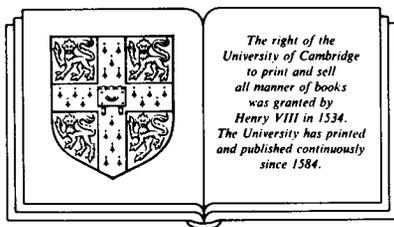


# COUNCIL AND HIERARCHY

*The Political Thought of  
William Durant the Younger*

CONSTANTIN FASOLT

*Associate Professor of History, University of Chicago*



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## INTRODUCTION

I have no doubt that there are some who will be irritated by my having at such length and with such enthusiasm advanced an argument which in reality may be not that important, not that indispensable, and even of no use to life at all.

Hermann Conring<sup>1</sup>

In 1311, at the council of Vienne, William Durant the Younger, bishop of Mende and count of Gévaudan, demanded a reform of the church 'in head and members' – a phrase that would reverberate throughout the later middle ages and which he was among the first to introduce into public debate.<sup>2</sup> The centre-piece of this

<sup>1</sup> 'Non dubito, fore qui aegre laturo sint, ea prolixitate, atque illo studio actum esse de argumento fortasse ponderis reapse non adeo magni, nec adeo necessarii, imo nullius singularis ad vitam usus.' Hermann Conring, *De civili prudentia, Opera*, 3:281.

<sup>2</sup> 'Videretur deliberandum, si posset, per quam utile fore et necessarium quod ante omnia corrigerentur et reformarentur illa que sunt in ecclesia dei corrigenda et reformanda tam in capite quam in membris.' *TMA* 1.1, fol. 4rb. The opinion that William Durant the Younger was actually the first to coin the phrase 'reform in head and members' is expressed by McNeill, 'Emergence', pp. 298f.; Lecler, *Vienne*, p. 40; Lecler, *Le Pape ou le concile?*, p. 49. But although Durant certainly helped to give it greater currency, Neiske, 'Reform oder Kodifizierung?', p. 74 n. 18, has discovered the same formula as early as 1289 in the letters of Nicholas IV, no. 1556 (5.IX.1289) and especially no. 1772 (10.XII.1289): 'Ad statum pacificum et tranquillum Cluniacensis ordinis paternis studiis intendentes, quamplura statuta pro reformatione ipsius tam in capite quam in membris edidimus.' It is surely noteworthy that the earliest known use of 'reform in head and members' should be found in papal letters regarding a monastic order as intimately linked to the rise of the medieval papacy as Cluny. The notion of reform in the middle ages has been thoroughly investigated; Burdach, *Reformation, Renaissance, Humanismus*, Ladner, *The Idea of Reform*, and Panofsky, *Renaissance and Renascences* are three basic, classic, and complementary statements. More recent are Ladner, 'Terms and Ideas of Renewal'; Constable, 'Renewal and Reform'; Benson, 'Political Renovatio'; and Morrison, *The Mimetic Tradition of Reform*. On the vicissitudes of ecclesiastical reform in the later middle ages Haller, *Papsttum und Kirchenreform* is still the single best study, to be accompanied by works like Barraclough, *Papal Provisions*; Leff, *The Dissolution of the Medieval Outlook*; Pascoe, *Jean Gerson*; Stump, 'Reform in Head and Members'; and Stockmeier, 'Causa reformationis'. For an understanding of the objects of reform the following four are especially useful: Murray, *Reason and Society*; Schwer, *Stand und Ständeordnung*; Stutz, *Die Eigenkirche*; Schulte, *Der Adel und die deutsche Kirche*. A perspective on the assimilation of reform by the laity is furnished by Strayer, 'The Laicization of French and English Society' and Lagarde, *La Naissance de l'esprit laïque*.

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reform was to consist of the transferral of the responsibility for the law of the church from the papacy to general councils, which would meet at ten-year intervals: 'Henceforth the church of Rome ought to enact no general laws unless a general council has been convoked, and such a council ought to be convoked every ten years.'<sup>3</sup> Lest anyone should think that the papacy would still be free to change existing laws by granting dispensations, Durant declared explicitly that the papacy was not to 'issue any dispensations, privileges, or exemptions contrary to the provident conciliar constitutions of the holy fathers unless a general council has been called.'<sup>4</sup> In support of these demands he invoked the famous principle that 'what touches all must, according to the rule of both canon law and civil law, be approved by all in common'.<sup>5</sup> Finally, in what was perhaps his most farsighted proposition, he suggested a kind of budgetary process that would have made the finances of the papacy dependent on its compliance with 'whatever may seem reasonable to the council'.<sup>6</sup> In sum, Durant wished to endow general councils with sufficient power to control the government of the church.

As far as we know, never before had anyone proposed such radical ideas. Of course, Durant's *démarche* was not entirely unprecedented. During the two centuries preceding the council of Vienne, canonists had already gone to considerable lengths in attempting to place effective limits on papal government. They had declared that the church had an immutable constitution, a 'state of the church' that no one, not even the pope, could change or abrogate, and they insisted that this state of the church was by no means limited to the faith but extended to the organization and government of the church as well – although its precise definition

<sup>3</sup> 'Item quod [Romana ecclesia] nulla iura generalia deinceps conderet nisi vocato concilio generali, quod de decennio in decennium vocaretur.' *TMA* 2.96 (3.27), fol. 59rb.

<sup>4</sup> '[Presidentes monarchie non] sine generali concilio \*agant\* [P] contra ea que sunt in concilio a sanctis patribus provide constituta in dispensationibus, privilegiis, et exemptionibus, et aliis exercendis.' *TMA* 1.4, fol. 7ra.

<sup>5</sup> 'Illud quod omnes tangit secundum iuris utriusque regulam ab omnibus debeat communiter approbari.' *TMA* 1.4, fol. 7rb. Cf. VI.5.12 De reg. iuris 29.

<sup>6</sup> 'Item quod de bonis ecclesiasticarum personarum superabundantibus talis provisio fieret supradicte Romane ecclesie quod absque omni taxationis nota et infamia posset communiter et divisim honorabiliter vivere \*et\* [M] onera incumbencia supportare, provisio tamen quod ultra et contra predicta et alia que concilio rationabilia viderentur contra divinas et humanas leges non posset absque generali concilio habenas extendere plenitudinis potestatis.' *TMA* 2.96 (3.27) fol. 59rb.

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was much in dispute.<sup>7</sup> They had discussed how a pope who violated the state of the church, especially by falling into heresy or by committing outrageous and notorious crimes, was to be judged and deposed, and most of them agreed that the responsibility for such action rested with general councils.<sup>8</sup> General councils thus played a crucial role in contemporary theories about the government and structure of the church. Attempts were sometimes made to turn these theories into practice: in the mid thirteenth century Emperor Frederick II had appealed to a general council against Pope Innocent IV, and King Philip IV had very recently lodged a similar appeal against Pope Boniface VIII.<sup>9</sup> Moreover, even apart from the crises associated with attacks on papal government by temporal rulers, councils had played a regular and important part in the government of the church. During the 200 years preceding the council of Vienne, six general councils met at an average of one council every thirty years – more frequently than in any comparable length of time before or after – and this activity was more than equalled by councils on the local level.<sup>10</sup> Indeed, in the 1280s the church of France had mounted a flurry of provincial and national councils designed to overturn the privileges that the papacy had granted to the mendicant orders, which the prelates of France regarded as a direct violation of their rights and which provoked them into clear statements both of their understanding of the state of the church and of their willingness to organize resistance to the papacy ‘for the common good’.<sup>11</sup> Even without considering the councils convened by royal and urban governments, and even omitting Magna Carta, there can be little doubt that during the twelfth and thirteenth centuries conciliar activity intensified in both theory and practice to a degree unmatched either before or since. As Brian Tierney has put it, ‘the roots of the conciliar

<sup>7</sup> On the concept of the ‘state of the church’ see the precisely focused investigations of Hackett, ‘State of the Church’, Congar, ‘Status ecclesiae’, and Post, ‘Copyists’ Errors’, as well as more broadly conceived works like Tierney, *Foundations*, Tierney, *Origins of Papal Infallibility*, Pennington, *Pope and Bishops*, and Buisson, *Potestas und Caritas*.

<sup>8</sup> Tierney, *Foundations*; Tierney, ‘Pope and Council’.

<sup>9</sup> See Kempf, ‘Die Absetzung Friedrichs II.’, Arquillière, ‘L’Appel au concile’, and now Becker, *Die Appellation vom Papst an ein Allgemeines Konzil*.

<sup>10</sup> It has been estimated, for example, that over one hundred councils met in France during the thirteenth century; Gaudemet, ‘Aspects’.

<sup>11</sup> See Schleyer, *Anfänge des Gallikanismus*, Glorieux, ‘Prélats français’, Lagarde, ‘La Philosophie sociale’.

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tradition lie deeper in the past than has usually been supposed'.<sup>12</sup>

And yet William Durant the Younger's idea was radically new. If in the middle of a learned commentary on Gratian's *Decretum* a canonist reflected on the potential applications of a canon demanding that popes who fell into heresy be judged – that was one thing; it was quite different for a bishop to appear at a general council that had been convoked explicitly for the reform of the church and to ask the council publicly henceforth to prevent all popes, heretical or otherwise, from making law without convoking general councils. It was one thing for thirteenth-century canonists to analyse the relationship between a bishop and his cathedral chapter in terms of Roman legal theories of corporation; but it was quite different for Durant to subject the papal plenitude of power to the discretion of a general council. General councils had frequently met before, and in practice they had often served as channels to communicate resistance to papal government. But they had always met at the bidding of the papacy and with the proviso that their decisions were invalid unless they received the approval of the pope. Requiring the pope to obtain the approval of a general council for all new legislation was a complete reversal; substituting a period of ten years for a period at the pope's discretion was an emancipation of the council from papal government; and combining both proposals was a restriction on the papal plenitude of power that amounted to a prodigious innovation in the constitution of the church.<sup>13</sup>

The radical quality of Durant's ideas was immediately recognized, and it immediately got him into trouble with the pope. When he convoked the council of Vienne Clement V had expressly asked for written suggestions on reforming the church, but clearly this was not what he expected. Alerted to the displeasure of the pope, Durant thought it wise to reconsider: while the council of Vienne was in session, he composed a more modest treatise (*Tractatus Minor*) that retained many of the ideas he had developed in his earlier work (*Tractatus Maior*) and that in many ways foreshadowed the reforms later enacted at the council of Trent, but

<sup>12</sup> Tierney, *Foundations*, p. 245. On conciliar action by the laity see the excellent study by Reynolds, *Kingdoms and Communities*.

<sup>13</sup> Sieben, *Konzilsidee des lateinischen Mittelalters*, p. 257, even speaks of 'revolution': 'Während die Verbindung von Konzils- und Reformidee, die uns im Werk des Durandus zum ersten Mal entgegentritt, für die Ebene der *membra* eine Wiederherstellung des altkirchlichen Konzilswesens besagt, bedeutete sie auf der Ebene des *caput*, würde sie in die Tat umgesetzt, eine Revolution.'

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that made no mention whatsoever of reform by means of general councils. When he died in 1330 it may therefore have seemed as though his revolutionary plans had been forever laid to rest. But they were not forgotten: some seventy years after the council of Vienne, under the extraordinary circumstances of the great schism that divided the church from 1378 to 1417, they came into their own. Just over one hundred years after Durant's apparent defeat, the council of Constance wrote his ideas into law with the decrees *Haec sancta* and *Frequens*.<sup>14</sup>

There is of course a certain difference between demanding, as Durant had done, that the pope should not be allowed to issue general laws or to dispense from such laws without the assistance of a general council, and declaring, as *Haec sancta* did, that the pope was subject to councils in the three specific matters of faith, schism, and reform. Constance was both more radical in subjecting the pope explicitly to conciliar authority and more moderate in limiting the scope of that authority to three specific subjects. But it is hard to imagine any activity by the pope that would not have affected matters construed as broadly as faith, schism, and reform. If the formulation differed, the thrust of Durant's proposal was nonetheless preserved – not to mention that Constance followed him precisely in joining its enactment of conciliar authority to a 'reform in head and members' and in adopting the same decennial period for conciliar assemblies.

In the two centuries following the council of Constance William Durant the Younger's treatise enjoyed considerable popularity. To be sure, no more than ten manuscripts have been preserved, of which three are quite fragmentary while only two include both the *Tractatus Maior* and the *Tractatus Minor*, and there are only six printed editions.<sup>15</sup> Those numbers do not compare favourably

<sup>14</sup> COD, pp. 409f., 438–42. For the transmission of Durant's ideas see Fasolt, 'Die Rezeption der Traktate Wilhelm Durantis d. J.'

<sup>15</sup> P and M are the two 'best' manuscripts and the only ones to contain both the *Tractatus Maior* and the *Tractatus Minor*. C, R, B, Ma, and Tr, which contain the *Tractatus Maior* in its entirety, but not the *Tractatus Minor*, are more derivative. Tu contains the *Tractatus Maior* up to chapter 2.71. O and Z are each conflated from at least two different sources and contain only a fragment of the *Tractatus Maior* extending barely beyond the end of the first part. The printed editions are Lyons 1531 (reprinted with a different frontispiece in 1534), Paris 1545 (two printings), Lyons 1549 in the second volume of a large collection of *Tractatus ex variis iuris interpretibus*, Venice 1562, Venice 1584 in volume 13 of the *Tractatus universi iuris*, and Paris 1671. For more details see Fasolt, 'Manuscripts and Editions', Fasolt, 'A New View', and Fasolt, 'William Durant the Younger's "Tractatus"', pp. 18–157.

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with, for example, the massive number of manuscripts and editions of the *Speculum iudiciale* or the *Rationale divinorum officiorum* by his more famous uncle and predecessor as bishop of Mende, William Durant the Elder, commonly known as the Speculator.<sup>16</sup> It seems that the respect with which the younger Durant was received after the council of Constance was that accorded to a precursor whose central ideas had now been realized and whom his followers were pleased to invoke to lend respectability to their own endeavours or to reflect on their own origins, but who did not dominate public debate. Indeed, the man who edited his treatise in 1531 expressed some mild embarrassment about what he considered the quaint antiquity of Durant's detailed proposals.<sup>17</sup> But this is not surprising. What is surprising is that the *Tractatus Maior* was copied, read, and printed without noticeable interruption from the council of Constance down to the late seventeenth century – indeed, printed more frequently than Nicholas of Cusa's *De concordantia catholica*, a book that is sometimes regarded as the outstanding achievement in the history of the conciliar theory and thus perhaps allows for a more instructive comparison than standard works of reference like the *Speculum iudiciale* or the *Rationale divinorum officiorum*.<sup>18</sup> It is striking as well that both manuscripts and editions appear with great regularity in the proximity of dominant figures and pivotal events in the history of the conciliar theory. The readers of the *Tractatus Maior* are thought to have included Pierre d'Ailly (certainly) and Jean Gerson (probably) at the beginning of the period and Etienne Baluze (probably) toward the end.<sup>19</sup> Among the owners of the manuscripts were Pope Benedict XIII, who cherished it sufficiently to place it in the *Biblioteca minor* accompanying him on his wide-ranging travels through Europe in the first decade of the fourteenth century;<sup>20</sup> Nicholas of Cusa, who did not

<sup>16</sup> See below, p. 67, no. 45.

<sup>17</sup> 'Nonnulla fortasse ab huius aetatis institutionibus videbuntur aliena.' Jean Crespin, *TMA*, fol. 2ra.

<sup>18</sup> Kallen, ed. Nicholas of Cusa, *Concordantia catholica*, pp. xiii–xxix, lists eighteen complete and five fragmentary manuscripts of the *Concordantia*, but only four editions from 1514 to 1609.

<sup>19</sup> On d'Ailly and Gerson see Viollet, pp. 123–6. Since Baluze, *Miscellanea*, 3:301–50, used Ma for his edition of Jordan Brice's treatise against cardinal Capranica, and since he acquired P for the library of Colbert in 1682, it is not unlikely that he read the *Tractatus Maior* as well.

<sup>20</sup> Maier, 'Die "Bibliotheca Minor" Benedikts XIII.', p. 37, no. 312. This manuscript appears to have been lost. The catalogue of the papal library, which Franz Ehrle believed

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like his copy because it was full of mistakes but clearly read it with attention, placed annotations in its margins, and put it into the library of the hospital that he built in his home-town on the Moselle, where it can still be read today;<sup>21</sup> Peter Nümagen, humanist, secretary to Andrea Zamometic during the ill-fated attempt to revive the council of Basle in 1482, and notary at the Grossmünster in Zurich where he died in 1517 shortly before Zwingli reorganized the church on Protestant principles;<sup>22</sup> Louis Pinelle, who served as rector of the college of Navarre from 1497, as chancellor of the university of Paris thereafter, and from 1511 until his death in 1516 as bishop of Meaux, where he set the stage for the well-known attempt to reform the church of France by his successor in the bishopric, Guillaume Briçonnet, and Briçonnet's ally Jacques Lefèvre d'Étaples, who edited the works of Nicholas of Cusa;<sup>23</sup> Guglielmo Sirleto, scriptor of the Vatican Library and cardinal, well known for his contribution to the council of Trent;<sup>24</sup> Pierre Pithou (1539–1596), lawyer, humanist, editor of classical texts, and author of *Les Libertés de l'église gallicane*, a famous work in the history of Gallicanism and 'the classical text for parliamentarians, especially in the eighteenth century';<sup>25</sup> and finally Colbert.<sup>26</sup>

The editions tell a similar story. Although the Jean Crespin who produced the first edition in Lyons in 1531 is not to be confused with the more famous Genevan martyrologist of the same name, it seems more than likely that his decision to publish Durant's ideas was inspired by the desire for reform that was current in France,

was composed in 1375 for Gregory XI, but which Anneliese Maier has shown was prepared for Benedict XIII at the very beginning of his pontificate in 1394, includes a work entitled *Consilia generalia et institutiones domini Guillelmi episcopi Mimatensis*. But it is impossible to decide whether this refers to the *Tractatus Maior* or, perhaps, to the older Durant's *Instruktionen et constitutiones*; see Ehrle, *Historia*, p. 527, no. 1,201; Maier, 'Die "Bibliotheca Minor" Benedikts XIII.', pp. 1–6; and Fasolt, 'The Manuscripts', pp. 304–6.

<sup>21</sup> On the first folio of C Nicholas commented: 'Liber iste corrupte multum scriptus est.' In C, fol. 95r, he annotated the beginning of Durant's long quotation of D.21 c.2 and C.24 q.1 c.18 with the words 'Petri eminentia'. Gerhard Kallen, in his edition of the *Concordantia catholica*, p. 150 n. 8, was therefore certainly right to trace Nicholas' use of these canons to Durant's treatise. <sup>22</sup> Nümagen owned Z.

<sup>23</sup> Pinelle owned Ma. <sup>24</sup> Sirleto owned O.

<sup>25</sup> 'Le texte classique où puisèrent les parlementaires, notamment au XVIII<sup>e</sup> siècle.' Carreyre, 'Pithou', p. 2,237. Pithou owned Tr.

<sup>26</sup> Colbert owned P. For more information about the various owners of the manuscripts of Durant's treatise and detailed bibliographical references see Fasolt, 'The Manuscripts', and Fasolt, 'William Durant the Younger's "Tractatus"', pp. 18–53.

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particularly in Lyons, in the 1530s.<sup>27</sup> Philippe le Preux or Philippus Probus, jurist of Bourges, published his edition of Paris 1545 on the occasion of the opening of the council of Trent and introduced it with a fulsome dedication to Pope Paul III, in which he expressed the hope that Durant's ideas might help to combat the 'heretical depravity' of the Protestants.<sup>28</sup> In 1549 the treatise was included in a collection of legal treatises known as the *Tractatus ex variis iuris interpretibus* that surely helped to make Durant's ideas more accessible;<sup>29</sup> in 1562, when the council of Trent reconvened for the third and last time, Michele Tramezino reprinted the edition which Philippus Probus had published on the occasion of the council's beginning;<sup>30</sup> in 1584, in the aftermath of the council of Trent and the reorganization of the law of the church that it engendered, the treatise was incorporated in the massive collection of legal wisdom that was published at the request of Pope Gregory XIII under the title of *Tractatus universi iuris*, which has perhaps done more than any other publication to introduce Durant's ideas to a wide audience.<sup>31</sup> And as late as the second half of the seventeenth century Louis XIV's sharp disagreements with the papacy made the printers become active again: in 1668 César du Boulay decided to include in his history of the university of Paris a crucial chapter from the *Tractatus Maior* in which Durant had sought to demonstrate that exemptions from episcopal authority violated the state of the church;<sup>32</sup> and in 1671 François Clousier published the

<sup>27</sup> Jean Crespin was active in Lyons from about 1525 to 1543; his widow and heirs continued his business down to 1570: Muller, *Dictionnaire*, p. 32. His publications are well documented by Baudrier, *Bibliographie lyonnaise*. On his more famous colleague and namesake from Arras who converted to Protestantism and enjoyed such remarkable success in Geneva in the third quarter of the sixteenth century see Gilmont, *Jean Crespin*.

<sup>28</sup> In his preface, *Tractatus de modo generalis concilii celebrandi* (Paris, 1545), sig. a iiv, Philippus Probus described Durant's treatise as a 'dignum certe opus, quod omnium teratur manibus, quodque ob oculos omnium versetur, ob multiugam conditionem, et in quo contineantur omnia, quae in conciliis universalibus proponenda sint et tractanda, et in his praesertim fidei tractatur negotium, quibusque mediis infandissimum haereticae pravitate crimen e Christianorum animis eradendum sit: quod prohdolor multis iam retroactis annis, non sine gravi animarum iactura, impune toto orbe grassatur.' There were two separate printings by Poncet le Preux and Galliot du Pré, on whom see Renouard, *Répertoire*, pp. 131f., 268f. On Philippus Probus see Izbicki, "'Clericis Laicos'", p. 190.

<sup>29</sup> *Secundum volumen tractatum ex variis iuris interpretibus collectorum* (Lyons, 1549), fols. 88v–117v. The entire collection comprises 18 volumes.

<sup>30</sup> *Tractatus de modo generalis concilii celebrandi*. Ed. Michele Tramezino (Venice, 1562).

<sup>31</sup> *Tractatus universi iuris, duce et auspice Gregorio XIII in unum congesti*, 22 vols. (Venice, 1584–86), here vol. 13, part I: *De potestate ecclesiastica* (Venice, 1584), fols. 154–182v.

<sup>32</sup> *TMA* 1.4 De exemptionibus, fols. 8rb–13rb, in Du Boulay, *Historia*, 4:130–8. Parts of the same chapter were also included in P. de Marca, *De concordia sacerdotii et imperii* (Paris, 1704), pp. 445f., 467, a work first published in 1641.

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entire treatise and dedicated it to Achille du Harlay, count of Beaumont and a protagonist of the Gallican cause.<sup>33</sup> No new editions were to be produced thereafter, but it seems not unlikely that Durant's ideas continued to be studied. Indeed, one of the later occasions on which they were invoked may well have been one of the most dramatic: in 1682 Bossuet relied on the bishop of Mende for support in his defence of the famous declaration of Gallican liberties promulgated by the bishops of France that confirmed the validity of the decrees of Constance concerning the superiority of the council over the pope.<sup>34</sup> In short, throughout the late medieval and early modern period Durant caught the attention of a group of intellectuals – theologians, lawyers, humanists, philosophers, and administrators – many of whom were not inconspicuous and some of whom may be counted among the greatest minds of the age.

Considering the forbiddingly technical nature of the *Tractatus Maior* this was a remarkable success. In part it was probably due to the fact that some of the manuscripts and all of the editions confused William Durant the Younger with his uncle and predecessor William Durant the Elder, a confusion that is commonly perpetuated by library catalogues today – understandably, as both were distinguished canonists and both were bishops of Mende.<sup>35</sup> If one knows the obvious pleasure with which Bossuet invoked 'the greatest man of his age, a light not only of France but of the Catholic Church, whom the interpreters of papal law prefer the most' in his support of the Gallican position, one cannot but conclude that the *Tractatus Maior* must have benefited from the

<sup>33</sup> *Tractatus de modo generalis concilii celebrandi*. Ed. F. Clousier (Paris, 1671). In the early 1960s, perhaps 1963, this edition was photographically reproduced by the Gregg Press in London.

<sup>34</sup> See Bossuet, *Oeuvres*, 31:115–20; and Viollet, p. 3 n. 3. It may be worth noting that it was precisely at this time that Colbert, through the services of his librarian Baluze, acquired P.

<sup>35</sup> M, P, and O merely name the author; Tu, C, R, Ma, Tr, and Z explicitly identify the author with the Speculator; only B, fol. 313r, explicitly distinguishes the author from the Speculator. Jean Crespin made the confusion canonical by introducing his edition, fol. 3, with an 'authoris vita ex Antonio Columbano Lugdunensi utriusque Censure professore' that actually described the life of William Durant the Elder, but extended it down to the council of Vienne and credited him with having written the treatise of the younger Durant. This account was reproduced in the editions of Paris 1545, Venice 1562, and Paris 1671. Antonius Columbanus may be identical with Antoine de Lyon (d. 1560), on whom see *Dictionnaire de biographie française*, 3:45. For a typical example of the muddled details found in some early modern biographical reference works see Panzirolus, *De claris legum interpretibus*, pp. 330–2. The *National Union Catalog, Pre-1956 Imprints*, 152:596f., and many library catalogues following in its wake still attribute the *Tractatus de modo generalis concilii celebrandi* to William Durant the Elder.

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enormous prestige accorded to the Speculator.<sup>36</sup> But in much greater part the success of the *Tractatus Maior* must be attributed to the inherent merit of ideas that anticipated by more than a hundred years the most important decrees of the council of Constance and that could still be quoted effectively in ecclesiastical debates as late as 1682.

One might have thought that the works of a man who clearly played a major role in the history of the conciliar theory would have received much attention from historians, but such is not the case. To be sure, Durant's demand for decennial councils is regularly cited in general histories of medieval political thought and in a broad array of studies that touch on the development of the conciliar theory from a variety of perspectives.<sup>37</sup> There are also about a dozen articles and chapters in books that deal directly with Durant and that have been appearing with some regularity since Döllinger first drew attention to his radical critique of papal government on the occasion of the First Vatican Council.<sup>38</sup> Valuable though many of these studies are, however, they have not succeeded in securing for Durant a place proportionate to his significance.

One reason why Durant's ideas have not received as much attention as they deserve is that the text of the *Tractatus Maior* has gravely suffered from an accident in its transmission. All of the printed editions obliterate the distinction between the *Tractatus Maior* and the *Tractatus Minor*: they seem to contain a single book with the spurious title *Tractatus de modo generalis concilii celebrandi*.<sup>39</sup>

<sup>36</sup> 'Haec scriptis ille Durandus Mimatensis Episcopus, sui aevi vir maximus, neque tantum Galliae, sed etiam Catholicae Ecclesiae lumen, quem juris pontificii interpretes potissimum sequuntur; qui Romanis Pontificibus gratissimus vixit, ac de Concilii oecumenici habendi ratione a Clemente V jussus, haec scripsit, viamque celebrando Viennensi Concilio, cujus ipse pars fuit maxima, praeparavit.' Bossuet, *Oeuvres*, 31:119.

<sup>37</sup> See, for example, Carlyle, *History*, 6:24; Dempf, *Sacrum Imperium*, p. 421; McIlwain, *Growth*, pp. 249, 256; Martin, *Origines*, 1:92, 357, 2:31; Caillet, *La Papauté*, pp. 380–5; Merzbacher, 'Wandlungen', pp. 305f.; Jedin, *Geschichte*, 1:5–7; Oakley, *Council over Pope?*, p. 62; Lecler, *Le Pape*, pp. 48f.; Alberigo, *Chiesa conciliare*, p. 299; Hofmann, *Repräsentation*, pp. 253–5; Stieber, *Pope Eugenius IV*, p. 67 n. 12. The younger Durant is strikingly, but not uncharacteristically, absent from Ullmann, *History*, and the *Cambridge History of Medieval Political Thought*.

<sup>38</sup> Döllinger, *Der Papst und das Concil*, pp. 241–3; Heber, *Gutachten*, pp. 40–56, 64–74; Scholz, *Die Publizistik*, pp. 208–23; Haller, *Papsttum und Kirchenreform*, pp. 58–66, 70; Viollet; Posch, 'Die Reformvorschläge des Wilhelm Durandus'; Rivière, *Le Problème*, pp. 363–9; Müller, *Konzil von Vienne*, pp. 587f., 591–610; Torquebiau, 'Le Gallicanisme'; Tierney, *Foundations*, pp. 190–9; Lecler, *Vienne*, pp. 38–50; Bellone, 'Cultura e studi'; Vereecke, 'La Réforme de l'église'; Sieben, *Konzilsidee des lateinischen Mittelalters*, pp. 317–21, 351–7.

<sup>39</sup> For details see Fasolt, 'A New View', *passim*. See also the Note on Texts and Citations and figure 2 below, pp. 321–5.

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Since the *Tractatus Maior* was written while Durant was still hopeful of reform whereas the *Tractatus Minor* exhibited the effects of his encounter with the papacy, the result is somewhat comparable to including Paul's letter to the Romans among the five books of Moses. Small wonder that historians have charged Durant with inexplicable contradictions, unmotivated repetitions, and a grievous lack of organization overall.<sup>40</sup> Small wonder, too, that they have not been able to discern the underlying patterns that shaped Durant's proposals into a systematic programme of reform. Indeed, several scholars, perhaps sharing Jean Crespin's embarrassment about Durant's firm attachment to the time-bound particulars of practice, have not been able to persuade themselves that he had any theory at all.<sup>41</sup>

But it must also be confessed that even in its original condition Durant's *Tractatus Maior* is exceptionally difficult to understand. This is because Durant self-consciously refrained from articulating the theory that he did have. He was content to offer a vast array of specific proposals for reform and to support each of them by direct quotations from canon and civil laws. Not even the systematic argument for general councils that forms the substance of the first part of the *Tractatus Maior* can qualify as theory in any straightforward sense. As far as he was able – and his ability was great – Durant disguised his personal point of view in the conventional language of the laws. That is emphatically not to say that he possessed no authorial identity, much less that he expressed nothing deserving of the name of theory. Quite the contrary – the analytical power of his intellect allowed him to cut straight to the heart of the consti-

<sup>40</sup> Typical is Rivière, *Le Problème*, p. 363: 'Il y déploie un très grand luxe d'érudition canonique, mais une absence totale de composition.' Similarly Viollet, p. 82: 'Précédé d'un avertissement très sobre, [le *Tractatus de modo generalis concilii celebrandi*] est divisé en trois parties, et chaque partie est subdivisée en titres, divisions et subdivisions qui s'adressent à l'œil plus qu'à l'intelligence, car, dans son ensemble, l'œuvre est confuse et hâtive; ce sont, pourrait-on dire, des notes jetées comme en courant.' For more complaints about Durant's lack of organization see Posch, 'Reformvorschläge', p. 289; Müller, *Konzil von Vienne*, pp. 609f.; Torquebiau, 'Le Gallicanisme', pp. 275f.; McNeill, 'Emergence', pp. 298f.; Tierney, *Foundations*, pp. 190f.; and especially Viollet, pp. 80, 85, 87, 101, 110, 117. For a counter-argument see Fasolt, 'At the Crossroads'.

<sup>41</sup> Heber, *Gutachten*, p. 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 [for general councils] aufzustellen, das Ziel zu dem man kommen musste und auch kam, anzugeben.' Haller, *Papsttum und Kirchenreform*, p. 65: 'Alles dies zwar ohne systematische Grundlegung, bloss in einzelnen praktischen Forderungen formuliert, aber darum nicht weniger deutlich.' Oakley, *Council over Pope?*, p. 62: 'He produced no systematic ecclesiology and it would certainly be improper to regard him as a proponent of the strict Conciliar theory.'

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tutional problems that confronted the church in his time and to divine where they would lead in the distant future. But for the sake of enhancing the authority of his ideas he effectively blurred the line between the law and his interpretation of it. At first sight there is therefore no theory at all in the *Tractatus Maior* but only an interminable sequence of quotations shot through by sometimes surprisingly radical suggestions for reform; and even at a second glance it is exceptionally difficult to penetrate the thicket of legal verbiage in order to arrive at Durant's own meaning.

This is hardly the stuff to capture the imagination of historians who are often more interested in determining the origins of the conciliar theory than in determining Durant's intentions. Thus it has happened that the body of scholarship devoted to Durant, small though it is, exhibits considerable interpretative uncertainties. Historians who have dealt with the *Tractatus Maior* agree that Durant planned to reform the church 'in head and members' – but that is the extent of their agreement. Even on such a basic question as whether he meant to impose strict limits on the papal plenitude of power, opinions are sharply divided. Döllinger was sure that Durant was a staunch antipapalist whose reforms were 'basically directed against the entire papal system as it had developed during the previous 200 years'.<sup>42</sup> To one or another degree his view was adopted by Max Heber,<sup>43</sup> Richard Scholz,<sup>44</sup> Johannes Haller,<sup>45</sup>

<sup>42</sup> Döllinger, *Der Papst und das Concil*, pp. 241–3: '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.'

<sup>43</sup> Heber, *Gutachten*, p. 73: 'Duranti will einen konstitutionellen Souverän haben.'

<sup>44</sup> Scholz, *Die Publizistik*, p. 220: 'Für Duranti [ist] das Ideal eine aristokratische, vom Episkopat unter dem Vorsitz des Papstes, nach einer festen Verfassung geleitete Kirche, deren souveräne Autorität nicht im Papste, sondern im Generalkonzil liegt.'

<sup>45</sup> Haller, *Papsttum und Kirchenreform*, p. 65: 'Wer die Lage des Episkopats . . . kennt, . . . 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, schlechweg 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.' However, in his review of Scholz, *Die Publizistik*, Haller dissented sharply with Scholz's conception of Durant as representing the party of aristocratic reaction to papal government.

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Brian Tierney,<sup>46</sup> and Antonio Marongiu,<sup>47</sup> all of whom agree that Durant was a radical reformer who wished to turn the pope into something of a constitutional monarch, subject to the authority of general councils. The opposite point of view was first enunciated by Paul Viollet, who declared that Durant may have criticized papal abuses but that he 'does not deny the power of the sovereign pontiff. To abuse those powers and to lack them completely are two different things.'<sup>48</sup> This opinion, too, had followers, such as Pierre Torquebiau,<sup>49</sup> Louis Vereecke,<sup>50</sup> and above all Hubert Jedin, who insisted that 'by reform of the head Durant meant proper use of papal power. He did not think of constitutional limitations upon papal power.'<sup>51</sup> And naturally there is a third group of scholars, consisting mainly of Jean Rivière,<sup>52</sup> Andreas

<sup>46</sup> Tierney, *Foundations*, pp. 192, 195f.: 'Durantis . . . condemned the whole system of centralized administration . . . Guilielmus Durantis 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 . . . 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 . . . Indeed, this sprawling ill-designed work . . . strikes for the first time the authentic note of the Conciliar Movement properly so called.'

<sup>47</sup> Marongiu, 'The Theory of Democracy', p. 406: 'In his hands the principle [that what touches all must be approved by all] became exceptionally important; it became the justification and foundation of conciliar theory in its broadest sense. The supreme power in the field of Christian doctrine and Church discipline would be entrusted to an ecumenical council, superior to the Pope, kings, and princes . . . Such a clear statement of the democratic principle was truly exceptional.'

<sup>48</sup> Viollet, p. 119: '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.'

<sup>49</sup> Torquebiau, 'Gallicanisme', pp. 279, 289: 'Durand ne dit pas que le Pontife romain n'a pas le droit d'édicter des lois universelles sans le Concile général; simplement il souhaite qu'il ne le fasse pas sans lui. Durand ne conteste donc pas le pouvoir du chef suprême de l'Eglise; il se borne à souhaiter, et si l'on veut, à demander que l'exercice de ce pouvoir soit entouré de sérieuses garanties . . . 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.'

<sup>50</sup> Vereecke, 'La Réforme', p. 288: 'Ne voyons pas en Durand un conciliariste ou un gallican avant la lettre, car il affirme bien haut la primauté du Pape.'

<sup>51</sup> 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.'

<sup>52</sup> Rivière, *Le Problème*, pp. 367f.: 'Sans doute Guillaume se garde de dire que le concile soit l'autorité suprême dans l'Eglise – et c'est par là que sa pensée se distingue des théories