

William Durant the Younger and Conciliar Theory

Constantin Fasolt

William Durant the Younger (c. 1266-1330) had a sharp mind, deep familiarity with the law of his times, and the practical experience necessary to understand exactly what was wrong with what he, like others, called “the state of the church.”¹ He also had the ability to argue from principles to conclusions and the courage to state his conclusions in public—at least until his superiors taught him to proceed with greater caution. The results were some rather radical ideas which reverberated through the later Middle Ages and beyond. They are contained in a long treatise on the reform of the church (*Tractatus Maior*), which he submitted to the council of Vienne in 1311, and a shorter one (*Tractatus Minor*), which he wrote at the council of Vienne while it was still in session and after having had what appears to have been an unpleasant encounter with Pope Clement V. The purpose of this article is to focus on the underlying significance of his ideas for our understanding of the conciliar movement and its place in European history.

The significance of Durant’s ideas ought not to be confused with their influence. Influence is the historian’s term for the efficient causality of ideas. Modern science, according to a wide-spread commonplace, has taught us to

This is a revised version of a paper given at a conference on “Law, Authority and Consent in the Roman Catholic Tradition” at the Institute of Human Values, Saint Mary’s University, in 1994. My thanks go to Arthur Monahan and John R. MacCormack for their invitation, to Francis Oakley and Joachim Stieber for their spirited discussion, and to the anonymous readers of a first draft of this article for their valuable criticisms.

¹ I have previously dealt with the same subject in *Council and Hierarchy: The Political Thought of William Durant the Younger* (Cambridge, 1991). I am returning to it here wishing neither to change nor to expand the interpretation I have already offered to the public, but to make its central features more clearly perceptible than they are amidst the detailed analysis of the evidence that takes center stage in *Council and Hierarchy*. Readers who would like to know more than can be written here about the evidence and its interpretation are referred to the passages in *Council and Hierarchy* indicated in the footnotes below.

focus our attention on efficient causality to the exclusion of all other possibilities. Merely to take the notion of formal or final causality seriously is likely to create bewilderment and misunderstanding. The great interest historians take in tracing influence thus is perhaps a measure of the tribute they pay to modern science, but it is clear neither that such tribute is deserved nor that modern science wants it. That is at least one good reason why it may be worthwhile to deflect attention from whatever efficient causality (influence) Durant's ideas may have exercised and focus it on their formal and final causes instead—on the questions what they were and where they led.²

What, then, were Durant's ideas? The treatise that he submitted to the council of Vienne in 1311 bristles with all sorts of complexities. But most of these are superficial. At bottom, it was founded on a few straightforward premises. These premises can be stated and counted in different ways, depending on how closely you want to look, the order in which you want to proceed, and the case you want to argue. For the purposes of this article they are best summed up in three propositions.

The first was that actions are right only if they conform to the law of the church. There are many questions that would need to be answered in order to make this a workable principle. For example, what, precisely, is the law of the church? Is it limited to the Bible? If so, all of the Bible, including the Mosaic Law, or only parts of the Bible? Does it perhaps include conciliar canons and papal decretals as well? If so, which canons and which decretals? Are such canons and decretals human law or divine law? What is the relation between human law and divine law in the first place? Who decides the meaning of the law in case of doubts or contradictions? What if someone is ignorant of the law? And perhaps most important: how do you verify that conduct does in fact conform to the law? Durant struggled with those questions and with others like them. But none of the practical and theoretical difficulties they raised ever shook his conviction that they could be answered and that the solution was contained in the holy books and the canonical writings transmitted from antiquity. His entire work rests on one simple idea: to act rightly means to act in conformity with the laws established and transmitted from antiquity.³ And to

² For Durant's influence, see Constantin Fasolt, "Die Rezeption der Traktate Wilhelm Durantis d. J. im späten Mittelalter und der frühen Neuzeit," in Jürgen Miethke (ed.), *Das Publikum politischer Theorie im 14. Jahrhundert: Zu den Rezeptionsbedingungen politischer Philosophie im späteren Mittelalter* (Munich, 1992), 61-80.

³ "If the ecclesiastical and the earthly powers wish to govern the world and the human race salubriously, they ought to conform their deeds and words to divine and human laws, subject themselves to these laws by imitation, give examples of what ought to be done to their followers and subjects, and govern the commonwealth neither for the sake of their presidency nor in order to enrich themselves or their family" (*Council and Hierarchy*, 155f).

judge rightly means to judge actions by those laws.⁴ Those laws were old, good, and true. They were the real authorities; the people who applied them were merely their servants.

The second proposition consisted of Durant's conviction that the world had fallen away from obedience to the law.⁵ Like other reformers, he judged the actions of his contemporaries according to the law and found that they were wanting. More unusually, he studied the ancient canonical collections and found that the actions of his contemporaries could not possibly have matched the law because so much of that law had been forgotten or superseded by recent and, in his opinion, ill-advised legislation.⁶ In large stretches his treatise, therefore, reads like a litany of indictments against contemporary conduct and a lament over the passing of the ancient law.

The third proposition was that the disrepute of ancient law and the sorry state of the contemporary world had not been caused by ill will but by ignorance: ignorance of the law in general, ignorance of the ancient law in particular, and ignorance of the proper ways and means to apply the law to circumstances that could not possibly have been foreseen at the time of its creation.

Despite the underlying gloom so typical of Durant and reformers like him, this was a happy message. Had the trouble lain with some ineradicable flaw in human nature, some profoundly corrupted will, or some inescapable destiny preventing human beings from knowing exactly what was right and what was wrong, there would have been little hope for reform. But from Durant's perspective the trouble was neither that human beings willfully did what they knew to be wrong nor that they could not tell what was right. He was certain that human beings who know what is right will do what is right. And knowing what was right was easy. All you had to do was read the books that contained the law, and especially the ancient books that contained the ancient law. The trouble was simply that not enough people read those books and that even fewer understood them as they ought to have been understood. It was ignorance

⁴ "As St. Augustine says in *De vera religione*, although men make judgments about temporal laws when they enact them, once such laws have been enacted and affirmed no judge may judge about them, but only according to them" (*Council and Hierarchy*, 166). What Durant says here about temporal law applies *a fortiori* to divine and natural law.

⁵ "If we remember with Pope Alexander how this holy church of God was originally planted, we cannot but feel grief that, not all of us in every way, but so many of us have fallen away in so many different ways from the primitive church as it was established by the holy fathers, councils, and Roman popes, that some of us seem to have become entirely oblivious of its original institution" (*Council and Hierarchy*, 269, n. 40).

⁶ "I read the constitutions for the state of the universal church which the holy fathers, general and provincial councils, and others carefully established once upon a time, which we have abandoned in many ways, and I decided to write down what in my humble view ought to be done by the council that is going to meet in Vienne" (*Council and Hierarchy*, 115; cf. 116-17).

that was the mother of all vices,⁷ but ignorance could be conquered by enlightenment. Whence not only Durant's practical proposals for better schools and education but also his demand to subject power to reason in general and his conviction that the reform of the church agreed with the will of God as much as the will of man.⁸

In this regard Durant deserves to be ranged with rationalists and optimists like Socrates and Diderot, as opposed to men like Augustine or Luther. He was inspired by the conviction that human beings were not only in a position to determine right and wrong reliably but also in a position to do something about it—though not, admittedly, exclusively by their own lights but by the light of the law which had been revealed to them by God and which they had in the meantime elaborated in divinely inspired assemblies and institutions. The foundation furnished by that law was firm beyond dispute, even if its rationality was sometimes difficult to grasp by mere mortals who are subject to the passage of time.

There may thus have been a great deal that was wrong with the church, but none of it touched the foundations. On the contrary, what was wrong was that the foundations of the church had all too often been abandoned, and the chief reason for that was a kind of forgetfulness. The ministers of the church, including the pope, knew neither the law they were supposed to apply nor the circumstances to which they were supposed to apply it as well as they should have. That was why the church was rife with abuse, not because anything was wrong with its structure or its law. The practice needed improvement, not the principle. From Durant's point of view the structure and law of the church, as he believed them to have been established by Christ, were supremely rational tools of human governance. If the source of that rationality transcended purely human understanding, this merely served to confirm his optimism about the rationality of the attempt to make human conduct conform to law.

Durant thus displayed what Arthur O. Lovejoy once referred to as a "peculiarly exuberant kind of this-worldliness," distinguishing it from the "other-worldliness" so memorably symbolized in Plato's image of the cave—and it is hardly an accident that Durant's "this-worldliness" was firmly joined to a particular instance of that hierarchical view of the world whose general history

⁷ "Ignorance is the mother of all vices and God's priests must avoid it more carefully than anybody else because they have taken it upon themselves to teach the people" (*Council and Hierarchy*, 193, n. 67; cf. 126-27).

⁸ "Power must be ruled, limited, and restricted by reason, so that reason rules overall, as Pope Gregory wrote to Emperor Maurice" (*Council and Hierarchy*, 145). "Let me therefore repeat that such reform in head and members conforms with the will of God, and consequently also with the will of man" (*Council and Hierarchy*, 131). For the reform of education, see *ibid.*, 126-27, 193-96, 244.

forms the subject of *The Great Chain of Being*.⁹ For Durant, there was no cave, nor was there an unbridgeable chasm between “the good” and everyday reality. Instead there was a “great order of difference,” to use a phrase he borrowed from Pope Gregory the Great.¹⁰ This order was grounded in reason and joined all creatures together in a structure that, however finely subdivided, was continuous. Its continuity assured each creature, from the lowest down here on earth to the highest angels in heaven, of a direct link to God. Hence Durant saw no fundamental difficulty in the relationship between reason and power, truth and authority, or law and justice. Fundamentally, these were all in harmony with each other because they all emanated from a single source, an all-knowing, all-powerful God. Fundamentally, the good and the true, the real and the ideal were united. There could be no such thing as purely irrational force. There could be no chasm dividing reason from power, truth from reality, justice from law, or right from might. Truth, if properly understood, had real effects; right, if properly acknowledged, had genuine might; law, if properly remembered, would be thoroughly obeyed; and good examples, if given not only by words but also by deeds, would actually be followed.¹¹

In all of these ways Durant expressed a particular variety of a faith so basic in medieval times as to be commonplace: the faith that there exists a timeless and transcendent kind of authority that unites all forms of power—the real as well as the ideal—under a single heading.¹² This faith was of course not unqualified. But it was basic, and its qualifications took another shape than they would in modern times. Durant’s writing thus displays a considerable degree of gloom but scarcely a trace of cynicism. It is characterized by a keen aware-

⁹ Arthur O. Lovejoy, *The Great Chain of Being: A Study of the History of an Idea* (Cambridge, Mass., 1936), 45.

¹⁰ *Council and Hierarchy*, 178-79.

¹¹ *Council and Hierarchy*, 212-16.

¹² One hesitates to use a German concept like “Weltanschauung” or a French one like “mentalité” to refer to the faith in question. But it is a fact that it has received more explicit recognition in German and French than it has in English historiography. A classic statement is Fritz Kern, “Recht und Verfassung im Mittelalter,” *Historische Zeitschrift*, 120 (1919), 1-79, reprinted separately Darmstadt, 1973. For a more recent account see Franz Wieacker, *Privatrechtsgeschichte der Neuzeit* (Göttingen, 1967²), 45-60, esp. 49-50, 54-56. For classic studies of particular applications of this view of the world to different areas of medieval life see, for example, Marc Bloch’s study of the medieval belief in the supernatural power of royalty, *The Royal Touch: Sacred Monarchy and Scrofula in England and France*, tr. J. E. Anderson (London, 1973), esp. 216-17, Gerd Tellenbach’s account of the “ecclesiastical claim to world-domination” in *Church, State and Christianity at the Time of the Investiture Controversy*, tr. R. F. Bennett (London, 1959), esp. 21-23, 162-68 (166 for the “claim to world-domination”), and Otto Brunner’s demonstration of the rationality of the feud as an instrument of medieval governance in *Land und Herrschaft: Grundfragen der territorialen Verfassungsgeschichte Österreichs im Mittelalter* (Vienna, 1965⁵), recently translated into English by Howard Kaminsky and James Van Horn Melton as *Land and Lordship: Structures of Governance in Medieval Austria* (Philadelphia, 1992), esp. 114-24.

ness of the many ways in which the ideals enshrined in holy canons were being violated in practice every day but hardly a suspicion that they might be “mere” ideals that could be ignored even if they were properly remembered.

His very style of writing was grounded in those convictions.¹³ Because Durant was sure that legal writings had real authority, he hesitated to use his own voice—the voice of the person whom we consider to be the “author”—whenever it was possible to quote the laws instead. He preferred to let the authorities speak for themselves. He favored an impersonal manner of expression that is as directly linked to his understanding of reform as it has been irritating to his modern readers. Above all else, of course, he presented a program of reform whose outline and details, including his demands for reenacting the law of the past and assembling general councils every ten years, are directly founded on his basic conviction that both reason and power were inseparably present in the authorities.

These, then, were Durant’s most basic arguments: the law was good; but it was not being obeyed; and the reason for that was ignorance. They can be summed up in his conviction that the law pointed a “short road to reform.”¹⁴

What was the program of reform that followed from these ideas? Reform, he established first, had to begin at the top of the hierarchy, which is to say, with the church.¹⁵ The clergy had to show their flock what good conduct was. The flock could hardly be expected to behave as good Christians were supposed to do unless they had learned good behavior from the only source accessible to them, the example of their priests and bishops. Once good examples were given, Durant was convinced that the success of reform was assured. The trouble was that priests and bishops were in no position to go ahead with good examples. In order for them to be able to do so, he established next, they had to be better informed about the source from which good conduct flowed.¹⁶ That is, they had to be educated in the law of the church both old and new.

It was at this point in his argument that Durant had to address the chief difficulty in the way of relying on the law among the several difficulties that were mentioned above.¹⁷ He recognized full well that the law did not always point the road to reform with equal clarity. He was aware that old laws must sometimes be changed, or even abandoned, in order to keep up with the times, that new laws must be made to deal with unforeseen events, and that all laws must be interpreted. He recognized, in other words, that the spirit of the law was not always evident in the letter. He admitted, therefore, that just as Christ

¹³ On Durant’s style as an expression of his fundamental beliefs see *Council and Hierarchy*, 122-28.

¹⁴ *Council and Hierarchy*, 132.

¹⁵ *Council and Hierarchy*, 129-32.

¹⁶ *Council and Hierarchy*, 132-35, 193-96.

¹⁷ *Council and Hierarchy*, 135-44.

had been entirely within his rights to break the Sabbath, so the pope was entirely within his rights to adjust the law to changing circumstances.

He also insisted, however, that the pope was not quite like Christ. The task of keeping the exercise of power under the control of reason exceeded, not Christ's, but the pope's capacity. Christ was *logos* himself. He knew which circumstances did and which did not justify modifications in the law.¹⁸ He knew when to break the Sabbath and when to accept circumcision. The pope knew sometimes, but not always. There was too much that needed to be known, and the dangers at the exposed pinnacle of the ecclesiastical hierarchy, always attracting the attention of the devil, were too great to be braved by one man, even if that man was the vicar of Christ.¹⁹ Hence the pope could not be exempted from the law. And yet the law needed to be revised. How was the law to be kept both flexible enough to respond to changing circumstances and yet firmly rooted in truth and reason?

This was the question that Durant answered with his conciliar proposal.²⁰ Christ had promised his presence at gatherings in his name. Councils were gatherings in his name. Hence councils could be trusted to supply the divine knowledge that exceeded the grasp of mere mortals but that was necessary to assure the harmony of law with reason even under changing circumstances. It followed that general councils ought to be convoked whenever new laws needed to be made or old laws needed to be modified. In this way the potential split between the letter and the spirit of the law could be avoided and true reason would in fact rule power over all.²¹

There is a great deal that could be said about this conciliar deduction, if that is what the few steps by which Durant arrived at his famous demand for the

¹⁸ "Since Christ, the head and spouse of the universal church, is the truth and the way by which we come to life, we ought to follow the truth rather than wicked customs or the abuses practiced by the church. For reason and truth always exclude mere custom" (*Council and Hierarchy*, 223).

¹⁹ *Council and Hierarchy*, 167f.

²⁰ "It would be advisable for the commonwealth and the administrators of the commonwealth if their power were to be limited by reason (as has been discussed before) in such a way that [first] the lord pope should no longer use the prerogative of his power without the considered advice of the lords cardinals, nor kings and princes the prerogatives of their power without the advice of other good men (as used to be the practice in the commonwealth in the past), especially when they are making concessions contrary to councils and laws approved in common; and [second] that the pope, kings, and princes, can no longer enact any new laws or grant any new concessions contrary to these councils and laws unless a general council has been convoked, for what touches all must, according to the rule of both canon law and civil law, be approved by all in common" (*Council and Hierarchy*, 160; cf. 156-68).

²¹ For other answers to the same question, see, e.g., Brian Tierney, *Religion, Law, and the Growth of Constitutional Thought, 1150-1650* (Cambridge, 1982); Stephan Kuttner, "Pope Lucius III and the Bigamous Archbishop of Palermo," in: *Medieval Studies presented to Aubrey Gwynn* (Dublin, 1961), 409-53; and Gaines Post, "Vincentius Hispanus, 'pro ratione voluntas,' and Medieval and Early Modern Theories of Sovereignty," *Traditio*, 28 (1972), 159-84.

participation of general councils in all legislative matters of church and state may be called. The most obvious, probably, is that nothing in this deduction justifies the demand for general councils to meet every ten years.²² It is one thing to ask for the assistance of Christ whenever the rationality of the law is in doubt; it is quite another to ask for his assistance every ten years. Equally striking, perhaps, is the absence of the so-called theory of corporations and a theory of representative government as we understand it. Durant did have such a theory, but it did not make up the foundation of his argument.²³ His argument did have something to do with representation, but it was the representation of Christ, truth, and reason in a council rather than the representation of the people in a constitutional assembly. This in turn raises fascinating questions about the relationship between the concept of Christ and the concept of the people in political theory. But in order to determine where Durant's ideas were leading, it may be more fruitful to return to the premises of his argument.

Where, then, did the ideas of William Durant the Younger lead? If you reflect on his premises, you realize that they embody a paradox. On the one hand, he relied on the law as the ultimate standard by which to judge right and wrong. Councils, as important as they were to him, merely played the subsidiary role of helping out where the law was in doubt. On the other hand, however, his very effort to restore the ancient law served to confirm beyond a shadow of a doubt that the law had long since failed to prevent the abuses he would so much have liked to have reformed. The more forgotten ancient laws he unearthed, the more clearly he showed how impotent the law was in the face of forgetfulness. The more urgently he demanded reform, the more exactly he revealed the extent of abuse. The more emphatically he declared the law to contain inviolate principles of justice, the more incontrovertibly he proved that those inviolate principles had in fact been violated. Far from securing a short road to reform, Durant tore up the very ground across which that road was supposed to lead. If there is one overriding lesson to be taken from the *Tractatus Maior*, it is that its author expected to reform the church by relying on laws whose failure to prevent abuse he himself had conclusively established. Durant thus fell into a vicious circle.

Now it is true that he recognized the circle and attempted to escape from it. That is the underlying function of his demand for general councils. If Durant's investigations of the ancient laws served mainly to increase the split between the letter and the spirit of the law to desperate proportions, the council was supposed to heal that split. Whenever the law was thrown into doubt, the council was to serve as an independent source of reason through which the law could be restored. This was an entirely workable solution—but only on one

²² *Council and Hierarchy*, 242-43.

²³ *Council and Hierarchy*, 280-83.

condition: that Christ would indeed be present in the council. What if the split between the letter and the spirit of the law were to infect the proceedings of the council itself? What if the council were to be divided into factions disputing different interpretations of the law? What if the council failed to arrive at a single answer to the question which law was reasonable and which was not? And what if the council were to be ranged against its most eminent member, the pope? These were obvious questions, and they troubled virtually every medieval writer who thought about the issue at all.²⁴ But merely to raise them was enough to show that the solution advocated by Durant was just as doubtful as the problem it was intended to solve. Merely to consider the possibility that the council itself might suffer from internal strife and fail to reconcile the spirit with the letter of the law was to contemplate the impossibility of reform on the basis that Durant had adopted.

That is, I think, the reason why Durant never addressed the question how to solve an outright conflict between pope and council. That is also the reason why he never demanded a formal right of conciliar consent to the measures of the papacy—a right, in other words, to a form of consent without which papal measures would have been invalid and that the council would have been entitled to withhold at its own discretion. At several places in his treatise he came close to demanding such a right, but every time he stopped short of the line that Gaines Post has clarified by coining the term “compulsory” or “procedural” consent—consent that cannot be freely granted or withheld but must be given once a council has been duly convoked and consulted on all matters under consideration, not unlike the kind of consent that is required from participants in a trial.²⁵

Once the necessary formalities, such as indictments, pleas, selection of a jury, calling of witnesses, examination of evidence, and so forth, have been fulfilled, plaintiffs and defendants are expected to consent to the decision of the court, whether they like it or not. Their consent is not “voluntary” but “compulsory.” In very much the same way Durant seems to have considered the council’s consent to be bound by the law. He did apparently not consider it within the rights of a duly convoked council to reject measures proposed by the papacy once all procedural resources had been duly exhausted—and one must say “apparently” because he had nothing explicit to say on the matter, even though it was absolutely crucial and even though one would very much have expected him to say that a council did have the right to refuse its consent to papal mea-

²⁴ See, e.g., Yves M.-J. Congar, “Quod omnes tangit, ab omnibus tractari et approbari debet,” *Revue historique de droit français et étranger*, 36 (1958), 210-59, and Francis Oakley, “Legitimation by Consent: The Medieval Roots,” *Viator*, 14 (1983), 303-35.

²⁵ See Gaines Post, “A Romano-Canonical Maxim, ‘quod omnes tangit,’ in Bracton,” *Traditio*, 4 (1946), 197-251, reprinted in his *Studies in Medieval Legal Thought: Public Law and the State, 1100-1322* (Princeton, 1964), ch. 4.

tures if he had thought it possible to insist on any such right.²⁶ It does thus not appear that his conception of the rights of a council ever equaled that which we associate with the “voluntary” consent at the disposal of modern representative assemblies.²⁷

The conciliar solution that Durant proposed in order to anchor reform securely in the law of the church thus did not solve but merely displaced a problem embedded in his conception of reform itself. Indeed, it may well have increased the problem. For at least by implication Durant raised the possibility that councils themselves might fail to guarantee the kind of authority that he intended to preserve. Implicitly, he raised the possibility that councils convoked in order to heal a split between the letter and the spirit of the law (which was bad enough) might merely aggravate the matter by revealing a split in the ultimate source of divine reason and authority at the disposal of the Christian church (which was intolerable). Durant’s ideas were leading him to a conclusion not at all in keeping with his wishes, namely, that reason and power were irreconcilably divided.

There is a sense in which this interpretation of Durant’s views flies in the face of his professed intentions and as a matter of fact this is precisely its point. The principles Durant adopted had implications conflicting sharply with the goals that he pursued. His program of reform was stretched uneasily over a conflict buried deeply in the logic of his assumptions. He tried his best to conceal the reality of that conflict, and to some extent he succeeded in keeping it implicit. But since it was embedded in his own convictions, it left clear traces on his thought and actions. One such trace has just been mentioned: his curious abstention from discussing the obvious question what to do if the council disagreed with the pope. Two more can still be added.

Another trace of this internal conflict can be found in a brief and virtually self-contained section of the *Tractatus Maior* that is entitled “How to Limit the Power of Superiors.”²⁸ This section comes just after Durant has formulated the chief difficulty inherent in relying on the law as the true measure of reform, and just before he offers his conciliar solution to the problem of adjusting old laws to new circumstances. It is the most fascinating stretch of writing in the entire treatise because it moves so very far away from Durant’s explicit formulation of the problem and the solution that he was about to offer, even though it is

²⁶ For a telling exception see Durant’s proposals on taxation (*Council and Hierarchy*, 243-46).

²⁷ The assertions made in the preceding paragraph are fraught with many technical difficulties including the interpretation of Durant’s Latin prose. For a detailed analysis of the issue and its implications see Constantin Fasolt, “Quod omnes tangit ab omnibus approbari debet: The Words and the Meaning,” in Steven Bowman and Blanche Cody (eds.), *In Iure Veritas: Studies in Canon Law in Memory of Schafer Williams* (Ann Arbor, Mich., 1991), 21-55. Cf. *Council and Hierarchy*, 163-65, and especially 281-84.

²⁸ *Council and Hierarchy*, 144-56, 218-22.

placed right between the two. It begins with the most emphatic demands that the power of the pope must be subjected to reason, continues with a uniquely detailed passage on the virtues of the ancient Roman Republic, culminates in a pained exclamation over the distance separating contemporary Christian vices from ancient pagan virtues, invokes the wrath of God on unjust rulers, and ends with abject entreaties to the pope to impose the law upon himself.

The tone and substance of these passages is strikingly different from the rest of the treatise. At the end there is no longer even the slightest hint that the papacy could be subjected to law and reason by any other means than its own good will. Durant starts out by asserting the power of reason, but instead of demonstrating how reason could be brought to bear on the papacy, he ends up by throwing himself and his entire program of reform, including its legal foundations, on impotent threats of divine vengeance and the faint hope that the pope may of his own free will do what Durant would have liked him to do. Precisely where he invokes the obligations of Christian government most urgently, Durant turns to the virtues of pagan antiquity. Precisely where he states his desire to identify the ancient law with reason most explicitly—and I think because this is where he does state it most explicitly—the link joining the ancient law to reason breaks apart.

This left Durant with the possibility that ancient Christian virtues might have been lost forever, that the virtues of Christians and pagans might have become comparable, and that the ancient law of the church might henceforth belong in the domain, not of reform, but of history—a form of history not yet perhaps exactly as value-neutral as history has reportedly come to be in the research of modern historians, but surely neither any longer a source of moral obligation as direct as his program for reform required it to be. It followed, and Durant almost admitted as much, that there was not much else to do than to relinquish contemporary affairs to the power of a ruler whom one could beg, but not require, to obey the law because the decision what is law could no longer be derived from any other source than from that ruler's own discretion. It followed, in other words, that the supremely rational power of the law by which Durant thought the power of rulers could be bound in order to promote the reform of the church had, under the stress of his very own insistence, broken apart into two uneven pieces: a supreme power that was irrational (which we have learned to call sovereignty) and a form of rationality that was powerless (which we have learned to call history).²⁹

²⁹ *Council and Hierarchy*, 265-67, 275-76. For an old, but still marvelously lucid general perspective on the "historical revolt" from a characteristically medieval faith in the rationality of the world to a characteristically modern, and historicist, form of "irrationality," see A. N. Whitehead, *Science and the Modern World* (New York, 1925), 12-16, esp. 16: "Science has never shaken off the impress of its origin in the historical revolt of the later Renaissance. It has

There is a logic to the sequence of steps that Durant took in the section on limiting the power of superiors. It is a logic that caused him the greatest anguish, but it is also a logic that followed directly from the urgency with which he admonished his contemporaries to heed “the original texts.”³⁰ It drove him to acknowledge the impotence of those texts and his own inability to make the present conform to what the original texts demanded. It transformed those texts from authorities into sources of historical knowledge about a past that was both ideal and irretrievably lost. It forced him to countenance the disintegration of the universal order that he was struggling so painfully hard to preserve—an order moral, rational, legal, and powerful all in one—into mere evidence of how things used to be, with no binding moral claims upon the present, and the arbitrary power of a sovereign ruler bound by no precedent or law besides his own interpretation of the law of nature and of God. Whether or not that sovereign was to be found in representative assemblies or monarchies was a subsidiary question. In neither case were sovereigns going to accept submission to that ancient law on whose divinely inspired authority Durant had rested his case. Here, in other words, the conciliarist was about to change his mind. Having started out by demanding a return to the ancient laws, he ended up by facing the possibility that the only return to the ancient laws within his grasp was the historical study of “the original texts” because “the power of superiors” had successfully escaped from his attempt to subject it to the reason of those texts. Here the conciliarist anticipated the early modern division of labor between humanists and politiqués, between history and reason of state, that came to fruition in the writings of Jean Bodin and his successors. And by anticipating it he helped to bring it to reality.³¹

A second additional trace of the internal conflict in question has to do with Durant’s later actions. It was because of the logic of his own argument, and not merely out of craven submission to superior force or self-interested political expedience (though certainly not in conflict with them either), that Durant so quickly modified his ideas at the council of Vienne when he encountered opposition from the curia and from Pope Clement V.³² What had merely been a (very

remained predominantly an anti-rationalistic movement, based upon a naive faith.... Of course the historical revolt was fully justified.... It was a very sensible reaction; but it was not a protest on behalf of reason.”

³⁰ Anticipating humanist sentiments, Durant repeatedly expressed his contempt for “the diversity and variety of glosses and writings in each of the [university] faculties. They stultify the intelligence of students with multiplicity, prolixity, and similitude. They are a waste of time and money and they produce confusion and ignorance because they lead to contempt for the original texts” (*Council and Hierarchy*, 126-27).

³¹ For a detailed justification of this interpretation of Durant’s section on “How to Limit the Power of Superiors” see *Council and Hierarchy*, 247-84, 317-18.

³² *Council and Hierarchy*, 283-84, 290-304.

unwelcome) logical possibility thus became a (relatively painless, but not much more welcome) course of action just as soon as Durant experienced the conflict between reason and “the power of superiors” in his own person. Of course it was the conciliar proposal that went. What remained in the *Tractatus Minor*, and what was in fact enhanced, were the proposals for educating the clergy that came to fruition at the council of Trent.³³ What remained in Durant’s own life was a diplomatic career in royal and papal service which declined only under the pontificate of Pope John XXII and ended in Nicosia in 1330, whence he had just returned from Egypt in an attempt to further the crusade—surely a fitting end to the career of someone as firmly dedicated to the universal rationality of the law as William Durant the Younger.³⁴

That was where his ideas were leading William Durant the Younger. What is their significance for our understanding of conciliar thinking overall? Let me offer an answer in three parts. First, Durant’s ideas help to identify the fundamental issue in the history of the conciliar theory. That issue was not the choice between monarchy and representative government, not the choice between pope and council. It was rather the question how to balance the needs of the present against the weight of the past. It was how to reconcile contemporary experience with a hallowed textual tradition without allowing the one to predominate at the expense of the other. It was, in other and more familiar terms, the question of reform. Reform is the fundamental category of the framework in which the conciliar theory and the conciliar movement took shape and by which they were determined—a framework that had been constitutive for the self-understanding of the medieval church ever since the times of Pope Gregory VII and Gratian at the latest. Conciliarists may have turned reform against the papacy, but only because in their view the papacy had failed to reach the goals that had been set in the eleventh century and not because the goals themselves were wrong. That explains why the logic of Durant’s conciliar program, including its non-conciliar outcome, can be traced back to a crucial canon in Gratian’s *Decretum*.³⁵ This is of course not to say that the great debate over the respective constitutional rights of the council and the pope did not have the importance for later constitutional thought that historians now attribute to it. But it is to say that it acquires its proper meaning only within the limits established by the framework of reform.

Second, Durant’s ideas help to clarify the nature of the conciliar theory. Paradoxically, at least to modern ears, it was a theory not only of freedom but

³³ On this connection see Ernesto Bellone, “Cultura e studi nei progetti di riforma presentati al concilio di Vienne, 1311-1312,” *Annuario historiae conciliorum*, 9 (1977), 67-111. Cf. *Council and Hierarchy*, 301-3.

³⁴ *Council and Hierarchy*, 305-14.

³⁵ Not, as one might have thought, D.40 c.6, but D.20 c.3 (*Council and Hierarchy*, 157-58, 267-75).

also of obedience. "Obedience," Durant declared in the very opening lines of his treatise, quoting the prophet Samuel and Pope Gregory I, to whose thinking Durant was heavily indebted, "obedience is better than sacrifice because sacrifice is performed with the flesh of another, whereas obedience is a sacrifice of our selves."³⁶ In Durant's view councils were the place where that sacrifice of our selves could be properly performed. There, with the assistance of Christ, due obedience could be rendered to the ancient law and the reason that it embodied without disrespect either to the past or to the present. It was by such a sacrifice that Durant expected to be able to heal the split between the letter and the spirit of the law that threatened to undermine the foundations of the church and to hasten the apocalypse. If the conciliar theory was meant to secure freedom, it was at least in part the freedom to obey.

Walter Ullmann has written that the conciliarists

had not the courage of their conviction to transplant their own theories into reality. It was the amorphous multitude which first frightened them and then made them abandon their own position, only to retreat into the old papal-monarchic framework. Indeed, it was fear of the multitude—of the laity—which made the conciliarists join the "Establishment" in which they found a secure bulwark against the rising tide of popular forces.³⁷

If my interpretation has any merit, that is both unfair and misleading. It was not that the conciliarists lacked the courage of their conviction. It was that their conviction included obedience. It may be difficult for modern interpreters to appreciate the kind of virtue conciliarists were able to find in obedience, unless they share the Kantian perspective that freedom consists of obedience to reason, but a virtue it was most certainly thought to be. It is difficult to believe that the obedience praised by Durant did not serve as one of the sources from which modern sovereigns have drawn their claims on a right to demand unconditional obedience from their subjects.

Third and finally, Durant's ideas help to understand why the conciliar movement ended as it did. The trajectory of his thought and life paralleled that of the conciliar movement overall. To put the same point in the terms alluded to at the beginning of this article, Durant and the conciliar movement shared common formal and final causes. Both started with an attempt to maintain the authority of the church and its law, both founded themselves on the rationality of the church and its law, and both ended in a victory for history and sovereignty, i.e.,

³⁶ *Council and Hierarchy*, 116-17.

³⁷ Walter Ullmann, *A History of Political Thought: The Middle Ages* (rev. ed., Harmondsworth, 1970), 224.

for a return to the past that has no morally or legally binding implications for the present and for a kind of authority that is exempt from law. In the case of Durant, that victory came when Pope Clement V took him to task, and he abandoned his conciliar proposal. In the case of the conciliar movement, that victory came when Pope Eugenius IV faced down the council of Basel, and leading conciliarists such as Cesarini and Nicholas of Cusa took his side while welcoming the humanist study of the past. In the end the conciliar movement found it just as impossible to prevail in an outright conflict between Pope and Council without forsaking its principles as Durant had found it to be. What began as a mere logical possibility became a historical force that changed both minds and the course of events just as soon as concrete experience forced conciliarists to address the direct conflict between Pope and Council that Durant had hoped to avoid by silence. Durant's ideas, in other words, illuminate a road that led from the assertion of conciliar principles to the acceptance of princely sovereignty, not in spite of the demand for general councils, but because of it.

That road was not at all the only one he could have traveled. There is no reason to believe that ancient law cannot be duly balanced against contemporary circumstances. Nor is there any reason to believe that reason itself cannot change in accord with the demands of time and place. But there is reason to believe that the balance will inevitably contain an element of irrationality. To try and do away with that irrational remainder is merely to increase its strength. This, I think, is precisely what William Durant the Younger did and what was repeated in the conciliar movement overall. Both sought after a solution to the problems confronting the church in the later Middle Ages with no irrational remainder. Both wanted to get to the bottom of things. But in their eagerness to keep authority intact they overshot the mark. Far from arriving at the desired goal, they were driven into the corner defined by the question "Council or Pope?" There was no way out of that corner without changing the terms of the debate. The very attempt to get to the rational bottom of the problem of reform destroyed the foundation for its conciliar solution.

The sequel is well known. It was adumbrated in Durant's own writing and repeatedly enacted and re-enacted by those late medieval canonists who turned from striving for conciliar reform to humanist studies and an acceptance of the kind of papacy epitomized by men such as Alexander VI, Julius II, and Leo X.³⁸ It was driven even further by their Protestant successors who rejected the very concept of the rational authority of law as a foundation for the church, sharpened the distinction between faith and law to a point where the relation between the two became well-nigh unintelligible, and softened the distinction

³⁸ A book about conciliar canonists turning to humanist studies is still waiting to be written.

between legitimate rulers and tyrants to a point where the difference between the two became hard to tell. Jean Bodin was merely consistent when he went so far as to declare a tyrant ruling without consent as a sovereign properly speaking, while denying sovereignty to certain magistrates ruling with consent, precisely because they were ruling with consent.³⁹ In Bodin's thought the medieval hatred for tyranny had been superseded by an entirely novel respect for a kind of public authority that transcended the legal distinction between tyrants and legitimate rulers.

By transforming the concept of reform into that of the Reformation Protestants opened a new epoch in the history of Europe. As a result the obedience that Durant had wished for was irreversibly divided into two varieties: the humanistic one, still practiced by modern historians, which continues to heed the commands of ancient law but which has voided them of their obligatory power and limited itself to studying the original texts without demanding any action; and the obedience of the modern subject, who heeds the commands of a sovereign ruler and is asked to obey them blindly because the sovereign is absolute and his reasoning is a secret of state. Historicism and absolutism are the price that modernity has paid in compensation for the medieval dream of a perfectly rational constitutionalism.

Obviously this view of things depends on a definite interpretation, not only of the ideas of William Durant the Younger but also of the conciliar movement as a whole, not to mention a host of other things. I am well aware that the interpretation of the conciliar movement remains contested. I am even better aware that I assume, instead of proving, the extent to which Durant and the conciliar fathers at Constance and Basel were inspired by a similar respect for the authority and rationality of law. There are good reasons to believe they were, but the question is wide open.⁴⁰ Far be it from me, therefore, to consider the matter settled, but in conclusion I would like to specify a potential benefit of this interpretation.

³⁹ "I would add that if a sovereign magistrate, whose term is only annual or is for a fixed and limited time, contrives to prolong the power entrusted to him, it must either be by tacit consent [*de gré à gré*] or by force. If by force, it is called a tyranny. Yet the tyrant is nonetheless a sovereign, just as the violent possession of a robber is true and natural possession even if against the law, and those who had it previously are dispossessed [*en sont dessaisis*]. But if a magistrate prolongs sovereign power by tacit consent, I say that he is not a sovereign prince, since he has nothing except by sufferance, and all the less so if no time limit is set, for then he has only a precarious commission [*commission précaire*]." Jean Bodin, *On Sovereignty: Four Chapters from Six Books of the Commonwealth*, ed. and tr. Julian H. Franklin (Cambridge, 1992), 6. See also Constantin Fasolt, "Visions of Order in the Canonists and Civilians," in Thomas A. Brady, Jr., Heiko Oberman, and James Tracy (eds.), *Handbook of European History, 1400-1600: Late Middle Ages, Renaissance and Reformation* (Leiden, 1995), II, 31-59, esp. 48-50.

⁴⁰ Cf. Louis B. Pascoe, *Jean Gerson: Principles of Church Reform* (Leiden, 1973), and Phillip H. Stump, *The Reforms of the Council of Constance (1414-1418)* (Leiden, 1994).

If it is true that there is a correlation between the demand for regular meetings of general councils as a means to curtail the power of the papacy and the disintegration of a unified concept of rational authority into historicism and absolutism, then that disintegration ought to have been most advanced in places where the conciliar movement flourished, and least advanced in places where it did not. This, it seems to me, is precisely the lesson taught by the different national histories of Europe. Germany and France were the countries most hospitable to historicism and absolutism. They were also the countries most hospitable to the conciliar movement. The councils of Lyons and Vienne, well before the conciliar movement got underway, but when the call for church reform was already beginning to turn against the papacy, are the only ecumenical councils that met in France. The councils of Constance and Basel, the two most important councils at which conciliarist convictions were given legal and political expression, are the only ecumenical councils to have met on "German" soil. Conciliarists were born in many different places, but they went to France and Germany.

Perhaps one could go even further and say that in the German-speaking lands where the councils of Constance and Basel actually met the disintegration of rational authority was experienced at its most concrete. Germany went on not only to produce the Reformation—a revolutionary transformation of the concept of reform that involved a frontal assault on the authority of law if anything ever did—but also to implicate itself in erudite historicism too deeply to be able to conduct a contemporary politics except in the disjointed and disorganized territorial way which characterized the Holy Roman Empire in early modern times and has gone on to characterize Germany until the present.⁴¹

France, on the other hand, was the country that housed the single most important intellectual home of conciliar theorists, the University of Paris. In France the failure of rational authority was perhaps experienced less sharply, or at any rate so differently that historicism took second place to absolutism. Attachment to universal causes was transformed into attachment to the greatness of the French monarchy and nation, allowing France to specialize in building the classic model of absolutist sovereignty and encouraging the French to practice a variety of rationality equally absolutist as, but less historicist than, the German. By the nineteenth century diplomatic negotiations were just as naturally conducted in French as the great works of historicism were written in German.

Italy and England, by contrast, did not appear as prominently on the scene of the conciliar movement as Germany and France. Neither did they experience

⁴¹ On this characterization see Leonard Krieger, *The German Idea of Freedom: History of a Political Tradition from the Reformation to 1871* (Chicago, 1957), and Notker Hammerstein, *Jus und Historie: Ein Beitrag zur Geschichte des historischen Denkens an deutschen Universitäten im späten 17. und 18. Jahrhundert* (Göttingen, 1972).

the split between past and present equally sharply, suffer internal disruptions as violent as the Thirty Years War or the Wars of Religion, or embrace absolute sovereignty with the same enthusiasm. These are the countries in which Renaissance had more resonance than Reformation. That may help to understand why no country managed more successfully to integrate princely sovereignty with scholarly humanism than Italy, and why the ideals to which the conciliar movement aspired have nowhere been translated more effectively into a national setting than in England.⁴² Perhaps it may even explain why it was an Englishman equally at ease with the study of history as with the life of a statesman who would, at a much later time, but in the very same context of fundamental legal reform, strike the balance between past and present that seems to have eluded the conciliar movement in one of the clearest formulations imaginable: "It is now time for us to pay a decent, a rational, a manly reverence to our ancestors, not by superstitiously adhering to what they, in other circumstances, did, but by doing what they, in our circumstances, would have done."⁴³ From somewhat unexpected quarters J. G. A. Pocock's thesis about a republican tradition in political thought bypassing Germany and France while linking Italy to England may thus receive some confirmation.

The University of Chicago.

⁴² On Italy see Eric Cochrane, *Italy, 1530-1650*, ed. Julius Kirshner (London, 1988), esp. 55-66, 202-205, 248-250. On England, see Frazer → Oakley, "'Anxieties of Influence': Skinner, Figgis, Conciliarism and Early Modern Constitutionalism," *Past & Present*, 151 (1996), 60-110, esp. 84-85.

⁴³ T. B. Macaulay, "Speech on Parliamentary Reform (2 March 1831)," in Jan Goldstein and John W. Boyer (eds.), *Nineteenth-Century Europe: Liberalism and Its Critics* (Chicago, 1988), 47.