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THE  
**POWER OF THE POPE**  
DURING THE MIDDLE AGES;  
OR,  
AN HISTORICAL INQUIRY  
INTO THE  
ORIGIN OF THE TEMPORAL POWER OF THE HOLY SEE,  
AND  
THE CONSTITUTIONAL LAWS OF THE MIDDLE AGES  
RELATING TO THE DEPOSITION OF SOVEREIGNS.

IX-8

WITH AN INTRODUCTION,  
ON THE HONOURS AND TEMPORAL PRIVILEGES CONFERRED ON RELIGION AND ON  
ITS MINISTERS BY THE NATIONS OF ANTIQUITY,  
ESPECIALLY BY THE FIRST CHRISTIAN EMPERORS.

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VOL. II.

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## NOTICE.

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ALTHOUGH the name of the Rev. Gentleman, by whom this work of M. GOSSELIN has been rendered into English, is of itself a sufficient guarantee for the fidelity of the translation ; it may be proper to state, that, in accordance with the rule laid down by the Council at the commencement, each sheet has been examined by one of their number, whose name is hereto appended, and upon whom the general editorial responsibilities of the series have devolved.

W. B. D. D. TURNBULL.



# POWER OF THE POPE

## IN THE MIDDLE AGES.

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### PART II.

#### POWER OF THE POPE OVER SOVEREIGNS DURING THE MIDDLE AGES.

##### 1. *General Idea of this Power.*

BESIDES the supreme power enjoyed by the pope in his own dominions, he exercised, after the tenth century, another much more extraordinary over the sovereigns of other states. For many centuries after that date all the Catholic kingdoms of Europe constituted a sort of commonwealth, of which the pope was recognised the head. In that capacity he decided both in councils and by himself, as supreme arbiter and judge in contests arising between princes and their subjects, or between princes among themselves; he cited sovereigns before his tribunal; and not only inflicted on scandalous princes spiritual censures, but even deprived of their rank those who persisted obstinately in their disorders. Thus Henry IV., emperor of Germany, was solemnly deposed by Gregory VII. in 1076; Frederick I. by Alexander III. in 1160; the emperor Otho IV. and John, king of England, by Innocent III. in 1211; and Frederick II. by Innocent IV. in 1245. Even general councils, far from protesting against these acts of authority, occasionally suppose that they are legitimate, and attribute to themselves the same right. We find, especially, that when Pope Innocent IV. pronounced sentence of deposition against the emperor Frederick II., in the first Council of Lyons, the fathers not only did not protest against the act, but, as we shall soon see, even expressly approved

it.<sup>1</sup> We find similar acts in the third and fourth councils of Lateran, and in the councils of Constance and of Basle, which condemn heretics to the forfeiture of all, even temporal dignities, and absolve their subjects from their oath of allegiance.

2. *Different Systems to account for it.*

The difficulty of accounting for so prodigious a power has given rise, in these latter times, to the most contradictory theories, both among Catholic and heretical authors. These theories may all be reduced to two classes, the first of which may be called theological, because they examine the difficulty principally in a theological view, that is, according to the principles of revelation and of divine right; the second are the historical, because they examine the question chiefly in its historical view, that is, according to positive human laws, according to the principles of legislation then in force, and according to some considerations founded on the condition and exigencies of society in the middle ages.

3. *Theological Theories—Their Number.*

I. *Theological theories.*—From the revival of learning until the commencement of the last century the question was never discussed except in a theological view: nor did the majority of those who examined it in that light appear to know that it could be discussed on any other principles. This mode of investigation gave rise to systems so totally different, that some tend to justify completely the conduct of popes and councils to sovereigns during the middle ages; others absolutely condemn it, and others merely excuse it on the ground of the peculiar circumstances of the times, and of the opinions then generally prevalent.

4. *System of the Right Divine.*

The conduct of popes and councils is completely justified by the principles of revelation and of divine right, if we believe the advocates of that theological opinion which attributes to the Church and to the pope, according to Divine institution, “a power of jurisdiction, at least indirect, over temporal matters.”<sup>2</sup>

<sup>1</sup> *Infra*, ch. ii. n. 149.

<sup>2</sup> An exposition of this system may be seen in the following works: Belarmin, *De Summo Pontifice*, lib. v. cap. i. vi.; Pereira de Castro, *De Manu*

According to the advocates of this opinion, the direct and immediate object of ecclesiastical power is to govern the faithful in the spiritual order; which naturally involves the power of making all the laws necessary for their spiritual good. This power, however, implies indirectly, and as it were inferentially, a power of regulating even temporal concerns for the greater good of religion; so that the temporal power, though in its nature different from the spiritual, is nevertheless subordinate to it, in the same way as a subject is to his superior, who has the power to judge, to examine, and to annul his subject's acts, and even to depose him whenever the greater good of religion requires it. In accordance with these principles, the ecclesiastical power never meddles with temporal affairs as long as the prince to whom they are intrusted does nothing contrary to the good of religion; but should he act so, it is a right and a duty of the ecclesiastical power to repress the temporal power, by all the means necessary for the greater good of religion, so far even as to depose a sovereign and to appoint another in his place.<sup>1</sup> This system was long maintained, with modifications more or less important, by a great number of theologians not French;<sup>2</sup> but in the course

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Regiâ, Prælud. I. Lugd. Batav. 1673, fol., Olyssipone, 1625, 1688, and 1742; Roncaglia, Animadversiones in Hist. Eccles. Nat. Alexander, at the close of the Second Dissertation of Nat. Alexander on the Ecclesiastical History of the Eleventh Century; Bianchi, Della Potesta e della Politia della Chiesa, vol. i. book i. § 8, n. 1; Perez Valiente, Apparatus Juris publici Hispanici; Matriti, 1751, 2 vols. 4to. vol. i. cap. xiv. xv.; Mamachi, Origines et Antiquitates Christianæ, vol. iv. cap. ii. § 4. Every one knows the noise made by the revival of these ultramontane opinions in our own time by a too famous writer. See especially the two works entitled *De la Religion considérée dans ses Rapports avec l'Ordre Politique*, Paris, 1826; *Des Progrès de la Révolution et de la Guerre contre l'Eglise*, Paris, 1829. See also in the *Histoire Littéraire de Fénelon* (part iv. n. 74), an exposition of his system, on the temporal power of the Church and of the pope.

<sup>1</sup> This system of the "indirect power," as explained in the text, is defended principally by Cardinal Bellarmin (*ubi supra*). Even the authors who afterwards modified that system, have retained the substance of the learned cardinal's doctrine, and given it in nearly all its details; so that the modifications introduced are really of very slight importance. See in No. 8 of the *Confirmatory Evidence* at the end of this volume, more ample details on the origin, progress, and vicissitudes of the system.

<sup>2</sup> Before the sixteenth century, this system was not less common in France than in other countries. See, on this subject, Charlas, *Tract. de Libertat. Eccl. Gall. lib. vii. cap. viii. ix.*; Bianchi, *Della Potesta e della Politia della Chiesa*, vol. i. book i. § 10—14; Mamachi, *Origines et Antiquit. Christ.* vol. iv. p. 254, note 1. It must, however, be observed, that those writers attribute the advocacy of the indirect power to many ancient theologians, who may very well be understood as speaking of a power purely directive.

of our inquiry it will be shown, that it was never sanctioned by any decision of the Church or of the Holy See.<sup>1</sup> Some modern writers have even confidently asserted that it is generally abandoned at present, even by foreign theologians.<sup>2</sup>

5. *This Theory generally impugned by Protestants.*

The general opposition of Protestants to this system, which we have now explained, may be seen from the exposition given in the first part of this work of the different opinions of modern authors, on the grounds and original titles of the temporal power of the Holy See.<sup>3</sup> The first reformers, following, as we have seen, in the footsteps of Calvin, carried their opposition so far as to maintain the incompatibility of the temporal with spiritual power, at least in the New Law: whence they inferred, first, that the conduct of popes and councils to sovereigns in the middle ages, cannot be excused from "gross error," and even from criminal usurpation of the sovereign's rights: and, secondly, that the sanctity and infallibility attributed to the Roman church by Catholic divines, were both refuted by this conduct.<sup>4</sup>

Modern Protestants, for the most part, are far from the extravagance of maintaining the incompatibility of temporal with spiritual power in the ministers of the New Law. Many of them, nevertheless, do not hesitate to repeat, with more or less violence or vituperation, the declamations of the first reformers against popes and councils, and especially the accusations of "error" and criminal usurpation of the rights of the temporal power.<sup>5</sup>

<sup>1</sup> See *infra*, ch. iii. art. i. last number.

<sup>2</sup> Frayssinous, *Les Vrais Principes de l'Eglise Gallicane*, 2nd edit. p. 62. De la Luzerne, *Sur la Déclar. de l'Assemblée de 1682*. Paris, 1821, 8vo. p. 7. Lettre de Monseigneur l'Evêque de Chartres à un de ses Diocésains, du 30 Mars, 1826, pp. 57, 69, &c. Milner, *Excellence de la Religion Catholique*, vol. ii. p. 579, &c. *L'Ami de la Religion*, vol. xviii. p. 198; vol. lx. p. 35, 81; vol. xcv. p. 434.

In corroboration of the opinion of these authors, see No. 8 of the Confirmatory Evidence at the close of this volume.

<sup>3</sup> See, *supra*, part i. ch. ii. art. ii. n. 87, 88.

<sup>4</sup> Calvin, *Instit. lib. iv. cap. ii. n. 8*, &c. Cardinal Bellarmin (*De Rom. Pontif. lib. v. cap. i.*) cites some other works of the first reformers on this subject.

<sup>5</sup> See, among others, Basnage, *Hist. de l'Eglise*, vol. ii. book xxvii. ch. vii.; Mosheim, *Hist. Eccl. sæc. ii. part. ii. cap. ii. § 9*; sæc. xiii. part. ii. cap. ii. § 11; cap. v. § 2, &c. et alibi passim; Hallam, *Middle Ages*, vol. iii. ch. vii.

M. Guizot, it must be admitted, speaks more moderately than those authors;

6. *Opposed also by many Catholic Writers, but with more Moderation.*

The system of those authors who undertake to justify the conduct of popes and councils to sovereigns in the middle ages, by the theological theory "of the indirect power," has been opposed, not only by Protestant writers, but also by a great number of Catholic divines, who denounce that theory as an error contrary to the doctrine of antiquity on the distinction and reciprocal independence of the two powers.<sup>1</sup> The spiritual and the temporal powers, they maintain, are equally sovereign within their own sphere, and independent of each other, accord-

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it is clear, nevertheless, that his system on the temporal power of the Church and of the pope in the middle ages is imbued with the principles and prejudices of the reformers. (Guizot, *Hist. Gén. de la Civilis. en Europe*, 3rd edit. Paris, 1840.) However beneficial to society in Europe the influence of the Church was from the fifth century, it tended ever from that time, he says, to encroach on the temporal power, and to aspire to exclusive dominion (*ibid.* p. 59). To defend herself against the violence and despotism of princes, the Church proclaimed her own independence; and by the natural development of ambition, she endeavoured to establish not only the independence of the spiritual power, but its domination over the temporal (pp. 156, 161). Gregory VII. was the real author of this revolution, the remote causes of which had been in operation for many ages (p. 192); but the execution of this plan was impeded in the very commencement by great obstacles, which the Church never was able to overcome. Gregory VII. by his violent conduct, rather injured than promoted the cause which he wished to serve; and its success was compromised, towards the close of the thirteenth century, by the reaction of sovereigns and their subjects against the domination of the Church (pp. 289, 297). This author, however, excuses the injustice done by the Church, in consideration of the deplorable state of society from the fifth to the thirteenth century, which absolutely required the intervention of the Church between princes and people, to maintain the liberty of the latter against the despotism of the former (p. 159).

This system, it is clear, may be reduced to three leading points: first, that the Church's independence of princes, even in the spiritual order, was not acknowledged in the Church before the fifth century; second, that from that period she was not content with proclaiming her own independence, but aspired to domination over the temporal power; third, that Gregory VII. was the chief author of this reform, which subjects the temporal to the spiritual power. In the course of our inquiry we shall prove that these three assertions are false. See especially, ch. iii. part ii.

<sup>1</sup> This is the system commonly maintained by French authors, especially during the two last centuries. Of these Bossuet is beyond all comparison the most celebrated. *Def. Declarat.* (*Œuvres*, vol. xxxi. and following, Versailles edit.). It is from him that Mamachi gives his long exposition of the system of French authors (Mamachi, *ubi supra*, p. 158, &c.). See also Dupin, *Traité de la Puissance Ecclés. et Temp.* Paris, 1707. This work is recommended by De Héricourt as one of the best on the subject. De Héricourt, *Lois Ecclés. de France*, Paris, 1771, fol. p. 220. The Abbé Dinouart gave, in 1768, a new edition of Dupin's work, 3 vols. 8vo. *Nat. Alexander*, *Dissert.* 2 in *Hist. Eccles. sæculi xi. art. ix. x.* It was from him that Bossuet, in our opinion, adopted most of the facts and observations published on this subject in the *Défense de la Déclaration*.

ing to divine institution. The spiritual power, though more excellent in its nature and in its object, has no right to make laws on matters within the sphere of the temporal power; it may direct the latter by advice or exhortation, but not by orders or decrees in temporal affairs. In this system, it is manifest that the conduct of popes and councils to sovereigns during the middle ages cannot be excused from error, nor, consequently, from usurpation, at least unintentional, of the rights of sovereigns. The theologians who hold this opinion, are nevertheless very far from admitting, as legitimate consequences of their principles, the abominable declamations of the enemies of the Church on this point; on the contrary, they insist on the fact, that the error on which the conduct of popes and councils to sovereigns during the middle ages was grounded, never had been sanctioned by any doctrinal decision or decree, and that it was no more than a mere opinion, left to the free discussion of the schools;<sup>1</sup> they add, moreover, that of all errors it was the "most harmless and excusable;" that it had gradually become so respectable, in consequence of the decline of learning, as to be adopted by "the most pious and enlightened men;"<sup>2</sup> and, in fine, that the error was the more pardonable, as the condition and interest of society had insensibly introduced, and in some manner rendered imperative, the intervention of the ecclesiastical power in temporal affairs, and the great influence which it exercised over them, with the express or tacit consent of princes.<sup>3</sup> All Catholic writers, it must be confessed, do not express themselves on this subject with equal moderation; and many have too lightly adopted the odious declamations of the enemies of the Church.<sup>4</sup>

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<sup>1</sup> Bossuet takes particular care in establishing this point, in his examination of the particular facts alleged by ultramontane theologians in support of their opinion. See especially the explanations which he gives on the subject in his *Défense de la Déclar.* book iii. ch. i. v.

<sup>2</sup> Bossuet, *Defens. Declarat.* lib. i. sect. 2, cap. xxiv. p. 348; lib. iii. cap. xxi. p. 662.

<sup>3</sup> As we shall soon see (*infra*, ch. iv. art. 2), this point is admitted also by French authors, even those who censure with great petulance and acrimony the conduct of popes and councils to sovereigns in the middle ages. See especially Bossuet, *ibid.* book iv. ch. v.; Ferrand, *l'Esprit de l'Histoire*, vol. ii. letter 47, p. 494.

<sup>4</sup> We have mentioned some of those authors in the Preface to this work.

7. *Historical Theories not much valued before the Eighteenth Century.*

II. *Historical theories.*—Until the close of the seventeenth century, as we have already remarked, theological theories alone were maintained on both sides of the question, with great vehemence, and sometimes with excessive ardour. The difficulty which had given rise to these different systems, had been, it is true, examined by several authors in the light of history, independently of the principles of revelation and of the right divine; but even those who examined it in that view, did so in a cursory manner, their only object being to support and confirm by secondary evidence, the more complete solution, which they imagined was given by theological principles alone. This was especially observable in many writings published in the sixteenth century by the English and French Catholics, against the rights of Elizabeth to the crown of England, and against those of the king of Navarre (afterwards Henry IV.) to the crown of France.<sup>1</sup> The authors of these writings against the two sovereigns appeal principally to the divine right, either in the sense in which it is explained by the advocates of the theological theory of the “indirect power,” or in the sense of those authors who attribute to society the right, in certain cases, of deposing sovereigns: but they also appeal in support of their opinion, to human positive laws, that is, to the ancient codes of the Catholic states of Europe, and especially of France and England, which excluded heretical princes from the throne.

This last mode of solving the question appears to have been completely unknown to the majority of those theologians who discussed the point before the eighteenth century; and many of those to whom it was known appear to have attached no importance to it. Among the latter may be mentioned Bossuet especially, as we shall prove in the course of our inquiry. It may be observed here, that in his *Defence of the Declaration*, when stating briefly this mode of accounting for the conduct of the popes, especially to the emperors of Germany, he merely cites the opinion; and, without either approving or condemning,

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<sup>1</sup> We reserve for No. 8, *Confirmatory Evidence*, at the close of this volume, some details on the principal works relating to these two controversies.

refers it for the consideration of juriconsults, and of those who take an interest in such discussions.<sup>1</sup>

After having been so long discussed on theological principles almost exclusively, the difficulty was at length, during the course of the last century, subjected to a more close examination on historical principles. Many celebrated writers, both Protestant and Catholic, undertook to explain and vindicate the conduct of the popes and councils of the middle ages to sovereigns, on purely historical considerations, founded either on the general legislation of the times, or the condition and requirements of society. This new line of inquiry gave rise to various systems, which seem to be every day acquiring more credit, in proportion as historical studies are pursued with greater ardour and impartiality. We shall give here a brief exposition of the most remarkable of these systems.

#### 8. *Fenelon's Opinion.*

Fenelon's opinion is unquestionably one of the best entitled to consideration, both from its author's fame, and, as we shall prove in the course of our inquiry, from the solidity of its principles, and also because this illustrious prelate appears to have been the first Catholic writer that expounded at any length the opinion, which explains, by the constitutional law of the middle ages, the conduct of those popes and councils who had formerly deposed temporal princes.<sup>2</sup> We may mention here, that the firm and confident tone in which he expresses his opinion on the point, mainly gave rise to the researches which we have been making during some years, for the settlement of this important question.

#### 9. *His Mode of explaining the Deposition of Childeric and of Louis le Débonnaire.*

In the 39th chapter of his Dissertation on the Authority of

<sup>1</sup> Defens. Declarat. lib. i. sect. i. cap. xvi. p. 273 ; lib. iii. cap. xxiv. p. 682. *Infra*, ch. iii. art. 2, § 2.

<sup>2</sup> In another place we shall see that Fenelon's opinions on this point appear to be in reality the same as those which Leibnitz had professed a few years before, in several of his works (see *infra*, ch. ii. art. ii. n. 124). How far Fenelon may have been influenced by Leibnitz's opinion we are unable to say ; but in our judgment, the former has explained his system with far greater clearness and precision. But however that may be, the agreement of these two great men on so important a question, notwithstanding the difference of their religious principles, is a fact well worthy of consideration.

the Pope, he examines, *ex professo*, “by what right the ecclesiastical authority formerly deposed temporal princes;” and he undertakes to answer that delicate question in the following manner. In the first place, he observes, that Pope Zachary’s answer to the French, on Childeric’s deposition in 752, and the deposition of Louis le Débonnaire by the French bishops in 833, are not, properly speaking, acts of jurisdiction exercised by the ecclesiastical authority over the temporalities of princes. The answer of Pope Zachary was simply a decision on a case of conscience, which the French had of their own accord submitted to his tribunal;<sup>1</sup> and the French bishops who pronounced the deposition of Louis le Débonnaire acted so, not in virtue of their ecclesiastical authority, but as chief lords of the kingdom, and in concert with the other lords, who composed the States-General of the nation.<sup>2</sup>

10. *Maxims and Usages of the Middle Ages on the Deposition of Princes.*

After these important observations, Fenelon continues:—“After this last event,<sup>3</sup> an impression began gradually to take deep hold of the mind of Catholic nations, that the supreme power could be vested in none but a Catholic; and that a condition was implied in the tacit contract between princes and people, that the people should faithfully obey the prince so long as he remained faithful to the Catholic religion.<sup>4</sup>

<sup>1</sup> It is to be observed, that this theory of Fenelon’s is adopted by Bossuet, and by our best historians. See *supra*, ch. ii. part i. n. 95; and also ch. iii. of part ii. n. 172.

<sup>2</sup> In this passage Fenelon appears to suppose that Louis le Débonnaire was deposed by the Council of Compiègne in 833. We shall see, in another place, that this council merely approved the emperor’s deposition, which had already been decreed by an assembly of lords in the rebel army of Lothaire. *Infra*, ch. i. art. iii. n. 67.

<sup>3</sup> “*Sensim Catholicarum gentium hæc fuit sententia, animis altè impressa, scilicet, supremam potestatem committi non posse nisi principi Catholico, eamque esse legem sive conditionem tacito contractui appositam populos inter et principem, ut populi principi fideles parerent; modò princeps ipse Catholicæ religioni obsequeretur. Quâ lege positâ, passim putabant omnes solum esse vinculum sacramenti fidelitatis a totâ gente præstitum, simul atque princeps, eâ lege violatâ, Catholicæ religioni contumaci animo resisteret.*”—Fenelon, *Dissert. de Auctoritate Summi Pontificis*, cap. xxxix. p. 382.

<sup>4</sup> Fenelon supposes here, that the authority of the prince can be restrained by a fundamental law of the state, prescribing certain conditions on the election of the sovereign, and making him liable to deposition by a general convention of the nation, should he presume to violate them. This doctrine is, in fact, admitted by the most eminent and the wisest jurists, and even by Bossuet himself. See *infra*, ch. i. art. i. n. 25.

This condition once supposed, it was the general belief, that the oath which bound the nation to its prince, ceased to be obligatory whenever he violated that condition, and openly revolted against the Catholic religion. In these times, it was usual,<sup>1</sup> that persons excommunicated should be deprived of all communication with the faithful, and should have no intercourse with them except for the indispensable necessities of life. It is, therefore, not at all so surprising that the nations, then so attached to the Catholic religion, should shake off the yoke of an excommunicated prince. In truth, they had promised to obey him only on condition that he should obey the Catholic religion; now, a prince who had been excommunicated by the Church, either for heresy or for crimes and impieties committed by him in the government of his kingdom, ceased to be considered as that religious prince to whom the whole nation intended to subject itself; the oath of allegiance which bound them to their sovereign ceased, they believed, to bind them in such circumstances. Moreover, canon law had decided that excommunicated persons, not obtaining sentence of absolution by submission to the Church, within a stated time, should be regarded as heretics, or at least suspected of heresy. Hence, all princes who doggedly lay under sentence of excommunication, were considered guilty of sacrilegious

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<sup>1</sup> "Tum verò *moris erat*, ut excommunicati piorum omnium societate privarentur, et solâ ope ad victum necessariâ frui possent; unde nihil est mirum si gentes Catholicæ religioni quàm maxime addictæ, principis excommunicati jugum excuterent. Eâ enim lege sese principi subditas fore pollicitæ erant, ut princeps ipse Catholicæ religioni pariter subditus esset. Princeps verò qui, ob hæresim, vel ob facinorosam et impiam regni administrationem, ab Ecclesiâ excommunicatur, jam non censetur pius ille princeps, cui tota gens sese committere voluerat: unde solutum sacramenti vinculum *arbitrabantur*. Præterea *canonico jure* sancitum fuit, ut ii censerentur hæretici, aut saltem hæreticæ pravitatis valde suspecti, qui, excommunicati ab Ecclesiâ, intra certum tempus absolutionem excommunicationis debitâ submissione non consequerentur. Ita principes qui in excommunicationis vinculo contumaces jam obsordescebant, ut impii Ecclesiæ Catholicæ contemptores, atque adeo hæretici habebantur. Hos autem, tanquam a contractu secum inito deficientes, exauctorabat gens sua. Porro hoc erat *hujus moris* temperamentum, quod ea depositio non fieret, nisi consultâ prius Ecclesiâ. . . . In eâ autem *disciplinâ*, quæ multum viguit, nulla est Ecclesiæ doctrina quæ in dubium vocari possit: sed solummodo agitur de *placito*, quod *apud omnes Catholicas gentes invaluit*, nimirum, ut sæcularis auctoritas non committeretur principi, nisi eâ certissimâ lege, ut ipse princeps Catholicæ religioni per omnia tuendæ et observandæ incumberet. Itaque *Ecclesia neque destituebat neque instituebat laicos principes*; sed tantum consulentibus gentibus respondebat, quid, ratione contractûs et sacramenti, conscientiam attineret. Hæc non *juridica et civilis*, sed *directiva tantum et ordinativa potestas*, quam approbat Gersonius."—Fenelon, ubi supra.

contempt of the Church, and, consequently, of heresy; and their subjects, regarding them as guilty of the infraction of the contract made between them, renounced their authority. This usage was, however, so far modified, that the deposition of the prince could not be carried into effect without having previously consulted the Church."

11. *Directive Power of the Church and of the Pope over Sovereigns.*

"This discipline, which was in force during many centuries, supplies no pretence for calling in doubt any part of the doctrine of the Church; for the whole question turns on a principle then generally enforced in all Catholic nations, namely, that temporal authority was conferred on a prince on the express condition of his protecting, and observing in all things the Catholic religion. Hence, the Church neither made nor unmade temporal princes: but when consulted by the people, she decided merely a case of conscience, arising from a contract and an oath. She exercised no civil and judicial power, but a power purely directive and superintending admitted by Gerson. The power consists in this, that the pope, as prince of pastors, and chief doctor and governor of the Church in all great questions of morality, is bound to instruct the people who consult him on the observance of the oath of allegiance. But the popes have no right of pretending to command princes, unless they have acquired that right by a special title, or by some peculiar prescription over princes feudally subject to the Holy See; it was to all the apostles, and, consequently, to Peter, that Jesus Christ addressed the words, 'The kings of the Gentiles exercise dominion over them, but not so you.'"<sup>1</sup>

Conformably to these principles, Fenelon teaches, in his *Plans of Government*, drawn up in 1711 for the duke of

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<sup>1</sup> "Hæc autem potestas, quam Gersonius *directivam et ordinativam* nuncupat, in eo tantum consistit, quod Papa, utpote princeps pastorum, utpote præcipuus, in majoribus moralis disciplinæ causis, Ecclesiæ director et doctor, de servando fidelitatis sacramento populum consulentem edocere teneatur. De cætero, nihil est quod pontifices regibus imperare velint, nisi ex speciali titulo, aut possessione aliquâ peculiari, id sibi juris, in aliquem regem feudatarium sedis apostolicæ, adepti fuerint. Namque apostolis omnibus, ac proinde Petro dictum est: *Reges gentium dominantur eorum; vos autem non sic.*"—Fenelon, ubi supra, cap. xxvii. p. 334.

Burgundy, that the pope has no direct power over the temporalities of princes, but only an indirect power, in the sense already explained; that is, a purely directive power, which is no more than a deciding on the oath of allegiance in cases submitted for consultation, but not implying in any manner a power, properly so called, of deposing sovereigns.<sup>1</sup>

12. *The Conduct of the Popes to Sovereigns during the Middle Ages accounted for by the Constitutional Laws of those Times.*

In Fenelon's opinion, therefore, the conduct of those popes who formerly deposed temporal princes, can be naturally explained by the maxims then generally received in the Catholic nations of Europe, which invested the Church in certain cases, with at least an indirect power of appointing and of deposing sovereigns. This power, according to the archbishop of Cambray, was not "a power of temporal jurisdiction, founded on the divine law," but it was both "a directive power" of divine institution, and "a power of temporal jurisdiction" of purely human institution. The Church and the pope, being, in a word, bound, and consequently entitled, by divine institution, to enlighten and direct the consciences of princes and of people, in all that concerns salvation, have, by the very fact, power to decide questions relating to obligations of conscience, arising from the oath of allegiance.<sup>2</sup> But besides this directive power, divinely instituted, they had, moreover, during the middle ages, "a power of temporal jurisdiction," of purely human institution, founded on the usages and maxims of constitutional law then generally admitted. When they deposed a sovereign, who obstinately persisted in his heresy or remained under excommunication, they acted, not only as doctors and directors of the faithful in the spiritual order; they acted, moreover, as judges,

<sup>1</sup> The following are Fenelon's words on this passage; they rather suggest than develop his meaning:—"Power (of Rome) over temporalities: *direct*, absurd and pernicious; *indirect*, evident, though fallible, where it merely decides on the oath by way of consultation; but deposition by no means follows from it." See in the *Hist. Littéraire de Fénelon* (4th part, n. 60, note) some important observations proving the authenticity of this passage.

<sup>2</sup> It must be remarked, that the directive power of the pope, explained in this sense, is readily admitted, even by divines most opposed to the opinion which attributes to the Church and to the pope, by divine right, jurisdiction, at least indirect, over the temporalities of princes. See *infra*, ch. iii. n. 172.

established and recognised by the usage and constitutional law then in force, according to which, sovereigns should be examined and judged, when incurring deposition by the violation of the contract which they had made with their subjects. This is, in reality, a statement of Fenelon's opinion, though he does not, perhaps, express it so fully.

In this opinion, it is clear, that the sentence of deposition pronounced by the pope or council in the middle ages, on an heretical or excommunicated prince, was founded both on the divine right and on human law. It was founded on the divine right, not merely because it pronounced a prince to be a heretic, or excommunicated, but because it moreover enlightened and directed the consciences of princes and people on the objections arising from the oath of allegiance. It was also founded on human laws, not only by declaring a prince to have forfeited his throne, in consequence of a stipulation made at his election; but also in virtue of a power which usage and constitutional law then conferred on the popes and councils of judging the cases of sovereigns, who incurred the penalty of deposition. In pronouncing this sentence, the pope and councils did not, properly speaking, depose the sovereign, nor attribute to themselves a power by divine right of deposing them; but merely declared and decided that, according to the conditions implied in his election by the usage and jurisprudence of the age, he had forfeited his dignity. Their sentence may be compared to that of an ordinary judge pronouncing the nullity of an act, which the laws declare null, but where nullity is not *ipso jure*, and takes not effect until sentence has been pronounced by the judge.<sup>1</sup>

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<sup>1</sup> Observe, that in this system the popes and councils who absolved subjects from the oath of allegiance to their sovereign, did not give a dispensation, properly so called, from the oath, but merely a declaration or interpretation of its nullity. The oath of allegiance being, in fact, exclusively referred to the contract between the prince and his subjects, had no force whatsoever, except to confirm that contract, and not even so much, if that contract became null. The moment that contract was broken (by the prince) the oath ceased to bind, its matter being destroyed; and the same sentence which declared the contract null, included, as a natural consequence, a declaration of the nullity of the oath, without requiring any other dispensation in the rigorous and strict sense of the term. If therefore the popes and councils sometimes use in those cases the terms "dispensation" and "absolution," and others of a similar kind, it is in a general sense, as Fenelon explains them, when speaking of the deposition of Frederick II., pronounced by Innocent IV. in the Council of Lyons in 1245.

13. *Fenelon's Opinion modified by that of Count de Maistre.*

In the course of this inquiry we shall have occasion to cite, in support of this opinion, many learned authors, even Protestants, who during the last century adopted it, more or less explicitly, though with various restrictions.<sup>1</sup> In this place we shall only observe, that of the authors who have adopted it, some have believed they could combine it with that theory of "the divine right" which we have already explained, and which Fenelon expressly rejects.<sup>2</sup> We have already stated, that in the sixteenth century the divine right and positive human laws were both appealed to by the English and the French Catholics against the rights of Elizabeth to the crown of England, and against those of the king of Navarre (afterwards Henry IV.) to the crown of France.<sup>3</sup> This opinion was also adopted in our own time by

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(Fenelon, *ubi supra*, cap. xxxix. p. 387. See this passage, *infra*, ch. iii. art. i. n. 213.) If, however, any one should still insist that this was a dispensation, properly so called, we will not dispute about words; we shall merely remark, that in this matter it is often difficult to distinguish between a dispensation properly so called and a mere interpretation. It must be admitted that the difference commonly assigned between these two things is not always easily understood.

<sup>1</sup> See *infra*, ch. iii. art. ii. § 4.

<sup>2</sup> At first sight it appears difficult to combine these two opinions on the same system; for if we suppose that the Church has, by divine right, the power of deposing sovereigns for the greater good of religion, what can positive human laws add to that power? The provisions of human laws on the subject could be no more than a useless repetition of the divine laws; they would therefore be useless laws, without an object, and consequently null. This difficulty, nevertheless, is rather specious than solid. There is no reason why a point of the divine law should not be made the matter of human laws, the better to insure its observance by adding the sanction of the temporal power to that of the divine will, and to restrain, by the dread of temporal penalties, those whom the fear of God alone could not sufficiently restrain. It was from this motive that all Christian princes, from the days of Constantine, sanctioned by their edicts many divine laws, as we have already proved (Introduction, art. ii. § 2). In consequence of this sanction, many provisions, both of constitutional and common law, belong both to the divine law and to human law: to the former by their origin; to the latter by the sanction given to them by princes. Thus, in countries where the Catholic religion alone is recognised as a law of the state, to the exclusion of every other, the external profession of that religion is grounded both on the divine and human law; so that whoever should make open profession of any other would be guilty of disobedience both against God and the prince, and would render himself liable both to temporal and spiritual penalties.

<sup>3</sup> See *supra*, n. 7, p. 7. Leibnitz, it must be observed, who admits substantially the opinion of Fenelon on this subject, does not venture to condemn absolutely the theological theory of the indirect power, in the sense explained by Cardinal Bellarmine. See *infra* a remarkable passage of Leibnitz on this subject, ch. ii. n. 167.

Count de Maistre, in his work on the Pope. It is not repugnant, according to him, that a sovereignty, though divine in its principle, should be controlled by the spiritual authority established by God for the government of his Church, and that this authority should in certain cases have a right to annul the oath made to princes by their subjects. That was, according to him, the belief of the middle ages. "These ideas," he says, "were floating in the minds of our fathers, who were not in a condition to account to themselves for this theory, and to give it a systematic form: they merely suffered their minds to receive the vague impression, that the temporal power could be controlled by that supreme spiritual power which, in certain cases, had the right of annulling the oath of allegiance."<sup>1</sup>

14. *The Count de Maistre's Mode of proving this Constitutional Law.*

But besides this theory, which he does not absolutely adopt, Count de Maistre had another: he believed that the conduct of popes and councils to sovereigns, during the middle ages, could be fully explained and justified by the constitutional law of these times. Whatever may have been the origin and foundations of this law, its existence is manifestly proved, according to him, by the sole fact of the usage and general persuasion of the middle ages, or by the long and undisputed prescription of popes and councils. This constitutional law was, he asserts, "as generally and as indisputably recognised as any law that ever existed."<sup>2</sup> We must assume, from the outset," he says, "this general and indisputable principle, that all governments are good, when they have been long established and when they exist without opposition. All possible forms of government have appeared in the world; and all are legitimate as soon as they are established; so that it is never lawful to test them by abstract reasonings, not bearing on the facts of the particular case. Now, if there be one fact attested by all the monuments of history, it is, that the popes, during the middle ages, and for a considerable time also in modern ages, exercised a great power over temporal sovereigns; that they judged them, and on certain extraordinary occasions excommunicated them, and have frequently even

<sup>1</sup> De Maistre, *Du Pape*, book ii. ch. iii. x. pp. 227, 333—335.

<sup>2</sup> *Ibid.* p. 235.

declared the subjects of those sovereigns absolved from the oath of allegiance. The authority of the popes was the power chosen and established during the middle ages as a counterpoise for the temporal power, to make it supportable to men. In this, there was certainly nothing contrary to the nature of things, which admits of every form of political association. If this power is not established, I do not mean to say that it ought to be established or re-established; I have repeatedly made this solemn disclaimer; I merely assert, with reference to ancient times, that being established, it was as legitimate as any other; the sole foundation of all power being possession. The authority of popes over kings was disputed by none except those whom it judged. There never, therefore, was a more legitimate authority, because there never was one less disputed. What is there certain among men, if usage, especially when undisputed, is not the mother of legitimacy? It is the greatest of all sophisms to transport a modern system to ancient times, and to judge by that rule the men and affairs of ages more or less remote. Such a principle would upset the world: all possible established institutions could be subverted by that means, by judging them according to abstract theories; once admit that kings and peoples agreed in recognising the authority of the popes, and all modern objections are refuted. During the course of my life, I have often heard the question asked, by what right the popes deposed emperors? the answer is easy; by the same right on which all legitimate authority reposes; *possession* on one side, and *assent* on the other.”<sup>1</sup>

15. *A Condition made, according to him, in the Election of Sovereigns.*

Though the author does not consider an inquiry into the origin of this right necessary for the vindication of the popes and councils who exercised it, he intimates clearly enough that it was founded on a stipulation made in the election of the sovereign by the electors, who by the elective constitution of the middle ages had an unquestionable right of thus restricting the authority of sovereigns. In this respect, Count de Maistre's opinion very much resembles Fenelon's. “I cannot,” he says,

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<sup>1</sup> De Maistre, *ibid.* ch. ix. &c. pp. 318, 320, 321, 325, 337, 344, 378.

“close this chapter without one observation, which, in my opinion, has not been sufficiently insisted on; namely, that the greatest acts of papal authority over the temporal power which can be cited, always assailed elective sovereignties, that is to say, *semi-sovereignties*, which were responsible to other authority, and which could be deposed, in case of certain excesses of misgovernment. It has been truly remarked by Voltaire, that election necessarily implies a contract between the king and the nation,<sup>1</sup> so that an elective monarch can at all times be called to account and judged; he never has that sacred character which time alone can give; for no man ever really respects whatever himself has made; he does justice to himself by despising his works until God has sanctioned them by time. Sovereignty was therefore very badly understood, and very badly secured in the middle ages: elective sovereignty in particular had no other firm stay but what it derived from the personal qualities of the sovereign: let no person, therefore, be astonished, that it had been so often attacked, transferred, or subverted.”<sup>2</sup>

16. *Difference between Count de Maistre's Opinion and Fenelon's.*

From this exposition we see how the opinions of Count de Maistre and of Fenelon agreed, and in what they differed. Both agree in accounting for the power of the Church over sovereigns in the middle ages, by the maxims of constitutional law then universally admitted; but, in the opinion of Count de Maistre, this explanation does not exclude the other, which is founded on the divine right. The two opinions differ, moreover, in the line of argument by which they prove the existence of the constitutional law. Except in the case of fiefs and of other sovereignties acquired by some special title, Fenelon's sole argument is, the contract tacitly made between the prince and his subjects, in virtue of which the prince forfeited his rights by rebellion against the Church. Besides this first title, which Count de Maistre admits, he produces another proof of the existence of the constitutional law, namely, the fact itself,—the general belief of the middle ages, or the long and undisputed possession of popes and councils. Count de Maistre's opinion,

<sup>1</sup> Voltaire, *Essai sur les Mœurs*, vol. iii. ch. cxxi.

<sup>2</sup> De Maistre, *ubi supra*, p. 327.

therefore, besides being liable to all the objections against the systems both of the ultramontane theologians, and of Fenelon, is, moreover, exposed to the arguments which may be proposed against the proof from prescription, on which he chiefly relies. The majority of readers will, we fear, be disheartened by so formidable an array of difficulties, and will consider them, in some manner, a justifiable prejudice against Count de Maistre's system.<sup>1</sup>

17. *Opinion of M. Michaud—The Conduct of the Popes to Sovereigns during the Middle Ages justified by the Necessity of Circumstances.*

In fine, some modern authors, without inquiring precisely into the origin and titles of the power exercised by popes and councils during the middle ages, are of opinion that this power was fully justified by the necessities of the times and circumstances, that is, by the deplorable position to which European society had then been reduced: a position which imperatively required that sort of dictatorship with which popes and councils were then invested, for the repression of public disorders. In his *History of the Crusades*, Michaud appears favourable to this explanation, and proposes it confidently against those modern authors who have so thoughtlessly censured the conduct of popes in the middle ages. "In these latter times," he observes, "writers have spoken much of the power of the heads of the Church; but they have judged more by theories than by facts: more in the spirit of our age, than in that of the middle ages. The genius of the popes has been lauded in extravagant strains; and these eulogies have been designed principally to make their ambition more palpable. But if the popes had the genius and ambition which are attributed to them, we must believe that their first object should have been to extend their

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<sup>1</sup> M. Henrion, in his edition of Berault-Bercastel's *History of the Church*, seems to adopt substantially Count de Maistre's system; for he explains and justifies the conduct of the popes to sovereigns during the middle ages, sometimes by the jurisprudence or constitutional law of that epoch; sometimes by the theological theory of the divine right; and sometimes by both combined. But in some passages he pronounces much more decisively than Count de Maistre for the second explanation. In support of these observations, see especially M. Henrion's corrections in Bercastel's text, in the passages relating to Gregory VII., Innocent III., Innocent IV., and John XXII. vol. iv. pp. 405, 406; vol. v. pp. 94, 206, 239, 263, 329, 503, 517, &c.; vol. vii. pp. 231, 428, et alibi passim.

own dominions, and to increase their power as sovereigns ; nevertheless, in this they have not succeeded, or they never tried to succeed. Is it not more natural to suppose that, in whatever great things they accomplished, the popes only obeyed the impulse of Christendom? During the middle ages, the epoch of their power, they rather obeyed than created that impulse. Their supreme power was forced on them by their position, not by their own will. Without undertaking to justify their domination, we may assert, that they were led to the possession of supreme power by the circumstances in which Europe was placed during the eleventh and twelfth centuries. Society in Europe, overwhelmed with ignorance and anarchy, and without any law, threw itself into the arms of the pope, and believed that it was placing itself under the protection of heaven. As nations had no other notion of civilization, but that which they received from the Christian religion, the popes naturally became the supreme arbiters of nations. In the midst of that darkness which the light of the Gospel was constantly tending to dispel, their authority was naturally the first that was established, the first that was recognised. The temporal power stood in need of their sanction ; nations and kings implored their support, and consulted their wisdom : they believed themselves authorized to assume a universal dictatorship. This dictatorship was often exercised for the benefit of public morality and social order ; it often protected the weak against the strong : it prevented the execution of criminal projects ; it restored peace between nations ; it saved society in its infancy from the excesses of ambition, from licentiousness and barbarism.”<sup>1</sup>

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<sup>1</sup> Michaud, *Hist. des Croisades*, 4th edit. vol. iv. p. 97 ; vol. vi. pp. 230-234. These judicious reflections may correct many passages in the same work, in which the author too inconsiderately adopts the severe censures of modern writers against Gregory VII., Urban II., Innocent III., Innocent IV., and many other popes of the middle ages. After having boldly vindicated them from the reproaches of ambition and usurpation in the passages just cited, he copies these very reproaches in other places, without even attempting to reconcile them with what he had previously said to refute them. We shall mention particularly the following passages : on Gregory VII. vol. i. pp. 86, 87 ; vol. iv. pp. 162-164 ; vol. vi. p. 260 ; on Pope Urban II. vol. i. pp. 101, 102 ; on Innocent III. vol. iii. pp. 399, 400, 405 ; on Gregory IX. vol. iv. pp. 18, 73, 488, &c. ; on Innocent IV. vol. iv. pp. 91, 145, 152, 154, 157, 161, 163, 184, 185, 198, 452, 455, 470, et alibi passim. From a collation of these passages with those of the same author cited in our text, the inference is inevitable, that he had not fixed and well-digested notions of the papal power in the

18. *Many Protestant Writers favourable to this Opinion—Testimony of Voigt.*

From the time of the publication of the work now cited, many Catholic writers fully adopted the opinion and moderate theory of Michaud, and applied them as their criterion in their judgments on the conduct of popes and councils to sovereigns during the middle ages.<sup>1</sup> But the most remarkable fact is the language of two Protestant authors, who were led by a profound and impartial study of the monuments relating to the history of Gregory VII. and of Innocent III., to judge of these two popes with a moderation not always observed by many Catholic authors. "To give an opinion of this pope, in which all would agree, is impossible," Voigt observes, in his *History of Gregory VII.* "His great idea, and he had no other, was the independence of the Church. To this point, all his thoughts, all his writings, all his actions, like so many rays of light, tend, as to their centre. This idea was the soul of his amazing activity; it was an epitome of his life; the spring of all his operations. Political power naturally tends to unity; hence, Gregory desired to establish in the Church a perfect unity, by raising her above every other power. To attain that end, to confirm it, to make it predominant throughout all ages and in all countries, that was the constant object of his acts, and as he conscientiously believed, the duty of his office. Assuming, then, that he had

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middle ages. His inconsistencies on this subject may also, we believe, be attributed partly to his excessive fear of exposing himself by moderate opinions to the censures of certain prejudiced minds. At least, this is the reason assigned by himself for the suppression of the second part of the *Mémoire sur la Lutte des Deux Puissances au Moyen Age*, placed at the commencement of the *Eclaircissements* of the fourth volume of his *History* (p. 461). In closing that Memoir, the author had announced a second (p. 517), which was to be inserted in the following volume, but which he there deferred to the sixth volume, in which it did not however appear. (See vol. v. p. 537.)

In the same interview in which Michaud communicated to us these facts (it occurred not long after the publication of the fourth edition of his history), he listened with interest to an exposition which we gave him of Fenelon's opinion; though he did not expressly adopt it, he declared that it deserved serious consideration, and earnestly urged us to continue our researches on the subject. He appeared, moreover, convinced, that the authority of the popes during the middle ages was "a provisional authority, rendered necessary by circumstances;" that is, by the state of anarchy in which society was then involved; he compared the conduct of the popes at that period to that of a private individual, who, in a time of disorder and anarchy, seizes with a firm hand the reins of government to save his country.

<sup>1</sup> See especially Lefranc, *Hist. du Moyen Age*, book iv. ch. vi. § 1.

conceived, like ancient Rome, the project of bringing all nations under his sway, can we blame the means which he adopted for that end, especially when we reflect that they were for the benefit of nations? To judge his acts impartially, we must keep in view his object and his intentions; we must consider the exigencies of his age. The German no doubt swells with generous indignation when he beholds his emperor (Henry IV.) humbled at Canossa; and the Frenchman, in like manner, when he hears the bitter lectures addressed to his king (Philip I.).<sup>1</sup> But the historian, who surveys events in a general point of view, rises above the limited horizon of German and of Frenchman, and approves highly all that was done, though others censure it. Even Gregory's enemies are constrained to acknowledge that the master idea of this pontiff—the independence of the Church—was indispensable for the good of religion, and for the reform of society; and that, for this end, the chains which had hitherto, to the great detriment of religion, bound the Church to the State, should be burst asunder. To the genius of Gregory it is difficult to give too much praise; for he laid on every side the foundations of lasting glory; and all ought to desire to do justice, where it is due. Let no man, therefore, cast a stone at the innocent; but all respect and honour a man who laboured for his times, with views so generous and so great."<sup>2</sup>

19. *This Opinion admitted substantially by Hurter.*

We find the same views substantially in M. Hurter's *Life of Innocent III.*, a work not less remarkable than M. Voigt's,

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<sup>1</sup> See *infra*, ch. ii. art. i. n. 97, 108.

<sup>2</sup> Voigt, *Hist. de Grégoire VII.* vol. ii.; Conclusion, p. 605, &c. We may apply here to M. Voigt's work what we have said in another place of the *History of Innocent III.* by M. Hurter (*supra*, part i. n. 99, note 2). The panegyric on such a pope as Gregory VII. by a Protestant writer, is undoubtedly a rare instance of candour, and of the results that may be produced by conscientious studies, in eradicating from honest minds even the most deeply-rooted prejudices. Nevertheless, it were exceedingly difficult for M. Voigt, attached as he is to the fundamental principles of the Reformation, not to allow some assertions to escape him which are contrary to Catholic doctrine. In this respect his work, however useful in dispelling hostile prejudices, needs much improvement. To compose a work of that character, to appreciate correctly the principles and conduct of Gregory VII., learning alone is not enough, if it be not guided by a pure faith, and a sincere adherence to the Catholic doctrines. See, on this subject, the review of M. Voigt's work, in the *Bibliograph. Cathol.* 2nd year, p. 431.

both for erudition and for the moderation and impartiality of its judgments. After the most extensive and conscientious researches on the character and principal actions of Innocent III., M. Hurter professes sincere admiration of the exalted notions which that pope had formed to himself of the powers of his office, not only in the spiritual, but also in the temporal order ; he does full justice to the comprehensiveness of his views, as well as to the uprightness of his intentions ; he acknowledges, in fine, that the views of Innocent III. were in harmony with those of his time, and that society derived immense benefit from the political system, which invested the pope with so great power over sovereigns.<sup>1</sup> “A power based on the purest moral principle,” he observes, “on the recognition of a divine influence in human affairs, surely must be pronounced beneficial when it prevented or healed contests between kings and crowns. When Innocent assumed the title of vicar of the supreme Peacemaker, it was no empty title in him ; for during his whole life he endeavoured to realize the grandeur of his mission. If universal peace were not a dream, it could never be realized except by a spiritual ruler, generally recognised, established as mediator between kings and nations, and wielding all the power of Christendom against him who should abuse his authority, refuse to submit to its awards, and disturb the general tranquillity.”<sup>2</sup> It was thus that the authority of Pope Innocent III. restored peace between the kings of Castille and of Portugal, when they were threatened by the Moors. \* \* \* Must we now proceed to pass judgment on this pope ? All historians, both ancient and modern, who knew how to appreciate a man’s character by the comprehensiveness of his views, by the difficulty of the social problems which he has solved, by his elevating himself so as to become, as it were, the centre to which all the lights of his time necessarily converged ; all agree, that during many centuries before and after Innocent III., no pope that sat in the chair of St. Peter obtained

<sup>1</sup> In confirmation of these assertions, see especially the following passages of the History of Innocent III.: vol. i. pp. 220, 221, 430, 431 ; vol. ii. pp. 445, &c. 731, 732, 786, &c. 798, &c. 801, 846, &c.

<sup>2</sup> M. Hurter is not the first nor the only author who has based on this idea the project of a universal peace. He cites, in support of his opinion, the prior Gerhoh de Raitenpuch, mentioned by Schmid, *Hist. d’Allemagne*, vol. iv. In another place we shall see that this idea had been broached long before by Leibnitz (*infra*, ch. ii. art. i. n. 124).

more brilliant renown, by the extent of his knowledge, by the purity of his morals, and by his eminent services to the Church ; so that he has been styled, not only the most powerful, but also the wisest of all the popes that filled the papal chair since the days of Gregory VII. \* \* \* If authors of a later period have picked up the calumnies vented against this pope by some contemporaries, whose interests he had crossed, or whose rival prejudices he had wounded, we must attribute their historical error rather to interested passions than to a serious investigation of the acts, and especially of the intentions, of Innocent, as carefully explained and propounded by himself with the most perfect candour. Other writers, who have succeeded in emancipating themselves from the prejudices of their times, and who better understand this great pope and the difficulties of his position, have pronounced quite a different opinion of him : lying and exaggeration, engendered in party hate, ought never to have passed current as historical truth. Can it be maintained, consistently with history, that Innocent was nothing but ambitious ? To answer this question, one thing alone is necessary ; namely, to examine sincerely whether this pope, in the exercise of his power, in his mode of directing the affairs of the universe, in his persevering superintendence over them as a supreme arbiter, had in view the personal glory which thence redounded to himself, or rather the solemn and simple realization of the exalted idea which he had conceived of the duties of sovereign pontiff ; whether, in fine, his position was his own work. The facts which we have narrated, the convictions with which Innocent was profoundly impressed, and which he manifested on many important occasions, without ever troubling himself, in my opinion, about the judgment of posterity, are sufficient guarantees of his disinterestedness.”<sup>1</sup>

<sup>1</sup> Hurter, *Histoire d'Innocent III.* vol. ii. pp. 801, 846, &c. We may remark here, in passing, that MM. Hurter and Voigt are not the only Protestant writers in our days who have spoken with so much moderation on the character and conduct of Gregory VII. and of his successors. Many other remarkable testimonies of a similar kind are given in No. 2 of the *Annali di Scien. Rel.* published in Rome by the Abbate di Luca (Oct. 1835). Part of that article was republished in the *Ami de la Religion*, vol. lxxxviii. pp. 18, 55, &c. ; vol. xci. p. 257, &c., and translated complete in vol. xvi. of *Démonstrations Evangéliques*, published by Abbé Migne (Paris, 1843, 4to. pp. 577, &c.). This article was written by N. Wiseman, then Rector of the English College, Rome (now [1845] bishop in partibus of Melipotamus, and coadjutor of the Midland

20. *Plan of this Second Part—The whole Discussion reduced to Four Propositions.*

The very diversity of opinion which we have now explained, is of itself a sufficient evidence of the importance and difficulties of the subject which we intend to discuss in this second part. To proceed with order, we shall divide it into four chapters, the development of which will comprise a solution of all the difficulties of the subject. In the first, we shall state the principal circumstances which introduced or aided the establishment of that extraordinary power which popes and councils exercised over sovereigns during the middle ages. In the second, we shall inquire, "what was the general belief of princes and people regarding the existence of this power?" In the third, we shall point out the real foundations of this power. Finally, in the fourth, we shall consider the influence of this power on the good of society. A development of these different points will demonstrate to evidence the truth of these four propositions to which this whole discussion may be reduced, and which contain a complete justification of popes and councils on the subject of our inquiry. First, the power of popes and councils over sovereigns during the middle ages, however extraordinary it may appear to us at present, was introduced naturally, and in some manner inevitably, by the state of society and the exigencies of the times; second, the popes and councils, when claiming and exercising this power, merely followed principles then authorized by universal consent; third, the universal consent which attributed this power to them was not founded on error, or on their usurpation, but on the then existing constitutional law; fourth, the maxims of the middle ages which attributed this power to them, were far from producing all the bad consequences sometimes supposed in modern times; and whatever bad consequences they really may have produced, have been amply counterbalanced by the great benefits which society derived from the extraordinary power with which popes and

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District, England).\* We may also mention on this matter a review of Voigt's History of Gregory VII. in the Biblioth. Univ. de Genève, n. 25, 26 (January and February, 1838). These two articles were written by M——, a Protestant minister, professor of belles-lettres in the Academy of Geneva, and librarian of that city.

\* [Now Cardinal Archbishop of Westminster.—T.]

councils had been so long invested.<sup>1</sup> The development of these four propositions will place in a new light Fenelon's opinion, which we have already explained, and which we believe to be preferable to any other opinion on this matter.

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## CHAPTER I.

SOME OF THE PRINCIPAL CIRCUMSTANCES WHICH CONTRIBUTED TO ESTABLISH OR FAVOUR THE EXTRAORDINARY POWER OF POPES AND COUNCILS OVER SOVEREIGNS DURING THE MIDDLE AGES.

### 21. *How to form an impartial Judgment of our Ancestors and of their Intentions.*

To judge of our ancestors impartially, as a judicious historian observes, we must not measure their acts by our present manners and ideas; we must transport ourselves to the times in which

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<sup>1</sup> Some readers may perhaps, at first sight, be surprised at the order adopted in this second part, and they may regret not having the facts connected with it stated, as in the first part, in chronological order. This observation having been made to us by some persons to whom we had submitted our work, we made several attempts to modify our plan according to their suggestion; but it appeared to us to be exceedingly difficult, and perhaps impossible. It was easy to observe the chronological order in the first part, because we had really but one question to examine; namely, the origin and progress of the temporal power of the Holy See. In the second, we have many questions, different in themselves and in their relations to different states. First, we have to examine the circumstances which paved the way for the temporal power of popes over sovereigns,—circumstances which, from their number and variety, require to be stated separately. Second, the exercise of this power in different states, and in very different circumstances; at one time with regard to princes feudally subject to the Holy See, at another with regard to the emperor, who, though not a feudal subject of the pope, was dependent on him in a peculiar manner; and again with regard to other sovereigns. Thirdly, the foundations of this power, as it concerned both the emperor and other sovereigns; foundations which could not be explained without an attentive study of the constitutions of the different states, and of that theory which explains the conduct of the popes to sovereigns by the theological opinion of “the indirect power.” An examination of so many different questions excludes the possibility of observing chronological order; at least all our attempts to observe it were fruitless. It appears to us, moreover, that the want of this chronological order is very well compensated for by the logical order of these four propositions to which we reduce the second part; an order which has the undoubted advantage of proceeding from the more clear to the less clear, by establishing first the facts most easily proved and generally admitted, to deduce from them as a consequence that constitutional law which is the principal object of our inquiry. Moreover, the first and second propositions prepare the way so naturally for the third, that, once admitted, the reader is naturally inclined to embrace the opinion which we adopt in the third. The development of our plan, and especially of the third chapter of this second part, will fully illustrate the importance and justness of these observations.

they lived, and reflect on their political institutions, their principles of legislation, and their government.<sup>1</sup> It may be confidently asserted, that forgetfulness of this principle is one of the most ordinary causes of the false estimates formed by so many modern authors, of the principal events, and of the most celebrated characters in history, both ancient and modern. Hence arise, especially, the different judgments pronounced in those latter times on the conduct of popes and councils to sovereigns in the middle ages. On this, as on so many other points, they could have avoided a mass of errors and of hateful declamations, had they been better acquainted with the political institutions of the middle ages, and with the state of society during that period.

22. *The Power of the Popes and Councils over Sovereigns during the Middle Ages tested by this Principle.*

To be convinced of this, we need but examine closely the origin of that extraordinary power which popes and councils then exercised over sovereigns; that is, the circumstances which insensibly introduced this power, which favoured its establishment, and which continued to maintain it during many centuries. The result of this inquiry must be to convince every impartial reader, that this power, however opposed to the prejudices and customs of our age, was naturally introduced, and maintained during the greater part of the middle ages, by the condition and exigencies of society, and also by the constitution of the principal states in Catholic Europe. At a time when all monarchies were elective, and when the clergy were the first order in the state, a necessary consequence in course of time should be, that the principal stipulation in the election of a sovereign would be, a profession of the Catholic faith, and its defence against all enemies. This condition once established, the sovereign could not violate it, without incurring the forfeiture of his rights; he became, as a matter of course, amenable to the pope and to councils, the only competent judges of such offences: it was even the interest of sovereigns that their judgment should be reserved to the tribunal of the Church, as being more enlightened and more disinterested than that of the lay lords. However

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<sup>1</sup> Lingard, *History of England*.

singular this order of things may appear to us at the present day, the general interests of society imperatively required it at a time when the clergy occupied the first rank in society, by the threefold ascendancy of their profession, their learning, and their virtues. In fine, this order of things was the more easily established, as it was no more than the result and natural application of the jurisprudence then existing in all the Catholic states of Europe, on the temporal effects of heresy, of public penance, and of excommunication.

This combination of circumstances, which explains so naturally the origin of the power of popes and councils over the Catholic sovereigns of Europe in general, explains it still more satisfactorily with regard to those who had voluntarily declared themselves feudatories of the Holy See ; and also with regard to the emperors of the West, who, from the establishment of the new empire, had special relations of dependence on the Holy See.

These are the principal circumstances whose combination explains naturally the origin of the power now under consideration. To illustrate these in all their bearings, we shall now develop each of them more amply.

#### ARTICLE I.

##### Constitution of Governments in the Middle Ages.

###### *23. Most of the Monarchies of that Period Elective.*

After even a slight examination of the nature of the governments of Europe during the middle ages, and especially during the earlier part of that period, no person can be surprised at the great influence which the clergy long possessed in political affairs, more particularly in the election and deposition of sovereigns.

First, most of the monarchies established in Europe, after the fourth century, on the ruins of the Roman empire, were elective, at least in this sense, that the sovereign might be selected indifferently among all the princes of the reigning family. The crown, properly speaking, was neither purely elective, nor purely hereditary ; but it was both elective and hereditary : hereditary, in this sense, that the sovereign should be selected out of the members of

the reigning family ; elective, in the sense, that the nation was at liberty to select any of the princes of the royal blood. All the children of the deceased king had the same pretensions to the succession, which they sometimes partitioned among themselves, like private property, with the express or tacit consent of the barons of the kingdom : this right, however, was dependent on the consent of the barons, who could resist the partition of the kingdom, and elect a new king among the relatives of the deceased, to the exclusion even of his children. Their birth gave to the latter a hope, and, so to speak, an inchoate right, but not a full and incontestable right ; they might be regarded as “ natural and probable ” successors of the deceased king, but not necessary successors, since they could be excluded by the barons, in whom was vested the right of election. This was the order of succession to the throne in the Visigoth monarchy in Spain ;<sup>1</sup> in that of the Anglo-Saxons in Great Britain ;<sup>2</sup> in that of the French under the second race of their kings, according to the common opinion of historians,<sup>3</sup> and even under the first, in the opinion of many learned writers.<sup>4</sup> Such was, especially, the constitution of the new empire of the West, in which this form of government was retained longer than in the other states of Europe.<sup>5</sup>

24. *M. Guizot's Opinion on this Point.*

We deem it unnecessary to insist on this first point, which is generally admitted by the modern authors who have most

<sup>1</sup> Hallam's Europe, &c. vol. ii. p. 18, et alibi passim. Ferreras, Hist. d'Espagne, vol. ii. p. 414. Perez Valiente, Apparatus Juris publici Hispanici ; Matriti, 1751, 2 vols. 4to. ; vol. ii. cap. vi. vii. xxi.

<sup>2</sup> Hallam, ubi supra, vol. ii. pp. 270, 271, et alibi passim. Lingard, Hist. of England, vol. i. pp. 99, 225, 521, 542. Alban Butler, Lives of the Saints, note on the Life of St. Edward the Confessor, 13th October, vol. ix. p. 473, &c.

<sup>3</sup> Daniel, Hist. de France, vol. i. Préface Historique, art. 3.

<sup>4</sup> Vertot, Dissertation sur la Succession à la Couronne de France, in the Mémoires de l'Académie des Inscriptions, vol. vi. of the edit. in 12mo. and vol. iv. of the edit. in 4to. The opinion of this author is adopted by Velly, Montesquieu, Hallam, De Saint-Victor, Gaillard, De Châteaubriand, Møller, Guizot. See especially the work of this last author, Essais sur l'Histoire de la France, 4th Essay, ch. iii. p. 218. See also some elucidations of this point in No. 7 of the Confirmatory Evidence at the close of this volume.

<sup>5</sup> Lenglet-Dufresnoy, Méthode pour Etudier l'Histoire, part iv. ch. v. art. i. (vol. vi. of the 12mo. edit.). Pfeffel, Abrégé de l'Histoire de l'Allemagne, passim. See, in the index of this work, the words Election, Electors, &c. Hallam's Europe, &c. vol. iv. pp. 11, 19, 33, &c.

carefully examined the history of the different states which we have named. In support of our exposition it is enough to cite the opinion of M. Guizot, in his *Essais sur l'Histoire de France*, in which he compresses into a few words the researches of the most celebrated authors on this subject. He regards as an incontestable fact, "the mixture of the hereditary and elective principles in royal succession, during the earlier times of modern monarchies. Hence, he says, this almost universal fact, that the election was never made except among the members of the same family, invested with the privilege of giving kings to the nation."<sup>1</sup>

Not satisfied with asserting this principle, as a point of law common to all the Germanic nations, M. Guizot establishes it especially with regard to the kingdom of the Franks. "So far," he observes, "as we can judge, in the absence of ancient and original documents, the principle of election prevailed among the primitive Franks. Still, the most ancient authorities which speak of the election of Frank kings, assert, at the same time, that it raised to the throne a family already distinguished by the exclusive privilege of wearing long hair, whence these kings were afterwards denominated 'Chevelus.'<sup>2</sup> After the territorial settlement, and when Clovis had rallied almost all the Frank tribes under his sceptre, the hereditary principle of royal succession began to prevail. This was the inevitable consequence of the preponderance actually possessed by the royal family, and of the independence which the greater lords enjoyed of the regal power. Some could not contest the royal pre-eminence; others did not trouble themselves about it. In such a state of affairs, it is ridiculous to look for a principle clearly acknowledged and formally established; it is useless to expect public institutions skilfully combined, and consistently maintained. The Franks no more dreamed of solemnly disposing of the throne at each vacancy, than they would have tolerated their kings in assuming that they were the owners of the nation, and of the supreme power. Things were ordered in a manner both more regular and more simple. Royalty was neither elective, nor emancipated from all chances of disorder, and from

<sup>1</sup> Guizot, *Essais sur l'Histoire de France*, 4th Essay, ch. iii. p. 219.

<sup>2</sup> *Ibid.* p. 220.

stipulations of liberty. On the death of the king, his sons inherited his titles, like his domains: the common impression was, that they had a right to one as well as to the other: but, in order to receive power with their title, they generally found themselves necessitated to seek a recognition of their right by some assembly, more or less numerous, of the chiefs and people whom they were to govern. Thus the hereditary principle subsisted, but under the obligation of frequently soliciting a recognition; the Franks did not elect for themselves a new king, but recognised, very generally, the natural successor of the deceased king. Neither the idea of legitimacy, nor that of election, was well defined and effective. The throne belonged by inheritance to one family; but the Franks belonged to themselves, and, except in cases of violence, these two rights mutually acknowledged each other, by both asserting themselves when necessity required it.<sup>1</sup> These are two facts, attested undeniably by those contemporary historians who have been cited by some to prove the hereditary succession, and by others the popular election of the French kings.<sup>2</sup> The violation of the hereditary principle by the election of Pepin,<sup>3</sup> did not prevent it from prevailing once more, and without dispute, in favour of the Carolingians. Pepin had made the French swear that they should never elect kings sprung from the blood of any other man. He exacted this oath rather as a protection for his descendants against the pretensions of the dethroned family, than as a restriction of a constitutional right, of which, in truth, no person dreamed. The election of kings was not more real under the second than under the first race. The authorities which refer to it, merely indicate, as under the Merovingians, the recognition of hereditary rights, a sort of national acceptance of the legitimate successor. This acceptance took place, sometimes, after the reigning king's death, sometimes during his life, and at his own request: this was an effort of the hereditary principle to establish itself in a disorganized and anarchical

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<sup>1</sup> Guizot, *Essais sur l'Hist. de France*, 4th Essay, ch. iii. p. 221.

<sup>2</sup> *Ibid.* p. 222, note 1.

<sup>3</sup> M. Guizot supposes here that Pepin was not of the royal stock of the Merovingians. We have elsewhere stated that this point is not certain. See No. of the Confirmatory Evidence at the close of this volume.

state of society, but not a true election. As the revolution, however, which raised the Carolingians to the throne, had, by its very nature, infused a new, though not permanent, vigour into the German institutions and liberties, the adherence of the people to the right of the king's sons was more regularly insisted on, more formally expressed, and it answered, at least in form, more the appearance of a national choice."<sup>1</sup>

25. *The Authority of the Sovereign restricted by the General Assembly of the Nation.*

In all the new monarchies, the authority of the sovereign was limited by the general assembly of the nation.<sup>2</sup> All matters of great importance were regulated by this assembly; its powers were very extensive, and were, perhaps, never determined with precision; which was one of the most prolific causes of the tumults and disorders which so often convulsed society at this period. "Here," observes M. Guizot, "we shall look in vain for some principle, some rules of prerogative and limitations, I do not say, respected, but even recognised. The throne passed without dispute from the father to the son: but the real and actual power of its possessor was more a matter of fact than of right. Not that I mean to say, it was absolute: I mean only, that it was variable and undefined: immense to-day, powerless to-morrow; sovereign in this place, ignored elsewhere; almost always and everywhere at war with those over whom it was to be exercised; strong or weak, just as the chances of war were against it, or in its favour."<sup>3</sup>

But however difficult, or even impossible it may be, especially at this time, to ascertain the limits of the power attributed by the constitution of the state to the general assembly, it is at least certain, that from the very nature of elective governments it could prescribe conditions in the election of the sovereign, make him responsible for his acts, and even, in certain cases, depose him for the violation of the conditions stipulated at the election.<sup>4</sup> It is, in truth, generally acknowledged, that in elective

<sup>1</sup> Guizot, p. 223. The principal testimonies of the ancient authors in support of his opinion are given in M. Guizot's work.

<sup>2</sup> See the authors cited in the preceding notes (supra, p. 28).

<sup>3</sup> Guizot, ubi supra, p. 226.

<sup>4</sup> It may not be useless to remark, that mixed monarchy, such as we explain, does not necessarily suppose the principle of the sovereignty of the people; it

governments, the authority of the sovereign could be so restricted by the general assembly of the nation. The following are the views on this subject of a judicious author, speaking of the conditions imposed on the Gothic kings of Spain in the seventh century. "Our reasoning with regard to elective monarchies must be very different from that regarding hereditary monarchies. In the latter, there is no right to impose on the sovereign any other conditions except those prescribed in the establishment of the monarchy. But wherever there is a right to elect a king, there is a right to name the conditions on which he is to be elected, especially when they are proposed in the general assembly of all the orders of the kingdom, and in the name of all the people."<sup>1</sup> A celebrated writer of the last century establishes the same principles, when treating of the imperial capitulation, signed by Charles V. at the time of his election in 1519.<sup>2</sup> "The emperor," he states, "binds himself by oath to observe all the articles of this contract. By violating them he absolves his subjects from their oath of fealty; he loses all the rights which he had to the empire, because the empire was conferred on him only on condition that he should observe these articles. They are not always the same; they change according to times and circumstances: they may be increased or diminished, as it may be deemed necessary for the safety of the empire: very different, in that respect, from the oaths which hereditary monarchs usually make at their coronation. The articles of these oaths, when once agreed on by men who subject themselves to a particular family, remain ever after the same; and are liable no more to the revision of the subject: God alone is their judge. But the oaths of elective princes, being covenants which the commonwealth changes, reforms, interprets, restricts, or extends, according to its pleasure, are always subject to its judgment. The chiefs whom it has selected are always responsible to it for their observance; and it has, at

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supposes merely a fundamental law of the state, in virtue of which the power of the monarch is more or less limited.—Pey, *De l'Autorité des Deux Puissances*, vol. i. part ii. ch. iv.

<sup>1</sup> Note by Père Charenton, Jesuit, on Mariana's *History of Spain*, vol. i. book i. n. 32.

<sup>2</sup> In another place we shall discuss more fully this capitulation. *Infra*, ch. iii. art. ii. § 4, n. 288.

all times, the right to compel them to observe them, or to pronounce their deposition if they do not observe them.”<sup>1</sup>

26. *Strict Union of Religion and Government in these Monarchies.*

In all the monarchies of the middle ages, religion was regarded as the basis and indispensable bond of society. The first duty of the prince, and of all who shared his authority, it was believed, was to respect and to make others respect religion; so that the sovereign or magistrates who neglected this essential duty, proved themselves, by the very fact, unworthy of their title, and deserved to be deprived of it. These principles are clearly enounced in the legislation of the different states of which there is question, and especially in the legislation of France. We find on that subject, the following declaration in the “second addition to the Capitularies,” in accordance with many mixed councils or assemblies held in France during the ninth century. “The king (*rex*), is so called from his acting well (*rectè agendo*): for if he acts justly, piously, and clemently, he is deservedly styled a king; but if he has not these qualities, he is not a king, but a tyrant. The principal duty of a king is, to govern and conduct the people of God with justice, and to labour for the maintenance of peace and concord. Above all things, he ought to be a defender of the churches and of the servants of God, of widows, of orphans, of the other poor, and of all who are in affliction.”<sup>2</sup>

<sup>1</sup> Lettres, Mémoires, et Actes concernant la Guerre présente (the war of the Spanish succession), Basle, 1703 and 1704, vol. iii. p. 146. These anonymous letters, which form eight volumes duodecimo, were written by Jean de la Chapelle, secretary of the prince of Conti. He died in Paris, A.D. 1723. In confirmation of his views on the nature of elective governments, the reader may consult Bossuet, *Défense de l’Hist. des Variations*, n. 5, 13 (*Euvres de Bossuet*, vol. xxi.); Pey, *De l’Autorité des Deux Puissances*, vol. i. p. 271; Lenglet-Dufresnoy, *Méthode pour Etudier l’Histoire*, part iv. ch. v. art. i.; vol. vi. of the duodecimo edit. p. 333.

<sup>2</sup> “*Rex, a rectè agendo vocatur. Si enim piè et justè et misericorditer agit, meritò Rex appellatur; si his caruerit, non rex, sed tyrannus est. . . Regale namque ministerium specialiter est populum Dei gubernare et regere cum æquitate et justitiâ, et ut pacem et concordiam habeant studere. Ipse enim debet primò defensor esse ecclesiarum et servorum Dei, viduarum, orphanorum, ceterorumque pauperum, necnon et omnium indigentium.*”—Capitular. Additio 2, n. 24, 25 (Baluze, *Capitular.* vol. i. p. 1146, &c.). These passages, taken from the sixth Council of Paris, held in 829, and from the second Council of Aix-la-Chapelle, held in 836, are found also, with some modifications, in a Council of Mayence, held in 888, and in Hincmar, *Opusc. de Divortio Lotharii* (*Oper.* tom. i. p. 693).

These principles are laid down with the same precision in the contemporary legislation of Spain, of England, and of Germany;<sup>1</sup> we shall see that to enforce their observance, it was successively established in these different states, that the sovereign should not be elected except on the express or tacit condition of professing the Catholic religion, and of defending it with all his might against the attacks of heresy and impiety.<sup>2</sup>

27. *Union of these two Powers.*

In all the monarchies of the middle ages, the union of the two powers was regarded as the natural consequence of those principles, and as essential for the general welfare of society. In support of this assertion, it were easy to cite a host of authorities, besides those already given. Remarkable provisions are found on this subject in many capitularies of Charlemagne; one of them, published in 805, in the Diet of Thionville, prescribes, "that all our subjects, from the highest to the lowest, shall be submissive to the ministers of religion as to God himself, whose place they hold in the Church: for we can have no dependence on the fidelity of those who prove themselves faithless to God and to his priests; nor can we have any confidence that they will be obedient to us and to our officers, who are not obedient to the ministers of religion in the affairs of God, and in the concerns of the Church. We order, therefore, that all shall obey them, in all things pertaining to the exercise of their ministry and to the punishment of the wicked. As for those who prove themselves negligent or disobedient in this matter, were they even our own children, let them know that they cannot hold any office in our empire or in our palace, nor have any communication with us or with our subjects, but that, on the contrary, they must be punished severely—publicly branded with infamy, deprived of their properties, and sent into exile."<sup>3</sup>

<sup>1</sup> *Lex Visigothorum*, lib. xii. tit. ii. n. 2 (Canciani, *Barbarorum Leges*, tom. iv. p. 185). *Leges Angliæ* (*ibid.* pp. 311, 337, &c.). *Juris Alamannici seu Suevici præfamen*, n. 21-24 (Senckenberg, *Corpus Juris Germanici*, tom. ii. p. 6, &c.).

<sup>2</sup> *Infra*, ch. ii. art. i. iv.; ch. iii. art. ii.

<sup>3</sup> "Volumus atque præcipimus, ut omnes suis sacerdotibus, tam majoris ordinis quàm et inferioris, a minimo usque ad maximum, ut summo Deo, cujus viee, in Ecclesiâ, legatione funguntur, obedientes existant. Nam nullo pacto

Similar provisions are found in a discourse of Edgar, king of England, to St. Dunstan, archbishop of Canterbury, and to other bishops of that province (in 969), exhorting them to reform the abuses which then disfigured the English church. "It is time," the king declares, "to rise against the transgressors of the law of God: the sword of Constantine is in my hand; the sword of Peter is in yours; let us take hands, and join sword to sword, and expel the lepers from the camp, and cleanse the sanctuary of the Lord. The royal power shall never be wanting to you, to expel scandalous sinners from the Church, and to protect the just."<sup>1</sup>

The discourse of the emperor Henry II. to Pope Benedict VIII. is not less remarkable. It was delivered in a council held at Pavia, about the year 1022. The pope having requested the emperor to confirm the decrees of this council, Henry answered in the following terms: "Most holy father, I can refuse you nothing, because I owe all things to you in Jesus Christ. Whatever your paternal authority has ordained in this council for the reform of the Church, I commend it, I confirm it, I sanction it, as your son:—my will is, that it shall be all observed for ever, ranked among the rules of government, and solemnly inserted in our laws."<sup>2</sup>

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agnoscere possumus qualiter nobis fideles existere possunt, qui Deo infideles, et suis sacerdotibus apparuerint; aut qualiter nobis obedientes nostrisque ministris ac legatis obtemperantes erunt, qui illis, in Dei causis et Ecclesiarum utilitatibus, non obtemperant. . . . Jubemus (ergo) ut omnes eis, pro viribus, ad eorum peragenda ministeria, et ad malos et peccatores atque negligentes homines distringendos, summopere obedientes existant. Qui autem in his, quod absit, negligentes eisque inobedientes fuerint inventi, sciant se nec in nostro imperio honores retinere, licet etiam filii nostri fuerint, nec in palatio locum, neque nobiscum aut cum nostris societatem aut communionem ullam habere, sed magis sub magnâ districtioe et ariditate pœnas luere . . . ; sed etiam infames atque reprobi manifestè apparentes notabuntur, eorumque domus publicabuntur, et ipsi exiliabuntur."—Capitulum Imperatoris, apud Theodonis Villam (ann. 805) (Baluze, *Capitular.* tom. i. p. 437). *Capitular.* lib. vii. n. 390 (*ibid.* p. 1109).

<sup>1</sup> "Tempus est insurgendi contra eos qui dissiparunt legem Dei. Ego Constantini, vos Petri gladium habetis in manibus; jungamus dexterâs: gladium gladio copulemus, ut ejiciantur extra castra leprosi, ut purgetur sanctuarium Domini. . . . Non deerit tibi potestas regia, . . . ut et episcopali censurâ, et regiâ auctoritate, turpiter viventes de ecclesiis ejiciantur, et ordinatè viventes introducantur."—Oratio Edgari Regis ad Dunstanum (Labbe, *Concil.* tom. ix. p. 697). Fleury, *Hist. Ecclês.* vol. xii. book lvi. n. 30.

<sup>2</sup> "Nihil tibi, sanctissime papa, possum negare, cui pro Deum omnia debeo. . . . Omnia quidem, quæ pro Ecclesiæ necessariâ reparatione, synodaliter instituit et reformavit Paternitas tua, ut filius laudo, confirmo, et approbo; . . .

28. *This Union more strict at this Period than under the First Christian Emperors.*

These principles, which had generally been the groundwork of the legislation of the Christian emperors after Constantine's conversion, were more uniformly the rule of the governments of the middle ages, and were much more frequently applied. We have seen the Christian emperors, in accordance with these principles, openly protecting the public exercise of religion, granting to its clergy numerous prerogatives, and very extensive jurisdiction even in the temporal order, confirming by their edicts the divine and the ecclesiastical laws, and enacting severe penalties against the crimes of heresy and impiety.<sup>1</sup> But the prerogatives of the clergy, and their influence in all the departments of the civil administration, were still further extended by the generosity of sovereigns in the new monarchies which arose after the fourth century on the ruins of the Roman empire. In them the clergy were generally regarded as the first order in the state, and summoned, in that capacity, not only to the councils of kings, but to the general assemblies of the nation in which the sovereigns were elected, and the most important matters discussed. This pre-eminence of the clergy was not peculiar to any particular country, as some modern authors appear to suppose, by confining it to France or Spain: it was common to all the monarchies established after the fourth century. This is manifestly proved by a vast array of authorities still extant, and especially by many mixed councils or assemblies held since that epoch in all the Catholic states of Europe; in which councils the two powers regulated in concert all that related to the good of religion and of the state.<sup>2</sup>

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et in æternum mansura, et inter publica jura semper recipienda, et humanis legibus solemniter inscribenda, . . . coram Deo et Ecclesiâ ita corroboramus." —Henrici Augusti Responso ad Bened. VIII. (Labbe, *ibid.* p. 831). Fleury, *ibid.* book lviii. n. 47. This testimony and the preceding appeared so remarkable to Bossuet, that he cites them literally in his *Discours sur l'Unité de l'Eglise*, at the end of the first part.

<sup>1</sup> See the details given on this matter in our Introduction, art. ii. § 2.

<sup>2</sup> M. Sismondi, following some modern writers, asserts that the summoning of the prelates to political assemblies, a measure whereby the influence of the clergy was so much increased under the Carlovingian kings, was an innovation of Pepin. (Sismondi, *Hist. des Français*, vol. ii. part ii. ch. i. p. 175; *Hist. des Répub. Ital.* vol. i. ch. iii. p. 139, &c.) This is an error. In summoning the prelates to political assemblies, Pepin only followed the practice long esta-

29. *Influence of the Clergy in Public Affairs in consequence of this Union.*

Under such a form of government the clergy should inevitably take a considerable part in public affairs, and exercise a great influence by the natural ascendancy of their intelligence and virtues, combined with their religious and political character. It must, moreover, be acknowledged, with Fleury and our best historians, that in attending political assemblies in which such public affairs were debated, they merely performed their duty; for, being summoned as well as the other lords, "they could not avoid taking a part in them."<sup>1</sup> Superficial or prejudiced minds may condemn this order of things; but no impartial and upright person can fail to recognise that it was perfectly legitimate, because founded on the constitution of the state itself; and that in these mixed assemblies already mentioned, the clergy exercised no influence except in concert with the other lords.<sup>2</sup>

lished in France, and in all the Catholic states of Europe. With regard to France in particular, this point of history has been solidly discussed by the Abbé Bullet, in his *Dissertation sur l'Etat des Evêques en France, sous la Première Ræe de nos Rois*. This *Dissertation* makes part of the collection entitled *Dissertations sur la Mythologie Française, et sur plusieurs Points Curieux de l'Histoire de France*, by the Abbé Bullet. Paris, 1771, duodecimo. Père Berthier has also treated the subject, more briefly but very ably, in the third article of his *Discours sur les Assemblées de l'Eglise Gallicane*, prefixed to vol. xvii. of his *Hist. de l'Eglise Gallicane*. With regard to other states, see Thomassin, *Ancien. et Nouv. Discipline*, vol. ii. book iii. ch. xlv. xlv. and following; Fleury, *Hist. Eccl.* vol. xiii. 3rd Disc. n. 9, 10; Mœurs des Chrétiens, n. 58; Lingard, *Hist. of England*, vol. i. ch. vii.; Mariana et Ferreras, *Hist. d'Espagne*, 6th and 7th century; Perez Valiente, *Appar. Juris Publici Hispan.* vol. iii. passim; Pfeffel, *Abrégé de l'Histoire d'Allemagne*, articles Bishops, Clergy, &c. in the Index.

<sup>1</sup> Fleury, *ubi supra*, 3rd Discourse, n. 9.

<sup>2</sup> Fleury, *ibid.* It is astonishing that the author, in the very Discourse in which he expressly acknowledges the nature of those mixed assemblies, and the obligation under which bishops as well as lay lords were of attending them, censures severely this union of the spiritual and temporal in these assemblies, and roundly accuses the clergy of intruding themselves into secular affairs, and of judging kings. (*Ibid.* n. 9, 10.) The bishops were legitimately summoned to these assemblies with the other lords; and as Fleury himself admits that they could not avoid "taking part" in them, is it surprising that they should, in concert with the other lords, regulate all that related to the temporal government; and that in some cases they should have even judged kings, who were then responsible for their acts to that general assembly, in accordance with the principles of elective governments?

These observations may serve to correct a great number of passages, not only in Fleury's Discourses, and in his *Hist. Ecclésiastique*, but also in a crowd of modern authors, who, from not attending to this twofold character, political and ecclesiastical, of many councils of the middle ages, have censured much too thoughtlessly the conduct of bishops in those councils. Père Longueval himself, Père Daniel, and many otherwise most respectable writers, are not exempt from censure on this score.

Such was, in reality, the character of the numerous councils held at Toledo during the seventh century, and especially of the fourth, held in 633; which ordained, that after the king's death, his successor should be elected by a council of lords and bishops.<sup>1</sup> Such was the council held at Calcuth, in England, in 787, which declares (Can. xii.), "that kings, to be legitimate, must be chosen by the bishops and lords."<sup>2</sup> Such, likewise, were many councils in France, under the second race of kings, in which the bishops sometimes disposed of the crown with absolute authority.<sup>3</sup>

30. *Influence of the Pope the natural Consequence of similar Circumstances.*

This great influence of the clergy in the political affairs of the different states of Europe, should naturally augment, at least on many occasions, that which was already vested in the pope, either by the authority which his sacred character gave him in the eyes of princes and people, or in virtue of the temporal power possessed by him since Italy had shaken off the yoke of the Eastern empire. The position as princes which the popes had acquired by that great revolution, their special right over the new empire of the West,<sup>4</sup> the interests of religion, of which they were the guardians in all places, the authority vested in them by the venerable title of head of the Church, for watching over the preservation of faith and morals in all Christian states; for keeping princes in peace, and for preventing or correcting public disorders, naturally empowered and

<sup>1</sup> "Defuncto in pace principe, primates totius gentis, cum sacerdotibus, successorem regni, concilio communi, constituent."—Concil. Tolet. iv. can. 75 (Labbe, Concil. tom. iv. p. 1724). Fleury, Hist. Eccl. vol. viii. book xxxvii. n. 50.

<sup>2</sup> "In ordinatione regum, nullus permittat pravorum prævalere assensum; sed legitime reges a sacerdotibus et senioribus populi eligantur."—Concilium Calcutense, can. 12 (Labbe, tom. vi. p. 1867). Fleury, *ibid.* vol. ix. book xliv. n. 41.

<sup>3</sup> We shall mention in particular the Councils of Aix-la-Chapelle in 842, and of Savonnière in 859, of which more detailed notice is given in another place (ch. ii. art. ii. n. 131); the Council of Mante or Mantelle, near Vienne in Dauphny, which elected Boson, king of Provence, in 879; Forcheim, in which Louis, son of Arnulph, was elected king of Germany, in 900. See, on these two latter councils, Fleury, Hist. Eccl. vol. xi. book liii. n. 10; book liv. n. 31; Hist. de l'Eglise Gallicane, vol. vi. p. 334.

<sup>4</sup> We shall see in another place the origin of these rights. *Infra*, ch. iii. art. ii. § 2.

often compelled them to interfere in the government of kingdoms, and to take, in matters of importance, a very active part; not merely by their counsels and exhortations, but also by just protests and strong remonstrances, whenever there was a question of preserving those rights which their position as temporal princes conferred on them, as well as on all other sovereigns. One of the most illustrious orators that appeared in the political world in England at the close of the last century, has described most faithfully these relations of the pope with other sovereigns. "As temporal prince," Burke observes, in one of his speeches in Parliament, "the pope is equal to any other prince; but if to this we add his title of supreme head of Christendom, he has no equal." It is manifest, that this observation of Burke's on the position of the popes, even in those latter times, applies with far greater truth to their position during the middle ages, especially from the period when the clergy were summoned, in all the Christian states of Europe, to exercise so great an influence in all departments of the civil administration. What could be more natural than that princes and people, who reposed so great confidence in the clergy, should much more willingly accord it to him whom they venerated as the head of all bishops, and as the centre of Catholicity. It was impossible that the clergy, while taking so great a part in public affairs, and in the government of states, should not often appear as the agents and ambassadors of him whom they regarded as their head, and their oracle in all that regarded the good of religion, so closely connected with the good of the state.

31. *Errors of many modern Writers on this Point.*

From not having correctly appreciated this position of the popes, a great number of modern writers attribute to ambition, to exaggerated pretensions, and to a purely mundane policy, those measures of the popes which were but the natural consequences of the state of things just described. By that combination of circumstances, especially must be explained the conduct of Popes Gregory IV., Nicholas I., and Adrian II., so bitterly censured by many otherwise excellent historians, who did not comprehend sufficiently the motives by which the pope was obliged to interfere in the disputes between the French

princes, during the reigns of Louis le Débonnaire and of Charles the Bold.<sup>1</sup> The sequel of our inquiry will give us an opportunity of demonstrating, that the reasons which authorized, and often necessitated, this intervention of the popes in the government of states, and in the public affairs of Europe, became more and more numerous and urgent in the course of the middle ages, and especially during the Crusades.<sup>2</sup>

#### ARTICLE II.

State of Society during the Middle Ages.—Advantages which it derived from Religion and the Clergy.

##### 32. *Picture of the State of Society during the Middle Ages.*

The common good of society in the middle ages, and especially during the first centuries of that period, should naturally concentrate in the clergy this great influence over temporal affairs. To be convinced of this truth, we need but consider, on the one hand, the deplorable state of society at this period; and, on the other, the immense resources which religion and the clergy supplied against all the evils with which it was afflicted.

Let us reflect, for a moment, on the character of the barbarous hordes, which, after the close of the fourth century, partitioned among themselves the members of the Roman empire in the West.<sup>3</sup> Completely ignorant of the arts and sciences, and of civilization, they knew no other occupation but hunting and war; no law but force; no glory but conquest; and far from feeling the inconveniences and disorder of this savage state, they professed a sovereign contempt for a mode of life more refined. The Christian religion, which they all embraced, softened, by degrees, their ferocious manners; but this inestimable effect of their conversion was slow and insen-

<sup>1</sup> These observations may be useful on many points against a great number of modern writers. We shall mention only a few of the most distinguished. Fleury, *Hist. Eccl.* vol. xi. books li. lii. passim; vol. xiii. 3rd Discourse, n. 10, &c.; Daniel, *Hist. de France*, vol. ii. pp. 426, 468, 475, et alibi passim; *Hist. de l'Eglise Gallicane*, vols. v. and vi. passim.

<sup>2</sup> *Infra*, art. ii. n. 51, &c.

<sup>3</sup> Fleury, *Mœurs des Chrétiens*, n. 57; *Hist. Eccl.* vol. xiii. 3rd Discourse.

sible : the majority of them long retained their ancient habits, that is, their inconstant, violent, and ungovernable temper ; their passionate taste for hunting and war ; their profound contempt for the arts and sciences ; and especially the spirit of insubordination and of independence, which seemed to be the most deeply marked trait in their character.

33. *Ignorance and Barbarism of this Epoch.*

The natural influence of the character of the dominant race on that of the conquered people, could not fail to introduce among the latter the decay of enlightenment and of civilization. Hence, ignorance and barbarism are generally considered the distinctive characteristics of the state of society in the middle ages ; and though this description does not apply equally to all parts of that period, though it has often been exaggerated by passion and malice, it must be admitted, that the middle ages, compared in respect of enlightenment and civilization with those that preceded and followed them, present a really sad and afflicting spectacle. We will not undertake, in this place, to describe all its features : it is sufficient to say, with all historians, that however deplorable the state of society was, in regard of the arts and sciences, it was still worse in point of civilization and morals. In the latter view, the history of the middle ages, especially during the earlier centuries, presents a spectacle of uninterrupted disorder and calamity. With the exception of some intervals of repose and tranquillity, procured by the influence of some sovereigns more energetic and politic than others, we see in every place society without order, government without power, laws without authority, and corruption of morals without restraint. The glorious reign of Charlemagne seemed destined to put an end to these disorders ; but the hopes which he might have inspired were soon blasted by the imbecility of his successors, by the abuses of the feudal system, and by the new irruptions of barbarians over all parts of Europe. This unhappy concurrence of circumstances replunged society into the barbarism from which it was beginning to emerge, and completely obliterated the faint remaining traces of Roman civilization.

34. *Disorders of Society in the Time of Gregory VII.*

Hence, nothing can be more saddening than the picture of the disorders to which society was a prey during the three centuries after the reign of Charlemagne. It was drawn in the following colours by an author who was contemporary of Gregory VII. "The world," exclaims St. Peter Damian, "is violently plunged into the abyss of every vice; and the nearer it approaches to its end, the more enormous becomes the accumulation of its crimes. Ecclesiastical discipline is almost universally contemned; the clergy are no longer held in the reverence due to them; the sacred canons are trampled under-foot; and the ardour which should be devoted to the service of God, is wasted totally on earthly passions. The legitimate rule of marriages is neglected; and it must be confessed, to the dishonour of the Christian name, they live like Jews, who bear the name of Christ. Is not rapine universal, and theft? Who fears to commit perjury, or impurity, or sacrilege? Who have any horror of the most atrocious crimes? We have long since renounced the pursuit of virtue, and pestiferous vices, like wild beasts, have started up around us.<sup>1</sup> Now, assuredly, the evil spirit urges on the human race with more than usual violence into the abyss of vices, and diffuses on all quarters hatred and jealousy, the causes of discord. Wars, armies, hostile invasions, are multiplied to such a pitch, that the sword destroys more of the human race than the sickness and infirmities to which human nature is subject. The whole world is like the sea torn with tempests: discord and dissension, like agitated waves, convulse every heart. The restless murderer penetrates all

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<sup>1</sup> "Totus mundus, pronus in malum, per lubrica vitiorum, in præceps ruit; et quanto fini suo jamjam vicinus appropinquat, tanto graviorum super se quotidie criminum moles exaggerat. Ecclesiastici siquidem genii ubique pene disciplina negligitur; debita sacerdotibus reverentia non præbetur; canonicæ sanctionis instituta calcantur; et soli terrenæ (cupiditati) inhianter explendæ digna Deo cura servitur. In fœderandis porro conjugiiis legitimus ordo confunditur: et, o nefas! ab eis in veritate judaicæ vivitur, qui, superficie tenus, Christiano vocabulo palliantur. Enimvero ubi rapinæ desunt? ubi furta caventur? Qui perjuria? qui lenocinia? qui sacrilegia metuunt? qui denique perpetrare quælibet atrocissima crimina perhorrescunt? Jamdudum planè virtutum studiiis repudium dedimus, omniumque perversitatum pestes, velut impetu facti, feraliter emerferunt."—S. Petri Damiani Epist. lib. ii.; Epist. i. ad S. R. E. Cardinales; initio.

places, and rages through the whole world, as through a field, to deposit everywhere the livid seeds of hate.”<sup>1</sup>

35. *These Disorders often fomented by the Example of Princes.*

Princes and lords, as we learn from the same author, far from repressing or resisting these disorders, fomented them by their example. We find them in all quarters rising up, and extending their territories at the expense of their less powerful neighbours, degrading their dignity by all sorts of excesses, and harassing their people with multiplied oppressions. “The churches,” observes St. Peter Damian,<sup>2</sup> “are afflicted with calamities so grievous, that they are, as it were, encompassed by the armies of Babylon, and resemble Jerusalem when besieged with all its citizens. Laymen usurp the rights of the Church, seize its revenues, invade its possessions, and deck themselves in the

<sup>1</sup> “Malignus planè spiritus humanum genus nunc solito vehementiùs per omnia vitiorum abrupta præcipitat, truculentiùs tamen odiorum, ac similitatum omnes livore perturbat. Tot enim quotidie bella desæviunt, armatæ acies prouunt, hostiles impetus inhorrescunt, ut de militaribus quidem viris plures gladius videatur absumere, quàm in grabatulis quiescentes, corporeæ conditionis ægritudo finire, ut propemodum maris more geratur hic mundus. . . . Discordiæ procellis cuncta hominum corda vexantur, et tamquam spumosis fluctibus illiduntur. Instabilis enim homicida omnia scrutatur, omnia mundi velut unius agri loca perlustrat, ne quid infœcundum a lividi fomitis satione prætereat.”—Ibid. Epist. lib. iv. ; Epist. 9, ad Oldericum Episcopum Firmanum, p. 51, col. 2.

<sup>2</sup> “Tam immanis pressuræ calamitas incumbit ecclesiis, ut tamquam Babylonice legionis acies circumfusa, et Hierusalem cum civibus suis videatur obsessa. Sæculares ecclesiastica jura corradunt, salaria subtrahunt, possessiones invadunt, et sic stipendia pauperum, velut hostium se reportare manubias, gloriantur. Ipsi quoque sæculares nihilominus inter se proprii juris bona diripiunt, alter alteri supergredientes impingunt; et . . . quia soli esse nequeunt, mutuâ se pervasione collidunt. Mox arundineas rusticorum segetes aggrediuntur exurere, et fel atrocissimi livoris, quod suis utique nequeunt inimicis invomere, imbellibus non erubescunt rusticis propinare. . . . Fortis ac ingenuus quisque bellator vitat inermem, impetit adversum se tela vibrantem, . . . isti verò adversus inermes arma corripiunt, et dum fuant hostes, vapulant innocentes. . . . Totus itaque mundus, hoc tempore, nihil est aliud nisi gula, avaritia atque libido; et sicut olim trifariam divisus est orbis, ut tribus simul principibus subjaceret, ita nunc genus humanum, heu proh dolor! his tribus vitiiis servilia colla substernit, eorumque quasi totidem tyrannorum legibus obtemperanter obedit.”—S. Petri Damiani Epist. lib. i. Epist. 15, ad Alexandrum II. Romanum Pontificem, passim, p. 12, &c. All these passages in the letters of St. Peter Damian, and many others equally remarkable, have been collected by Voigt, *History of Gregory VII.* book ii. p. 57. It would be easy to confirm them by many others, from the letters of Gregory VII. and from other contemporary documents, as the same historian observes. See especially Gregory VII. Epist. lib. ii. epist. 49; Fleury, *Hist. Eccl.* vol. xiii. book lxiii. n. 54; D. Ceillier, *Hist. des Auteurs Ecclés.* vol. xx. p. 663, &c.

substance of the poor, as if they were the effects of an enemy. At the same time, they pillage each other indiscriminately; they assault each other; and as if each wished to be sole master of the world, they strain every nerve to supplant their competitors. Then they burn the cabins of the poor villagers, and vent on these poor creatures the fury which they could not discharge on their enemies. A brave and honourable soldier never attacks an unarmed man: he is satisfied with repulsing his assailant; but these take arms against defenceless men, and slay the innocent when they cannot destroy their enemies. Hence, the whole world, in our days, is one scene of intemperance, of avarice, of libertinism; and as it was once subject to three princes,<sup>1</sup> so the whole human race is now governed by these three vices, and obeys, like a slave, the mandates of these tyrants."

The most powerful kings were often the most scandalous. Philip I., king of France, made a shameful traffic in bishoprics and abbeys, encouraged by his example debauchery and pillage, and carried his violence to such excesses that, by his orders, foreign merchants were pillaged on their way to a fair in his kingdom.<sup>2</sup> What might we not say of the emperor of Germany, Henry IV., whom all historians agree in representing as one of the most cruel and depraved princes ever mentioned in the annals of history, and who is described by his contemporary St. Anselm, archbishop of Canterbury, as "a worthy successor of Nero, and of Julian the Apostate?"<sup>3</sup>

<sup>1</sup> The author alludes to the time when the Roman empire was divided among Cæsars.

<sup>2</sup> Gregorii VII. Epist. lib. i. 35; lib. ii. 5, 18. Fleury, Hist. Eccl. vol. xiii. book lxii. n. 6, 16; Hist. de l'Eglise Gallicane, vol. vii. ann. 1073, 1074, pp. 504-508. In another place (ch. ii. art. i. n. 108, &c.) we shall give some other details on the character and conduct of Philip I. Is it not, then, surprising to find respectable authors censuring severely the conduct of Gregory VII. to this prince, and extenuating with that view disorders which they cannot deny? See Hist. de l'Eglise Gallicane, ubi supra, p. 509; Daniel, Hist. de France, vol. iii. ann. 1073, pp. 377, 453.

<sup>3</sup> "Scienti breviter loquor," wrote Saint Anselm to the bishop of Neubourg; "si certus essem prudentiam vestram non favere *successori Julii Cæsaris, et Neronis, et Juliani Apostate*, contra successorem et vicarium Petri apostoli; libentissimè vos ut amicissimum et reverendum episcopum salutarem."—S. Anselmus, De Azymo et Fermentato, præf. (Oper. p. 135). See also Noël Alexandre, Deuxième Dissert. sur l'Hist. Ecclés. du Onzième Siècle, art. i.; Fleury, Hist. Eccl. vol. xiii. book lxi. n. 31; Voigt, Hist. de Grégoire VII. pp. 69, 110, 133, &c.; De Maistre, Du Pape, book ii. ch. xii. p. 358, note 1.

36. *A Respect for Religion still surviving in the midst of these Disorders.*

Nevertheless, it would be a very false estimate of the middle ages, to suppose that a general neglect and contempt of religion was the necessary consequence of the ignorance and barbarism which we have just described.<sup>1</sup> On the contrary, it is certain, that amidst the decay of enlightenment and civilization during those ages, there still remained in the hearts of the people generally, a profound respect for religion and for its ministers. In the gloomy darkness with which society was enveloped, faith still lived in all its integrity and ardour. No one dreamed of doubting the truths which it taught: heresy and impiety were held in general horror; and the respect of the people for religion manifested itself in all the Christian states of Europe, by the honours and prerogatives conferred on the clergy. In those times, it was of course inevitable, that the clergy, as well as the other orders of society, should sometimes be the victims of violence and injustice, the invariable concomitants of anarchy; but, as a general rule, these violences did not spring from a contempt of religion and of its ministers; they almost always arose from outbursts of passion, which the criminal himself deplored and publicly condemned, when his anger had subsided.

37. *The Clergy distinguished at all Times by their Enlightenment.*

The clergy were really entitled to this general respect, by the enlightenment and virtues of which the body always preserved the tradition, and which were conspicuous in many of its members. Notwithstanding the abuses, and the relaxation of discipline which had crept in amongst them, as among all other states, their habits and daily occupation preserved them much more than the rest of society from the general ignorance and barbarism.<sup>2</sup> Whatever little science and learning then remained in Europe, was concentrated in the Church and the monastery; these were almost the only schools; and the benefits conferred

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<sup>1</sup> Fleury, *Mœurs des Chrétiens*, n. 52, 61, &c.

<sup>2</sup> Fleury, *Hist. Eccl.* vol. xiii. 3rd Discourse, n. 21, 22. Ryan, *Benefits of Christianity*, ch. iii. Lingard, *Antiquities of the Anglo-Saxon Church*, passim; see especially ch. iv. De St. Victor, *Tableau de Paris*, vol. i. p. 194, &c. De Montalembert, *Hist. de Sainte Elizabeth de Hongrie*, Introd. p. 70, &c. Voigt, *Hist. of Gregory VII.* vol. i. p. 204, &c.

on society, in this way, especially by the monastic institutions, were incalculable.<sup>1</sup> While they were thus centres of learning and of civilization, they, moreover, presented to the world moving examples of virtue, and the most powerful bulwarks against the universal depravity. Nowhere were so many models of all the Christian virtues to be found, and especially of that spirit of charity, which, from the commencement, had distinguished the monastic state. These striking and numerous examples caused it to be generally regarded as a state of perfection and sanctity. Hence, under the monarchies of the middle ages, as well as under the Roman empire, it often happened, that monks were taken from their monasteries and raised to the priesthood or to the episcopacy: a great number of clerics, moreover, combined the exercises of the religious life with their ecclesiastical functions.<sup>2</sup> The faithful of every age and rank, who had an ardent desire of perfection, knew no surer means of attaining it than by entering a monastery. There might be seen young children, whom their parents had there consigned, to preserve them from their tenderest years from the dangers of the world.<sup>3</sup> Old men, who desired to end their days in holiness;

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<sup>1</sup> Besides the authors cited in the preceding note, see Bergier, *Dict. Théol.* art. Moines; Mabillon, *Præf. in Ter. Sæc. Bened.* § 4; *Præf. in Quar. Sæc.* part. i. § 8; Thomassin, *Ancien. et Nouv. Discipline*, vol. i. book iii. passim; De Héricourt's *Abridgment*, part ii. ch. vi. n. 3.

<sup>2</sup> Thomassin, *Ancien. et Nouv. Discipline*, vol. i. book iii. ch. iv. xiii. &c. De Héricourt's *Abridgment*, part i. ch. xxii.

<sup>3</sup> The ancient custom of offering children to God, in the monastic or the ecclesiastical state, without waiting for their own consent, has been viewed in very different lights by authors ancient and modern. The majority of the ancients considered it a very laudable and pious custom; they regarded it, as a modern writer observes, "as a sort of ransom which men in the world paid to God for their sins; as a vessel of election which themselves devoted voluntarily for the sanctification of their family." (*Nettement, Vie de Suger*, p. 6.) Most of the moderns denounce the custom as utterly inexcusable, and opposed to that liberty which parents are bound to allow their children in the choice of a state of life, and especially of certain states which impose obligations most painful to nature. (*Nettement, ibid. Nisard, Histoire de la Reine Blanche*, p. 83.) We are far from wishing to defend manifest abuses of this custom, which were often the occasion of introducing relaxation and scandals into the ecclesiastical and monastic states. But on this, as on so many other questions, may we not draw a distinction between the custom itself and the abuses of which it has been sometimes the occasion or pretext? Unquestionably it is a palpable and gross abuse to constrain the liberty of children with regard to the grave obligations of the monastic and ecclesiastical state; and hence this abuse has been repeatedly denounced by the Church, as may be seen especially from the 23rd Canon of the Council of Mayence, held in 813, which expressly

married persons who, by common consent, had renounced the world to consecrate themselves in solitude to a more perfect life ; princes and princesses of the highest rank, some of whom came here to acquire that precious treasure, an education suitable to their rank ;<sup>1</sup> while others, disabused of the illusions of the world, voluntarily renounced their temporal honours and property, to seek in retreat a more solid happiness ; sometimes, also, scandalous sinners, who, touched with remorse, retired to practise in solitude a penance which they had not the courage, or perhaps liberty, to practise in the world.

38. *Edifying Spectacle presented by the principal Religious Orders.*

This affecting spectacle, presented to the world by the first religious orders established after the persecutions in the East and West, was frequently renewed in the middle ages, even in times and in countries which witnessed the most general corruption of religion. Such, especially, was the spectacle presented in the ninth century, by the foundation of the monastery of Aniane in France ; in the tenth century, by the establishment

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prohibits the ecclesiastical or monastic tonsure to be given to any person whatsoever under the canonical age, and without his free consent. (Labbe, *Concilia*, vol. vii. p. 1248.) But viewing the thing in itself, a parent most certainly has a right of consecrating his children to God in their infancy, reserving, however, to them the right of annulling or ratifying this oblation when they are of an age to make a reasonable choice. It was with this understanding that children were formerly offered to convents and churches. The laws of the Church did not consider this engagement as irrevocable, but as a sort of novitiate not always ending in a profession. It was a sure and easy means of securing a good education for the child, and of preserving him, at least for a time, from the dangers and contagion of the world. For a development of these observations, see Mabillon, *Præf. in Ter. Sæc. Bened.* § 1, n. 17, &c. ; *Præf. in Qua. Sæc. part. ii. cap. vii. n. 199* ; *Præf. in Sex. Sæc. part. ii. § 11* ; *Mège, Comment. sur la Règle de St. Benott, ch. i. p. 50-52* ; *Fleury, Hist. Eccl. vol. xiii. book lxiii. n. 58.*

<sup>1</sup> Père Mabillon, in his *Acta Ordin. S. Bened.* mentions many princes of the blood royal of France, who received, at different periods of French history, their first education in monasteries of that order. Among others he mentions Lothaire, son of Charles the Bald, who was educated in the monastery of St. Germain Auxerre ; Thierry III. in Chelles ; Louis VI. and many others, in St. Denis ; as well as Pepin the Little, the founder of the second race, and Robert, the second king of the third race. (Mabillon, *Præf. in Ter. Sæc. Bened.* § 4, n. 40.) It was during his residence in the monastery of St. Denis that Louis VI., surnamed the Fat, first became acquainted with the abbot Suger, then a simple monk in that abbey ; but whom he soon distinguished above all the others, and for whom he conceived the high esteem, of which Suger rendered himself so eminently worthy by the services which he subsequently rendered to his prince, and to all France.—*Nettement, Vie de Suger*, pp. 11, 12.

of the order of Cluny in France, and of the Camaldolese in Italy; in the eleventh century, by the foundation of the Chartreux; in the twelfth century, by the foundation of the monasteries of Cîteaux and Clairvaux; in the thirteenth century, by the foundation of the orders of St. Dominic and of St. Francis. Each of these establishments became, as it were, a new centre of enlightenment and virtue, whose influence was felt through the whole frame of society, and which preserved, in the midst of the universal ignorance and disorder, the ancient tradition of learning and morality; so that the founders of these different orders, St. Benedict, St. Odo, St. Romuald, St. Bruno, St. Bernard, St. Dominic, St. Francis of Assisium, and so many other founders or reformers of religious orders, independently of those personal virtues which have entitled them to the public worship of the Church, have lasting titles to general homage and admiration, for the beneficial influence which they exercised on all society, both in regard of enlightenment and civilization, and of virtue and public morals.

39. *The Disorders of the Middle Ages often exaggerated by Modern Authors.*

It evidently follows from all these facts, according to the remark of Fleury himself,<sup>1</sup> otherwise so prone to exaggerate the abuses and disorders which disfigured the Church in the middle ages,<sup>2</sup> that even the darkest and most unhappy centuries were not so bad as they have been represented: that, notwithstanding the progress of vice and ignorance, they were not devoid of learning and virtue: finally, that the clergy and the religious orders were then, as at all times, as much distinguished among the other orders of society by their learning and virtues, as by the sanctity of their profession.

40. *This important Fact admitted by Authors least liable to the Suspicion of Partiality.*

Such is the character generally given of the clergy of this

<sup>1</sup> Fleury, Hist. Eccl. vol. xiii. 3rd Discourse, n. 25; Mœurs des Chrétiens, n. 61.

<sup>2</sup> In another place we have noticed some of these exaggerations (supra, n. 29, note 1); the sequel of our inquiry will furnish an opportunity for pointing out many others (infra, n. 57, notes; and Index to Fleury).

period, by the most authentic monuments of history, by the most judicious writers of modern times,<sup>1</sup> and often by those least suspected of partiality to the clergy, and most opposed to their temporal power. We give the following extract from a modern author, whose notorious prejudices against the Catholic Church, and especially against the religious state, make his evidence less exceptionable than any other, in the favourable testimonies which sometimes escape him.

41. *Remarkable Admissions of Hallam on this Point.*

“The bishops,” he writes, “acquired and retained a great part of their ascendency by a very respectable instrument of power, intellectual superiority. As they alone were acquainted with the art of writing, they were naturally intrusted with political correspondence, and with the framing of laws. As they alone knew the elements of a few sciences, the education of royal families devolved upon them as a necessary duty. In the fall of Rome their influence upon the barbarians wore down the asperities of conquest, and saved the provincials half the shock of that tremendous revolution. As captive Greece is said to have subdued her Roman conqueror, so Rome, in her own turn of servitude, cast the fetters of a moral captivity upon the fierce invaders of the north, chiefly through the exertions of the bishops, whose ambition may be forgiven for its effects: her religion, her language, in part even her laws, were transplanted into the courts of Paris and Toledo, which became a degree less barbarous by imitation.”<sup>2</sup>

42. *Services rendered to Society by the Monastic Orders, according to this Author.*

“If it be demanded by what cause it happened that a few sparks of ancient learning survived throughout this long winter, we can only ascribe their preservation to the establishment of Christianity. Religion alone made a bridge, as it were, across the chaos, and has linked the two periods of ancient and modern civilization. Throughout the whole course of the middle ages, there was no learning, and very little regularity of manners

<sup>1</sup> See the authors cited in notes, ch. i. n. 37.

<sup>2</sup> Hallam, *State of Europe during the Middle Ages*, vol. ii. p. 150.

among the parochial clergy. Almost every distinguished man was either the member of a chapter or of a convent. The monasteries were subjected to strict rules of discipline, and held out, at the worst, more opportunities for study than the secular clergy possessed, and fewer for worldly dissipations. But their most important service was as secure repositories for books. All our manuscripts have been preserved in this manner, and could hardly have descended to us by any other channel: at least, there were intervals when I do not conceive that any royal or private libraries existed.<sup>1</sup> A salutary influence, breathed from the spirit of a more genuine religion, often displayed itself among the corruptions of a degenerate superstition. In the original principles of monastic orders, and the rules by which they ought at least to have been governed, there was a character of meekness, self-denial, and charity, that could not wholly be effaced;—in the relief of indigence it may, upon the whole, be asserted, that the monks did not fall short of their profession. Nor do we find, in any single instance, during ancient times, if I mistake not, those public institutions for the alleviation of human miseries, which have long been scattered over every part of Europe.<sup>2</sup> The virtues of the monks assumed a still higher character, when they stood forward as protectors of the oppressed. By an established law, founded on very ancient superstition, the precincts of a church afforded sanctuary to accused persons.<sup>3</sup> How must this right have enhanced the veneration for religious institutions! How gladly must the victims of internal warfare have turned their eyes from the baronial castle, the dread and scourge of the neighbourhood, to those venerable walls, within which not even the clamour of arms could be heard to disturb the chant of holy men, and the sacred service of the altar. The protection of the sanctuary was never withheld. A son of Chilperic, king of France, having fled to that of Tours, his father threatened to ravage all the lands of the Church, unless they gave him up. Gregory the historian, bishop of that city, replied in the name of his clergy, that Christians could not be

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<sup>1</sup> Ibid. vol. iii. pp. 291, 292.

<sup>2</sup> See, in confirmation, the details given in the Introduction to this work (n. 81), and the authors cited in our notes.

<sup>3</sup> See Bergier, Dict. Théol. art. Asiles.

guilty of an act unheard of among pagans. The king was as good as his word, and did not spare the estate of the Church, but dared not infringe its privileges.”<sup>1</sup>

43. *Admissions of M. Guizot.—Influence of the Clergy on Civilization in Europe.*

M. Guizot's language on this subject is not less remarkable. He not only acknowledges the happy influences of the Christian Church on society, under the first Christian emperors,<sup>2</sup> but demonstrates, moreover, that this influence was equally beneficial in the new monarchies, which rose in the West on the ruins of the Roman empire, after the fourth century; and he hesitates not to assign this salutary influence as one of the principal causes of European civilization from the fifth to the tenth century. “The Church,” he says,<sup>3</sup> “was a regularly organized society, having its principles, its rules, its discipline, and animated with an ardent desire of extending its influence, of conquering its conquerors. Among the Christians of this period, among the Christian clergy, there were men who had reflected on all subjects, on all moral and political subjects; who had formed on all points fixed opinions, energetic sentiments, and an ardent desire of propagating them and making them triumphant. No society ever made more vigorous efforts to make her influence felt, and to mould to her own form the world around her, than the Christian Church, from the fifth to the tenth century. She had, in a manner, assailed barbarism on all points, to civilize by subduing it. In Spain, it was the Church herself that commenced the revival of civilization. There, instead of the old German assemblies, the assembly which takes the helm is the Council of Toledo; and though distinguished laymen assisted in it, the bishops were the ruling spirits. Open the code of the Visigoths; it is not a barbarian code: it was manifestly digested by the philosophers of the day, by the clergy. It is replete with general principles, and with theories utterly unknown to barbarian customs. The Visigoth

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<sup>1</sup> Hallam, *ubi supra*, vol. iii. pp. 291, 292, 301, 302. For this fact, see Gregory of Tours, *Hist. de France*, book v.; Daniel, *Hist. de France*; and Père Longueval, *Hist. de l'Eglise Gallicane*, ann. 576.

<sup>2</sup> See our Introduction, n. 33.

<sup>3</sup> Guizot, *Hist. Gén. de la Civilisation en Europe*, 3rd Leçon, pp. 86, 90.

code, in a word, bears the impress of a learned, a social, and a systematic character. It is manifestly the work of the same clergy which guided the councils of Toledo, and had so powerful an influence on the government of the country."

A little farther on, the same author sums up in the following terms, what he had developed more fully in his preceding lectures on the salutary influence of the Christian Church on European society after the fifth century. "At a single glance," he says, "we are struck with an immense difference between the state of the Church in the fifth century, and that of the other elements of European civilization. I have mentioned, as fundamental elements of our civilization, municipal government, the feudal system, royalty, and the Church. Municipal government in the fifth century was but a wreck of the Roman empire, a shadow without life, and without defined form. The feudal system had not yet come forth from chaos. Royalty existed only in name. All the civil elements of modern society were either in their infancy or in decrepitude. The Church alone was young and organized: she alone had acquired a settled form, and retained all the vigour of her prime: she alone had both activity and order; energy and a system, that is, the two great means of influence. Is it not, I ask you, by moral life, by internal activity, on the one hand, and by order and discipline, on the other, that institutions take root in society? The Church had, moreover, agitated all the great questions which concern man: she was solicitous about all the problems of his nature, about all the chances of his destiny. Hence, her influence on modern civilization has been immense, greater perhaps than has ever been imagined by her most ardent adversaries, or her most zealous advocates. Absorbed either in her defence or in aggression, they considered her only in a polemical point of view, and they have failed, I am convinced, in judging her with fairness, and in measuring her in all her dimensions."<sup>1</sup>

44. *Salutary Influence of the Church on Social Amelioration.*

In the course of the same work he illustrates more fully the salutary influence of the Church on social amelioration. "The

<sup>1</sup> Guizot, *ibid.* 5th Leçon, p. 132.

Church," he observes, "contributed in a most efficacious manner to the amelioration of the social state.<sup>1</sup> Unquestionably, she laboured obstinately against the great defects of the social state; for instance, against slavery. No person can doubt that she used all her influence to repress it. Of this fact there are undeniable proofs. Most of the forms of manumission at different periods are grounded on motives of religion; it was in the name of religion, of hopes beyond the grave, of the equality of men in the eyes of religion, that freedom was almost invariably conferred. The Church laboured likewise for the extirpation of a mass of barbarous practices, and for the amelioration of criminal and civil legislation. You know how absurd and injurious that legislation then was, notwithstanding some principles of liberty. You know that foolish ordeals, judicial combats, and the mere oath of a few persons, were then regarded as the only means of ascertaining the truth. The Church laboured to substitute in this place forms more rational and more legitimate. I have already dwelt on the difference between the code of the Visigoths and other barbarian codes. No one can compare them without being impressed with the immense superiority of the principles of the Church in matters of legislation and the administration of justice, the discovery of truth and the destiny of man. Most of these principles were no doubt borrowed from Roman laws; but they would have been lost had not the Church preserved, and defended, and laboured to propagate them.

"In the institutions of the Church there is one fact, which generally has not been sufficiently studied; namely, her penitential system. If you study the nature of those ecclesiastical punishments, that is, public penances, which were her principal mode of punishment, you will find that their principal object was to excite repentance in the heart of the criminal, and the moral terror of example in the hearts of the spectators.

"In fine, she likewise uses every possible means of preventing recourse to violence, and continual wars. Every one knows the Truce of God, and a number of similar measures, by which the Church contended against the empire of force, and endeavoured to introduce more order and gentleness into society. Facts of

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<sup>1</sup> Guizot, *ibid.* 6th Leçon, pp. 172-178.

this kind are so well known, that I may well be dispensed from entering into any details."

The inference which the author draws from these principles is as honourable to the clergy as it is rigorously demonstrated by history: "Such, gentlemen, are the principal points which I have to submit to your reflection, on the relation of the Church with the people.<sup>1</sup> It remains for us now to deduce, by inference and speculation from what we know, her general influence on civilization in Europe; a work which is already done, or at least considerably advanced; for a simple statement of facts, and of the dominant principles of the Church, explains and manifests her influence. The results and the causes have been clearly passed in review before you. All things considered, the influence was beneficial; it not only kept alive and fecundated intellectual activity in Europe, but the system of doctrines and of precepts, in whose name it imparted this activity, was far superior to all that the ancient world had ever known. There was not only activity, but progress."

45. *Admissions of Voltaire.—Usefulness of the Religious Orders.*

To these remarkable admissions, may be added those of Voltaire himself, who, notwithstanding his notorious hatred against religion and her institutions, admits, in many of his writings, the absurdity of the satires which himself published against the clergy in general, and the religious orders in particular—satires echoed by so many other writers.<sup>2</sup> "It was," he observes, "for a long time a consolation for the human race to have asylums opened for all those who wished to fly the oppressions of the Goth and Vandal governments. Almost all who were not lords in their castles, were slaves; the mildness of cloisters afforded a refuge from tyranny and war. The little knowledge that remained among the barbarians was preserved by the cloisters. The Benedictines transcribed some books; by degrees they made some useful inventions. These monks, moreover, cultivated the earth, sang the praises of God, lived frugally, were hospitable, and their example might serve to

<sup>1</sup> Guizot, *ibid.* pp. 178-180.

<sup>2</sup> Voltaire, *Essai sur les Mœurs et l'Esprit des Nations*, ch. cxxxix. (*Œuvres complètes*, 8vo. vol. xviii. p. 235, &c.).

soften ferocity in those days of barbarism. It cannot be denied that there were great virtues in the cloister. There is hardly one monastery at present that does not contain some admirable souls, who are an honour to human nature. Too many writers have made it their business to hunt out the disorders and vices with which these asylums of piety were sometimes disgraced. It is certain, that the secular life has been always more vicious, that greater crimes were not committed in monasteries, but that they have been more remarked by the contrast with their rule—no state of life was always pure. The Carthusians, notwithstanding their great wealth, have devoted themselves, without relaxation, to fasting, to silence, to prayer, and solitude: tranquil on earth in the midst of so many agitations, of which the rumour hardly reaches them, and knowing nothing of kings except in the prayers offered up for them.”

46. *Unjust Declamations of some Authors on this Point.*

The same writer, speaking of some modern authors who have declaimed excessively against religious orders in general: “It should have been acknowledged,” he observes,<sup>1</sup> “that the Benedictines have published many valuable books, that the Jesuits have rendered great services to literature; blessings should have been poured out on the brothers of Charity, and on those of the Redemption of Captives. The first duty is to be just. It must be admitted,<sup>2</sup> notwithstanding all that has been said against their abuses, that there were at all times among them, men eminent for learning and virtue, and that, in general, they were more to be pitied than blamed. Institutions consecrated to the relief of the poor,<sup>3</sup> and to attendance on the sick, were less brilliant, but are not less respectable. Perhaps there is nothing greater on this earth, than the sacrifice made by the tender sex, of their beauty, of youth, and often of high birth, to console in the hospitals those masses of human miseries, the very sight of which is so humiliating to human pride, and so revolting to our delicacy. Nations separated from the communion of Rome have imitated but very imperfectly this generous charity. There

<sup>1</sup> Dict. Philos. art. Apocalypse (Œuvres complètes, vol. xxxvii. p. 409).

<sup>2</sup> Voltaire, *ibid.* art. Biens de l’Eglise (vol. xxxviii. p. 297).

<sup>3</sup> Essai sur les Mœurs, *ubi supra*, p. 249.

is another congregation more heroic—for so we may style the Trinitarians for the Redemption of Captives. During five centuries these religious have devoted themselves to breaking the chains of Christians held captive by the Moors: in paying the ransoms of those slaves, they spend their own revenues and the alms which they receive, and carry in person to Africa. Of such institutions no complaints can be made.”

Such admissions must undoubtedly be sufficient to establish the important facts recorded in this article, on the immense resources which religion and the clergy presented to society during the disorders of the middle ages. Avowals so unexceptionable cannot be counterbalanced by the invectives and declamations of a host of authors against the monks and clergy of that period; declamations the more unjust, as being, for the most part, founded either on malignant conjectures, or on occasional abuses, from which the noblest institutions cannot be entirely exempt.

47. *First Inference from the preceding Facts: Influence of the Clergy in the Temporal Order during the Middle Ages.*

From these details, it evidently follows, that the general interest of society in the middle ages imperatively called for the influence of the clergy in the temporal order. What, in truth, could be more natural, than that princes and people should be most anxious to intrust their interests to that, among all the orders of the state, which, by its intelligence and virtues, proved itself most worthy of their confidence, and whose authority was the chief mainstay of society, and the firmest bulwark of public order. It was the great object of sovereigns especially, to increase the power and influence of the clergy. An order so respected by the people was, from its doctrine and example, the firmest support of the throne, so frequently endangered in those times by the insubordination and the revolts of the barons. The doctrine of the Church on the obedience due to princes, imprinted as it were on the foreheads of kings a sacred character, which made them more venerable in the eyes of their subjects. According to the principles of Christianity, princes are the representatives of God on earth, and the depositaries of his power. It may be easily understood how important, in

a political view, this doctrine, constantly taught by the Church, must have appeared, in a period of disorder and anarchy, and among barbarous nations, who acknowledged, so to speak, no other rein but religion. Ecclesiastics preached this doctrine the more efficaciously, as they generally enforced it by their example. Amongst them the sovereign found his most faithful and devoted subjects. The influence of the clergy, as a recent writer has observed,<sup>1</sup> aided without endangering the royal authority; and if they sometimes are found in the rebel ranks, it was because they were compelled, for the moment, to be the tool of passions which they were destined to resist. Their errors were not obstinate, as we find from the history of Louis le Débonnaire; the bishops who had favoured the revolt of his children were almost instantly punished by their own brethren in the episcopacy.<sup>2</sup>

48. *Second Inference: Origin of Ecclesiastical Principalities.*

So convinced were Charlemagne and his successors of this happy influence of the clergy, in supporting and maintaining their authority, that one of the principal objects of their policy was, the multiplication of ecclesiastical principalities (*seigneuries*) in those parts of the empire which were the most difficult to be kept in submission.<sup>3</sup> “Charlemagne and his first successors,” observes Montesquieu, “were apprehensive that the officers whom they placed over distant territories might revolt; they believed that more submission might be expected from ecclesiastics; hence, they established in Germany a great number of

<sup>1</sup> Bernardi, De l’Origine et des Progrès de la Législation Française, book i. ch. xi. page 74.

<sup>2</sup> Fleury, Hist. Eccl. vol. x. book xlvii. n. 47. Daniel, Hist. de France, vol. ii. ann. 835. Hist. de l’Eglise Gallicane, vol. v. ann. 833.

<sup>3</sup> “Carolus Magnus, pro contundenâ gentium illarum (Germaniæ) ferociâ, omnes pene terras Ecclesiis contulerat; consiliosissimè perpendens nolle sacri ordinis homines, tam facilè quàm laicos, fidelitatem Domini rejicere; præterea si laici rebellarent, illos posset excommunicationis auctoritate, et potentie severitate compescere.”—Guliel. de Malmesburien. De Gestis Anglorum, lib. v. (apud Hen. Savillium, Anglicarum rerum Scriptores, Londini, 1596, fol. p. 166). See, in support of this testimony, Thomassin, Ancien. et Nouv. Discipline, vol. iii. book i. ch. xxviii. xxx.; Mémoires de l’Académie des Inscriptions, vol. ii. 4to. p. 711 (vol. iii. 12mo. p. 442); Maimbourg. Hist. de la Décadence de l’Empire de Charlemagne, book iii. p. i. et seq.; Gaillard, Hist. de Charlemagne, vol. ii. p. 124; Hallam, Europe in the Middle Ages, vol. ii. pp. 145, &c.; Nettement, Vie de Suger, pp. 11, 32, 37, 46, et alibi passim.

bishoprics, and annexed to them extensive fiefs. These were the advanced guards which they set against the Saxons. What they could not expect from the indolence or neglect of a lord (*leude*), they believed they had reason to expect from the zeal and vigilant attention of a bishop: the former, moreover, instead of being of use to them against the vanquished people, would, on the contrary, have need of them to resist that people.”<sup>1</sup> This is the real origin, or at least one of the principal causes, of the establishment of those ecclesiastical principalities which contributed so efficiently to augment the temporal power and wealth of the clergy in all the Christian states of Europe during the middle ages. This is more especially the origin of the great ecclesiastical fiefs of the German empire, which lasted until very lately, with all the rights and prerogatives conferred on them by the ancient constitution of the state.<sup>2</sup>

49. *Third Inference: Influence of the Pope in the Government of States.*

The same circumstances which necessitated the interference of the clergy in the temporal government of states, also brought in the exercise of papal influence. In the midst of the disorders of all kinds, which disfigured society, the princes saw in the Holy See, a centre at once of religion, of enlightenment, and of civilization: still more, they saw in it the most powerful protection which they could invoke against the usurpations of their neighbours, and against the rebellions of their vassals. There was, then, no other authority acknowledged universally but that of the pope; and being thus the most respected of all, even by the most violent and barbarous men, is it surprising, that the sovereigns should be solicitous to have the Holy See as the arbiter of their differences, as a mediator and guarantee of their treaties, and sometimes, even to do homage to it for their kingdoms, in order to secure more effectually the aid which they required? How strongly must they have been confirmed in those dispositions by the firmness with which the Holy See asserted the rights of those sovereigns who had recourse to its

<sup>1</sup> Montesquieu, *Esprit des Loix*, book xxxi. ch. xix.

<sup>2</sup> See, on the ancient constitution of the German empire, Lenglet-Dufresnoy, *Méthode pour étudier l'Hist.* vol. vi. 12mo. edit. ch. v. art. 4; *Dict. de Moreri*, art. *Allemagne et Bulle d'Or*.

tutulary power. Whenever a usurper attempted to seize the territories of a prince who was a vassal of the pope,<sup>1</sup> he was instantly intimidated, and often stopped in his career, by the remonstrances and threats of the pope, telling him, as St. Gregory VII. did to Vezelin, the leader of a band of rebels against the king of Dalmatia, "We are exceedingly astonished that, after having long since promised to be a vassal to St. Peter and to us, you attempt now to rise up against him whom the apostolical authority has appointed king of Dalmatia.<sup>2</sup> We, therefore, in the name of St. Peter, prohibit you to take arms against that king, because whatever you do against him, you do against the Holy See itself. If you have any grounds of complaint, you should ask justice of us, and wait for our decision: otherwise, know that we will draw against thee the sword of St. Peter, to punish thy audacity, and the temerity of all those who shall favour thee in this enterprise."<sup>3</sup>

50. *Fourth Inference: Right of Sovereignty of the Holy See over many States.*

This has invariably been the language and conduct of the

<sup>1</sup> In the style of the middle ages, a feudatory or vassal was a lord subject to another, as his suzerain or liege lord, from whom he held his fief or domain. The right of the liege lord over his vassal was called the right of suzerainté.

<sup>2</sup> Demetrius, or Zuitermir, king of Dalmatia, had freely acknowledged himself a vassal of the Holy See in 1076. (Baronius, ann. 1076, n. 65, 66.) The frequent revolutions in Dalmatia at this period, incline us to believe that this act of Demetrius was suggested by the desire of procuring peace for his dominions, as the same thing was often done subsequently by many other sovereigns. It appears that hitherto the king of Dalmatia had been vassal of the emperor of Constantinople; but the weakness or timidity of those emperors not inspiring Demetrius with a hope of that protection and succour which he needed, induced him to renounce allegiance to the emperor, and to place himself under the protection of the Holy See. See Ducange, *Illyricum Vetus et Novum, seu Hist. Dalmatiæ, &c. Posenii, 1746, fol.*; Georges Pray, *Annales Reg. Hungar. Vindobonæ, 1764, fol. vol. i. p. 76.*

<sup>3</sup> "Scias nos de prudentiâ tuâ multum mirari, ut qui te esse dudum beato Petro et nobis fidelem promiseris, contra eum quem in Dalmatiâ regem auctoritas apostolica constituit, tu modò coneris insurgere. Quapropter nobilitatem tuam monemus, et ex parte beati Petri præcipimus, ut adversus jam dictum regem deinceps arma capere non præsumas; sciens quod quidquid in illum ausus fueris, procul dubio te in apostolicam sedem facturum. Si verò adversus ipsum aliquid te fortè dicis habere, a nobis iudicium debes expetere, et expectare justitiam, potius quàm contra eum, ad injuriam sedis apostolicæ, manus tuas armare. Quod si te tuæ temeritatis non penituerit, sed contra mandatum nostrum contumaciter ire tentaveris, scias indubitanter, quia gladium beati Petri in audaciam tuam evaginabimus, et eodem pertinaciam tuam, et omnium qui tibi in eâ re favorint, nisi respiscas, mulctabimus."—Gregorii VII. *Epist. lib. vii. epist. 4* (Baronii *Annales, ann. 1079, n. 29.*)

popes of the middle ages against usurpation: they employed their ascendancy, and their spiritual arms, in the defence of those who had placed themselves under their protection, as temporal princes employed the force of arms in defence of their vassals. This explains the conduct of so great a number of sovereigns, who, from the tenth century, became, of their own free will, vassals of the Holy See. Such a measure, however extraordinary it may appear at present, was not on their part merely an act of religion, inspired by a profound respect for the Church and the Holy See: it was, moreover, a measure of policy, grounded on the temporal interests of the kings and their subjects.<sup>1</sup> It is easy for superficial or prejudiced writers in modern times to attribute to papal ambition the really prodigious power vested in the popes by this combination of circumstances; but omitting altogether the fact, that this state of things was entirely independent of their will, is it not a palpable injustice to attribute to their ambition a power which was freely conferred on them by sovereigns, as much from motives of interest as from motives of religion? Far from meriting these censures, would not the popes have been far more reprehensible, if they had refused an authority so necessary at the time for the good of society, and the tranquillity of kingdoms?

51. *The Influence of the Pope more frequently exercised, and more extensive, during the Crusades.*

The intervention of the pope in the public affairs of Europe, already so common, in consequence of the circumstances just stated, and of many others mentioned in a preceding article, became much more so in the time of the Crusades; because it was then more than ever necessary for the management and success of those expeditions, in which the common interests of Christendom were so much involved.<sup>2</sup> This truth was

<sup>1</sup> See, in support of these observations, Bossuet, *Defens. Declar. lib. i. sec. i. cap. xiv.*; Lingard, *Hist. of England, vol. iii. ch. i.*; Affre, *Essai Historique sur la Suprématie Temporelle du Pape et de l'Eglise, ch. xviii. p. 309, &c.*; De Montalembert, *Hist. de St. Elisabeth de Hongrie, Introd. p. xxvi. &c.*; Jager, *Introd. à l'Hist. de Grégoire VII. pp. xxi.-xxiii.*

<sup>2</sup> Many modern authors, especially during the two last centuries, have regarded the crusades merely as wars undertaken through a misguided zeal for religion. It would be difficult to compress into fewer words a more complete defence of these expeditions than the Abbé Cambacérés pronounced in

felt by the sovereigns themselves, who soon regarded unanimously the pope as the soul and principal support of these great enterprises. "Every one knows," observes Bossuet, "that, at this time, Christian sovereigns were perfectly satisfied with having the pope supreme in all matters relating to the holy wars, in order that they should be carried on with more concert and respect for religion. Often the kings and princes who enrolled themselves in the holy war, placed their persons and their properties under the protection of the pope. A brief allusion only is required to recall these certain and notorious facts. Nor was it in the holy wars alone, but also in all others, that sovereigns by their treaties of peace submitted themselves to the authority of the Holy See, to confirm and to insure the execution of their treaties; thus they called in religion to their aid: whence it happened, that the most important political affairs were arranged at Rome, in presence of the pope. By this means, the spiritual power usurped many rights of sovereigns; and though the Christian princes were aware of the fact, they did not always

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1768, in his Panegyric on St. Louis: "To transport beyond the sea factious and rebel vassals, and thereby to restore peace to the state; to turn against the barbarians the fury of those tameless lions who were destroying their own country, and thereby to give the people some rest; to occupy their arms against a distant enemy, that they might not turn them against their kings, and thereby to consolidate the throne; to stifle civil wars by foreign expeditions,—*there is their political object.* To fight a ferocious people, who ranked the extermination of the Christians as one of their articles of faith, who had carried their ravages into Spain, into Portugal, into Germany, and even into France; who were preparing the subjugation of all Christendom, if religion had not combined all Christian princes against those rapid conquerors, and by the crusades delivered Asia and secured Europe,—*there is their justice.* Let us then be bold enough to defy prejudice, and to picture to ourselves these holy wars with the success which might have crowned them. Asia would not now be a prey to barbarians: the law of the Gospel would have made men and morals there, where the law of an impostor has engendered a state of morals disgraceful to humanity. Asia, Africa, and Europe would be, so to speak, only one people and one religion; the sea would be without pirates, commerce without an obstacle, the Christian name without enemies: millions of hapless beings, our brethren and fellow-countrymen, would not now be groaning, to the disgrace of nations, under the chains of the infidel; and thus beholding the world emancipated from the Ottoman yoke, instead of saying, 'What a folly were these crusades,' we should exclaim, 'What a misfortune to the world that the crusades have not succeeded.' *This is their defence.*"

In corroboration of this opinion, see the following works: Bergier, Dict. Théol. art. Croisades; Feller, Dict. Histor. art. Pierre l'Ermite; De Maistre, Du Pape, book iii. ch. vii.; De Choiseul d'Aillecourt, De l'Influence des Croisades, p. 9; D'Exauvillez, Hist. de Godefroy de Bouillon, Introd. p. 29, &c.; Frayssinous, Panégryrique de Saint Louis, part iii. (Discours Inédits, p. 433, &c.).

manifest any repugnance : frequently they approved it, by their consent, their permission, or their silence.”<sup>1</sup>

52. *Remarkable Examples of this Influence.*

From the history of those ages, an immense number of facts might be selected, to confirm those assertions.<sup>2</sup> During all the Crusades, and especially during the first, sovereigns and their armies were often seen placing themselves almost in absolute dependence on the pope. At the voice of the head of the Church innumerable hosts of Crusaders were seen assembling from all quarters, arming and marching for the East. In concert with, and even at the request of, the Christian princes, the pope watched over the prompt and faithful accomplishment of their vows, examined and pronounced on the causes of exemption, ordered contributions and taxes for the expenses of the holy war, directed in person or by his legates the march of the armies, and the negotiations of the Christian princes with the infidels. So fully did the Crusaders profess their dependence on the pope, in the true spirit of their pious enterprise, that they sometimes pressed him to come and lead them in person :<sup>3</sup> and, on one occasion of imminent danger to Christen-

<sup>1</sup> “Neminem, credo, latet (ecclesiasticam potestatem multa sibi vindicasse civilia, principum concessione aut consensione), sacrorum bellorum, quæ *cruciatas* vocant, tempore, sive illæ in Saracenos recuperandæ Palæstinæ gratiâ, sive in hæreticos susceptæ essent. Placebat enim Christianis regibus, in illis sacris bellis, præesse omnibus pontificiam potestatem, ut et conjunctioribus animis, et majori religionis reverentiâ rem gererent. Sæpe etiam reges ac principes, bellum sacrum inituri, se suaque omnia pontificibus tuenda commendabant. Hæc obvia et nota tantùm referimus. Neque duntaxat in sacris, sed etiam in omnibus bellis, pacto de pace federe, hujus firmandi et exequendi gratiâ, sedi apostolicæ se ultrò submittebant ; aliisque multis modis se religionis nomine ac reverentiâ tutabantur ; quibus fieret ut sæcularia negotia maxima, Romæ potissimum coram pontifice tractarentur. Per eam interim occasionem, spiritualis potestas multa regum jura invadebat ; cùmque id perspicerent boni ac pii principes, non semper repugnabant. . . . sed (in his omnibus) diligentissimè secernenda quæ a Christo concessa sint (Ecclesiæ), ab iis quæ *regum auctoritate, consensu, permisu, conniventiâ, silentio* denique, gesserit aut habuerit.”—Bossuet, *Defensio Declar. lib. iv. cap. v.*

<sup>2</sup> Fleury, *Hist. Eccl. vol. xviii. 6th Discourse, n. 7, 8.* De Choiseul d’Aillecourt, *De l’Influence des Croisades*, pp. 83, 84. Michaud, *Hist. des Croisades*, vol. vi. book xxii. ch. vii.

<sup>3</sup> See the letter of the crusaders to Urban II. after the capture of Antioch, in 1098. This letter has been preserved to us by Foucher de Chartres, *Gesta Peregrin. Francor.* (vol. i. of the Collection by Bongars ; *Gesta Dei per Francos, Hanoviæ, 1611, 2 vols. fol.* ; vol. iv. of Duchesne’s Collection of *Historians of France*). An extract from this letter is given in the work, already

dom, a pope sixty years of age took that extraordinary resolution, which death alone prevented him from accomplishing.<sup>1</sup>

We should far exceed our prescribed limits, were we to attempt collecting the innumerable proofs scattered in every page of the history of the Crusades, of the extraordinary influence exercised by the popes in the government of kingdoms, and in the general affairs of Europe, by the very necessity of the times, and with the express or tacit consent of sovereigns. We must content ourselves with citing especially the Council of Clermont, held under Pope Urban II. in 1095, which proclaimed the first Crusade: the first general Council of Lateran, held in 1123; and many other general or particular councils, whose decrees on temporal matters, and especially on all that concerned the holy wars, were approved by the sovereigns who assisted either in person or by their ambassadors at these councils. We should bear in mind also, the details of the regency of the abbot Suger in France, during the absence of Louis the Young; the history of the assault and capture of Constantinople by the Crusaders in 1204, and the principal events connected therewith.<sup>2</sup> All these events, and many others to which we cannot even briefly refer, supply manifest proof of our exposition of these matters, which justified, and often imperatively required the intervention of the popes in the political affairs of Europe. They also furnish a natural explanation of a great number of facts, which, from not having been considered in their true point of view, have been judged so differently by modern authors, and so malignantly interpreted by the enemies of the Church and of the Holy See.<sup>3</sup>

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cited, of Choiseul d'Aillecourt, *De l'Influence des Croisades*, pp. 84, 281; and in Fleury, *Hist. Eccl.* vol. xiii. book lxiv. n. 58.

<sup>1</sup> On this extraordinary resolution of Pius II. see Michaud, *Hist. des Croisades*, vol. v. book xx. ann. 1463, p. 376, &c.; De Choiseul d'Aillecourt, *ubi supra*, p. 281; Fleury, *Hist. Eccl.* vol. xxiii. book cxii. n. 98, &c.

<sup>2</sup> For detailed accounts of these events, see especially Fleury, *Père Daniel, Père Longueval, Hist. des Croisades*, Michaud, &c. With regard to the abbot Suger's regency in particular, see *Nettement, Vie de Suger*, pp. 184-187, 268-278, 318, &c. On the siege and capture of Constantinople by the Crusaders, see Hurter, *Hist. of Innocent III.* vol. i. book vii. viii.

<sup>3</sup> These observations may be very useful in explaining the conduct of Innocent III. to the kings of France and England (in 1199); that of Gregory IX. and of his successors to Frederick II. (1239-1245); that of Boniface VIII. to Philip the Fair (1296 and 1302); and, in fact, many authors have justified that conduct on these principles, at least on many points, as we shall soon have occasion to show (*infra*, ch. iii. art. i.).

53. *Necessity of the Influence of the Clergy in the Middle Ages acknowledged by unexceptionable Authorities.*

All the observations made in the course of this article to explain the frequent intervention of the popes and councils in the political affairs of Europe during the middle ages, were already felt, even in those later days, by a great number of writers who were otherwise opposed to the prodigious development of the temporal power of the clergy. Notwithstanding their notorious prejudices on this subject, these authors have no difficulty in acknowledging that the influence of the clergy on the temporal governments of those times was rendered imperative by the deplorable situation of society; that princes and people were equally interested in acknowledging and maintaining this influence: and that the power of the Holy See, in particular, was a kind of dictatorship necessary for the defence of society against the universal anarchy which threatened it with utter ruin. We have already cited, in support of these assertions, many remarkable testimonies.<sup>1</sup> We subjoin others, which seem equally entitled to attention.

54. *Testimony of Bossuet.*

Bossuet, in his *Defence of the Declaration*, explains, in the following terms, the origin and progress of the temporal power of the Church and the Holy See, from the conversion of Constantine until the election of Charlemagne to the empire of the West. "Every one knows," he observes, "the judicial powers of the bishops in the earlier ages of the Church. Without entering into a detail of all the laws of princes, which prove this assertion, we need but read what is said on the point in the Justinian code, under the title, '*De Audientiâ Episcoporum*,'<sup>2</sup> and we shall at once see how powerful the bishops were, even at a time when they had as yet no civil offices."<sup>3</sup> Even the tem-

<sup>1</sup> See (*supra*, n. 18) the testimonies of Voigt, Hurter, and of many other Protestant writers.

<sup>2</sup> *Cod. Justinian. lib. i. tit. iv.*

<sup>3</sup> It is not correct to say that at this epoch, that is, in the reign of Justinian, the bishops had as yet no civil offices; on the contrary, it is certain that, even before this time, the bishops already occupied, by concession of the emperors, many important civil offices. See details on this subject in the Introduction to this work, art. ii. §§ 5, 6.

poral assistance which they lavished on their flocks with a truly paternal charity, made them be regarded, not only as the ornaments, but still more, as the defenders and the support of the state. Under this conviction, kings and people conceived so much esteem and veneration for them, as to consider them the first order, and, as it were, the first barons of the state. Many of them even became, in course of time, lords and temporal princes of their cities. This power, added to their sacred character, and founded even on the dignity of that character, is very different from what they possessed by virtue of their original institution. In ecclesiastical power, we must, therefore, distinguish what is essential to its institution, from what has been subsequently superadded to it: what is primary, from what is only secondary; what is essential, from what is purely accidental. The more exalted was the dignity of the popes, either as the successors of St. Peter, and in this capacity having no superior, or as bishops of the capital of the world, the greater was the extent of this secondary and accidental power with which they were invested. From that moment, the Holy See began to exercise a great influence, not only in ecclesiastical affairs, which naturally belonged to its sphere, but also in civil affairs: especially from the time when the emperors, finding their power annihilated in the West, had no other means of supporting their dignity there, than the respect and fidelity which the popes retained for them.”<sup>1</sup>

<sup>1</sup> “Quid enim episcopi, primis Ecclesiæ temporibus, in judiciis potuerint, neminem latet, probatque titulus de *Episcopali audientia*, in *Codice*, ut hic alia principum constituta omittamus. Tanta poterant, cum necdum aliquid publici muneris attigissent. Cum autem commissas greges, paternâ caritate, etiam in negotiis secularibus adjuvarent, ipsique reipublicæ, non tantum ornameto, verum etiam tutelæ ac firmamento essent, eos tanta regum ac civium caritas et reverentia prosecuta est, ut jam reipublicæ pars maxima, interque optimates primi haberentur; multi etiam, lapsu temporis, suarum urbium principatum ditionemque obtinerent; quæ sacro conjuncta ordini, et ejus dignitate tamquam fundamento nixa, longè tamen absunt ab iis quæ primæ institutionis esse constat. Distinguamus itaque, quæ in titutionis sint, quæ sint accessionis; quæ primaria, quæ secundaria; quæ innata, quæ annexa sint. Pontifices Romani, quo altiore loco erant, Petri nomine ac majestate primum, quæ post Christum erat maxima, tum dominæ urbis splendore commendati, hæc annexa et secundaria longè eminentiùs obtinebant. Cœpit ergo Romana sedes, non modò in ecclesiasticis, quod et ipsi innatum, sed etiam in civilibus majestatem habere negotiis; eo maximè tempore, quo imperatores, solutâ in Occidente imperii vi, Romanorum pontificum fide atque observantiâ singulari, suam dignitatem in his partibus sustentabant.”—Bossuet, *Defensio Declarat.* lib. ii. cap. xxxvi.

55. *Testimony of Bernardi.*

A legal writer of our times, who has made the legislation of the middle ages his particular study, adopts fully the explanation of Bossuet, and applies it to account for the extraordinary increase of the temporal power of the clergy in all the Catholic states of Europe. After the reign of Charlemagne, "sovereigns themselves," observes Bernardi,<sup>1</sup> "derived advantage from the great temporal power of the clergy. The great men of the state were exceedingly untractable; they submitted reluctantly to the laws. To consolidate the throne, and to protect themselves from the insults to which they were continually exposed, kings were compelled to throw themselves into the arms of the clergy, among whom they found their most enlightened and most loyal subjects. The intelligence of the clergy was, moreover, useful in all departments of the administration, in which it was found necessary to employ them. From all these circumstances arose the credit which the clergy enjoyed, from the very birth of the European monarchies; the inspection which they exercised over the civil judges; and the authority which they had in the different branches of the public administration, the true rules of which were known to them alone: hence, also, the frequent use of canonical punishments, which alone could influence men who defied all others."

56. *Admissions of M. Hurter.*

In his History of Innocent III., M. Hurter, as we have already seen, not only applies these principles to explain and vindicate<sup>2</sup> the frequent interference of the Holy See in the political affairs of Europe during the middle ages; but acknowledges more especially the importance and good results of that interference during the Crusades. "We cannot," he observes, "estimate too highly the services rendered by the papacy in combining the forces of the West against that torrent of barbarian hordes, which threatened to overwhelm Europe. Who knows whether it is not to these Crusades, that this part of the

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<sup>1</sup> Bernardi, *De l'Origine et des Progrès de la Législation Française*, Paris, 1816, 8vo. book i. ch. xi. pp. 71-75.

<sup>2</sup> *Supra*, n. 19.

world owes its preservation from an irruption as disastrous as those of 710 and of 1683? And if we cast a glance back from the year 1529 to the four preceding centuries, must we not conclude that it is to those who directed the forces of Europe against the Moslem territories, that Europe owes its escape from the invasions of the followers of Mahomet?"<sup>1</sup>

57. *Inconsistencies of many Modern Writers on this Subject.*

It were superfluous to add more citations on this subject. We shall merely call attention to the natural inferences from the facts and testimonies collected in this article, against the imputation of ambition and usurpation thrown by so great a number of modern writers on the clergy of the middle ages, and principally on the popes, for the extraordinary power with which usage and the custom of their times had invested them.<sup>2</sup> What semblance of probability is there in assigning so disgraceful an origin to a power, exercised from the first by so great a number of popes, distinguished by the eminence of their virtues; a power which princes and people had freely conferred on the clergy, and which was in general used in a manner so commendable, and so useful to the general good of society?

ARTICLE III.

Legislation of the Middle Ages on the Temporal Consequences of Public Penance and of Excommunications in the Case of Private Individuals.

58. *Origin of this Legislation.*

The intimate union of the two powers, in all the Christian states of Europe during the middle ages; the pre-eminence enjoyed by the clergy among all orders of the state; the profound respect of the people for religion, which was then generally regarded as the basis and indispensable support of government; all these circumstances combined, should naturally introduce the custom of confirming the divine and ecclesiastical laws by the authority of princes, and by the sanction of temporal punishments. This custom, already established by the Christian

<sup>1</sup> Hurter, *History of Innocent III.* vol. ii. p. 518.

<sup>2</sup> See note 1, n. 17.

emperors from the time of Constantine's conversion,<sup>1</sup> should appear the more natural in the other states, as in them the union of the two powers was far more strict, and the rudeness of the people made the use of temporal penalties far more necessary for the maintenance of public order. This is the real origin of the temporal penalties enacted by the legislation of all Christian states during the middle ages, against heresy, apostasy, blasphemy, and many other crimes contrary to religion.<sup>2</sup>

From the exposition given in the Introduction to this work, of the principal provisions of the Roman law against heresy, a sufficiently accurate knowledge may be had of the laws of the middle ages on the same subject; for they were adopted without any change from the Roman law. To avoid, therefore, a useless repetition, we shall confine ourselves, in this third article, to the temporal effects annexed by the laws of the middle ages to public penance, and to excommunication. These effects we shall consider principally as they regarded private persons, reserving for the following chapter their application to sovereigns.

### § 1. *Temporal Effects of Public Penance.*<sup>3</sup>

#### 59. *Ancient Discipline of the Church on Public Penance.*

The origin and progress of this custom are the more worthy of attention, as it appears to have insensibly paved the way for

<sup>1</sup> See the details on this subject in the Introduction to this work, art. ii. § 2.

<sup>2</sup> With regard to French legislation on this point, see especially the *Analyse des Capitulaires*, in the *Hist. des Auteurs Sacrés et Ecclés.* by D. Ceillier, vol. xviii. p. 380. This analysis is scattered through vols. ix. and x. of Fleury's *Hist. Eccl.*; in vols. iv. and v. of *l'Hist. de l'Eglise Gallicane*; in the *Annales du Moyen Age*, vol. v. book xvii. p. 69; vol. viii. book xxvii. p. 47; book xxx. *passim*. For English legislation, see Lingard's *Anglo-Saxon Church*, ch. v. and *History of England*, vol. i. ch. ii.; *Leges Ethelberti, Inæ, &c.* (Wilkins, *Concilia Britanniae*, vol. i.); Alban Butler, *Lives of Saints*, Oct. 28, note on Alfred the Great. For the legislation of Spain, and of other countries, see in D. Ceillier's work, *l'Analyse des Conciles ou Assemblées mixtes*, held in these different states, since the sixth century, vols. xvii. xxii. xxiii.

<sup>3</sup> This historical fact, which is in general not much known, was carefully treated by Père Morin, in his work, *Commentarius Historicus de Disciplinâ in Administratione Sacramenti Pœnitentiæ olim observatâ*, Paris, 1651, fol. lib. v. cap. xviii.-xxv.; lib. vii. cap. iv.-vii. A long analysis of this work is given in the *Bibliothèque des Auteurs Ecclés. du xvii. Siècle*, by Dupin, part ii. p. 254.

the discipline of the middle ages, on the temporal effects of excommunication.

From the time of the persecutions, the Church prescribed various practices of external and public penance for sinners guilty of certain enormous crimes, such as apostasy, murder, and fornication.<sup>1</sup> Great disputes, it is true, have been raised among the learned, on the origin and variations of this ancient discipline, and especially on the class of crimes subjected to public penance by the laws of the Church. All mortal sins, however secret, were, according to some authors, subject to it; others assert, that it was not imposed on secret sins, nor even on public sins, except those of a singular grievousness. But whatever may be thought of those discussions, which do not affect our object, it is certain, and generally admitted, that many grievous sins were, from the time of the persecutions, subjected to public penance, both in the East and in the West: that this discipline was generally enforced, with more or less rigour, until the eighth century, in the Western Church, where it gradually fell into disuse between that period and the twelfth century; finally, that while this ancient discipline was in force, and principally from the fourth to the eighth century, the course of public penance was practised not only by public and scandalous sinners, but also by a small number of pious Christians, who subjected themselves to it voluntarily, either for the expiation of some secret sins, or simply from devotion and fervour.

From the fourth century, the discipline on this matter was much more severe in the West than in the East. In addition to those painful and humiliating exercises, which invariably accompanied public penance, the usage of the Latin Church annexed, moreover, from that period, many temporal effects, unknown in the Greek Church, and on which the discipline of the Latin Church itself varied considerably, according to times and places. We shall trace here, in a few words, the principal variations of this discipline.

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<sup>1</sup> On this point the reader may consult P. Morin, *ubi supra*; Sirmond, *Hist. de la Pénitence Publique*; Nat. Alexander, *Dissert. vi. et seq. in Hist. Ecclés. Seculi Tertii*; Bingham, *Origines sive Antiquitates Eccles. tom. viii. lib. xviii.*; Billuart, *Digressio Historica, ad calcem Tractatús de Pœnitentiâ*; Fleury, *Hist. Eccl. vol. ii. book vi. n. 20*; *vol. iii. book x. n. 5*; *Mœurs des Chrétiens, n. 25, 26*; Marchetti, *Critique de Fleury, part i. § 6*; Muzzarelli, *Remarques sur l'Hist. Eccl. de Fleury, §§ 8, 9, 10*; Alban Butler, *Moveable Feasts, 5th Treatise, ch. viii.*

60. *Temporal Effects of Public Penance in the West after the Fourth Century.*

I. From the fourth to the eighth century, public penitents in the West were generally prohibited to marry, or to live with their wives, or to accept any secular office dangerous to salvation, such as in the army, or on the bench, and many others.<sup>1</sup> This discipline, it is true, was not observed with uniform strictness in all places: some churches considered it not obligatory as a precept, but rather as a matter of devotion, and a mere counsel:<sup>2</sup> others admitted it, but with restrictions more or less important.<sup>3</sup> Still, it appears certain, that from the fifth to the eighth century, it was generally considered obligatory in the West, and especially in France and Spain. According to the discipline of these times, the temporal effects above mentioned were annexed to public penance, whether prescribed for some public crime, or voluntarily embraced, either for some secret sin or purely from devotion. These temporal consequences, moreover, were incurred, not only while the public penance lasted, but also after it had been finished, and during the life of the penitent, so that public penance was then considered as a perpetual engagement to a life of retirement and of perfection. A detailed history of all the variations of discipline on this point would carry us too far, without being useful to our purpose. We shall therefore merely cite the principal authorities which prove the existence of this discipline, principally in France and Spain, from the fourth to the eighth century.

61. *Remarkable Testimony of St. Leo on this Point.*

One of the most remarkable is that of St. Leo, in his letter

<sup>1</sup> Morin, *De Penitentiâ*, lib. v. cap. xviii.-xxiii. Duguet, *Conférences Ecclési.* vol. i. Dissertation xxx. p. 511.

<sup>2</sup> In confirmation of this assertion, Père Morin cites Sermon 58 *De Tempore*, attributed to St. Augustin. It appears this sermon was by St. Cæsarius of Arles; it is the 258th sermon in the Appendix of vol. v. of St. Augustin's works, edit. Bened.

<sup>3</sup> This discipline, it appears, was not admitted in England without many restrictions. There are, however, some traces of it in the statutes drawn up, about the year 680, by Theodore, archbishop of Canterbury, and in those of Egbert, archbishop of York, about the year 750. These two prelates adopted on public penance, and on many other points, the milder discipline of the Greek Church. See in vol. vi. of Labbe's *Concilia*, pp. 1616, 1877, the statutes of Theodore, n. 51, 53, et alibi passim, and those of Egbert on Penance, n. 3. See also Lingard, *Anglo-Saxon Church*, ch. vi.

to Rusticus of Narbonne, about the year 450. This prelate had consulted the pope on the conduct to be observed to those who, after having completed the course of public penance, ventured to plead in the courts, to embark in commerce, to return to the army, or to marry. The pope declares all these things contrary to the common custom, but not absolutely forbidden, except returning to the army, which could not be done without danger. "It is entirely contrary," he answers, "to the rule of the Church, to return to the army after having gone through public penance. Whoever returns thus to the warfare of the world, entangles himself in the toils of the devil."<sup>1</sup> Here it must be remarked, first, that St. Leo not only speaks of penitents who are actually engaged in a course of public penance, but also of those who have completed it; secondly, that the then existing discipline on the temporal effects of public penance was in force before the pontificate of St. Leo, since he describes it as founded on more ancient ecclesiastical rules. Fleury has been, therefore, grievously led astray by supposing, in many parts of his history, that the effects of which we speak were restricted to the period during which the public penance was performing.<sup>2</sup> We may add, that whatever may have been the primitive usage on this point, we shall find the discipline becoming much more severe after St. Leo's time, and the temporal effects of public penance remaining even after its exercises had been finished.

62. *Canons of different Councils on the same Subject.*

The second Council of Arles, held in 452, prohibits, under penalty of excommunication, married persons who had been

<sup>1</sup> "Contrarium est omnino ecclesiasticis regulis, post pœnitentiæ actionem, redire ad militiam secularem; cùm apostolus dicat, *Nemo militans Deo implicet se negotiis secularibus*. Unde non est liber à laqueis diaboli, qui se militiâ mundanâ voluerit implicare."—S. Leonis Epist. 2, ad Rusticum, inquis. 10, 11, 12, 13. Fleury, *Hist. Eccl.* vol. vi. book xxvi. n. 53. A long exposition of this passage of St. Leo's is given in the above-cited work of Morin, ubi supra, cap. xxiv.

<sup>2</sup> Fleury, *Hist. Eccl.* vol. x. book xlvi. n. 40. In support of his opinion, he cites the 12th canon of the Council of Nice, and the 5th article of the letter of St. Siricius to Himerius, bishop of Tarragona, in Spain; but it is clear that he has mistaken the sense of those two passages. See, on the 12th canon of Nice, Père Morin, *De Pœnitentiâ*, lib. v. cap. xix. n. 8, 9; D. Ceillier, *Hist. des Auteurs Ecclés.* vol. iv. p. 598, &c. On the letter of Siricius to Himerius, see D. Constant, *Epistolæ Roman. Pontificum*, p. 628, text and notes; D. Ceillier, *ibid.* vol. viii. p. 165.

subjected to public penance, from contracting a new marriage after the death of their partner. It also prohibits married persons from being subjected to public penance without their mutual consent, in consequence of the obligation of perpetual chastity, then annexed to public penance. Finally, it threatens with excommunication those who, after having embraced public penance, resume the secular habit, that is, a secular life, according to the interpretation of critics.<sup>1</sup>

The third Council of Orleans, in 538, forbids public penance to be imposed on young persons, or on married persons unless they mutually consent, and be of full age. This canon is grounded on the same motive as the canon of the second Council of Arles, which we have just cited. Another canon of the same Council of Orleans excommunicates those who, after having received the penitential habit, resume the habit and the warfare of the world.<sup>2</sup>

The first Council of Barcelona, in 540, enters into remarkable details on this subject. It orders public penitents to shave their hair, to dress plainly, and to employ their time in fasting and prayer: it forbids them to assist at feasts, or to engage in secular affairs: in fine, it orders them to observe retirement, and to lead a simple and frugal life.<sup>3</sup>

<sup>1</sup> " Pœnitens quæcumque, defuncto viro, alii nubere præsumperit, vel suspectâ vel interdictâ familiaritate cum extraneo vixerit, cum eodem ab Ecclesiæ liminibus arceatur. Hoc etiam de viro in pœnitentiâ posito placuit observari."—Concil. Arelat. ii. can. 21.

" Pœnitentia conjugatis non nisi ex consensu danda."—Can. 22.

" Hi, qui post sanctam religionis professionem, apostatant, et ad sæculum redeunt, et postmodum pœnitentiæ remedia non requirunt, sine pœnitentiâ communionem penitens non accipiant. Quos etiam jubemus ad clericatus officium non admitti; et quicumque ille, post pœnitentiam, habitum sæcularem non præsumat. Quod si præsumperit, ab Ecclesiâ alienus habeatur."—Can. 25 (Labbe, Concil. tom. iv. p. 1013). Fleury, Hist. Eccl. vol. vi. book xxviii. n. 48. Hist. de l'Eglise Gall. vol. ii. book iv. p. 74.

<sup>2</sup> " Ut ne quis benedictionem pœnitentiæ juvenibus personis credere præsumat; certè conjugatis, nisi ex consensu partium, et ætate jam plenâ, eam dare non audeat."—Concil. Aurel. iii. can. 24.

" Si quis, pœnitentiæ benedictione susceptâ, ad sæcularem habitum militiamque reverti præsumperit, viatico concessio, usque ad exitum excommunicatione plectatur."—Ibid. can. 25 (Concil. vol. v. p. 302). Hist. de l'Eglise Gall. vol. ii. book vi. p. 443.

<sup>3</sup> " Ut pœnitentes epulis non intersint, nec negotiis operam dent in datis et acceptis; sed tantùm in suis domibus vitam frugalem agere debeant."—Concil. Barcinonense 1, can. 7, 8 (Labbe, ibid. p. 379). Ferreras, Hist. d'Espagne, vol. ii. ann. 540. This council is not mentioned in Fleury's Eccles. Hist.

In consequence of these ancient regulations, the second Council of Barcelona, held in 599, excommunicates those who married after having made a vow of virginity, or of their own free will solicited public penance.<sup>1</sup> The fourth Council of Toledo, in 633, excommunicates, as apostates, the penitents who resume the lay habit and state; as well as the virgins and the widows who, after having consecrated themselves to God, abandon their sacred habit, and presume to marry.<sup>2</sup> This canon was confirmed by the Council of Toledo (A.D. 638),<sup>3</sup> so far as it regards public penitents.

63. *These Effects attached to Public Penance, even when accepted out of mere Devotion.*

These councils, it will be perceived, make no distinction between penance accepted voluntarily and from devotion, and penance imposed by the Church in punishment for sin: but they attribute the above-mentioned effects generally to all public penance. This decision is found in many councils, which clearly suppose the custom of admitting to public penance persons soliciting it purely from devotion.<sup>4</sup> Besides the councils already cited, the twelfth Council of Toledo, in 681, declares even those persons subject to the effects of public penance who

<sup>1</sup> "Si qua virgo, propriâ voluntate, abjectâ laicali veste, devotarum more induta, castitatem servare promiserit; vel si qui hominum utriusque sexûs, pœnitentiæ benedictionem expetendo a sacerdote perceperint, et ad terrena connubia sponte transierint; aut violenter abstractæ feminæ a pudicitia violatore se sequestrare noluerint; utriusque ab Ecclesiarum liminibus expulsi, ita ab hominum catholicorum communione sint separati, ut nulla prorsus eis vel colloquii consolatio sit relicta."—Concil. Barcin. ii. can. 4 (Labbe, *ibid.* p. 1606). Fleury, *Hist. Eccl.* vol. viii. book xxxvi. n. 12. Ferreras, *ibid.* ann. 599.

<sup>2</sup> "Quicumque ex sæcularibus, accipientes pœnitentiam, totonderunt se, et rursus prævaricantes laici effecti sunt, comprehensi ab episcopo suo, ad pœnitentiam, ex quâ recesserunt, revocentur. Quod si aliqui per pœnitentiam irrevocabiles sunt, nec admoniti revertentur, verè ut apostatæ, coram Ecclesiâ, anathematis sententiâ condemnentur. Non aliter et hi qui detonsi a parentibus fuerint, aut sponte suâ, amissis parentibus, seipsos religioni devoverunt, et postea habitum sæcularem sumpserunt; et iidem a sacerdote comprehensi, ad cultum religionis, actâ priùs pœnitentiâ, revocentur. Quod si reverti non possunt, verè ut apostatæ, anathematis sententiæ subjiciantur. Quæ forma servabitur etiam in viduis virginibusque sacris, ac pœnitentibus fœminis, quæ sanctimoniale habitum induerunt, et postea, aut vestem mutaverunt, aut ad nuptias transierunt."—Concil. Tolet. iv. can. 55 (Labbe, *ibid.* p. 1718). Fleury, *ibid.* book xxxvii. n. 49.

<sup>3</sup> Concil. Tolet. vi. can. 7, p. 1744. Fleury, *ibid.* book xxxviii. n. 14.

<sup>4</sup> See especially canons already cited, of the first Council of Barcelona, and of the fourth and sixth of Toledo.

had received it during sickness, through devotion only, and at the request of their friends, according to a very common practice of those times.<sup>1</sup>

Not long before this council, King Ervigus attempted, against all the rules of equity, to apply that principle to his predecessor Wamba.<sup>2</sup> Instigated by a lust of power, he administered a poisonous draught to Wamba, in the hope of either killing him, or at least making him so sick, that the archbishop of Toledo would, according to the custom of the time, give him the penitent's habit, with the last sacraments; which would disqualify him for all civil functions, even should he be restored to health. The event turned out as Ervigus calculated. The archbishop of Toledo, believing Wamba on the point of death, administered the last sacraments to him, and invested him with the penitential habit. Secret emissaries of Ervigus, who were in the palace, suggested to the king to appoint Ervigus as his successor, which he did by signing a paper presented to him. Next day, Wamba, having completely recovered, was greatly surprised on being told what had happened. Still, looking on the event as a special dispensation of Providence for his salvation, he ratified all that had been done in his illness, and retired to a monastery, where he consecrated the remainder of his days to God. From this statement, it is evident that Ervigus was guilty of manifest injustice, in applying to the case of Wamba the general principles regarding the temporal effects of public penance; and that the abdication of the crown, made in such circumstances, would have been null, if he had not voluntarily ratified it after his recovery. But the intrigues of Ervigus on this occasion manifestly suppose the principle, then generally admitted in the West, and especially in the kingdom of the Goths, that public penitents were disqualified for all civil offices.<sup>3</sup>

<sup>1</sup> "Sicut baptismum, quod, nescientibus parvulis, sine ullâ contentione, in fide tantum proximorum accipitur; ita et poenitentiae donum, quod nescientibus illabitur, absque ullâ repugnantia inviolabiliter hi, qui illud exceperint, observabunt."—Concil. Tolet. xii. can. 2 (Concil. tom. vi. p. 1226). Fleury, Hist. Eccl. vol. ix. book xl. n. 29.

In those days the faithful frequently received from devotion the penitential habit, during sickness, as they received, from the same motive, in similar circumstances, the religious habit in later times.

<sup>2</sup> Julian of Toledo, Hist. Vambæ (vol. i. Recueil des Hist. de France, by Duchesne, p. 821, &c.). Mariana, Hist. of Spain, book vi. ann. 680, 681.

<sup>3</sup> Fleury and some other modern writers suppose that the application of this

The thirteenth Council of Toledo, held in 683, presents this principle in a new light by its conduct in the case of Gaudentius, bishop of Valencia, who, during a severe illness, had accepted public penance, from devotion. This prelate consulted the council whether he could resume his functions after having received penance. The council decided in the affirmative, because public penance, being a state of perfection, was incompatible, not with sacred functions, but with civil or secular offices.<sup>1</sup>

64. *This Custom sanctioned by the Two Powers in the Kingdom of the Goths.*

From all these facts it follows clearly, first, that from the fourth century public penance, even when accepted voluntarily, and from mere devotion, was generally considered in the West a sacred and perpetual engagement to a life of perfection and retreat, to the observance of chastity, and to a renunciation of all profane amusements, and of all secular offices; secondly, that this discipline, which at first was established by church authority alone, was, from the sixth century, recognised and sanctioned by the temporal power in the kingdom of the Goths. In truth, those Spanish councils which we have just cited, from the time of the fourth Council of Toledo, in 633, were, as we have already remarked,<sup>2</sup> mixed assemblies, in which the two powers combining regulated together the affairs of church and state.

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principle to Wamba was made by the twelfth Council of Toledo, which thus established the first precedent of a prince deposed under pretence of public penance.—Fleury, *Hist. Eccl.* vol. ix. book xl. n. 29; vol. xiii. 3rd Discourse, n. 10. *Annales du Moyen Age*, vol. v. book xix. p. 498. Bianchi, *Della Potestà della Chiesa*, tom. i. lib. iii. § 2, n. 5. Mamachi, *Origines et Antiquit. Christ.* vol. iv. p. 187. This supposition is not correct. The twelfth Council of Toledo does not apply the principle to Wamba; it merely ratifies the election of his successor, Ervigus, in accordance with documents presented to the council, attesting that Wamba had received the religious habit, and had appointed Ervigus as his successor.—*Concil. Tolet.* xii. can. 1, apud Labbe, *Concil.* tom. vi. p. 1225. This decree of the council, therefore, does not depose Wamba; it simply supposes that he had voluntarily abdicated the throne, which is the fact, as all historians assert he did after having recovered his health. See, on this subject, Nat. Alexander, *Dissert.* iv. in *Hist. Eccles. Sæculi vii.*

<sup>1</sup> “*Pœnitens abstinere à peccatis pariter et negotiorum tumultibus debet, non ab iis quæ sancta videntur, et summa se abstrahere, quæ operantem plus expiant, quàm commaculando deturpant.*”—*Concil. Tolet.* xiii. can. 10 (*Concil.* tom. vi.). Fleury, *ibid.* book xl. n. 30.

<sup>2</sup> See *supra*, n. 28, 29.

We will not venture to assert that this discipline, of which we speak, was at that period confirmed by the temporal power in any other country except Spain; but we shall soon see the custom of Spain equally sanctioned in France, and in all the countries subject to Charlemagne's sceptre.

65. *Decline of Public Penance from the Seventh to the Twelfth Century.*

II. From the seventh to the twelfth century, the custom of public penance, even for public crimes, having gradually fallen into disuse, new regulations were published, with the design of retaining it in certain cases, and of substituting for it, in others, some equivalent mode of punishment.<sup>1</sup> It was enacted, therefore, by a great number of councils and capitularies,—First, that the temporal effects, annexed anciently to public penance, should be henceforward incurred in the case only of certain enormous crimes, such as adultery, incest, rape, parricide, the murder of a bishop, a priest, or a deacon, whether the criminal performed public penance for these crimes, or was content with doing private penance.<sup>2</sup> Secondly, that in certain cases, when these crimes were to a certain degree notorious, the criminals should be compelled, by excommunication, to undergo public penance, according to the ancient custom; and that, if they refused to submit, they should be forced to do so by the temporal power. Thirdly, in fine, that if dukes and counts refused their co-operation in such cases, they should themselves incur excommunication and temporal penalties, which might even deprive them of their dignities.<sup>3</sup>

<sup>1</sup> Morin, De Pœnit. lib. v. cap. xxii.; lib. vii. cap. iv. v. vi.

<sup>2</sup> “De incestuosis et parricidis, ut canonicè coerçantur; sicut de illo iudicatum est qui materteræ suæ filiam stupravit, ut conjugium ultrâ non repetat, et militiæ cingulum derelinquat, et aut monasterium petat, aut si foris remanere voluerit, tempora pœnitentiæ secundùm canones pleniter exsolvat.”—Capitular. lib. vi. n. 71.

“Si quis sacerdotem, vel levitam aut monachum interfecerit, vel debilitaverit, juxta statuta priorum capitulorum, quæ legi Salicæ sunt addita, componat; et insuper bannum nostrum, id est, sexaginta solidos, nobis persolvat, et arma relinquat, atque in monasterio, diebus vitæ suæ, sub arduâ pœnitentiâ, Deo serviat, nusquam postmodum seculo vel secularibus militaturus, neque uxori copulaturus.”—Ibid. n. 98. Morinus (lib. v. cap. xxii.) has collected on this point a great number of testimonies from the councils and capitularia of the eighth and ninth centuries.

<sup>3</sup> “Si quis, in his supradictis sanctorum canonum nostrique decreti sanctionibus [pœnitentiam publicam spectantibus], episcopis inobediens et contumax

66. *Its Temporal Effects maintained in France, and in other Places, by the Authority of the Two Powers.*

From these details we find, first, that notwithstanding the decline of the ancient discipline of public penance, its temporal effects were still in force in the eighth and ninth centuries, in the countries subject to Charlemagne's sceptre, that is, especially in France, Germany, and Lombardy. Secondly, that in all these countries, as well as in Spain, the temporal effects of public penance were expressly sanctioned and confirmed by the temporal power; as they were promulgated in the capitularies by the authority of the two powers, and formed part both of the civil and of the ecclesiastical code.

67. *The Custom of those Ages illustrated in the Case of Louis le Débonnaire.*

The history of the deposition of Louis le Débonnaire, in 833, would of itself alone explain what was the discipline then in force in the French empire.<sup>1</sup> Lothaire, his eldest son, having openly revolted against him, and obtained an irregular sentence of deposition against him in an assembly of the principal lords of the rebel army, endeavoured to get himself acknowledged in a more constitutional form, by a general assembly of the nation. He accordingly summoned, for the 1st of October, at Compiègne, which was attended by a great number of bishops, abbots, and barons devoted to his interests. Many of them, with Ebbo, archbishop of Rheims, at their head, suggested to him to subject Louis to trial for various crimes against the Church and the state; after which they could condemn him to public penance during

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extiterit; primum canonicam sententiam [i. e. *excommunicationis*] feriat; deinde in nostro regno beneficium non habeat, et alodis ejus in bannum mittatur [i. e. *prædia et possessiones ejus in fisci potestatem reponantur*]; et si annum et diem in nostro banno permanserit, ad fiscum nostrum redigatur; et captus in exilium religetur; et ibi tamdiu custodiat et constringatur, donec coactus Deo et sanctæ Ecclesiæ satisfaciatur quod prius satisfacere noluerat."—Capitul. Tribur. ann. 822, n. 6 (vol. i. of the Collection by Baluze, p. 629).

"Quicumque, propriâ uxore derelictâ, vel sine culpâ interfectâ, aliam duxerit; armis depositis, publicam agat pœnitentiam; et si contumax fuerit, comprehendatur a comite, et ferro vinciatur, et in custodiam mittatur, donec res ad nostram notitiam deducatur."—Capitul. lib. v. n. 300 (ibid. p. 885). See also lib. vii. n. 258, 432, 433, et alibi passim.

<sup>1</sup> See, on this extraordinary fact, Fleury, Père Daniel, Père Longueval, ann. 833; Nat. Alexander, Dissert. ii. in Hist. Eccl. sæc. ix.; Bossuet, Defens. Declar. lib. ii. cap. xxi.; Bianchi, Della Potestà della Chiesa, tom. i. lib. iii. § 3; Mamachi, Origin. et Antiquit. Christ. tom. iv. p. 189.

the remainder of his life, and enforce against him those canons which forbid penitents to carry arms or take any part in public affairs. This expedient was acted on: Louis was accused before the bishops, and pronounced guilty of the crimes charged against him: he confessed them publicly, and solicited public penance as a favour—it was instantly granted; he resigned his sword, and accepted the habit of the penitent; after which he was conducted in ceremony to a little cell in the monastery of St. Médard de Soissons, to spend there in penance the remainder of his life.<sup>1</sup>

The public penance thus imposed on Louis, and the enforcement in his regard of the canons which forbade penitents to carry arms, or to take part in public affairs, were undoubtedly a manifest injustice, in which the bishops were involved by the spirit of rebellion which Lothaire had infused into them. It must, however, be remarked, that those contemporary authors who are loudest in their censure of the deposition of Louis, do not deny the existence of canons disqualifying public penitents for secular offices; they rather suppose the existence of those canons, and merely condemn their application in that particular case, for crimes of which Louis had not been convicted, and for which he had already done voluntary penance in the Council of Attigny.<sup>2</sup>

68. *This Custom gradually falls into desuetude after the Ninth Century.*

It was, nevertheless, about this very period that these canons began to fall into disuse. A letter from Nicholas I. to Rodolph, archbishop of Bourges, about the year 866, supplies the first instance, in our opinion, of the relaxation of the ancient discipline of the Latin Church on the temporal effects of public

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<sup>1</sup> However reprehensible this conduct of the bishops to Louis may have been, it must be observed that, strictly speaking, they did not depose that prince; they merely approved his deposition, which had already been decided by an assembly of the principal lords of the rebel army of Lothaire. This is the necessary inference from the uniform statements of contemporary historians, as the authors cited in the preceding note have remarked (especially Nat. Alexander, *ubi supra*). Sufficient attention has not been paid to this fact by many modern writers, who attribute to the Council of Compiègne the deposition of Louis le Débonnaire. (Bianchi and Mamachi, *ubi supra*.)

<sup>2</sup> See especially, Eginhard's *Chronicon*, and the anonymous author of the *Life of Louis le Débonnaire*, ann. 833. Both these works are published in Bouquet's *Recueil des Historiens de France*. The passages referred to by us are cited by Nat. Alexander, and by Bianchi, *ubi supra*.

penance. "The penitents," the pope states, "who return to the army, act contrary to sacred canons: but since you declare that this prohibition drives some of them to despair, and others to take refuge among the pagans, we give you liberty to act in this matter according to what seems most advisable in the particular circumstances."<sup>1</sup> Similar motives induced the same pope, on another occasion, to depart somewhat from the ancient discipline, in favour of one Weimar, who had killed his three sons. In compelling him to undergo public penance, the pope forbids him ever to bear arms during his life, except against the pagans.<sup>2</sup> A council held at Rheims, in 924, carried its indulgence still farther, and dispensed from the exercise of public penance all who were actually engaged in war.<sup>3</sup> Gregory VII. endeavoured to maintain the ancient discipline on this point, with the relaxations tolerated by Nicholas I.,<sup>4</sup> but notwithstanding his efforts, public penance and its effects gradually fell more and more into disuse, in consequence of a custom then introduced, of compensating for it by other penitential works, such as alms, flagellations, and pilgrimages.<sup>5</sup>

<sup>1</sup> "De his verò qui pro criminibus pœnitentiam gerunt, et ad cingulum militiæ revertuntur, constat eos contra sacras regulas agere. Verùm, quia crimina non æqualia sunt, perhibesque alios horum, propter nimiam hebetudinem, in desperationem adisse, alios ob hoc ad paganos fugisse, tibi hoc committimus decernendum, nimirum qui loca et tempus regionis illius, modumque culpæ, necnon et pœnitentiam, et gemitus hominum ad confessionem venientium, præsens positus inspicere vales."—Nicolai I. Epistola 19 (alias 39), ad Rodolphum, n. 4 (Labbe, Concil. tom. viii. p. 505). Fleury, Hist. Eccl. vol. xi. book li. n. 8.

<sup>2</sup> "Usque ad diem mortis suæ perseveret in jam dictâ pœnitentiâ, atque arma, nisi contra paganos, non ferat."—Nicolai I. Epist. 17 (alias 5), ad Rivoladrum Episcopum (Labbe, ibid. p. 503).

<sup>3</sup> "Similiter (pœnitentiam agent) . . . omni sextâ feriâ per totum annum, nisi redemerint, aut festivitas celebris ipsâ die acciderit, vel eum infirmitate sive militiâ detentum esse contigerit."—Concilium Remense, ann. 924 (Labbe, Concil. tom. ix. p. 581). Fleury, Hist. Eccl. vol. xi. book liv. n. 57.

<sup>4</sup> "Quicumque miles, vel negotiator, vel alicui officio deditus quod sine peccato exerceri non possit, si culpis gravioribus irretitus ad pœnitentiam venerit, vel qui bona alterius injustè detinet, vel qui odium in corde gerit, et recognoscat se veram pœnitentiam non posse peragere, per quam ad æternam vitam valeat pervenire, nisi arma deponat, ulteriusque non ferat, nisi consilio religiosorum episcoporum pro defendendâ justitiâ; vel negotium derelinquat, vel officium deserat, et odium ex corde dimittat, bonaque quæ injustè abstulit restituat."—Concilium Rom. ann. 1078, can. 5 (alias 6), (Labbe, Concil. vol. x. p. 373). See, for an explanation of this canon, Christianus Lupus, Decreta et Canones, tom. v. p. 151, &c.

<sup>5</sup> Morin, De Pœnitentiâ, lib. vii. cap. 7, et seq. Fleury, Mœurs des Chrétiens, n. 63. Several of Fleury's assertions on this matter must be corrected after the works of Marchetti and of Muzzarelli, cited above, p. 69, note.

69. *This Custom was founded neither on the Divine Law nor on the Authority of the Church alone.*

A plain statement of those variations of the ancient ecclesiastical discipline, on the temporal effects of public penance, must at once, we trust, enable the reader to distinguish in this matter, what belongs to the divine law and to the law of the Church, from what was founded purely on the free will and voluntary concessions of princes. The Church, unquestionably, has by divine right, and by the institution of Jesus Christ himself, the power of inflicting on sinners penances proportionate to the grievousness of their crimes. This power has always been regarded in the Church as the natural and immediate consequence of the power of binding and loosing sinners ;<sup>1</sup> whence it follows, that sinners are bound in conscience to perform the works of satisfaction which the Church deems expedient for the remission of their sins. According to these principles, public penitents in the Western Church, from the fourth century, were certainly bound in conscience to avoid certain civil acts and offices, which the Church deemed it right to prohibit, as not being consistent with the spirit of public penance. But however rigorous this obligation was in conscience, it involved of itself the loss of no civil right, until that obligation had received the sanction of the civil power. For how could effects so variable as those which we have described be founded on the divine law : effects which were never known in the Eastern Church, nor in the Latin Church itself during the first five or six centuries, and which, even while they were enforced, underwent so many modifications and variations, according to times and places ? How is it possible that the Church, without the co-operation of the temporal power, could have annexed to public penance the loss of civil rights, from the fifth and sixth centuries, whilst at that very time, and long after, the Church manifestly proclaimed through her councils, and holy doctors, and the popes themselves, the distinction and the mutual independence of the powers, and represented each as equally sovereign in all that belonged to its own sphere ; as independent of each other, to such a degree, that the ecclesiastical power has no more

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<sup>1</sup> Matt. xvi. 19 ; xviii. 18. See on this point, Morinus, *De Pœnitentiâ*, lib. i. cap. iii. &c.

right to regulate the concerns of the temporal order, than the temporal power has over spiritual concerns.<sup>1</sup>

We infer, from these observations, that public penance did not of itself entail the forfeiture of any civil right, until the discipline of the Church, or its temporal consequences, had received the sanction of the civil power: a sanction which was not given apparently before the seventh century.<sup>2</sup>

### § 2. *Temporal effects of Excommunication.*<sup>3</sup>

#### 70. *Temporal Effects of Excommunication from the Origin of Christianity.*

The custom of attaching certain temporal consequences to excommunication can be traced back to the first establishment of the Christian religion: the sole difference between the discipline of the primitive ages and of the middle ages on this point, consists in this, that the former was much less rigorous, and founded solely on the authority of the Church and of her Divine Founder; whilst the second was established by the concurrent authority of Church and state. We shall now give a rapid sketch of the origin and progress of this discipline, which was so long enforced in all the Catholic states of Europe during the middle ages.<sup>4</sup>

<sup>1</sup> We have already seen the facts which establish the existence of this ancient tradition, part i. ch. i. n. 9, 10, 15, 28. It shall be confirmed still further in ch. iii. of this second part, art. i.

<sup>2</sup> From these observations we may estimate the value of the reasoning of some ultramontane theologians, who imagined they could prove at least an indirect jurisdiction of the Church over temporal affairs, by the power which Jesus Christ conferred of instituting public penance. Mamachi adopts this line of argument, *Origines et Antiquitates Christianae*, vol. iv. p. 188. Also Bianchi, *Della Polizia et della Podestà della Chiesa*, tom. i. lib. iii. § 2, p. 453, &c. Rohrbacher, *Des Rapports Naturels entre les Deux Puissances*, vol. i. ch. xiii. p. 180.

<sup>3</sup> Excommunication is a spiritual punishment, inflicted by a spiritual superior, or by the laws of the Church, which deprives a Christian of all or of some spiritual benefits enjoyed by members of the Church, such as the participation of the sacraments, public prayers, &c. In every society the sovereign, and the magistrates who administer justice in his name, can inflict penalties on guilty subjects, deprive them of the benefits enjoyed by obedient subjects, and even expel them from its communion, for grave crimes. These plain principles of common sense at once show that the Church ought to have the power of expelling from her communion obstinate sinners. For more ample developments of this subject the reader may consult, besides the divines and canonists, Pey, *De l'Autorité des Deux Puissances*, vol. iii. part iii. ch. v. § 2, p. 471; Bergier, *Dictionnaire Théologique*, art. Excommunication.

<sup>4</sup> We are not aware that any author has treated this subject historically at

From the establishment of Christianity, excommunication, according to the institution of Jesus Christ and of his apostles, deprived the Christian not only of the spiritual goods peculiar to members of the Church, but also of some acts of civil intercourse dependent on the will of private persons, and from which they could abstain without violating any right; such, for instance, are many ordinary marks of civility or friendship, such as sitting at the same table, familiar conversation, mutual salutations, &c.<sup>1</sup> Numerous evidences of this ancient discipline occur in the ecclesiastical authors of the primitive ages, who regarded it as equally useful to preserve the faithful from the contagion of bad example, and to excite sinners to repentance by a salutary humiliation.<sup>2</sup>

71. *Reasons why Ecclesiastical Censures became in Course of Time so frequent, and their Temporal Effects so numerous.*

From the seventh to the twelfth century, the custom of public penance having gradually fallen into disuse, and disorders becoming every day more general, in consequence of the anarchy which convulsed society, the two powers naturally sought to substitute some other punishment which might strike with awe their

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any considerable length. Van Espen may be consulted on it,—*Tractatus Historico-Canonicus de Censuris Ecclesiasticis*, cap. vii. §§ 2, 3 (*Oper. tom. ii.*); Dupin, *Traité Historique des Excommunications*, part i. § 16; part ii. § 3. The temerity of these authors on many points relating to the dogma and discipline of the Church, requires that their works should be read with caution. Van Espen's treatise was first published in 1728, that is, the very year in which he was suspended from his academical functions, by the rector of Louvain, for his obstinate attachment to the party of the appellants. The second volume of Dupin was suppressed in 1743, by an order of the council of state, on account of some passages which it contained in favour of the same party. See Moréri's Dictionary, arts. Van Espen and Dupin.

<sup>1</sup> "Quod si non audierit eos, dic Ecclesiæ; si autem Ecclesiam non audierit, sit tibi sicut ethnicus et publicanus."—*Matth. xviii. 17.*

"Nunc autem scripsi vobis non commisceri, si is qui frater nominatur, est fornicator, aut avarus, aut idolis serviens, aut maledicus, aut ebriosus, aut rapax; cum ejusmodi nec cibum sumere."—*1 Cor. v. 11.*

"Quod si quis non obedit verbo nostro per epistolam, hunc notate, et ne commisceamini cum illo, ut confundatur."—*2 Thess. iii. 14.*

"Si quis venit ad vos, et hanc doctrinam non affert, nolite recipere eum in domum, nec *ave* ei dixeritis; qui enim dicit illi *ave*, communicat operibus ejus malignis."—*2 Joan. 10, 11.* See, on the text of St. Matthew, Maldonatus, Menochius, &c.; and on the other texts, Estius and Mauduit.

<sup>2</sup> Fleury, *Mœurs des Chrétiens*, n. 24. Bingham, *Origines et Antiquitates Eccles. tom. vii. lib. xvi. cap. ii. § 11, &c.* Duguet, *Conférences Ecclésiastiques*, *Dissert. xxxiii. § 2.* Bossuet, *Defens. Declar. lib. i. sect. ii. cap. xxii. &c.*

barbarous and intractable subjects. Religion being almost the only authority which they respected, no more efficacious means could be devised for keeping them in order, than the use of ecclesiastical censures, and especially of excommunication. Sovereigns themselves, as an ancient author has observed, had no more effectual means of keeping their rebellious vassals in subjection ;<sup>1</sup> and the intimate union then existing between the two powers, naturally induced them to annex to that spiritual punishment, temporal effects resembling those which, during a long course of ages, had been annexed to public penance.

This is, in Bossuet's opinion, the real origin of the temporal effects consequent on excommunication during the middle ages. "According to the testimony of the Gospel and of the apostles, an excommunicated person is outlawed from human society, so far as human society regards good morals : but he retains all his civil rights, unless the law has ordained otherwise. If in the course of time, excommunicated persons were declared infamous, incapable of making a will, and disqualified for certain functions of civil life, until they returned to their duty ; this arose from the fact, that princes made their laws as conformable as possible to the laws of morality, and to the discipline of the Gospel, and not because excommunication of itself entails the loss of any temporal right, or any temporal property."<sup>2</sup>

<sup>1</sup> See the testimony of William of Malmesbury, cited supra, art. ii. n. 10 ; St. Victor, Tableau Historique et Pittoresque de Paris, vol. i. pp. 336-344.

In confirmation of these testimonies, and of all that we have said on the efficacy of excommunication in these days, in preventing and repressing disorder, many remarkable examples might be cited. The history of France especially contains them in abundance. From among them we shall select that of King Robert, who was excommunicated in 998, for his incestuous marriage with Bertha ; Philip I. excommunicated in 1094, for his illegitimate marriage with Bertrade ; Philip II. excommunicated in 1198, for his adulterous marriage with Agnès de Méranie. A much greater number of similar examples, relating to barons and persons of humbler condition, might be selected. See, on this subject, l'Hist. de l'Eglise Gallicane, vol. vii. ann. 913, 948, 964 (pp. 446, 514, 549), et alibi passim.

<sup>2</sup> "Ergo excommunicatus, evangelicâ atque apostolicâ auctoritate, humanæ societatis exsors est, quatenus humana societas ad bonos mores spectat ; manentque integra quæ civili lege continentur, nisi aliter lex ipsa caverit. Quod autem postea, inter Christianos, excommunicati, nisi resipiscant, sint infames, intestabiles, ad quædam vitæ civilis officia inhábiles ; id ex eo ortum est, quod Christiani principes, quoad fieri potest, leges suas ad bonos mores atque evangelicam disciplinam aptent, non quod excommunicatio per se ullo temporali jure bonoque privet."—Bossuet, Def. Declar. lib. i. sect. ii. cap. xxii. p. 345.

72. *Remarkable Examples illustrating this Matter in France after the Sixth Century.*

The first example occurring in history of this forfeiture of civil rights by excommunication, is found in a constitution of Childebert II. published in 595, in which he prohibits all his subjects, and even the French barons, whom he calls the "long-haired,"<sup>1</sup> to contract incestuous marriages. He orders all who refuse to obey the bishops on this point, and who are excommunicated for such disobedience, to be expelled from his palace, and deprived of their property in favour of their legitimate heirs.<sup>2</sup>

After this constitution of Childebert, in proportion as the ancient discipline of public penance was falling into disuse, a great number of similar constitutions were published in France, and in other countries, by the authority of the two powers, to extend still further the temporal effects of excommunication. One of the most remarkable is that of the Council of Verneuil, assembled in 755, by order of Pepin the Little, who confirmed its decrees. The ninth canon of this council, which was afterwards inserted in the capitularies, prohibits excommunicated persons to enter the church, or to eat with any Christian: it moreover condemns to exile all who refuse to observe this prohibition.<sup>3</sup> Another capitulary deprives excommunicated persons

<sup>1</sup> It was well known that, under the first race of French kings, long hair was a distinctive mark of princes of the blood royal.—Daniel, *Hist. de France*, ed. of P. Griffet, vol. i. pp. 73, 112, part i. p. 135. D. Bouquet, *Recueil des Historiens de France*, vol. iii. Preface, p. i. iv.

<sup>2</sup> "Convenit una cum *leudis* nostris [id est cum *vassalis nobilioribus sive optimatibus*] ut nullus de *crinosi* incestum usum sibi societ conjugio, hoc est, nec fratris sui uxorem, nec uxoris suæ sororem, nec uxorem patris sui, aut parentis consanguinei. Si quis uxorem patris acceperit, inortis periculum incurrat. De præteritis verò conjunctionibus, quæ incestæ esse videntur, per prædicationem episcoporum jussimus emendari. Qui verò episcopum suum noluerit audire, et excommunicatus fuerit, perennem condemnationem apud Deum sustineat; et insuper de palatio nostro sit omnino extraneus, et omnes facultates suas parentibus legitimis amittat, qui noluit sacerdotis sui medicamenta sustinere."—Childeberti Constitutio, n. 2 (Baluze, *Capitularia*, tom. i. p. 17). Fleury, *Hist. Eccl.* vol. viii. book xxxv, n. 45. *Hist. de l'Eglise Gall.* vol. iii. book viii. p. 313.

<sup>3</sup> "Si quis presbyter ab episcopo degradatus fuerit, et ipse per contemptum postea aliquid de suo officio, sine comæatu (id est, sine licentiâ) facere præsumpserit, et postea ab episcopo suo correptus et excommunicatus fuerit; qui cum ipso communicaverit scienter, sciat se esse excommunicatum. Similiter quicumque clericus aut laicus, vel fœmina incestum commiserit, et ab episcopo suo correptus se emendare noluerit, et ab episcopo suo excommunicatus fuerit,

of their benefices and of their private property, and condemns them to exile if they refuse obstinately to make satisfaction to the Church, within a year.<sup>1</sup> Another deprives them of the power of bringing an action at law, or of making a defence, and condemns to exile all who affect to despise excommunication.<sup>2</sup>

73. *The same Custom gradually established in the other States of Europe.*

In the legislation of other states of Europe, and especially in England, about the same time, we find a great number of similar provisions, which prove beyond a doubt, that these temporal effects of excommunication were introduced originally, not only without any reclamation on the part of princes, but with their concurrence and express approbation. A constitution of Ethelred, king of England, published in 1008, forbids persons under sentence of excommunication to remain near the king's residence (and, consequently, to hold any office near his person), until they have given satisfaction to God and the Church.<sup>3</sup> A law published some years later by king Canute, "condemns to the loss of life and of all his property, any person giving refuge to an excommunicated person, or to one under the ban of the civil power."<sup>4</sup>

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si quis cum ipso communicaverit scienter, sciat se excommunicatum esse. Et ut sciatis qualis sit modus istius excommunicationis, in ecclesiam non debet intrare, nec cum ullo Christiano cibum vel potum sumere, nec ejus munera quisquam debet accipere, vel osculum porrigere debet, nec in oratione se jungere, nec salutare, antequam ab episcopo suo fuerit reconciliatus. Quod si aliquis se reclamaverit quod injustè sit excommunicatus, licentiam habeat ad metropolitanum episcopum venire, et ibidem secundùm canonicam institutionem dijudicetur; interim suam excommunicationem custodiat. Quod si aliquis ista omnia contempserit, et episcopus emendare minimè potuerit, *regis judicio, exilio condemnetur.*—Concil. Vernens. can. ix. (Baluze, *ibid.* pp. 172, 836). *Hist. de l'Eglise Gall.* vol. iv. p. 398.

<sup>1</sup> See the Capitulary of Tribur, which we have cited in the preceding article (p. 76, n. 3).

<sup>2</sup> "Omnium anathematum vox, in accusatione, vel testimonio, aut humano judicio, penitus non audiatur; nec hi accusare quemquam permittantur; sed si quis anathematis pœnam parvi duxerit, aut in insulam religetur, aut exilio deputetur, ne possit Ecclesiam Dei ejusque famulos perturbare."—Capitular. lib. vii. cap. ccxv. (Baluze, tom. i. p. 1071).

<sup>3</sup> "Si aliquis excommunicatus absque pace sit [i. e. *absque veniâ seu absolute delictorum*], non commoretur in regis vicinâ alicubi, antequam divinam compensationem diligenter fecerit."—*Æthelredi Regis Constitutio* (Canciani, *Barbarorum Leges Antiquæ*, tom. iv. p. 291, col. 2).

<sup>4</sup> "Si quis excommunicatus vel exlegem [i. e. *qui beneficio legis, proinde juribus civilibus privatur*] habuerit et custodierit, luat vitam et omnem suam possessionem."—*Leges Canuti Regis* (*ibid.* p. 309, n. 64).

74. *Concurrence of Sovereigns in establishing this Discipline.*

The concurrence of sovereigns in establishing this discipline is formally acknowledged by many modern writers, in other respects most opposed to the maxims and practice of the middle ages, in this matter. It is observed by the continuator of Velly, "that Charlemagne, far from being apprehensive of the power of the bishops, believed that it was his interest to increase it, that it might serve as a check on that of the barons, who, being brought up in camps, and having the principal strength of the kingdom at their disposal, began to grow impatient of the yoke of authority. Accordingly, not only in the schools which he founded, but also in the ecclesiastical tribunals whose jurisdiction he extended, and even in the parliaments or general assemblies, which were the supreme tribunal of the nation, he ordered new maxims to be admitted, as favourable to the Church as they were opposed to the rights of sovereigns.<sup>1</sup> These germs were not slow in developing themselves. Kings or emperors having communicated a share of their political and civil power to the bishops, and finding it their interest that the ecclesiastical judgment should be enforced, had given to excommunication a far greater reach (than it had in the first centuries of the Church). An excommunicated person, not applying with humble submission to be absolved within a certain period, forfeited all his civil rights; he was proscribed and outlawed from society, &c."<sup>2</sup>

75. *Severity of this Discipline before the Time of Gregory VII.*

This severity had gradually been carried so far before the time of Gregory VII., that even the servants and near relations of the excommunicated were forbidden to hold any communication with him, except for the indispensable necessities of life;<sup>3</sup>

<sup>1</sup> It is amazing how the author of this passage can represent "as contrary to the rights of sovereigns," maxims authorized, according to his own admission, by the sovereigns themselves, who believed that they had the greatest interest in recognising them.

<sup>2</sup> Garnier, *Hist. de France*, vol. xxi. pp. 201, 208. See, in confirmation, Bernardi, *De l'Origine et des Progrès de la Législation Française*, book i. ch. ii.; book iv. ch. vi. pp. 71, 275, &c.; Gaillard, *Hist. de Charlemagne*, vol. ii. p. 124; Bossuet, *Defens. Declar. lib. sect. ii. cap. xxii. versus finem.*

<sup>3</sup> See the complaints of St. Abbo, abbot of Fleury-sur-Loire, in his Apology addressed to kings Hugh and Robert, about the close of the tenth century

whence it was inferred, that excommunication disqualified him for all civil functions, deprived him of all, even temporal dignities, and absolved his subjects from all obligation of obedience and fidelity to him until he had made satisfaction to the Church, by obtaining absolution. The severity of this discipline continued under the pontificate of Gregory VII., who merely confirmed the decrees of his predecessors, as he expressly declares in the third canon of the first Council of Rome. "In conformity with the decrees of our predecessors, we, by virtue of our apostolical authority,<sup>1</sup> absolve from their oaths all who are under any engagement to excommunicated persons, even by oath; and we prohibit them absolutely to observe those engagements."<sup>2</sup> It must, however, be remarked, that the sentence of excommunication did not entail the forfeiture of civil rights, except the criminal obstinately remained under it, during a certain time fixed by the law or the custom of each country. This condition, which is clearly proved by the constant usage of the middle ages, is added expressly to the text of Gregory VII. in the *Decretum Gratiani*.<sup>3</sup> We shall immediately give the legislation of the different states of Europe on the subject.

76. *This Severity moderated by Gregory VII.*

The serious inconveniences frequently resulting in the intercourse of society from discipline so rigorous, soon induced the pope to mitigate it in many respects. Gregory VII. at first permitted the wives and children and domestics of the excommunicated to have intercourse with them. This permission he

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(p. 401, Appendix to the Codex Canonum, published by Pithou, Paris, 1687, fol.) Fleury, *Hist. Eccl.* vol. xii. book lvii. n. 44.

<sup>1</sup> The temporal effects of excommunication being then sanctioned by the civil power, those expressions of Gregory VII.—"by virtue of our apostolical authority," must naturally be understood of the directive power in the sense explained by Fénelon (see *supra*, n. 10, 11, 12, and *infra*, ch. iii. n. 170). In another place we shall state more in detail the doctrine of Gregory VII. on this point. *Infra*, ch. ii. iii. of this second part.

<sup>2</sup> "Sanctorum prædecessorum nostrorum statuta tenentes, eos qui excommunicatis fidelitate aut sacramento constricti sunt, apostolicâ auctoritate, a sacramento absolvimus, et ne sibi fidelitatem observent, omnibus modis prohibemus."—*Synodus Rom.* iv. sub Greg. VII. cap. iii. (Labbe, *Concil.* tom. x. p. 370).

<sup>3</sup> After the text of Gregory VII. cited by us, Gratian adds these words: "Quoadusque ipsi in satisfactionem veniant."—*Gratiani Decretum*, parte ii. caus. 15, quest. 6, can. 4 & 5. *Decretal. lib. v. tit. 37, cap. Gravem.* 13.

subsequently extended to all those whose presence would not tend to confirm them in their obstinacy.<sup>1</sup> This decree, which at first was only provisional, was afterwards renewed by the successors of Gregory VII.; and it has been inserted in the *Corpus Juris*.<sup>2</sup> In fine, Martin V. not only approved this relaxation, but extended it still further in the Council of Constance, by declaring, that henceforward there was no obligation of avoiding any persons but those who were “publicly excommunicated, and denounced by name;” and this remains, to the present day, the discipline of the Church.<sup>3</sup>

77. *Excommunication entailed the Forfeiture of all Dignities, even Temporal.*

Notwithstanding these different relaxations, the general principle remained in force through the whole course of the middle ages, depriving all obstinate excommunicated persons of all dignities, even temporal. This was the general belief of pious and enlightened men, under the pontificate of Gregory VII., and from a more remote period, as even those authors admit who are most opposed to that discipline.<sup>4</sup>

78. *This Discipline sanctioned for many Centuries by the Common Laws of Europe.—German Law.*

This discipline continued unquestionably, during many cen-

<sup>1</sup> “Quoniam multos, peccatis nostris exigentibus, pro causâ excommunicationis perire quotidie cernimus, partim ignorantia, partim etiam nimia simplicitate, partim timore, partim etiam necessitate; devicti misericordia, anathematis sententiam ad tempus, prout possumus, opportunè temperamus. Apostolicâ namque auctoritate, anathematis vinculo hos subtrahimus, videlicet: uxores, liberos, servos, ancillas, seu mancipia, necnon rusticos et servientes, et omnes alios qui non adeo *curiales* sunt [i. e. *adeo in officiis curiæ versantur*], ut eorum consilio scelera perpetrentur; et illos qui ignoranter excommunicatis communicant, seu illos qui communicant cum eis qui communicant excommunicatis. Quicumque autem aut orator [i. e. *qui orationis et pietatis causâ peregrinatur*], sive peregrinus aut viator, in terram excommunicatorum devenerit, ubi non possit emere, vel non habet unde emat ab excommunicatis, accipiendi licentiam damus. Et si quis excommunicatis pro sustentatione, non superbie, sed humanitatis causâ, aliquid dare voluerit, fieri non prohibemus.”—Synodus Romana iv. sub Greg. VII. cap. iv. (Labbe, Conciliorum, tom. x. p. 371).

<sup>2</sup> Gratiani Decretum, parte ii. caus. 11, quæst. 3, can. 103.

<sup>3</sup> Van Espen, Tract. Hist. Can. de Censur. cap. vii. § 5 (Oper. tom. ii.). Suarez, De Censur. disp. 15.

<sup>4</sup> Bossuet, Defens. Declarat. lib. i. sect. ii. cap. xxiv.; lib. iii. cap. iv. pp. 348, 357. These passages of Bossuet shall be cited in another place, infra, ch. ii. art. i. n. 118. Fleury, Hist. Ecl. vol. xiii. Discourse iii. n. 18; vol. xvii. Discourse v. n. 13, near the end. Pfeffel, Abrégé Chronologique de l’Histoire de l’Allemagne, ann. 1106, 4to. edit. vol. i. p. 228.

turies, to form part of the common law of the Catholic states of Europe. It was sanctioned especially, in the most express terms, by many provisions of German law, compiled in the thirteenth century from the ancient customs of the empire.<sup>1</sup> The law of Swabia has the following regulation on the point. "If a person be excommunicated by the ecclesiastical judge, and remain in that state during six weeks and a day, he can be outlawed by the secular judge.<sup>2</sup> In like manner, if a person be outlawed by the secular judge, he can be excommunicated by the ecclesiastical judge. If he has been excommunicated before he was outlawed, he must be absolved from the excommunication, (if he is worthy) before the outlawry is reversed; and, in like manner, if he has been outlawed before he was excommunicated, the outlawry must be reversed before absolution from excommunication is given. Neither of the judges ought to free him (from the excommunication or the outlawry), until he has given satisfaction for the crime on account of which he has been outlawed or excommunicated.<sup>3</sup> Should an outlaw or excommunicated person bring an action against one in a court of justice, no person is bound to obey their citation; but if themselves are cited, they are bound to answer. The reason is, because they are deprived, both in the ecclesiastical and secular courts, of the right common to all Christians. If a man be only outlawed or excommunicated, he is to be considered as both outlawed and excommunicated."<sup>4</sup>

<sup>1</sup> The following is the title of the Laws of Swabia: "Hic incipit liber Juris provincialis Cæsarei, statutus et ordinatus a Romanis imperatoribus et electoribus, continens omnes communes articulos Juris, quidve agendum aut omitendum sit, . . . communis pacis causâ, a sacro imperio statutum, et ab antiquo tempore, serid confirmatum."—Præfamen Juris Alamannici, sive Suevici (Senckenberg, Corpus Juris Germanici, tom. ii. p. 1).

<sup>2</sup> From the text, it is clear, that the "proscriptio" mentioned here is the privation of all civil rights. This is more manifest from a comparison of ch. iii. with ch. cxxvii., as Senckenberg remarks.

<sup>3</sup> "Si quis a judicio ecclesiastico fuit excommunicatus, et in illo statu manet per sex septimanas et unum diem, tunc jure potest proscribi a judicio sæculari. Similiter, si quis a judicio sæculari proscibitur, jure a judicio ecclesiastico excommunicatur. Et si prius fuerat excommunicatus quàm proscriptus, prius etiam ab excommunicatione absolvi debet (præstitis præstandis); et vicissim, si prius fuit proscriptus quàm excommunicatus, debet etiam prius liberari a proscriptione. Neuter horum judicium debet illum absolvere (ab excommunicatione vel proscriptione), priusquam ratione prioris culpæ (propter quam primùm fuit excommunicatus vel proscriptus) satisfecerit."—Juris Alamannici, cap. iii. (Senckenberg, Corpus Juris Germanici, tom. ii.).

<sup>4</sup> "Proscriptis aut excommunicatis, si aliquem convenire conantur, nemo

79. *English Laws.*

With a few slight differences, the legislation of England and of France on this subject was the same, since the tenth century.<sup>1</sup> According to the English laws, the excommunicated who did not adopt measures, within forty days, for obtaining absolution, was denounced by the bishops to the royal officers, who cast him into prison, until he had given satisfaction to the Church and obtained absolution; and if he obstinately remained under excommunication during a whole year, he was declared infamous.<sup>2</sup> If he were a baron or other lord, his vassals were absolved from their oath of fidelity to him, and his fiefs could be seized by his suzerain lord, until he had been reconciled to the Church.<sup>3</sup>

80. *Ancient Customs of France conformable on this Point to that of other Countries.*

It would be an easy matter to demonstrate, by a great number of facts, that the custom of France in this matter differed in no respect from that of other Catholic countries of Europe.<sup>4</sup> But to be convinced of the fact, we need only peruse the works of Ivo of Chartres, the light and oracle of the Church of France, and even of the whole West during the twelfth century. In his *Decretum*, or collection of canons, he clearly assumes the

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tenetur respondere; si autem ipsi ab aliis conveniuntur, obstricti sunt ut respondeant. Hoc inde est quod, in iudicio ecclesiastico et sæculari exclusi sunt a jure quod Christianis ordinariè competit. Si quis est vel solummodo proscriptus, vel solummodo excommunicatus, tum censetur quasi et proscriptus et excommunicatus esset.”—*Juris Alamannici*, cap. cxxvii. See also ch. i. ii.

<sup>1</sup> See Ducange, *Glossarium Mediæ et Infimæ Latinitatis*, verbo *Excommunicatio*; Idem, *Observations sur l'Histoire de St. Louis*, by Joinville, p. 40; D. Brial, *Recueil des Hist. de France*, vol. xiv. Preface, sect. 1, § 10.

<sup>2</sup> The companions of St. Thomas of Canterbury, during his exile, express themselves on this subject to the following effect, in a letter written to Cardinal Albert, in 1170: “In eo maximè, apud nostrates, justitia viget ecclesiastica, quòd qui per annum excommunicationem sustinent, notari solent infamiâ.”—*S. Thom. Cantuariensis. Epistol. lib. v. epist. xxii.* This letter is the 258th in the *Recueil des Hist. de France*, by D. Bouquet, vol. xvi. p. 419.

<sup>3</sup> See the councils and other acts of English legislation, cited by Ducange, *ubi supra.* See especially the Council of Lambeth, in 1261, cap. *De Excommunicatis capiendis*; and that of London, in 1342, cap. xiii. (*Labbe, Concil. tom. xi. pp. 808, 1897.*) Fleury, *Hist. Eccl. vol. xviii. book lxxxv. n. 5*; vol. xx. book xcv. n. 13. Prynne, *Antiquæ Constitutiones Regni Angliæ, Londini, 1672, fol. pp. 358, 410.*

<sup>4</sup> See the authors cited in note 1 to n. 79.

universal prevalence of the discipline on the temporal effects of excommunication, and especially the invariable custom depriving the excommunicated of the right of judicial accusation or defence.<sup>1</sup> But he explains this discipline at much greater length in one of his letters, addressed to Lawrence, a monk of La Charité. It appears to have been written about the time when Pope Urban II. excommunicated Philip I., for his scandalous marriage with Bertrade. Consulted by Lawrence on the conduct to be observed towards the excommunicated, the bishop of Chartres recites for him the rules made or renewed on this subject by Gregory VII.: he cites and explains the canons of the Council of Rome, mentioned already,<sup>2</sup> and after having referred to the prohibition against the excommunicated, of judicial defence or accusation, he adds, "it has been so arranged by the laws, human and divine, in order to compel the excommunicated to enter into themselves, and to repent of their sins."<sup>3</sup> We shall soon have occasion to cite many other letters of the same prelate, on the scandalous marriage of Philip I., which imply that the temporal effects of excommunication were then admitted in France, even in the case of excommunicated kings.

81. *This Legislation in force under the Reign of St. Louis.*

An "ordonnance" published by St. Louis in 1228, establishes not less decisively the legislation then adopted in France on this subject. It contains provisions precisely similar to those which we have just remarked in English legislation.<sup>4</sup> This "ordonnance" prescribes, "that secular judges shall inflict temporal punishments against the excommunicated who remain obstinately under ana-

<sup>1</sup> "Definimus eum rite ad accusationem non admitti, qui postea quàm excommunicatus fuerit, in ipsâ adhuc excommunicatione constitutus, sive clericus, sive laïcus, accusare voluerit."—Ivonis Decret. lib. xiv. cap. lxi. See also ch. xcv.-xcvii.

<sup>2</sup> See supra, n. 75, 76.

<sup>3</sup> "Divinæ leges pariter et humanæ refutant et vitant eorum (excommunicatorum) testimonia et judicia; non quod non aliquando vera testificentur, et justa decernant; sed ut, tali repulsâ confutati, ab errore suo desistant."—Ivonis Epist. 186 (Oper. part ii. p. 78, col. 2). This letter of Ivo of Chartres is not in D. Bouquet's Recueil, which contains only a selection of that prelate's letters.

<sup>4</sup> This ordonnance of St. Louis is found in vol. xi. of the Collection of Councils of P. Labbe, p. 424. See also l'Hist. de l'Eglise Gallicane, vol. xi. pp. 569-572; Daniel, Hist. de France, vol. iv. pp. 308, 576; Ducange, ubi supra.

thema during a year ; in this manner, those who are not moved by the fear of God, shall be brought back to the Church by the fear of temporal punishment. " We therefore order our officers," the king adds, " to seize, after the expiration of one year, all the moveable and immoveable property of the excommunicated, and not to restore it until they have been absolved, and satisfaction has been given to the Church : and even in this case, the restitution shall not be made without our special order." <sup>1</sup> Similar provisions occur in many French councils, held about the same time, especially in those of Cognac, held in 1262, <sup>2</sup> and of Cologne in 1266. <sup>3</sup> They are also found in a collection of laws published about the same time, with the title, " Establishments of St. Louis ;" <sup>4</sup> which, though possibly not the work of that prince, gives at least the legislation of his age. <sup>5</sup>

82. *Circumstances favourable to the Establishment of this Discipline.*

However rigorous this discipline may appear to us at the present day, it was then established with the greater facility, being in reality a relaxation of the ancient discipline, on the temporal effects of public penance. The latter, besides the painful and humiliating practices which it imposed, entailed the temporal effects now described, even though it had been accepted voluntarily, and from mere devotion : and the effects subsisted even after the performance of the penance. <sup>6</sup> But under the new discipline, the sinner was not subjected ordinarily to the painful

<sup>1</sup> " Statuimus, ut excommunicati vitentur, secundum canonicas sanctiones ; et si aliqui per annum contumaciter in excommunicatione perstiterint, extunc temporaliter compellantur redire ad ecclesiasticam unitatem ; ut quos a malo non retrahit timor Dei, saltem pœna temporalis compellat. Unde præcipimus quod balivi nostri omnia bona talium excommunicatorum mobilia et immobilia post annum capiant, nec eis aliquo modo restituant, donec prædicti absoluti fuerint, et Ecclesiæ satisfecerint ; nec tunc etiam, nisi de nostro speciali mandato."—Statuta Ludovici Regis, pro Libertate Ecclesiæ, n. 7, 8 (Labbe, Concil. tom. xi. p. 424).

<sup>2</sup> Concilium Copriniacense (de Cognac), n. 3 (Labbe, *ibid.* p. 821).

<sup>3</sup> Concilium Coloniense, cap. xxxviii. (Labbe, *ibid.* p. 854).

<sup>4</sup> Etablissements de St. Louis, book i. ch. cxxi. This chapter is cited by Ducange, in his Glossary, *ubi supra*. The whole text is given in Ducange's edition of Joinville's History of St. Louis.

<sup>5</sup> Daniel, Hist. de France, vol. iv. p. 596. Montesquieu, Esprit des Loix, book xxviii. ch. xxxvii. Bernardi, De l'Origine et des Progrès de la Législation Française, book v. ch. iv. p. 329.

<sup>6</sup> See Père Morin's work, cited above, n. 59, note 1.

and humiliating practices of public penance, nor was excommunication pronounced except for certain heinous crimes: and its effects ceased as soon as the offender obtained absolution.

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## CHAPTER II.

THE POWER EXERCISED BY POPES AND COUNCILS OVER SOVEREIGNS IN THE MIDDLE AGES GENERALLY ADMITTED BY PRINCES AND PEOPLE.

### 83. *This General Belief undoubtedly existed.*

WHATEVER may have been the origin of the extraordinary power exercised by popes and councils over sovereigns in the middle ages, the fact is certain, that from the tenth century at least, and in many states from a much more remote period, a general belief prevailed in Europe, attributing to the spiritual power a supremacy over the temporal, in this sense, that a sovereign could be judged, and even in certain cases deposed, by the authority of the pope and of a council. Doubts there may be regarding the origin and grounds of this belief, which are explained differently by different authors, as we have seen already;<sup>1</sup> but the existence of that belief itself is one of the most indisputable facts in history.

### 84. *Proofs of this Fact.—Plan of this Chapter.*

To arrange our proofs in order, we shall state first those that relate to Catholic sovereigns of Europe in general; next those that relate to France, and to the countries feudally subject to the Holy See; finally, those that regard only the empire of the West. The development of these different divisions will demonstrate to evidence the truth of this assertion, that the popes and councils that attributed to themselves the power of judging, and of deposing temporal princes, and even Gregory VII. himself, who first exercised that power,<sup>2</sup> did but act in accordance with

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<sup>1</sup> *Supra*, n. 2.

<sup>2</sup> We assume here, as is commonly done, that the sentence of deposition pronounced by Gregory VII. against Henry IV., emperor of Germany, is the first instance of the kind. This is not, however, beyond all question; for it

principles universally admitted, and sanctioned even by the sovereigns most interested in denying them.

#### ARTICLE I.

Proofs of this Belief in the Case of Catholic Sovereigns in General.

##### 85. *General Belief that Heretical Princes incurred Deposition.*

One of the most clearly established facts in the history of the middle ages is, that from the tenth century at least, the principles which had long been enforced against private persons on the temporal effects of excommunication, were generally applied to the case of sovereigns.

In the first place, so far as the temporal consequences of heresy were concerned, it is certain that, according to the universal belief and custom, sovereigns as well as private lords incurred by heresy the forfeiture of their dignity, and could be deposed by the sentence of the pope or of a council. The fact is certain on the testimony of Henry IV. himself, who admitted it at a time when he was less than ever inclined to favour the pretensions of the pope, and more interested in rejecting them. Immediately after the Council of Worms in 1076, in which Henry had pronounced the deposition of the pope, he communicated the result to that pontiff, in a letter couched in the most insulting terms. Still, even in this passionate document, he does not absolutely deny that the pope had power to depose sovereigns; he only maintains "that, according to the tradition of the Fathers, a sovereign cannot be deposed for any crime whatsoever, except the denial of the faith."<sup>1</sup> Here is a suffi-

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appears certain that the emperor Arnolph was crowned emperor in 896, by Pope Formosus, who substituted him for Lambert, crowned about four years before by the same pope. The circumstances of this fact are not sufficiently well known to justify us in inferring from it, that princes and people at that time generally attributed to the pope the power of deposing the emperor. If such a persuasion had already existed, it is difficult to suppose that Gregory VII. would not have appealed to it in vindication of his conduct to the emperor of Germany. In another place we shall speak more at length on the election of Lambert and of Arnolph. For the precise date of these elections, see especially Pagi, Critic. in Annales Baron. ann. 892, n. 2; 894, n. 3; 895, n. 4; 896, n. 3; 898, n. 7; L'Art de Vérifier les Dates; Chronolog. Hist. des Emp. d'Occident; Cenni, Monumenta, tom. ii. pp. 28, 242.

<sup>1</sup> "Me quoque, . . . quem sanctorum patrum traditio soli Deo judicandum docuit, nec pro aliquo crimine, nisi à fide (quod absit) exorbitaverim, deponen-

ciently clear admission, as Fleury remarks, that, according to a usage even then considered ancient, "a sovereign could justly be deposed for abandoning the faith."

86. *This Belief existing in France under the Reign of St. Louis.*

About two centuries later we find an equally convincing testimony of this belief in a letter of the French barons to Pope Gregory IX., on occasion of the deposition of Frederick II., emperor of Germany. That prince having been excommunicated and deposed by the pope in 1239, the latter wrote an epistle to St. Louis, informing him of the event, and offering the empire to his brother, Count Robert.<sup>1</sup> The king and the French lords disapproved highly, it is true, of the pope's conduct to Frederick. But they did not deny the pope's right of deposing the emperor in some cases, and especially for heresy. "If," they observe, "the emperor deserved to be deposed, it should be done in a council only;" a precaution which they deemed necessary, to proceed with greater security in so important a matter. They added, that to them it appeared the emperor was innocent, both with regard to his secular conduct and the Catholic faith; that they would, however, send ambassadors to him, to examine carefully his opinions on the Catholic faith; and that if he were found guilty on that point, they would make war on him to the death, as in a similar case they would do against any other, even the pope himself.<sup>2</sup> It must be remarked, that the bold tone of this letter, and the offensive terms used to the pope, have led some authors to suspect that it was addressed to him without the king's knowledge by the French barons, who were very much

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dum asseruit, . . . me, inquam, a Deo constitutum inhonoras."—Christian. Urstitius, *Germaniæ Historici Illustres*, tom. i. p. 394. Baronii, *Annales*, tom. xi. ann. 1080, n. 24. Fleury, *Hist. Eccl.* vol. xiii. book lxii. n. 28. Voigt, *Hist. de Grégoire VII.* book viii. p. 377.

<sup>1</sup> Matthæus Paris, *Hist. Angl.* ann. 1239. Bossuet, *Defens. Declar.* liv. iv. cap. vi. ix. Fleury, *Hist. Eccl.* vol. xvii. book lxxxix. n. 36, &c. *Hist. de l'Eglise Gall.* vol. xi. ann. 1239. Daniel, *Hist. de France*, vol. iv. ann. 1239.

<sup>2</sup> "Si Fridericus *ab apice imperiali*, meritis exigentibus, *deponendus esset*, non nisi per generale concilium cassandus judicaretur. . . . Insontem sibi videri adhuc Fridericum, neque quid sinistri in eo visum, vel in fidelitate sæculari, vel in fide Catholica; missuros ad Imperatorem, qui quomodo de fide Catholica sentiat diligenter inquirant: tum ipsum, imò etiam ipsum Papam, si male de Deo senserit, usque ad interneconem persecuturos."—Matthæus Paris, ubi supra (cited by Bossuet, *ibid.* cap. vi. p. 26).

incensed at that time against the pope and the bishops.<sup>1</sup> But whatever may be the worth of this conjecture, the letter itself is not the less manifest evidence of the principles then generally admitted on the rights of the spiritual power to depose princes, and especially the emperor, for the crime of heresy. These principles must, in truth, have been generally regarded as incontestable at the time, since they have been so expressly acknowledged by the authors of a letter so full of expressions offensive to the pope.

87. *General and Particular Councils also attest this Belief.*

In attestation of this general belief, many councils, both general and particular, could be cited, whose decrees on this subject were published in presence of, and with the express or tacit consent of sovereigns. But the most remarkable of these are the decrees of the third and fourth Councils of Lateran, about the interpretation of which there is so great a diversity of opinion among authors who have not attended sufficiently to the fact that these two councils were mixed assemblies representing the temporal and spiritual powers.<sup>2</sup>

88. *Decrees of the Third General Council of Lateran.*

The first of these councils, held in 1179, revived against the Albigenes and many other heretics of the time, the principal provisions of the Roman law, which was then received in all the Christian states of Europe.<sup>3</sup> In the preamble to the decree, the council carefully distinguishes the spiritual penalties which the Church inflicts on heretics by her own authority, from the temporal penalties which she enacts with the concurrence and aid of Christian princes. The following are the words of the council :<sup>4</sup>

<sup>1</sup> See Daniel and Berthier, ubi supra.

<sup>2</sup> See, on these different explanations, Tournely, *De Ecclesiâ*, tom. ii. p. 447; Bossuet, *Defens. Declar. lib. iv. cap. i. ii.*; Mamachi, *Origines et Antiquit. Christianæ*, tom. iv. p. 245, note 2.

<sup>3</sup> We have explained these provisions in our Introduction, art. ii. § 2, n. 61, &c.

<sup>4</sup> "Sicut ait beatus Leo, licet ecclesiastica disciplina, sacerdotali contenta iudicio, cruentas non efficiat ultiones, Catholicorum tamen principum constitutionibus adjuvatur, ut sæpe quærant homines salutare remedium, dum corporale super se metuunt evenire supplicium."—Concil. Lateran. iii. can. 27 (Labbe, *Concil. tom. x. p. 1522*).

“Though the Church,” as St. Leo observed,<sup>1</sup> “is content with the judgment pronounced by her ministers, and does not inflict penalties of blood, she is, nevertheless, aided by the laws of Christian princes, in order that the fear of corporal punishment may lead the guilty to apply for the spiritual remedy.” Having laid down this principle, the council decrees both spiritual and temporal punishments against the heretics. In the first place, it anathematizes them and their abettors, cuts them off from the communion of the faithful, prohibits the holy sacrifice to be offered for them, and Christian burial to be given to them. Then, in virtue “of the aid given to the Church by Christian princes,” it decrees temporal penalties against heretics in the following terms:—“That all who are bound to them by any obligation, should consider themselves released from every bond of fidelity, homage, and obedience, so long as they persist in their heresy. We, moreover, enjoin all the faithful, for the remission of their sins, to resist courageously the ravages of the heretics, and to protect the Christian people against them by arms. We also order their property to be confiscated, and authorize princes to reduce them to subjection.”<sup>2</sup> The concurrence of the two powers in the promulgation of this decree, besides being clearly implied by the very text which we have cited, is, moreover, attested by a contemporary author, who adds, after citing these canons, “that when these decrees were published, they were accepted by all the clergy and people present.”<sup>3</sup> It is certain, as Bossuet remarks on this subject, that, according to the style of the councils, and of all ecclesiastical authors, the word

<sup>1</sup> The council cites literally the words of St. Leo, in his Letter to Turibius, a Spanish bishop, regarding the Priscillianists who then infested that kingdom.—S. Leonis Epist. 15 (alias 93), n. 1. Fleury, Hist. Eccl. vol. vi. book xxvii. n. 10.

<sup>2</sup> “Relaxatos autem se noverint a debito fidelitatis et hominii, ac totius obsequii, donec in tantâ iniquitate permanserint, quicumque illis aliquo pacto tenentur annexi. Ipsius autem, cunctisque fidelibus, in remissionem peccatorum injungimus, ut tantis cladibus se viriliter opponant, et contra eos armis populum Christianum tueantur, confiscenturque eorum bona, et liberum sit principibus hujusmodi homines subjicere servituti.”—Concil. Lateran. iii. ubi supra, p. 1523.

<sup>3</sup> “His itaque decretis promulgatis, et ab universo clero ac populo circumstante receptis, etc.”—Roger de Hoveden, Ann. Anglican. lib. ii. (Scriptores Angliæ, tom. i.). Labbe, Concil. tom. x. p. 1525.

“people” is used here in opposition to clergy, to designate all the laics present, even lords and princes.<sup>1</sup>

89. *Decrees of the Fourth General Council of Lateran.*

The decree of the third Council of Lateran was revived in the commencement of the following century, in the fourth Council of Lateran, A. D. 1215. After anathematizing in general, and without exception, all heresies contrary to the Catholic faith, the council continues thus: “We order,<sup>2</sup> that heretics, after

<sup>1</sup> “*Populi autem nomine, ecclesiastico more styloque, laici omnes intelligebantur, ipsique adeo principes, et eorum legati.*”—Bossuet, *Defens. Declarat.* lib. iv. cap. i. p. 6. See again, in support of these observations, Fleury, *Hist. Eccl.* vol. xv. book lxxiii. n. 22; D. Ceillier, *Hist. des Auteurs Ecclés.* vol. xxi. p. 721; Pey, *De l’Autorité des Deux Puissances*, vol. i. p. 112; Thomas-sin, *Traité des Édits*, vol. ii. ch. ix.; Bernardi, *De l’Origine et des Progrès de la Législation Française*, book v. ch. iii. p. 316.

<sup>2</sup> “*Damnati verò, sæcularibus potestatibus præsentibus, aut eorum balivis, relinquantur animadversione debitâ puniendi, clericis priùs a suis ordinibus degradatis; ita quod bona hujusmodi damnatorum, si laici fuerint, confiscentur; si verò clerici, applicentur ecclesiis a quibus stipendia perceperunt. Qui autem inventi fuerint solâ suspitione notabiles, nisi juxta considerationes suspicionis, qualitatemque personæ, propriam innocentiam congruâ purgatione monstraverint, anathematis gladio feriuntur, et usque ad satisfactionem condignam, ab omnibus evitentur; ita quod si per annum in excommunicatione persisterint, extunc velut hæretici condemnentur. Moneantur autem et inducantur, et si necesse fuerit, per censuram ecclesiasticam compellantur sæculares potestates, quibuscumque fungantur officiis, ut sicut reputari cupiunt et haberi fidei, ita pro defensione fidei præsent publicè juramentum, quod de terris suæ jurisdictioni subjectis, universos hæreticos ab Ecclesiâ denotatis, bonâ fide, pro viribus exterminare studebunt. . . . Si verò dominus temporalis, requisitus et monitus ab Ecclesiâ, terram suam purgare neglexerit ab hâc hæreticâ fœditate, per metropolitanum et cæteros comprovinciales episcopos excommunicationis vinculo innodetur; et si satisfacere contempserit infra annum, significetur hoc summo pontifici, ut extunc ipse vassallos ab ejus fidelitate denuntiet absolutos, et terram exponat Catholicis occupandam, qui eam, exterminatis hæreticis, sine ullâ contradictione possideant, et in fidei puritate conservent; salvo jure domini principalis, dummodo super hoc ipse nullum præstet obstaculum, nec aliquod impedimentum opponat; eâdem nihilominus lege servatâ circa eos qui non habent dominos principales. . . . Credentes verò præterea, receptores, defensores et fautores hæreticorum, excommunicationi decernimus subjacere; firmiter statuentes, ut postquam quis talium fuerit excommunicatione notatus, si satisfacere contempserit infra annum, extunc ipso jure sit factus infamis, nec ad publica officia seu consilia, nec ad eligendos aliquos ad hujusmodi, nec ad testimonium admittatur. Sit etiam intestabilis, ut nec testandi liberam habeat facultatem, nec ad hæreditatis successionem accedat. Nullus præterea ipsi, super quocumque negotio, sed ipse aliis respondere cogatur. Quod si fortè judex extiterit, ejus sententia nullam obtineat firmitatem, nec causæ aliquæ ad ejus audientiam perferantur. Si fuerit advocatus, ejus patrocinium nullatenus admittatur. Si tabellio, ejus instrumenta confecta per ipsum nullius penitus sint momenti, sed cum auctore damnato damnentur.”—Concilium Lateranense iv. can. iii. (Labbe, *Concil. tom. xi. part. i. p. 147, etc.*). Fleury, *Hist. Ecclés.* vol. xvi. book lxxvii. n. 47.*

their condemnation, be delivered over to secular princes or their officers, to be punished according to their deserts; care being taken that clerics shall be degraded before they are delivered up to the secular arm: that the property of laics so condemned shall be confiscated, and that of the clergy applied to the churches from which they had received their revenues: that, moreover, all persons suspected of heresy shall be excommunicated, unless they clear themselves in a manner suitable to the nature of the suspicion and the quality of the person suspected: that all the faithful shall avoid communication with them, until they have given satisfaction to the Church; and that, finally, they shall be condemned as heretics, if they remain under excommunication during one year. All secular powers, moreover, shall be admonished, and if necessary compelled, by ecclesiastical censures, to swear publicly to expel from their territories heretics denounced by the Church. If after the admonition and request of the Church, any temporal lord should neglect to purge his territory of heretics, he shall, in the first place, be excommunicated by his metropolitan and the suffragan bishops; and if he does not give satisfaction within a year, the pope shall be apprised of it, in order that he may declare the vassals of that lord absolved from their oath of fidelity, and may deliver over his lands to Catholics, that, after having expelled heretics from it, they may hold it in peace, and maintain therein the pure Catholic faith, saving the rights of the suzerain lord; provided, however, he places no obstacle to the execution of this decree; the same rule shall, moreover, be observed against those who have no suzerain lord. The abettors and protectors of heretics, we order, moreover, to be excommunicated; and if they do not give satisfaction within a year, they are, *ipso jure*, to be regarded as infamous, disqualified for secular offices or councils, incapable of either inheriting or making a will; and none shall be obliged to answer their citation in a court of justice, though themselves shall be obliged to answer others. Should a judge be condemned, his judgments shall not be of force; if he is a lawyer, he shall not be admitted to plead; and if he be a notary, the deeds drawn up by him shall be null."

90. *Concurrence of the Two Powers in the Promulgation of those Decrees.*

At first sight it might appear that, in publishing those decrees, the council encroached on the rights of the temporal power. But, independently of the fact that the consent of the princes, necessary for those decrees, had been clearly expressed by the third Council of Lateran, held only a short time previously, it is certain, that those decrees were not published without the consent of the Christian princes, who had all been summoned to this council, and who, in fact, assisted there by their ambassadors. This is the principle by which Bossuet and Fleury, and the majority of historians and canonists, especially in France, explain those decrees, and many others of a similar kind occurring in the general councils of the middle ages.<sup>1</sup> The union of the two powers in these councils has even led many learned authors to consider them as general diets, or states-general of Europe, combining in themselves at once the ecclesiastical council and the political assembly.<sup>2</sup> All the Catholic princes of Europe being, in fact, convoked to them, as well as the bishops, and assisting at them either in person or by their ambassadors, the decrees published by them on temporal matters, emanated both from the authority of the Church and of princes, and thus became obligatory on all the Catholic states of Europe.

91. *Confirmation of these Decrees by the Laws of Princes, and by different Councils or mixed Assemblies.*

But, besides this concurrence of the two powers in the third and fourth general Councils of Lateran, the consent given by princes to the abovementioned decrees is proved clearly by a great number of laws, promulgated about the same period by the temporal power, and by many councils or mixed assemblies held in different states. We shall notice particularly a constitution published in 1220, by Frederick II., emperor of Germany, the very day on which he received the imperial crown from the

<sup>1</sup> Fleury, ubi supra. Bossuet, *Defens. Declarat.* lib. iv. cap. i.-v. D. Ceillier, *Hist. des Auteurs Ecclés.* vol. xxi. p. 721; vol. xxiii. p. 560. Milner, *Excellence of the Catholic Religion*, letter xlix. See also the works of the Abbé Pey, Thomassin, and Bernardi, cited in last note to n. 88.

<sup>2</sup> Thomassin, *Traité des Edits*, vol. ii. ch. ix. p. 87. Idem, *Ancien. et Nouv. Discipline de l'Eglise*, vol. ii. book iii. ch. xlv.-lvii. passim. Bernardi, ubi supra, p. 316.

hands of Pope Honorius III. By this constitution, the emperor expressly confirms the canons of the third and fourth general Councils of Lateran, which we have already cited, and which are literally inserted in his decree.<sup>1</sup> Some years later, St. Louis, immediately after ascending the throne, published a similar order, to enforce the execution of the same canons in the south of France, where the heresy of the Albigenses, and the protection which the count of Toulouse had long given them, made the execution of these canons more difficult.<sup>2</sup> It was with the same view that the holy king afterwards solicited and obtained from Pope Alexander IV. the establishment of the tribunal of the Inquisition in France.<sup>3</sup>

Among the councils or mixed assemblies which promulgated similar decrees about the same period, we may mention especially the Council of Tours, in 1163, which was attended by a great number of bishops and barons of the kingdoms of England and France;<sup>4</sup> the Council of Verona, in 1184, in which were many bishops and barons from Germany, Lombardy, and from some other states;<sup>5</sup> and the Council of Toulouse, in 1229, in which the decrees were revived which had been enacted not long before against heretics by St. Louis.<sup>6</sup>

<sup>1</sup> *Constitutio Friderici II.* (in the *Corpus Juris Romani*, after the *Liber Feud.*) Fleury, *Hist. Eccl.* vol. xvi. book lxxviii. n. 40.

<sup>2</sup> *Constitutio Ludovici IX.* (Labbe, *Concil.* tom. xi. parte primâ, p. 423.) *Hist. de l'Eglise Gall.* vol. xi. book xxxi. p. 31. Daniel, *Hist. de France*, P. Griffet's edit. vol. iv. p. 575.

<sup>3</sup> Fleury, *Hist. Eccl.* vol. xvii. book lxxxiv. n. 15. This exposition may explain or modify the assertion of many French canonists of the last century, "that the temporal penalties decreed by the popes against heretics are not received in France."—De Héricourt, *Lois Ecclés. de France*, vol. i. p. 149, col. 1. It is certain that, under the reign of St. Louis, and even long after it, France adopted the same custom on this point as the other states of Europe. Doubtless, in consequence of the progress of the reformation in France, the principal provisions of the common law on this point fell into disuse; but most of these provisions were re-enacted by the revocation of the edict of Nantes, in 1685. See De Héricourt, *ibid.* p. 378, &c.; D'Avrigny, *Mémoires pour servir à l'Hist. Ecclés. du xvii. Siècle*, vol. iii. ann. 1685; *Hist. de Bossuet*, by the Cardinal Bausset, vol. iv. book xi. n. 15.

<sup>4</sup> *Concil. Turon.* (Labbe, *Concil.* tom. x. p. 1411). Fleury, *Hist. Eccl.* vol. xv. book lxx. n. 63.

<sup>5</sup> *Concil. Veron.* (Labbe, *ibid.* pp. 1737, 1740). Fleury, *ibid.* book lxxiii. n. 54.

<sup>6</sup> *Concil. Tolos.* ann. 1229 (Labbe, *Concil.* tom. xi. primâ parte, p. 426, &c.). Fleury, *ibid.* vol. xvii. book lxxix. n. 57. *Hist. de l'Eglise Gall.* vol. xi. book xxxi. p. 35, &c. For fuller details on this point, consult the authors cited in the Introduction, n. 67, note second last.

All these testimonies must certainly prove the general belief and custom of the states of Europe, during the middle ages, on the temporal effects of heresy, even in the case of princes. This important point shall, however, be demonstrated more clearly in the course of this chapter,<sup>1</sup> by the evidence even of those sovereigns who were most jealous of their authority, and most interested in disputing the custom of whose prevalence we are speaking.

92. *General Belief regarding the Temporal Effects of Excommunication in the Case of Sovereigns.*

The temporal effects of excommunication, even in the case of sovereigns, were not less generally admitted; and sovereigns themselves, as well as their subjects, expressly admitted them. The history of Henry IV., emperor of Germany, would be, of itself, sufficient to demonstrate the truth of this assertion. We think it right to discuss that subject in greater detail, both because it presents us the first case of a sovereign deposed by excommunication,<sup>2</sup> and because it appears to us peculiarly useful in illustrating the main object of our inquiry.<sup>3</sup>

93. *This Belief proved to exist from the History of the Emperor Henry IV.—Character and Conduct of that Prince.*

Historians are unanimous in representing Henry IV. as one of the most wicked princes that ever reigned over Germany. Debauch, tyranny, avarice, and simony, made him the scourge both of the state and of religion;<sup>4</sup> and to such a degree had his continual oppressions alienated the barons of the empire, that they had more than once conceived the design of deposing him in a general assembly of the nation. About the year 1067,

<sup>1</sup> *Infra*, art. 4.

<sup>2</sup> *Supra*, ch. ii. n. 84, note 1.

<sup>3</sup> For a full statement of the facts which we are about to cite, the reader is referred principally to the *Annales Baronii* (ann. 1073, et seq.), and to the Second Dissertation of Nat. Alexander, on the Eccles. Hist. of the Eleventh Century. These two authors cite at great length the principal testimonies of contemporary writers on the facts of which we speak. See also Voigt, *Hist. de Grégoire VII.* 2nd edit. Paris; Fleury, *Hist. Eccl.* vol. xiii. book lxii.; Receveur, *Hist. de l'Eglise*, vol. v. book xxvii. We have already remarked in our Preface, that this latter work is a useful corrective for Fleury's *Hist. Eccl.* and for many others, especially on the character of Gregory VII.

<sup>4</sup> See the authors cited above, ch. i. n. 35, last note.

long before the pontificate of Gregory VII., they had determined on the execution of their plan. They frequently revived it, but did not succeed, in consequence either of the intrigues and promises, or of the momentary amendment of Henry.<sup>1</sup> Pope Alexander II., in the hope of remedying the evils of church and state, had already cited that prince to Rome (in 1073), to give an account of his conduct, and especially to answer to the charge of simony, the chief cause of the troubles and scandals which then afflicted the Church of Germany; but, the pope dying not long after, the citation was of no effect, and the emperor's apprehensions were removed.<sup>2</sup> Gregory VII., Alexander's successor, had no sooner mounted the papal throne than he sincerely thought of devising efficacious means to remove the scandal; but even the least examination of his conduct will prove that he was naturally averse to rigorous measures, and especially against Henry. No person could, in truth, exhibit greater benevolence, mildness, and compassion, than the pope did to a prince so obstinate in his disorders;<sup>3</sup> nor was it until he had exhausted all possible gentle means, both personally and by his legates, that he at last, against his will, had recourse to menaces and severity. Even this was not done except on the request of the Saxon lords, who had been driven to extremities by the emperor's oppressions, and who, despairing of the fulfilment of promises which had so often been violated, had recourse to the Holy See as their only refuge, and the only tribunal capable of checking the despotism and the other crimes of Henry. After having laid before the pope the wretched condition of church and state in Germany, they furthermore urge, "that it is not right to tolerate so wicked a prince on the throne, especially as Rome had not yet conferred on him the regal dignity;"<sup>4</sup> that it is proper to restore to Rome her right of

<sup>1</sup> Voigt, *ibid.* p. 111.

<sup>2</sup> *Ibid.* p. 158, &c.

<sup>3</sup> Voigt, *ubi supra*, pp. 187, &c. 364, &c. Nat. Alexander, *ubi supra*, art. ii. iii.

<sup>4</sup> According to the custom and the constitutional law of Germany, the election made by the German lords of a king of Germany, did not, properly speaking, confer the imperial dignity; he could not take the title of emperor until he had been recognised and crowned by the pope (*infra*, art. iv. and ch. iii. art. ii. § 2). Henry had never complied with this last formality, as he had been crowned, not by the legitimate pope, but only by the anti-pope, Gilbert. Strictly, therefore, he was only king of Germany, and emperor elect, but not

appointing kings ; that it belongs to the pope and to the city of Rome, in concert with the German princes, to elect a man whose conduct and prudence would be worthy of so exalted a rank.”<sup>1</sup> In support of their request, they add, “that the empire was a fief of the eternal city, and that, consequently, the pope, as head and organ of the Roman people, should stand forth for the relief of the empire, in the extremity to which it was now reduced.”<sup>2</sup> It must be observed, that the Saxon lords, while thus urging the pope to severe measures against Henry, were acting in concert with the majority of the German lords, whose discontent had been manifested long before, and was still manifesting itself on all occasions, except when it was repressed by Henry’s power, or calmed by the false promises which that prince was ever ready to make, and to violate the moment he could do so with impunity.<sup>3</sup>

94. *The Pope threatens to excommunicate him—His insulting Answer to that Menace.*

His obstinate persistence in crime, and the general disaffection, which was every day growing stronger against him, compelled the pope to use other means than exhortation and paternal advice ; he accordingly addressed a very strong remonstrance to him to desist from his crimes, and especially to restore to liberty some bishops whom he had imprisoned, and to return their churches and property, which he had unjustly usurped ; in fine, he ordered the legates to threaten him with excommunication,

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emperor. This is the meaning of the assertion of the Saxon lords, “that Rome had not yet conferred on him the regal dignity.”

<sup>1</sup> “Non decere (Henricum IV.) tam flagitiosum, plus notum crimine quàm nomine, regnare ; maximè cum sibi regiam dignitatem Roma non contulerit ; oportere Romæ suum jus in constituendis regibus reddi ; providerent Apostolicus et Roma, ex consilio principum, cujus vita et sapientia tanto honori congrueret.”—*Apologia Henrici IV. apud Urstitium, Germaniæ Historici Illustres, Francofurti, 1670, fol. p. 382* (cited by Voigt, ubi supra, lib. viii. p. 364 ; and by Bossuet, *Defens. Declar. lib. i. cap. xii. ; lib. iv. cap. ix. p. 33*).

<sup>2</sup> “Proponunt deinde imperium beneficium esse urbis æternæ.”—*Aventin, Henrici IV. Vita, ann. 1076* (cited by Voigt, *ibid.*). The word “beneficium” in the writings of the middle ages is often synonymous with “feudus.” See Ducange, *Glossarium Mediæ et Infimæ Latin. verbo Beneficium*. It is so understood by Voigt and his French translator in this passage. We shall see, however, that the empire was not a fief of the Holy See, in the proper and strict sense of the term (*infra, art. iv. n. 142*).

<sup>3</sup> Voigt, ubi supra, pp. 111, 117, 121, 123, 133, &c., 147, &c., 192, &c., 200, &c.

if he did not give immediate satisfaction to the Church.<sup>1</sup> Henry, wounded to the quick by this remonstrance, expelled the legates ignominiously, and convoked a council at Worms, which drew up an accusation against Gregory teeming with the most infamous calumnies, and declaring him deposed from the papal throne.<sup>2</sup> Henry himself notified this decision to the pope in an insulting letter, as unbecoming a crowned head as it was disgraceful to a Christian. What must be especially remarked in that letter is, the fear which the writer therein betrays of the consequences which excommunication might have on his crown. Though in threatening him with excommunication, Gregory had not alluded in the least to deposition, Henry manifestly assumes as certain, that in the opinion of the pope and of many other persons, excommunication could entail that dreaded effect, at least after a certain lapse of time; for he accuses Gregory of having attacked him personally, and having wished to deprive him of his kingdom. "I have been dishonoured by you," he says, "I who hold my power from God himself; I who, according to the tradition of the Fathers, have no other judge but God, and cannot be deposed for any crime, except apostasy from the faith."<sup>3</sup> Henry appears to deny here that a sovereign could then be deposed for any other cause but heresy; a position which, if understood rigorously, is manifestly opposed to the general belief of his time, on the effects of excommunication in the case of sovereigns; a belief which he himself admitted, by his deputies, in the negotiations which preceded his absolution. It is therefore probable that the words of his declaration are not to be taken in their literal sense; and that, in accordance with the usage of ancient ecclesiastical authors, he took the word "heresy" in a general signification, including not only heresy strictly so called, but certain crimes which made a sinner be suspected of heresy; such, for instance, as simony, which was one of the principal grounds of Gregory's complaint against Henry.<sup>4</sup>

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<sup>1</sup> Voigt, ubi supra, p. 364, &c. N. Alexander, ubi supra, art. iii.

<sup>2</sup> Voigt, ubi supra, p. 369, &c. N. Alexander, *ibid.*

<sup>3</sup> Supra, n. 85, note 1.

<sup>4</sup> See on this subject, Launoï, *De Simoniâ*, observ. 3, 4, 5, 11 (*Oper. tom. ii. part. ii.*); Fleury, *Hist. Eccl. vol. xiii. book lxiii. n. 52.*

95. *He is excommunicated and deposed by the Pope—Lawfulness of this Sentence.*

The violent measures adopted by that prince in the Council of Worms, could not remain unpunished. The pope, immediately before he was informed of it, had summoned a council, in which he pronounced against Henry sentence of excommunication and deposition.<sup>1</sup> The sequel of the history, nevertheless, demonstrates that, so far as the sentence regarded the deposition of Henry, it was not definitive, nor was it to have its full effect, except in case that prince should obstinately remain under excommunication during a year, without taking any measure for giving satisfaction to the Church.<sup>2</sup> The sentence, we shall see, was understood in this sense by the adherents both of Henry and of Gregory.

The lawfulness of this sentence was acknowledged by the most pious and enlightened men of the day, such as St. Anselm of Lucca, Gébehard, bishop of Salzburg, Domnison, chaplain of the Countess Matilda, Paul Bernried, Lambert of Schafnabourg, &c.<sup>3</sup> But, as might naturally be expected, the partisans of Henry censured it severely, as an act dictated more by Gregory's personal revenge, than by a zeal for justice. To refute this calumny, the pope wrote to the German lords a letter, in which he explains, in language becoming his high station and character, the grounds of his sentence against Henry. From this letter, it is manifest that, in pronouncing that sentence, Gregory did not pretend to ground himself merely on the divine power of binding and loosing, but on the laws both of God and of man, "according to which Henry deserved, not only to be excommunicated, but also to be deprived of his regal dignity."<sup>4</sup>

<sup>1</sup> Voigt, ubi supra, p. 375, &c. Nat. Alexander, *ibid.* art. iv.

<sup>2</sup> Nat. Alexander demonstrates this point solidly, by the testimony of contemporary authors, and even by the letters of Gregory VII. (*ibid.* art. iv.). Voigt, who asserts the contrary, is in error (p. 378, n. 3).

<sup>3</sup> See their testimonies, cited by Nat. Alexander (*ibid.* art. iv.), and by Labbe (*Concil. tom. x. p. 357*).

<sup>4</sup> "Propter quæ (scelera) Henricum excommunicari non solum usque ad dignam satisfactionem, sed ab omni honore regni, absque spe recuperationis, debere destitui, *divinarum et humanarum legum testatur auctoritas.*" — Paul Bernried, *De Rebus gestis Greg. VII. cap. lxxviii.* (Muratori, *Rerum Ital. Script. tom. iii. part. i. p. 337, col. 1, D.*). Voigt, ubi supra, p. 384. N. Alexander, ubi supra, art. iv. Fleury, *Hist. Eccl. vol. xiii. book lxii. n. 33.*

96. *Consequences of this Sentence.*

These letters of the pope, aided by the spiritual penalties with which he threatened the abettors of the schism, and by the sudden death, which carried off many of Henry's partisans about the same time, considerably weakened the party of that prince.<sup>1</sup> Many even of his most devoted adherents began to have scruples about their conduct, and to respect the pope's sentence; "on the grounds, especially, that according to the laws of the empire, an excommunicated person not obtaining absolution within a year, should be deprived of all his dignities."<sup>2</sup> The small number of those who remained faithful to the emperor, took their stand on the ground, either that his cause had not been sufficiently examined, or that a sovereign could not be excommunicated.<sup>3</sup> Gregory VII. had refuted the former pretext sufficiently in his letter to the German lords; he discusses the second in a letter to Herman, bishop of Metz, who had consulted him on that point; and he demonstrates, that, according both to Scripture and tradition, the power of binding and loosing was given generally, and without restriction, to the apostles, and extended to princes as well as to others.<sup>4</sup>

<sup>1</sup> Voigt, *ibid.* p. 385, &c.

<sup>2</sup> "Dubitare cœperunt an excommunicationem ipsam contemnere, an reverenter observare deberent; maximè cum *in eorum lege contineatur*, ut si quis, infra annum et diem, excommunicationis vinculo non fuerit absolutus, omni careat dignitatis honore."—Nicolas Roselli, Cardinal d'Aragon, *Vita Gregorii VII.* (Muratori, *Rerum Italic. Script.* tom. iii. part. i. p. 307, note 14). Voigt, *ubi supra*, p. 390. The cardinal of Aragon wrote about the year 1360, under the pontificate of Innocent VI.; his testimony on this point is confirmed, as we shall see, by that of Lambert and of Bernried, contemporaries of Gregory VII. This testimony also proves, that later in the middle ages, as well as in the days of Gregory VII., the power of the pope over sovereigns in the temporal order was not considered as being founded merely on the right divine.

<sup>3</sup> Voigt, *ibid.* pp. 389, 390.

<sup>4</sup> "Eis autem qui dicunt *regem non oportere excommunicari*, licet pro magna fatuitate nec etiam eis respondere debeamus, tamen ne impatienter illorum insipientiam præterire videamur, ad sanctorum patrum dicta vel facta illos mittimus, ut eos ad sanam doctrinam revocemus. . . . Sed fortè hoc volunt prædicti viri intelligere quòd quando Deus Ecclesiam suam ter beato Petro commisit, dicens, *Pasce oves meas*, reges exceperit. Cur non attendunt, vel potius erubescendo confitentur, quia ubi Deus beato Petro principaliter dedit *potestatem ligandi et solvendi in cælo et in terrâ*, nullum exceperit, nihil ab ejus potestate subtraxit?"—Greg. VII. *Epistol.* lib. iv. epist. 2 (Labbe, *Concil.* tom. x. pp. 149, 150). D. Ceillier, *Hist. des Auteurs Ecclés.* vol. xx. p. 633. Fleury, *ubi supra*, n. 32. Voigt, *ubi supra*, p. 391, &c. N. Alexander, *ubi supra*, art. iv. last paragraph.

Bossuet, in his *Défens. Déclarat.* supposes, with Nat. Alexander, that the

97. *The Emperor solicits and obtains Absolution.*

The pope, though inflexible in passing sentence against Henry, was yet ever ready to yield and to grant absolution, provided that prince showed himself more tractable. The Saxons, resolving to profit by the state of affairs, renewed their old league against Henry, and once more addressed the Holy See to direct them in the course which they were bound to take.<sup>1</sup> Gregory seized this opportunity to manifest his own pacific feelings towards Henry. He ordered the German barons to use gentle measures with him, in order to give him an opportunity for amendment; he besought them, at the same time, not to think of a new election unless that prince should positively refuse to give satisfaction to the Church.<sup>2</sup> The lords who had so long borne impatiently the emperor's yoke, then met at

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partisans of Henry did not deny precisely that a sovereign could be excommunicated, but solely that he could incur an excommunication which would entail the forfeiture of his temporal rights.—Nat. Alexander, ubi supra, art. x. n. 6. Bossuet, Defens. Declar. lib. i. sect. i. cap. vii.; sect. ii. cap. xxx. This supposition is contrary to the words of Gregory VII., who declares in the commencement of this letter, that he is going to answer those who maintain that a king ought not to be excommunicated. What led Bossuet and Alexander into error appears to be, that they confounded the first letter of Gregory VII. to Herman, which was written in 1076 (lib. iv. epist. 2), with the second, which was written in 1080 (lib. vii. epist. 21). In the former, written before the emperor's final deposition, the pope merely proposes to answer the objection of those who pretended that a king ought not to be excommunicated; in the second, written after the final deposition, he discusses the objection of those who maintained that the pope could not absolve his subjects from their oath of allegiance. "Quod autem postulasti, te quasi nostris scriptis juvari ac præmuniri contra illorum insaniam, qui nefando ore garriunt, auctoritatem sanctæ sedis non potuisse regem Henricum . . . excommunicare, nec quemquam à sacramento fidelitatis ejus absolvere; non adeo necessarium nobis videtur, cum hujus rei tam multa ac certissima documenta in sacrarum Scripturarum paginis reperiantur."—Epist. lib. viii. epist. 21, p. 267. From not having distinguished between these two letters, Nat. Alexander has fallen into a singular contradiction on this point; asserting in one place with us, that Henry's partisans maintained a king could not be excommunicated (art. iv. last paragraph), and in another place supposing that no person held that error (art. x. n. 6).

<sup>1</sup> Voigt, *ibid.* p. 397, &c.

<sup>2</sup> "Quia nos contra eum non movit, Deo teste, sæcularis superbia, nec vana mundi cupiditas, sed sanctæ sedis et universalis Ecclesiæ sollicitudo et disciplina; monemus vos in Domino Jesu et rogamus, sicut carissimos fratres, ut eum benignè, si ex toto corde ad Deum conversus fuerit, suscipiatis, et circa eum, non tantùm justitiam quæ illum regnare prohibet, sed misericordiam quæ multa delet scelera, ostendatis. . . . Quòd si ex corde non fuerit ad Deum conversus, talis ad regni gubernationem, Deo favente, inveniatur, qui ea quæ videntur Christianæ religioni, et totius imperii salutis necessaria, secretâ ac indubitabili promissione observaturum promittat."—Greg. VII. Epist. lib. iv. epist. 3 (Labbe, Concil. ubi supra, pp. 151, 152). Voigt, *ibid.* p. 405, &c.

Tribur, to deliberate on the course to be adopted; and resolved to depose Henry, and elect a successor.<sup>1</sup> Terrified at these measures, the emperor entered into negotiations, and promised, in the most solemn manner, to repair without delay his past injustice; but the only indulgence he could obtain from them was, a suspension of their proceedings until he had visited Rome and submitted his case to the pope; they moreover added, "that if, through his own fault, he was not absolved from excommunication within the year, he should be definitively deprived of his crown, without the least hope of recovering his dignity, which the laws of the empire disqualified him from enjoying, if he had remained during more than a year under sentence of excommunication."<sup>2</sup>

However humiliating were these conditions, Henry thought himself fortunate in obtaining them, and resolved seriously to be reconciled to the pope; "knowing," as contemporary authors assure us, "that he had no other chance of safety, but by obtaining absolution before the anniversary day of his excommunication; and that, if he were not absolved before that day, he would definitively forfeit his crown, without hope of recovery."<sup>3</sup>

<sup>1</sup> Voigt, *ibid.* p. 407, &c.

<sup>2</sup> "Quòd si ante diem anniversarium excommunicationis suæ, suo præsertim vicio, excommunicatione non absolvatur, absque retractatione in perpetuum causâ ceciderit, nec legibus deinceps regnum repetere possit, quòd legibus ultrâ administrare, annum passus excommunicationem, non possit."—Lambert de Schafnabour, *Chronicon*, anno 1076. (Vol. i. of the *Recueil de Pistorius, Rerum German. Scrip. Ratisbonæ, 1726, 3 vols. in fol.*) This passage is cited by Nat. Alexander, *ubi supra*, art. 5; Baronii *Annales*, ann. 1076, n. 57; Voigt, *ibid.* p. 413; Fleury, *Hist. Ecclés.* vol. xiii. book lxii. n. 36.

<sup>3</sup> "*Rec certò sciens omnem suam in eo verti salutem, si ante anniversarium diem excommunicatione absolveretur . . . , optimum factu sibi judicavit, ut Romano pontifici in Italiam occurreret. . . . Hiems erat asperissima; . . . sed dies anniversarius, quo rex in excommunicationem devenerat, è vicino imminens, nullas accelerandi itineris moras patiebatur; quia nisi ante eam diem anathemate absolveretur, decretum noverat communi principum sententiâ, ut et causâ in perpetuum cecidisset, et regnum sine ullo deinceps remedio amisisset.*"—Lambert de Schafnabour, *ubi supra* (Baronii *Annales*, ann. 1076, n. 60; ann. 1077, n. 1). This text is also cited by Voigt, *ubi supra*, pp. 419, 422; but the first part is erroneously attributed to Paul Bernried. The following is the passage from the letter, which agrees perfectly, in substance at least, with Lambert's:—"Ipse verò (Henricus) ejusque complices, communionem utcumque festinaverant recipere, quia, *juxta legem Teutonicorum*, se prædiis et beneficiis privandos esse non dubitabant, *si sub excommunicatione integrum annum permanerent*; cujus adhuc unus mensis superfuit, dum ad reconciliationem redirent."—Paul Bernried, *De Rebus gestis Greg. VII. cap. lxxv.* (Muratori, *ubi supra*, p. 339, col. 2). See also Fleury, *ubi supra*, n. 37.

He accordingly set out for Italy, with the view of arranging matters with the pope. When he arrived at Canossa, where the pope was then residing, ambassadors were sent to announce that the emperor was ready to give whatever satisfaction was desired. The ambassadors were, moreover, to represent to the pope, "that the anniversary day of the excommunication was approaching, and that, if absolution were not given before that time, the prince would, according to the laws of the empire, be judged unworthy of the crown."<sup>1</sup> Moved by his promises, Gregory granted him absolution on condition that he should swear to submit his case to a general assembly of the German barons, and to the judgment of the pope; that they, after attentively examining all the accusations against him, should decide together, whether it was right that he should retain his crown.<sup>2</sup> Unfortunately, on this as on so many other occasions, Henry sought only to gain time, and to avert the storm by false promises. No sooner had he departed from Canossa, after receiving absolution, than he forgot all his engagements, and provoked, by additional crimes, the indignation of the German lords, who, without Gregory's consent, and in spite of his attempts to appease them, deposed him (in 1077) in the Diet of Forcheim, and elected Rodolph of Swabia in his place.<sup>3</sup> It was not until after this election that Henry was excommunicated a second time, and definitively deposed in 1080 by the pope, whose sentence was really no more than a confirmation of the judgment already pronounced by the German lords in the Diet of Forcheim.<sup>4</sup>

98. *Inferences from all these Facts with regard to the General Belief in the Papal Temporal Power.*

From this statement it clearly follows, that, at the time of those deplorable disputes, it was the general belief that, by the laws of the empire, a prince who should remain obstinately

<sup>1</sup> "Ut si ante hanc diem excommunicatione non absolvatur, deinceps, *juxta Palatinas leges, indignus regio honore habeatur.*"—Lambert de Schafnabourg, *Historia Imperatorum* (Script. Rerum Germanic. ubi supra). Voigt, *ibid.* p. 426. Fleury, *ibid.* n. 39.

<sup>2</sup> Voigt, *ibid.* p. 429, &c.

<sup>3</sup> Voigt, *ibid.* p. 436, &c. N. Alexander, *ubi supra*, art. vi. vii.

<sup>4</sup> Voigt, *ibid.* p. 523, &c. N. Alexander, *ubi supra*, art. viii.

under excommunication during a whole year, without taking any means to make satisfaction to the Church, forfeited his dignity, and could be deposed. The emperor, Henry IV., appears, it is true, to suppose the contrary in the insulting letter which he wrote to Gregory VII. in the commencement of those contests;<sup>1</sup> but a letter dictated manifestly by passion, which does not measure its expressions, cannot outweigh the testimony of the contemporary authors whom we have cited,<sup>2</sup> of the German lords in the assembly of Tribur, and of Henry's own ambassadors, who, when pressing Gregory to grant the absolution, insisted strongly on the ancient laws of the empire, "which enacted, that the monarch should be judged unworthy of the empire, if he were not absolved before the anniversary day of his excommunication."<sup>3</sup>

99. *Futile Objections against the Fact that such a Belief prevailed.*

It belongs not to our plan to refute in detail all the objections which might be made against our assertion, that the belief in the temporal effects of excommunication was universal.<sup>4</sup> Such a discussion would detain us too long, and, moreover, most of these difficulties have, we believe, been already anticipated. It was, in truth, impossible that a sentence so terrible as that of Gregory VII., pronounced against an emperor of such a character as Henry IV., would not meet with sharp opposition, principally from the imperial partisans, from those who dreaded his power or had anything to hope from his favour. It should, therefore, inevitably happen, that notwithstanding the pope's sentence, some persons interested in supporting Henry's cause, or dazzled by the sophistry of his advocates, should continue to acknowledge him and to treat with him as a legitimate prince, especially before the definitive sentence which deposed him in 1080. All this opposition, however, it is manifest, cannot, in any manner, invalidate the authority of those positive testimonies already cited, in proof of the fact, that there did then exist the

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<sup>1</sup> *Supra*, n. 94.

<sup>2</sup> *Supra*, n. 97.

<sup>3</sup> *Supra*, n. 97.

<sup>4</sup> These difficulties are proposed by Nat. Alexander, *ubi supra*, art. x.; and by Bossuet, *ubi supra*, lib. iii. cap. vi. &c. They are discussed at length by Bianchi, *Della Potestà della Chiesa*, tom. i. lib. ii.; and more briefly by Mamachi, *Origines et Antiquit. Christ.* tom. iv. p. 249.

general belief in question, on the temporal effects entailed by excommunication, by virtue of the "laws of the empire."

Though this observation is sufficient to answer most of the objections that can be proposed, we think ourselves bound to examine more particularly those which are of such a nature as to make a stronger impression on a certain class of minds. These objections are founded principally on the conduct of Henry's partisans, who despised the papal excommunication; and on the astonishment which that sentence caused in the world.

100. *The Sentence of the Pope treated with Contempt by the Partisans of Henry.*

The first objection, founded on the conduct of Henry's partisans, in whatever light it be considered, is of slight importance. For, first, that prince's party consisted principally of those lords who had shared in his oppressions and robberies; or of simoniacal and incontinent bishops and other ecclesiastics, who had a manifest interest in resisting a sentence of the pope which threatened themselves with excommunication, and with deprivation of their dignities and benefices; secondly, those partisans denied, it is true, the validity of the sentence pronounced by the pope, on the pretext, that it had been issued without sufficient examination; that it was not invested with the requisite forms; some even contended that a sovereign could not be excommunicated.<sup>1</sup> But it does not appear that they denied precisely the effects entailed by excommunication, according to the laws of the empire. On the contrary, these effects are expressly supposed by the ambassadors who solicited from the pope Henry's absolution; thirdly, many of those who had at first adhered to that prince, soon abandoned him; "and for this reason especially, that, according to the laws of the empire, an excommunicated person not obtaining absolution within a year, should be deprived of all his dignities;"<sup>2</sup> fourthly, in fine, admitting even that this terrible effect of excommunication was contested by some partisans of Henry, it is nevertheless certain, that it was admitted generally by the most pious and enlightened men. This fact, which follows clearly from our

<sup>1</sup> Voigt, p. 389, &c.

<sup>2</sup> Supra, n. 96.

statement, is expressly admitted by modern authors, who are least suspected of partiality for Gregory. "This reasoning," (founded on the obligation of avoiding heretics) Bossuet observes, "had made such an impression on pious and enlightened men in the time of Gregory VII., that they renounced allegiance to Henry IV., when he was excommunicated by that pope. It was the custom in those days to insist strongly on the law which prohibited intercourse with the excommunicated; . . . and that was the chief reason assigned by those who renounced allegiance to the emperor."<sup>1</sup>

101. *General Astonishment at this Sentence.*

A more plausible objection may perhaps be urged against us from the general astonishment at Gregory's sentence against the emperor. According to Bossuet,<sup>2</sup> "the novelty of this sentence excited universal astonishment, as we learn from the testimony of Otho, bishop of Frisingen, a distinguished writer of

<sup>1</sup> "Hoc illud argumentum est, quo uno, Gregorii VII. temporibus, viros bonos doctosque permotos fuisse videbimus, ut ab Henrici IV. regis excommunicati obedientiâ recederent. . . . Solebant autem, his temporibus, vehementissimè urgere, quod excommunicatos vitare debeamus; . . . eâque se ratione maximè tuebantur, qui regem respuebant."—Bossuet, Defens. Declar. lib. i. sect. ii. cap. xxiv. p. 348; lib. iii. cap. iv. p. 587, et alibi passim. In support of this testimony of Bossuet, we shall cite in another place those of Fleury and Pfeffel, &c. (*infra*, n. 119).

<sup>2</sup> "Ad rei novitatem obstupere omnes. Testis Otho, episcopus Frisingensis, duodecimi sæculi auctor nobilis, doctrinâ, virtutibus ac genere clarus; ad hæc historicus candidissimus, et Gregorii VII. laudator eximius; sedi verò apostolicæ sic addictus, ut Romanos pontifices, propemodùm impeccabiles faceret. Is enim de Henrico deposito hæc scribit: *Cujus rei novitatem eò vehementiùs indignatione motum suscepti imperium, quò numquam, ante hæc tempora, hujusmodi sententiam in principem Romanorum promulgatam noverat.* Quin ipse etiam Otho, quantum eâ novitate moveretur, his verbis testatur: *Lego et relego Romanorum regum, et imperatorum gesta; et nusquam invenio quemquam ante hunc (Henricum IV.) à Romano pontifice excommunicatum, vel regno privatum.*"—Bossuet, Defens. Declar. lib. i. sect. i. cap. vii.; lib. iii. cap. iii. Nat. Alexander, ubi supra, art. ix. x. Fleury, Hist. Eccl. vol. xiii. 3rd Discourse, n. 18; book lxii. n. 32. Nat. Alexander (*ibid.* art. x. n. 7), as a proof of the general astonishment at Henry's deposition, cites a letter of Gregory VII. himself, addressed to the Germans, in which he asserts, "that all the Latins (that is, the Italians), with very few exceptions, sided with Henry, and accused the pope of excessive severity towards him."—Gregorii Epistol. lib. vii. ep. 3. Nat. Alexander did not advert to the fact, that this letter, which was written in 1079, does not refer to the pope's sentence against the emperor, but to the pope's unwillingness to approve Rodolph's election. This election, as we have already observed (*supra*, n. 97), had taken place without the concurrence of Gregory, who did not consider Henry *definitively deposed*, nor despair altogether of obtaining from him suitable satisfaction. (Voigt, Histoire de Grégoire VII. p. 507, &c.)

the twelfth century, and a warm admirer of Gregory VII. He gives the following account of Henry's deposition: 'The empire was the more indignant at this novel procedure, as there had never before been a similar sentence published against a Roman emperor.'<sup>1</sup> In another passage he thus expresses his own astonishment at the proceeding: 'I have perused again and again the history of the kings and emperors of Rome, but I cannot find that any of them, before Henry IV., had been excommunicated, or deprived of his crown, by the pope.'<sup>2</sup>

The authors who propose this objection fall, we think, into a very strange contradiction. They admit, on the one hand, that in assuming to himself this extraordinary power over sovereigns, Gregory VII. only followed the maxims generally admitted by the most pious and enlightened men of his age;<sup>3</sup> and yet, on the other hand, they pretend, that in attributing this power to himself, "he astonished the whole world by the novelty of his principles."<sup>4</sup> Assuredly, it is difficult to reconcile two assertions so contradictory.

But let us examine the difficulty in itself. Why do they adduce in proof of this general astonishment at Gregory's deposition of Henry, Otho of Frisingen, an author who wrote a full century after that event? Who are the best authorities on the impressions immediately produced by that sentence? is it contemporary authors, who declare that it was in accordance with the laws of the empire, or more recent writers, representing it as a strange novelty?

These authors may, however, be perhaps reconciled, if we reflect that this sentence, though founded on the ancient laws of the empire, was, in a certain sense, really a novelty. It was the first time that the principle sanctioned by the ancient laws was enforced; and there was something astonishing, and even terrible, in seeing it enforced against so great a prince. If the world had just reason for astonishment on beholding St. Ambrose excommunicating Theodosius, and that prince humbly submit-

<sup>1</sup> Otho of Frisingen, *Chronicon*. lib. vi. cap. xxxv. &c. (vol. i. of Urstadius's Collection, *Germaniæ Historici Illustres*. Francofurti, 1670, 2 vols. fol.)

<sup>2</sup> *Idem*, *De Gestis Frider. I.* lib. i. cap. i. (vol. i. of Urstadius).

<sup>3</sup> *Supra*, n. 100.

<sup>4</sup> See authors cited in note 1 to n. 101.

ting to the sentence, there was much greater reason for astonishment when an emperor was, for the first time, deposed, by virtue of the laws of the empire, which annexed so terrible an effect to excommunication.

102. *Temporal Effects of Excommunication with regard to Princes acknowledged in England during the Twelfth Century.*

In the history of subsequent ages the same effect of excommunication is found generally recognised in the other Catholic states of Europe. The emperor Frederick I. (Barbarossa), having been excommunicated and deposed by Pope Alexander III., in punishment of the open protection given by him to the antipope Victor,<sup>1</sup> John of Salisbury, a contemporary author, and one of the most distinguished writers of his day, supposes it as a principle universally admitted, that the emperor's deposition was the consequence of the papal excommunication; and he expresses a wish that the pope should use the same means to compel the king of England to desist from his unjust aggressions on the liberties of the English Church. "I hope in the Lord," he writes in 1167, to William, superior of a monastery in Kent,<sup>2</sup> "that the city of Jericho (that is, the

<sup>1</sup> This sentence of excommunication and deposition was pronounced first in 1160, in the Council of Anagni, and renewed in 1167, in a council of Lateran. Bossuet is wrong in referring it to 1168. See, on this subject, the Annals of Baronius, ann. 1168, n. 32; Fleury, Hist. Eccl. vol. xv. book lxx. n. 43; Bianchi, Della Potesta della Chiesa, tom. ii. lib. v. § 14, n. 2.

<sup>2</sup> "Spes est in Domino, ut, vociferantibus tubis sacerdotilibus, in proximo corruat et Hiericho, et regnum proprio sanguine acquisitum obtineat triumphator Jesus, et in pace possideat quod sui juris est, sponsus et custos Ecclesiæ Christus. Cùm enim Romanus pontifex per patientiam Teutonicum tyrannum diutius expectasset, ut vel sic provocaretur ad pœnitentiam, et schismaticus, abutens patientiâ ejus, peccata peccatis adderet jugiter, ut error in amentiam verteretur; vicarius Petri, a Domino constitutus super gentes et super regna, Italos et omnes qui ei, ex causâ imperii et regni, religione jurisjurandi tenebantur adstricti, a fidelitate ejus absolvit; et Italiam fere totam a facie furentis et præsentis, tantâ felicitate et celeritate, excussit, ut in eâ nihil habere videatur nisi tortores quos evitat interdum, et angustiarum, quas evitare non potest, juge supplicium; abstulit ei etiam regiam dignitatem, ipsumque anathemate condemnavit, . . . donec fructus pœnitentiæ condignos operetur. . . . Et quidem illa sententia effectum sortita est; et hanc, de privilegio Petri latam, videtur ipse Dominus confirmasse. Hoc enim Itali audito, ab eo discedentes, reâdificaverunt Mediolanum, schismaticos expulerunt, Catholicos reducerunt episcopos, et apostolicæ sedi unanimiter adhæserunt. *Sed quid nota recensere?* Hoc ubique locorum fama, quasi præconâ voce, concelebrat; nec aliquibus dubium puto, nisi fortè lateat illos, qui soli, tempestate hæc, exulant domi suæ. Quia ergo ab Oriente jam radius serenitatis illuxit per Christum, et incolunitas Ecclesiæ in capite reparatur, superest spes fidei cer-

kingdom of the devil, and of the persecutors of the Church) may soon fall at the sound of the trumpets of the priests; that Jesus, triumphing over his enemies, may enjoy the kingdom which he purchased by his blood; and that the Christ, the spouse and guardian of the Church, may at length possess his own in peace. In truth, the sovereign pontiff, having long patiently borne with the tyrant of Germany (Frederick I.), to bring him to penance, and that schismatical prince having abused this patience to multiply his crimes, and plunge into the maddest excesses, the vicar of St. Peter, who was placed by God over nations and over kingdoms,<sup>1</sup> has absolved from all allegiance due to him as king or emperor, the Italians and all other subjects bound to him by oath. So promptly and successfully has this sentence of the pope delivered nearly all Italy from the fury of the tyrant, that wherever he turns he is met by enemies from whom he must endeavour to fly, and by chastisements which he cannot escape. This sentence has deprived him of the regal dignity, and subjected him to excommunication, until he does worthy fruits of penance. And the Lord seems to have confirmed this sentence, which was inflicted in virtue of the privilege of St. Peter; for as soon as the Italians heard it, they abandoned the emperor, restored the city of Milan,<sup>2</sup> expelled the schismatical bishops, recalled the Catholics, and unanimously took part with the Holy See. But where is the use of stating facts so notorious? Fame has published them in all places, and they cannot be called into doubt except by persons who have condemned themselves to perpetual solitude within the walls of their houses. The power of Jesus Christ having, therefore, made the calm succeed the storm in the East, and restored security to the Church in the person of her chief, let us hope, with a most firm confidence, that the oil of unction flowing from the head to the beard of the pontiff,<sup>3</sup> may descend also on

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tissima, quod *unguentum a capite in apostolicam barbam exuberans* descendet in caput et oram Ecclesiæ Anglicanæ."—Joannis Sarisb. Epistola 210, ad Wilhelmum, subpriorem Cantiaë. (Biblioth. Patrum, tom. xxiii. Inter Epistolas S. Thomæ Cantuar. lib. ii. epist. 89. Baronii Annales, tom. xii. ann. 1668, n. 53. Rerum Gallic. Script. tom. xvi. Joan. Sarisb. Epist. 57.)

<sup>1</sup> Jer. i. 10.

<sup>2</sup> Ruined by Frederick in 1162, and rebuilt by the Milanese in 1166.—Fleury, Hist. Eccl. vol. xv. book lxx. n. 56; book lxxi. n. 40.

<sup>3</sup> Psalm cxxxii.

the head and members of the English Church," that is, on the primate and the clergy of that Church, who were then persecuted by the king.

It is remarkable that, in this passage, the bishop of Chartres does not examine precisely by what law the deposition of the emperor was a consequence of his excommunication: he simply assumes it as a notorious fact, that the pope had deposed the emperor by excommunication, and that such a consequence of excommunication was generally admitted. He adds, it is true, that the sentence of the pope against the emperor was inflicted in virtue of the power of the keys, or of the privilege of St. Peter. And according to an exposition which we have given in another place,<sup>1</sup> it can be said with truth, that so far as the direct and immediate effect of the sentence, namely, excommunication, was concerned, it was founded on that power: but, in that supposition, the question still remains untouched, by what law is deposition annexed to excommunication? John of Salisbury does not examine that question here; but in another work he states his opinion very plainly on the subject.<sup>2</sup>

103. *Contests of Henry II. with St. Thomas of Canterbury.*

From the last words of the letter just cited, it appears that it was written during the fatal contest about ecclesiastical jurisdiction and immunities, between Henry II. and Thomas of Canterbury. We shall state briefly the occasion and subject of this contest, as it supplies an additional proof of the belief then prevalent in England regarding the temporal effects of excommunication in the case of sovereigns.<sup>3</sup>

No sooner was St. Thomas raised to the see of Canterbury, than he lost, as he had foreseen, the king's favour. Hitherto he had been the special object of the royal bounty. It is diffi-

<sup>1</sup> *Supra*, n. 12.

<sup>2</sup> John of Salisbury, *Polycraticus*, lib. iv. cap. i. ii. iii. In that work he maintains the opinion which attributes to the pope and to the Church a direct power over temporalities. He was the first, in our opinion, that maintained it; and in another place we shall see that it was held by very few before the thirteenth century. See No. 8 of the Confirmatory Evidence at the close of this volume.

<sup>3</sup> For a detailed account of these disputes, see Lingard's *History of England*, vol. ii.; Alban Butler, *Lives of Saints*, Dec. 29; Nat. Alexander, *Dissert.* x. in *Hist. Eccles. sæc.* xii.

cult to discover the precise cause of the sudden change ; some attribute it to the king's displeasure at the archbishop's sudden resignation of the office of chancellor ; others, to the claims which he urged to the lands unjustly taken from his see ; others, to his attempts to reform the clergy of the court, or to his opposition to the reimposition of an obnoxious tax on the clergy, contrary to their ancient immunities. But what led to an open rupture between the king and archbishop was, a dispute regarding ecclesiastical jurisdiction. Thomas complained loudly of the conduct of the lay judges, who frequently cited before their tribunals, ecclesiastics, in contempt of the immunities enjoyed by the clergy, time out of mind, in England, as well as in other Christian states, and which the king himself had, in his coronation oath, sworn to maintain. Henry, annoyed by these protests, used all possible means to compel the archbishop to desist. But not believing himself justified in conscience to sacrifice the rights of his church, St. Thomas persisted in maintaining them, in spite of the king's remonstrances. Hence those fatal dissensions which involved the saint in so protracted persecutions, and at length led to his martyrdom, on the 29th of December, 1170.

104. *Bossuet's Opinion of this Contest.*

The reader will no doubt be pleased to hear Bossuet's opinion of that famous contest. " Henry II., king of England, declares himself an enemy of the Church ; he attacks her both in spirituals and in temporals, in what she holds from God, and in what she holds from men ; he openly usurps her power ; he thrusts his hand into her treasury, which contains the property of the poor ; he injures the honour of her ministers by abrogating their privileges, and oppresses their liberty by restrictive laws. Rash and ill-advised prince ! why did he not foresee in the distance the portentous revolutions which the contempt of the Church's authority would one day cause in his kingdom ; and the unheard-of excesses into which the people would be hurried, when they had once shaken off that necessary yoke." <sup>1</sup>

<sup>1</sup> Panegyrique de S. Thomas de Cantorbéry, point 1st. (Œuvres de Bossuet, vol. xvi. p. 586). This is not the only passage in which Bossuet pronounces so decided an opinion on this matter. See also his opinion on it in the splendid panegyric on the sainted archbishop at the end of book vii. of the *Histoire des Variations* (vol. xix. of Œuvres).

105. *The Belief of which we treat proved by this Contest.*

The history of these deplorable contests furnishes a remarkable proof of the belief then prevalent in England, as well as in the other Catholic states of Europe, on the temporal effects of excommunication in the case of sovereigns. Henry II. obstinately persisting in his unjust pretensions, the pope wrote to him very urgent letters in 1169, ordering him to be reconciled to the archbishop of Canterbury. At first, the king protested with an oath that he would do no such thing, and he even threatened to commit new excesses. One of the legates, however, mildly replied to him: "Sire, use no threats; we fear them not: for we belong to a court that is accustomed to command emperors and kings." Upon this the king seemed to relent, and to be disposed for a reconciliation with the archbishop; he took many of his barons, and of the clergy of his chapel, to witness all the advances which he had already made with that view.<sup>1</sup> The legate's reply manifestly implied a threat of excommunication and deposition, like that with which the pope had punished the emperor some years before; and from the whole narrative, it manifestly follows, that the king of England, far from questioning the pope's power in this matter, was intimidated by the legate's threats, and prepared to satisfy the pope, in order to avert the fatal consequences which resistance might entail on him.<sup>2</sup>

<sup>1</sup> "Aliquantulum ante occasum solis, exiit rex multum iratus, conquerens graviter de domino Papa, quod numquam in aliquo audierit eum; et cum quâdam contumaciâ dixit rex: *Per oculos Dei, ego faciam aliud.* Et Gratianus gratiosè respondit: *Domine, noli minari: nos enim nullas minas timemus; quia de tali curiâ sumus, quæ consuevit imperare imperatoribus et regibus.* Tunc convocati sunt omnes barones et monachi albi, qui præsentés erant, et omnes fere de capellâ; et dominus rex rogavit ut tempore opportuno testificarentur pro eo, quanta et qualia obtulerat, restitutionem scilicet archiepiscopatus et pacis."—S. Thomæ Cantuar. Epist. lib. iii. epist. 61. Fleury, Hist. Eccl. vol. xv. book lxxii. n. 7.

"Some persons," observes M. Hurter, "denounce as insolent the words addressed on this occasion by Cardinal Gratian to the king of England; we regard them as dictated by the profound sense which that prelate had of the obligations of the papal office."—Hurter, Hist. d'Innocent III. vol. ii. book xx. p. 800.

<sup>2</sup> Père Daniel (Hist. de France, vol. iii. pp. 601, 613) supposes that it was this same fear of excommunication and deposition, with which the king of England saw himself threatened, that induced him about the same time to take his son as partner in the throne, in order to insure to the young prince the government of the kingdom in the event of his own deposition. There is, in truth, every reason to believe that this was really Henry's object in getting

106. *The same Belief proved by the History of Richard I.*

About the same period, the history of England also furnishes another remarkable proof of the general belief of princes and people regarding the effects of excommunication in the case of sovereigns. Richard I., king of England, having been made prisoner, in 1192, on his return from the Holy Land, by the emperor of Germany, Henry VI., Queen Eleanor wrote frequently to the pope, Celestine III., to obtain by his intercession the deliverance of her son.<sup>1</sup> Among other cogent arguments in support of her prayer, she tells the pope that, in order to obtain her son's liberty, he need but use the power which God had given him over all the kingdoms and all the powers of the earth, by means of excommunication. "What excuse," she urges, "can palliate your negligence, when the whole world knows that you have the power, if you have the wish to deliver my son? Has not God given to St. Peter, and to you in his person, the power of governing all kingdoms? No king, nor duke, nor emperor, is exempt from your jurisdiction. Where, then, is the zeal of Phineas? Show that it is not in vain you and your brother bishops bear the double-edged swords.<sup>2</sup> You will tell me that this power was given to you over souls, and not over bodies: granted; it is enough for me if you bind the souls of those who keep my son bound in prison: my son you can easily

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his son crowned in 1170; but however well grounded this conjecture may be, it does not seem proved to satisfaction by the ancient author cited by Père Daniel (*Hist. Quadrip. lib. ii. cap. xxxi.*). This work is prefixed to the *Letters of St. Thomas of Canterbury*, published by Christ. Lupus. It must be observed, too, that Dr. Lingard says nothing of this motive which P. Daniel attributes to Henry.

<sup>1</sup> *Petri Blesensis Epistolæ 144, 145, 146 (Operum, p. 227, &c.). Rymer, Fœdera, Conventiones, &c. vol. i. pp. 72-78. D. Ceillier, Hist. des Auteurs Ecclés. vol. xxiii. p. 220. Fleury, Hist. Eccl. vol. xv. book lxxiv. n. 41. Michaud, Hist. des Croisades, vol. ii. p. 553. Bibliothèque des Croisades, part ii. p. 862.*

<sup>2</sup> "Quæ enim excusatio possit vestram desidiâ et incuriam palliare, cùm omnibus liqueat quod liberandi filium meum habetis potestatem, et subtrahitis voluntatem? *Nonne Petro apostolo, et in eo vobis, a Deo omne regnum, omnisque potestas regenda committitur? . . . Non rex, non imperator aut dux a jugo vestre jurisdictionis eximitur. Ubi est ergo zelus Phineas? . . . Appareat quod non in vanum dati sunt vobis et coepiscopis vestris gladii ancipites in manibus vestris.*"—*Petri Blesensis Epist. 145 (Oper. p. 228, col. 2).*

These words allude to the allegory of the two swords, so often used by writers at this period to express the union of the two powers, spiritual and temporal, in the hands of the pope.

liberate, if the fear of God expel from you the fear of man. Restore my son to me, O man of God ; if you be indeed a man of God, and not a man of blood.”<sup>1</sup> Such language manifestly implies that, according to the general belief of the day, the pope had power, by means of spiritual censures, to govern kingdoms and keep sovereigns in the path of duty. This language of the queen of England is the more entitled to consideration, as the letters addressed in her name to the pope were the composition of Peter of Blois, one of the most eminent men of his day, both for piety and learning, and at the time the queen’s secretary.

107. *Proof of this Belief in France under the Second Race of French Kings.*

This general belief was not less prevalent in France than in other countries, under the second race of her kings, and the first period of the third. Lothaire the Young, king of Lorraine, son of the emperor Lothaire I., and grandson of Louis le Débonnaire, having repudiated Teutberga, his lawful wife, and taken in her place a concubine named Valdrada, Pope Nicholas I., one of the most learned and prudent pontiffs that ever filled the Holy See, at first threatened to excommunicate him, if he did not renounce this adulterous connection.<sup>2</sup> Shortly after (in 866) he excommunicated Valdrada, intimating, at the same time, that if he did not inflict the same punishment on Lothaire, it was purely from indulgence for that prince, whom he expected to gain over to a more Christian life by this moderation. Lothaire was alarmed ; he wrote a very submissive letter to the pope, promising to make satisfaction to the Church, and imploring, “ that none of his equals (that is, his near relatives) should be raised above him and placed over his states, lest they might attempt against him measures which he could not brook, and which might cause among them scandalous dissensions.”<sup>3</sup>

<sup>1</sup> “ Sed dicetis hanc potestatem vobis in animabus, non in corporibus fuisse commissam. Esto ; certe sufficit nobis si eorum ligaveritis animas, qui filium meum ligatum in carcere tenent. Filium meum solvere, vobis in expedito est, dummodo humanum timorem Dei timor evacuet. Redde igitur mihi filium meum, vir Dei ; si tamen vir Dei es, et non potius vir sanguinum.”—Petri Blesensis Epist. 146 (Oper. p. 230, col. 2).

<sup>2</sup> For details on this fact, see Baronius, *Annales*, ann. 866, n. 24, &c. ; Fleury, *Hist. Eccl.* vol. xi, book l. n. 43 ; *Hist. de l’Eglise Gall.* vol. vi. ann. 866, 867.

<sup>3</sup> “ Quamobrem cernuo lumine vestram affatim deprecimur Paternitatem,

This language of Lothaire clearly implies, that he admitted in the pope a power of depriving him of his kingdom by means of excommunication. Some authors, it is true, maintain, with Fleury, that Lothaire's excommunication would have been only a pretext devised by his uncles to deprive him of the crown ;<sup>1</sup> but that supposition can hardly be reconciled with Lothaire's letter, which implores the pope, in the most submissive manner, "that none of his equals should be raised above him, and placed over his states."

108. *Proof of this Belief under the Third Race.—Philip I. threatened with Excommunication by Gregory VII.*

But whatever may have been the custom of France in this matter under the second race of her kings, its existence under the first kings of the third race is manifestly proved by the conduct of Popes Gregory VII. and Urban II. to Philip I., and by the testimony of many writers, French included, relating to the scandalous marriage of that prince with Bertrade.

In the letters of Gregory VII., as well as in the other documents of contemporary history, Philip I. appears as one of the most scandalous princes of this age, both by the profligacy of his morals, and the shameful traffic which he carried on of bishoprics and abbeys.<sup>2</sup> Gregory VII., always so zealous for the reformation of the Church and of public morals, having implored him, but without success, to change his conduct, at length thought it his duty to threaten him with excommunication and deposition, if he persisted in his disorders. He wrote a letter to the bishop of Chalons to the following effect, and charged him

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ut dum nos vobis missisque vestris, ut ita dicamus, majoribus seu minoribus, per omnia, super omnes cœquales nostros obedire volumus, non aliquem nostri, Deo miserante super nos extollere, aut terræ præponere, vestræ libeat Paternitati ; ne fortè ipsi talem contra nos moliri velint causam, quam tolerare non valentes, pro regio munimine, inter nos aliquod scandalum evenire possit."—Lotharii Epistola ad Nicolaum I. (Baronii Annales, ann. 866, n. 41).

<sup>1</sup> Fleury, ubi supra.

<sup>2</sup> Ivonis Carnot. Epistolæ 35, 66, &c. See Juret's notes on these letters. Gilbert, abbot of Nogent, confirms the charge of simony against Philip I., describing his character in the following expressive words : "Hominem in Dei rebus venalissimum."—Guib. Monodiarum, sive de Vita sua, lib. iii. cap. ii. (Rec. des Hist. de France, vol. xii. p. 241). Fleury, Hist. Eccl. vol. xiii. book lxii. n. 6, 16, 20. Hist. de l'Egl. Gall. vol. vii. ann. 1073, p. 504, &c. D. Ceillier, Hist. des Auteurs Ecclés. vol. xx. pp. 618, 626.

to communicate it to the king. "Tell that prince, that we can no longer tolerate his injustices to the Church; for he must either renounce the shameful traffic in simony, or the French, involved in a general excommunication, must refuse to obey him, unless they prefer renouncing the Christian religion."<sup>1</sup> Gregory VII. repeats these menaces, in a letter addressed about the same time to the French bishops, whom he accuses of abetting the king's crimes by their weakness and cowardly silence. He accordingly orders them to assemble, in order to concert measures for compelling the king to restore justice and morality in his kingdom; adding, moreover, "that if he persisted in his disorders, every means should, with God's help, be used to deprive him of that kingdom."<sup>2</sup> These means, to which the pope here alludes, are explained in his letter to William, count of Poitiers, whom he requests to combine with the bishops and lords of France to compel the king to reform, and to desist from those outrages, which rendered him odious alike to the French and to foreigners. "Should he persist in his disorders," the pope continues, "we shall cut him off from the communion of the Church in the next Roman council, and all those who pay him honour or obedience."<sup>3</sup> Such language manifestly supposes that the temporal effects of excommunication in the case of sovereigns, were admitted in France, as well as in the other states of Europe. Can any one imagine that Gregory VII., to whom even his adversaries cannot deny great intelligence,

<sup>1</sup> "Indubitanter noverit nos hanc Ecclesiæ ruinam nequaquam diutius toleraturos, et ex auctoritate beatorum apostolorum Petri et Pauli, duram inobedientiæ contumaciam canonicâ austeritate coercituros. Nam, aut rex ipse, repudiato turpi simoniacæ hæresis mercimonio, idoneas ad sacrum regimen personas promoveri permittet; aut Franci pro certo, nisi fidem Christianam abjicere maluerint (*simoniacam hæresim amplectendo vel fovendo*), generalis anathematis mucrone percussa, illi ulterius obtemperare recusabunt."—Gregorii VII. Epistol. lib. i. epist. 35 (Labbe, Concil. tom. x. p. 34). This letter and that cited in the next note were both referred to by Bossuet, Def. Declar. lib. i. sect. i. cap. vii.

<sup>2</sup> "Quod si nec hujusmodi districtione voluerit respiscere, nulli clam aut dubium esse volumus, quin modis omnibus *regnum Franciæ de ejus occupatione*, adjuvante Deo, *tentemus eripere*."—Greg. VII. Epist. lib. ii. epist. 5, p. 74.

<sup>3</sup> "Si in perversitate studiorum suorum perduraverit, et secundum duritiam et impenitens cor suum iram Dei et sancti Petri sibi thesaurizaverit, nos, Deo auxiliante, et nequitia suâ promerente, in Romanâ synodo, a corpore et communione sanctæ Ecclesiæ *ipsum et quicumque sibi regalem honorem vel obedientiam exhibuerit*, sine dubio sequestrabimus."—Greg. VII. Epist. lib. ii. epist. 18, p. 84.

shrewdness, and talents for government, would have used such remonstrances so confidently, in letters addressed to the bishops and lords of France, if the temporal effects of excommunication had not been admitted in that as well as in all other kingdoms?

109. *This Prince excommunicated by Pope Urban II.*

Pope Urban II., whose prudence and intelligence have been generally lauded by historians, held on this matter principles identical with those of Gregory VII. This assertion is proved clearly by his conduct to Philip I., in 1095, in the Council of Clermont, one of the most numerous ever held in France, and attended by a number of bishops and lords from every part of the Christian world.<sup>1</sup> The king having been excommunicated the preceding year by the pope's legate, in the Council of Autun, for his unlawful marriage with Bertrade, had obtained from the pope, in the Council of Placenza, some delay to plead his cause; but as he subsequently gave no hope of conversion, the pope confirmed, in the Council of Clermont, the sentence of excommunication already pronounced against him, and subjected to the same penalty "all who would acknowledge him as king or lord, and who should obey him, or even speak to him, except for the purpose of converting him."<sup>2</sup> These are the very words of William of Malmesbury, a contemporary author, whose narrative is expressly confirmed by the chronicle of Guy, canon of Châlons-sur-Marne, written about the close of the twelfth century, and by the chronicle of Alberic, a monk of Trois-Fontaines, who wrote in the thirteenth century.<sup>3</sup> Bossuet,

<sup>1</sup> Hist. de l'Eglise Gall. vol. viii. book xxii. pp. 50, 51, 76, &c. Fleury, Hist. Eccl. vol. xiii. book lxiv. n. 21, 22, 29, 37, &c.

<sup>2</sup> "In eo concilio (Claromontano), excommunicavit dominus Papa regem Philippum Francorum, et omnes qui eum vel regem, vel dominum suum voverint, et ei obedierint, et ei locuti fuerint, nisi quod pertineret ad eum corrigendum."—Guill. Malmesb. De Gestis Anglorum, lib. iv. cap. ii. (Recueil des Historiens de France, vol. xv. p. 6, and Preface, p. 5). This passage of William of Malmesbury is cited by Bossuet, Def. Declar. lib. iii. cap. xi. p. 621.

<sup>3</sup> "Ibi (in concilio Claromontano) dominus Apostolicus excommunicavit Guibertum Ravennatem, qui se Papam appellabat, et Henricum imperatorem Romanorum, qui eum manu tenebat, Philippum quoque regem Francorum, ejus concubinam, comitis Andegavorum uxorem, et omnes qui eum regem vel dominum vocarent, vel obedirent, quousque veniret ad emendationem, ut alter ab altero discedat."—Alberici, monachi Trium Fontium, Chron. ann. 1095. (Leibnitz, Accessiones Historicæ ad Scriptores Rerum German. Hanoveræ,

no doubt, and some other modern authors, dispute this fact, on the grounds that William of Malmesbury, who first recorded it, was a foreigner, not well acquainted with what was occurring in France, and that the silence of contemporary French authors ought to be taken as a decisive argument against him.<sup>1</sup> Nevertheless, it seems difficult to question the authority of William of Malmesbury on an event so important, happening in so celebrated a council, and at a period when the communications between England and France were so frequent. It is still more difficult to suppose that Guy and Alberic, two French authors, would have stated the fact so confidently in the twelfth and thirteenth centuries, if there were not a tradition to that effect in France. Moreover, it must be borne in mind, that Bossuet and all the modern authors who disputed that fact, had never heard of the testimony of Guy and Alberic on the point.

110. *Effects of this Excommunication, according to contemporary Authors.*

From the testimony of these two authors, one consequence, at least, necessarily follows, viz., that they considered the temporal effects of excommunication in the case of sovereigns a point of law, as plainly recognised in France as in the other states of Europe, in the twelfth century. And on a fact of this nature it is manifestly more natural to depend on authors so ancient, and so very near the time of Philip I., than on modern authors, who cannot produce against the testimony of the ancients any positive testimony; nothing, in fact, but mere speculative arguments, which are very far from being beyond the reach of criticism.

111. *These Effects acknowledged by Ivo of Chartres.*

Though the testimony of these authors were not considered decisive, all doubts on the matter would be fully removed by the

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1700, 4to. tom. ii. p. 144.) In the passage just cited, Alberic relates the fact on the authority of Guy, chanter of the church of St. Stephen of Chalons, who died in 1203; he composed a Chronicle, containing an abridgment of universal history from the beginning of the world down to the period at which he wrote. The preface to Leibnitz's work contains the most ample details on Alberic's Chronicle, and on the ancient authors whom it follows. See also the *Hist. Littéraire de la France*, vol. xvi. p. 132, et alibi passim.

<sup>1</sup> Bossuet, ubi supra. *Recueil des Hist. de France*, vol. xv. ubi supra; vol. xvi. preface, p. lxx.

authority of Ivo of Chartres, one of the most distinguished prelates in France, both for learning and piety, during the reign of Philip I.<sup>1</sup> One of his letters has been already cited, which clearly supposes that the temporal effects of excommunication were admitted in France, as well as in other countries during his time.<sup>2</sup> But besides that letter he wrote many others, relating to Philip's scandalous marriage, all of which suppose that the temporal effects of excommunication were admitted in France, in the case of sovereigns, as well as of private individuals. When that prince was threatened with excommunication, in 1092, on account of the marriage, the bishop of Chartres wrote to him repeatedly, urging him to reform his conduct; and among other motives of amendment, he dwells especially "on the extreme danger to which he exposes his crown and all his kingdom, and the loss which he ought to apprehend, as well of his temporal kingdom as of the eternal kingdom," should he obstinately persist in his sin.<sup>3</sup> Pope Urban II. having, about the same time, addressed an encyclical letter to all the archbishops and bishops of France, authorizing them to compel the king by canonical procedure to separate from Bertrade, the bishop of Chartres, by his ascendancy over the bishops, succeeded for some time in keeping this letter secret, in order to prevent, as far as possible, a rising of the whole kingdom against the king.<sup>4</sup> In fine, the king, after having often repented and relapsed, and after several excommunications and absolutions, being again excommunicated in 1100, in the Council of Poitiers, by the legates of Pope Paschal II., the bishop of Chartres induced the pope to act leniently, in order to save the

<sup>1</sup> Fleury, Hist. Eccl. vol. xiii. book lxiv. n. 6. Daniel, Hist. de France, vol. iii. ann. 1092, &c.; Hist. de l'Eglise Gall. vol. viii. ibid.

<sup>2</sup> See supra, ch. i. art. iii. n. 80, &c.

<sup>3</sup> "Nec ista (quæ contra illegitimas regis nuptias Ivo objiciebat) contra fidelitatem vestram, sed pro summâ fidelitate dicere me arbitror; cum hoc et animæ vestræ magnum credam fore detrimentum, et coronæ regni vestri summum periculum. . . . Caveat ergo sublimitas vestra ne in horum incidatis exemplum, et ita cum diminutione terreni, regnum amittatis æternum."—Ivonis Carnot. Epist. 15 (Duchesne, Historiæ Francorum Scriptores, tom. iv.). See also letter 13. These letters are the 5th and 7th in the Recueil des Hist. de France of D. Bouquet, vol. xv.

<sup>4</sup> "Hæ quidem litteræ jam publicatæ essent; sed pro amore ejus, feci eas adhuc detineri, quia nolo *regnum ejus*, quantum ex me est, *adversus eum aliquâ ratione commoveri*."—Ivonis Epist. 23 (alias 14), ad Widonem dapiferum.

kingdom from the danger to which it was exposed by the king's excommunication.<sup>1</sup> These different letters manifestly refer, in our opinion, to the temporal effects which excommunication at that time entailed, according to the general usage and belief of France, as well as of all other Catholic states of Europe.

112. *Futile Objections against this Testimony.*

Some authors, we are aware, contend that this language of the bishop of Chartres refers, not to the temporal effects of excommunication, but to the pretext which the king's excommunication would supply to his disaffected barons to raise the kingdom against him.<sup>2</sup> This explanation is for many reasons exceedingly improbable; for, in the first place, the bishop of Chartres supposes that the king is exposed by excommunication to the revolt, not of some of his barons, but of the whole kingdom; which need not be feared, if the excommunication were a pretext for some only of the barons: secondly, supposing even that the danger was apprehended from some only of the barons, the prelate's letters imply, at least, that their revolt would have been powerfully assisted by the general belief on the temporal effects of excommunication; otherwise, it is utterly incredible that their intrigues against the throne could have been so formidable as the letters manifestly suppose. Our interpretation of these letters is, moreover, confirmed by the impression which historians, for the most part, give of the state of the public mind in France at this period. For the king, notwithstanding his repeated promises to dismiss Bertrade, having taken her back again in 1098, and being excommunicated for that crime in the Council of Poitiers, thought it advisable in so critical a conjuncture to take as colleague in the throne his son Louis, who was then only nineteen or twenty years of age. The object of this measure, according to the common opinion of historians, was, that the king's excommunication was

<sup>1</sup> "Nostræ suggestionis summa est, ut imbecillitati hominis amodo, quantum cum salute ejus potestis, condescendatis, et terram quæ ejus anathemate periclitatur ab hoc periculo eruatis."—Ivonis Epist. 144 (alias 89), ad Paschalem Papam II.

<sup>2</sup> Blondel, *De Formula, Regnante Christo*. Amstelodami, 1646, 4to. sect. ii. § 15. *Hist. de l'Eglise Gall.* vol. viii. p. 43.

a plausible pretext for the more powerful vassals to revolt.<sup>1</sup> Such a motive implies clearly, that the revolt of the vassals, in these circumstances, would have been powerfully seconded by the general belief, that excommunication entailed the forfeiture of all, even temporal dignities.

113. *This Belief continued in full force after the Reign of Philip I.*

This belief continued in France, as well as in the other states of Europe, long after the reign of Philip I. ; for the most celebrated writers of the twelfth and thirteenth centuries, in that kingdom as well as in others, continued to maintain, as a generally admitted principle, the subordination of the temporal to the spiritual power, in this sense, that sovereigns could, in certain cases, be judged and even deposed by the authority of the Church, or of the Holy See.<sup>2</sup> The fear of these terrible effects of excommunication appears, in truth, to have been the principal motive which prevented Philip Augustus from urging as powerfully as he was inclined, the pretensions of his son Louis to the throne of England, against John Lackland, whom the barons had generally abandoned.<sup>3</sup>

114. *Objection against the Existence of this Belief founded on the Conduct of some Sovereigns.*

Against our opinion on the existence of this general belief, it may perhaps be objected, that many sovereigns, though under sentence of excommunication, continued to govern their states and to be acknowledged as legitimate sovereigns. If we believe Fleury, Bossuet, and some other writers, Philip I., king of France, Frederick I., emperor of Germany, and many other sovereigns, never forfeited their authority, and were not regarded as deprived of their rights by excommunication.<sup>4</sup>

<sup>1</sup> Daniel, *Hist. de France*, ubi supra, pp. 398, 613. Velly, *Hist. de France*, vol. ii. p. 425. *Biographie Universelle*, art. Philippe I.

<sup>2</sup> See infra ch. iii. art. i. n. 194.

<sup>3</sup> Lingard, *Hist. of England*, vol. iii. ann. 1215, 1216. *Hist. de l'Eglise Gall.* vol. x. *Hist. d'Innocent III.* by Hurter, vol. i. pp. 747, 760. Daniel, *Hist. de France*, vol. iv. ann. 1216.

<sup>4</sup> Fleury, *Hist. Eccl.* vol. xiii. book lxiv. n. 21, 29 ; vol. xv. book lxx. n. 43 ; book lxxiii. n. 6. Bossuet, *Defens. Declar. lib. iii. cap. x. xix. xx.*

115. *This Objection answered by some General Observations.*

The limits which we have prescribed to ourselves not admitting of a detailed examination of all the facts urged in support of this objection,<sup>1</sup> we must confine ourselves to some general observations which fully solve it, and which more especially refute the objection founded on the conduct of Philip I. and of Frederick I.

It must be remembered, in the first place, that according to this custom, for which we are contending, the sentence of excommunication did not, *of itself*, imply the forfeiture of civil rights; it did not produce that effect until after the lapse of a certain time, which was much longer in the case of sovereigns than of private individuals. Bossuet himself expressly acknowledges this fact, when he states that the popes made a marked distinction between excommunication and deposition, and often separated one from the other.<sup>2</sup> It is not strange, therefore, that an excommunicated prince should often continue to govern his states, and to be acknowledged as their legitimate sovereign. In the second place, it must be observed, that besides this delay, granted to the excommunicated by ordinary usage, before the forfeiture of their temporal rights, they sometimes obtained a more considerable delay, either by appeals, or by promises of submission, or by negotiations dexterously concocted, to elude a definitive sentence. Thus, Philip I., when excommunicated in the Council of Autun, in 1094, obtained a respite the following year in the Council of Placenza, and was not definitively excommunicated until the Council of Clermont, which was held about the close of the year 1095.<sup>3</sup>

In the third place, we observe, that the pope, who alone, according to the general usage and belief, had a right to pronounce sentence of deposition against sovereigns remaining obstinately under excommunication, frequently deferred that sentence, either from indulgence for the princes themselves, or

<sup>1</sup> For explanation of these facts, see Bianchi, *Della Potesta et della Politia della Chiesa*, Roma, 1745, 5 vols. 4to. See especially vol. ii.

<sup>2</sup> "Anno 1163," Bossuet writes, "in concilio Turonensi excommunicationem renovat (Alexander III.), nullá hactenus depositionis mentione; hanc enim ab excommunicatione Romani pontifices separabant."—Bossuet, *Def. Declar.* lib. iii. cap. xix. p. 654. See also ch. x. of the same book, last paragraph.

<sup>3</sup> See Bossuet and Fleury, *ubi supra*.

from a hope of their amendment, or from an apprehension of the fatal consequences which it might produce. This latter motive, according to Bossuet, prevented Popes Gregory VII. and Urban II. from pronouncing sentence of deposition against Philip I.<sup>1</sup> This conjecture of the bishop of Meaux is certainly not unquestionable for the particular case of which he speaks ; but it may be applied to explain other facts of the same kind.

Finally, it must not be forgotten, that sovereigns, as well as private individuals, may sometimes have attributed to themselves, notwithstanding the censures of the Church, spiritual and temporal rights of which they were really deprived.<sup>2</sup> Criminals, at all times, have slighted the sentence which condemned them, and even affected to despise it. Sovereigns especially have ample means at command to support their pretensions, in similar cases, and to attach to their party some of their subjects, and even foreign princes. But in such cases we manifestly should not judge of the law by deeds, which might be themselves censurable ; but should rather judge of deeds by the law, especially when the latter is otherwise well attested by the general belief of princes and of people, and by the admissions of sovereigns themselves, at times when they were not interested in denying it.

116. *Objection from the Case of Philip I. answered.*

Though these general observations sufficiently solve the objection, we shall offer a few reflections on the case of Philip I. and of Frederick I.

And first, with regard to the king of France, it has been very incorrectly asserted that the sentence of excommunication pronounced against him for his marriage with Bertrade, “had not in any degree impaired his royal authority.”<sup>3</sup> On the contrary, it is certain, “that during the whole period of his excommunication, he never wore the diadem, or the purple, or held any solemn court, according to the usual custom of kings.”<sup>4</sup> These are

<sup>1</sup> “Neque his (depositionis minis) Franci auscultabant,” Bossuet observes ; “et ab iis adversus Francos Romani pontifices temperabant.”—Bossuet, *Def. Declar. lib. iii. cap. x.*

<sup>2</sup> See the authors cited above, note 1, n. 81.

<sup>3</sup> Bossuet and Fleury, *ubi supra.*

<sup>4</sup> “Tempore Urbani et Paschalis, Romanorum pontificum, fere quindecim

the very expressions of Orderic Vitalis, a contemporary author. From this testimony it clearly follows, that according to the usage received in France, excommunication deprived the monarch of certain rights, and certain temporal honours, even before his deposition had been pronounced.<sup>1</sup>

Philip, it is true, though deprived of these honours, and after the sentence pronounced against him by Pope Urban II., in the Council of Clermont, continued to govern his states, and was by them regarded as legitimate sovereign. But it should be remembered, that, alarmed at the sentence, he appeared to repent of his crime, and took measures to satisfy the pope, who actually absolved him in the Council of Nîmes, in 1096.<sup>2</sup> The negotiations which prepared the way for this event, should naturally suspend the effect of the sentence. It must be added, too, that as the text of the sentence is not extant, it would be impossible to say whether Philip's deposition was pronounced absolutely and definitively, or only conditionally, that is, in the event of his not making atonement to the Church within a limited time.

117. *Answer to the Case of Frederick Barbarossa.*

The objection founded on the case of Frederick Barbarossa, is equally inconclusive against the general belief which we say existed in the middle ages. This prince certainly, even after the sentence of deposition pronounced against him by Pope Alexander III., was still reputed and styled emperor by a great number of his subjects, especially in Germany, and even in Italy by the partisans of the schism which he abetted; it is equally certain, however, that he was regarded by other nations

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annis interdictus fuit (Philippus). Quo tempore, nunquam diadema portavit, nec purpuram induit, neque solemnitatem aliquam more celebravit."—Orderic Vital. Hist. Eccl. lib. viii. ann. 1092. Recueil des Hist. de France, vol. xii. p. 650; vol. xiv. Preface, § 10, n. 40. Hist. de l'Eglise Gall. vol. viii. p. 50.

<sup>1</sup> Something similar occurs in the penance imposed by St. Dunstan, archbishop of Canterbury, on Edgar, king of England, ann. 967; and in the conditions of the absolution given to Henry IV. by Gregory VII. in 1076. On this latter point, see Voigt, Hist. de Grég. VII. pp. 428, 430; Fleury, Hist. Eccl. vol. xiii. book lxii. n. 39, 40. On Edgar, king of England, see Labbe, Concil. tom. ix. p. 702; Lingard, Anglo-Saxon Church, ch. xii.; Fleury, *ibid.* vol. xii. book lvi. n. 28.

<sup>2</sup> See Bossuet and Fleury, *supra*.

and by faithful Catholics as really deposed. This is plainly declared in many letters of John of Salisbury, especially in that already cited,<sup>1</sup> which he addressed to William, sub-prior of the abbey of Canterbury, on the subject of the contests between the king of England and St. Thomas of Canterbury. The author of that letter assumes, as admitted and notorious facts, first, that the pope had really deposed the emperor by excommunicating him; secondly, that this sentence had detached from Frederick, and raised in revolt against him, the greater part of his states in Italy. All John of Salisbury's statements on this matter are confirmed by the acts of Alexander III., part of which were published by Baronius, from the archives of the Vatican, and by the more complete publications of Muratori, in the middle of the last century, in his Collection of Italian historians.<sup>2</sup> From these acts it appears, first, that Frederick was regarded in the East as well as in the West, as deposed from the imperial throne, after the sentence of deposition pronounced against him by Pope Alexander III.; and that, under this belief, the emperor Manuel besought the pope to grant to him the sceptre of which Frederick had been justly deprived.<sup>3</sup> Secondly, that Frederick, after long and fruitless attempts to retain the people of Italy under his sceptre, was at length necessitated to humble himself before the pope, and earnestly to beg absolution, which he eventually obtained in the year 1177.<sup>4</sup>

<sup>1</sup> See *supra*, n. 102. See also letters 150, 178, 182, 211, 233, 270, of the same author.

<sup>2</sup> Baronius, *Annal.* tom. xii. ann. 1170, n. 54, &c.; ann. 1176, n. 15; ann. 1177, n. 13, et alibi passim. Muratori, *Rerum Italicarum Scriptores*, tom. iii. p. 459, &c.

<sup>3</sup> "Unde (Emmanuel Magnus, Constantinopolitanus imperator) rogat et postulat quatenus, prædictæ ecclesiæ adversario imperii Romani coronâ privato, eam sibi, prout ratio et justitia exigit, restituatis."—Baronii *Annales*, ann. 1170, n. 54. Muratori, *ubi supra*, p. 460, col. 2.

<sup>4</sup> "Fridericus verò, cùm . . . in cunctis actionibus suis eventus semper sinistros haberet, . . . pacem Romanæ Ecclesiæ, quam præ cæteris rebus affectare se publicè asserebat, per se ipsum requirere studuit. . . . Quamvis autem causa ejus, ab eo tempore quo cœpit ecclesiam Dei persequi, semper, ultore Domino, in deterius haberetur, et nulla eum adversitas atque difficultas laboris a suo incepto retraheret; modò tamen ita vehementer a supremo judice percussus et humiliatus est, quod ad pacem Ecclesiæ, quam hactenus in duplicitate quæsi-verat, inclinari humiliter videretur, et eam, per majores personas imperii, a domino Alexandro papâ et ejus fratribus, suppliciter postularet."—

From these testimonies, we may infer how little credit is due to the assertion of Fleury and of other writers, "that after the sentence of deposition pronounced by Alexander III., Frederick was still recognised emperor, and that his Catholic subjects, even ecclesiastics, obeyed him as faithfully as before."<sup>1</sup>

118. *This General Belief admitted even by Bossuet.*

In confirmation of all these statements hitherto advanced, it may be observed, moreover, that this general belief of princes and people, during the middle ages, on the temporal effects

Baronius, ubi supra, ann. 1176, n. 15. Muratori, ubi supra, p. 465, col. 2; p. 467, col. 2. Fleury, *Hist. Eccl.* vol. xv. book lxxiii. n. 1, &c.

Some modern authors have added to the history of this reconciliation some fabulous circumstances, especially an overdrawn picture of the pope's haughtiness to the emperor. If we believe these authors, Frederick, having prostrated himself at the pope's feet in making the promise of obedience, the pope set his foot on the suppliant's neck, pronouncing at the same time the words of the psalm, "Thou shalt walk on the asp and the basilisk, and thou shalt trample under-foot the lion and the dragon."—Psalm xc. Stung with this indignity, Frederick sharply replied, "It is not you, but Peter I am obeying." The pope retorted, "Not Peter, but me." This ridiculous anecdote is sufficiently refuted by the silence of contemporary authors, such as Matthew Paris, William of Tyre, Roger Hoveden, and Romuald, archbishop of Salerno, who has left the most detailed account of the reconciliation of Frederick with the pope. (See Romuald's Chronicle, in tom. vii. of Muratori's *Rer. Ital. Script.*) This anecdote is moreover flagrantly at variance with the character of mildness and gentleness, of which Alexander III. has left indubitable proofs. Accordingly, it is rejected as a fiction by the majority of critics, and even by those whose well-known aversion to the Holy See would naturally incline to admit all statements in accordance with that prejudice. It is, moreover, expressly denied by Cardinal Baronius (*Annal.* ann. 1177, n. 85, &c.), Dupin (*Histoire Ecclésiastique*, xii. siècle, part ii. p. 426), and Nat. Alexander (*Hist. Eccles. Sæculi xii.* cap. ii. art. 9). Bossuet never mentions it in his *Defens. Declarat.* (ubi supra), though he gives there a very long account of the contests between Frederick and Alexander III. Neither does Fleury speak of it in his *Eccles. Hist.* (ubi supra). In fine, it is also passed over in silence by Daunou, in his *Essai sur la Puissance Temporelle des Papes*, in which he has so sedulously collected whatever might excite and envenom hatred against the Holy See. (See, on this subject, Alban Butler, *Lives of the Saints*, last note on the life of St. Galdin, archbishop of Milan, 18th April.) It may, indeed, be not unreasonably conjectured, that this anecdote was but a malignant application to Pope Alexander III. of the conduct of Justinian II. to Leontius and Tiberius Absimar, usurpers of the empire. He ordered them to lie prostrate on the earth before his throne, and trampled them under-foot in the Hippodrome, the people in the mean time exclaiming aloud, "Thou hast walked on the asp and the basilisk, and thou hast trampled under-foot the lion and the dragon." (Fleury, *Hist. Eccl.* vol. ix. book xii. n. 11. Lebeau, *Hist. du Bas-Empire*, vol. xiii. book lxii. n. 33.) This was not the only occasion on which Justinian exhibited that cruel and vindictive temper which made him so odious to his subjects.

<sup>1</sup> Fleury, *Hist. Eccl.* vol. xv. book lxxiii. n. 60. Bossuet, *Defens. Declarat.* lib. iii. cap. xix.

of heresy and excommunication, in the case of sovereigns, is expressly admitted by modern authors, even the most opposed to these maxims. Bossuet, we have already seen, admits that in the time of Gregory VII., according to the general belief of the most pious and enlightened men, excommunication entailed the forfeiture of all dignities, however temporal.<sup>1</sup> The same prelate has no difficulty in admitting, that in those ancient times, the Church often acted on that principle, with the consent and by the concession of temporal princes themselves. It is thus that he accounts for the penalty of deposition and the other temporal penalties decreed against heretical princes, in the third and fourth Councils of Lateran. "These depositions," he asserts, "were decreed, not in virtue of the power of the keys, but by the concession of princes, without which such decrees would have been null."<sup>2</sup> If, then, many princes acknowledged that they could be deposed by the Church (for crimes of heresy and apostasy), it is not that they recognised in bishops any power over temporalities; but because, so great was the hatred of those princes for heresy, that they voluntarily subjected themselves to the most rigorous of penalties, should they be so unhappy as to fall into it.<sup>3</sup>

119. *Admissions of Fleury on the same Subject.*

The abbé Fleury, an intimate of Bossuet, was equally well known for his opposition to ultramontane maxims, and for the severity with which he censures, in many of his works, the conduct of councils and popes that had deposed temporal princes

<sup>1</sup> See Bossuet's testimony, *supra*, n. 100.

<sup>2</sup> "Ergo hæc demonstravimus; . . . quæ a sacris conciliis œcumenicis, circa temporalia, decreta sint, numquam auctoritate clavium facta esse; numquam adscriptum eâ auctoritate fieri; imò explicatum fieri, mutuâtâ a regibus potestate; neque umquam ea decreta, nisi consensu principum, valuisse."—Defens. Declar. lib. iv. cap. xvii. n. 13, tom. xxxii. p. 71. It is principally in this fourth book that Bossuet discusses and explains these decrees. On the same subject, the reader may consult the *Essai Historique et Critique sur le Suprême Temporelle du Pape et de l'Eglise*, by Monseigneur Affre, archbishop of Paris. (Paris, 1829, 8vo.) The author adopts fully that observation of Bossuet, and confirms it. See especially ch. xvi. xvii. xviii.

<sup>3</sup> "Quod ergo quidam fortè principes se propter eas causas (hæresis atque apostasiæ) deponi posse concesserint, id non oritur ex ullâ potestate quam in pontificibus agnoscant ad ordinanda temporalia; sed quod hæresim detestati, omnia in se ultro permittant, si eâ se peste infici sinant."—Defens. Declar. lib. iv. cap. xviii. p. 73.

in former times. Nevertheless, even in those very passages in which he states his opinions most unreservedly, he expressly acknowledges, that the maxims on which popes and councils justified these extraordinary acts of authority, were then generally admitted by sovereigns themselves. "As soon as the bishops," he observes, "found themselves become barons, and admitted to a share in the government of the state, they imagined they possessed as bishops, what they possessed only as barons; they pretended to judge kings, not only in the tribunal of penance, but in councils; and kings, through ignorance of their own rights, did not protest against the assumption.<sup>1</sup> Such progress did this opinion, that bishops could depose kings, make (during the eighth and ninth centuries), that kings themselves admitted it, as appears from the petition presented by Charles the Bald to the Council of Savonnières, in 859, against Venilon, archbishop of Sens."<sup>2</sup> Thus, by Fleury's own admission, the bishops possessed then, if not as bishops, at least as barons, the power of deposing kings; and kings did not dispute it. In this, he supposes, we admit, that sovereigns showed their ignorance of their own rights; but does it not seem marvellous, that Fleury should thus attribute to all sovereigns, during so many centuries, so great an ignorance of their rights: we shall see that there are not the least grounds for such an imputation.<sup>3</sup>

According to the same author, it was a principle universally admitted in the time of Gregory VII., that excommunication entailed the loss of all civil rights; so that the partisans of King Henry had no other defence to make, except that a sovereign could not be excommunicated; a position utterly untenable, as Fleury himself acknowledges in the same passage. "More than two hundred years," he says, "before Gregory VII., popes had commenced to decide authoritatively on the rights of crowns.<sup>4</sup> Gregory VII. adopted these novel maxims, and carried them to

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<sup>1</sup> Fleury, *Hist. Eccl.* vol. xiii. 3rd Discourse, n. 10.

<sup>2</sup> *Ibid.* vol. xix. 7th Discourse, n. 5.

<sup>3</sup> *Infra*, ch. iii. art. ii.

<sup>4</sup> Fleury alludes principally to what he had already said (n. 10, same Discourse) on the conduct of Pope Adrian II. to Charles the Bald, who had seized the kingdom of Lothaire, to the prejudice of the emperor Louis II., son of Lothaire. In another place we have suggested explanations of the pope's conduct on that occasion; *supra*, ch. i. art. i. n. 30, 31.

greater lengths,<sup>1</sup> openly asserting that, as pope, he had a right to depose sovereigns who were rebellious to the Church. These pretensions he grounded principally on excommunication. The excommunicated must be shunned; there can be no communication, no conversation with them, not even a salutation, according to the apostle St. John; therefore, an excommunicated prince ought to be abandoned by all; it is not allowed to obey him, to receive his orders, to approach him;—he is excluded from all society with Christians. It cannot be denied, that so indisputable did these maxims then appear, that the advocates of King Henry had no other defence to offer, except that a sovereign could not be excommunicated: but Gregory VII. could easily prove that the power of binding and loosing was given to the apostles in general terms, without any distinction of persons, but including princes as well as others.”<sup>2</sup>

120. *Opinion of Dr. Lingard.*

Dr. Lingard adopts substantially the same opinion in his *History of England*, in which he accounts for the conduct of the popes of the middle ages to sovereigns, by the principles then generally recognised on the subordination of the temporal to the spiritual power; principles resulting, as he conceives, from a combination of religious maxims with feudal jurisprudence. “The reader has seen that Innocent grounded his temporal pretensions on the right which he possessed of judging of sin and of the obligation of oaths.<sup>3</sup> This doctrine, hostile as it might be to the independence of sovereigns, was often supported by the sovereigns themselves. Thus, when Richard I. was held in captivity by the emperor, his mother Eleanor repeatedly solicited the pontiff to procure his liberation by the exercise of that authority which he possessed over all temporal princes.<sup>4</sup> Thus also, John himself had, as we have seen, invoked the aid of the same authority to recover Normandy from the king of

<sup>1</sup> We shall see that Gregory VII. evidently did not push these principles farther than his predecessors; he merely applied them more rigorously, under the pressure of more trying circumstances.

<sup>2</sup> Fleury, *Hist. Eccl.* vol. xiii. 3rd Discourse, n. 18.

<sup>3</sup> The author alludes to a Decretal of Innocent III., of which we shall speak in another place, ch. iii. note 1, n. 208, &c.

<sup>4</sup> Some details on this important fact are given above, n. 106.

France (Philip Augustus). At first, indeed, the popes contented themselves with spiritual censures; but in an age when all notions of justice were remodelled after the feudal jurisprudence, it was soon admitted, that princes by their disobedience became traitors to God; that, as traitors, they ought to forfeit their kingdoms, the fiefs which they held of God; and that, to pronounce such sentence belonged to the pontiff, the vicegerent of Christ upon earth. By these means, the servant of the servants of God became the sovereign of the sovereigns, and assumed the right of judging them in his court, and of transferring their crowns as just it might seem to him."<sup>1</sup>

121. *Opinion of Michaud.*

In his History of the Crusades, Michaud assumes it as an indisputable fact, that the maxims on which Gregory VII. and his successors grounded their pretensions were generally admitted long before the reign of that pope, not only by private individuals, but also by sovereigns themselves, however great the interest they should have in denying them. "The pretensions of the popes," he asserts, "in this matter, were unquestionably favoured by the common belief of the age. Occasional complaints there were of unjust decisions issuing from the tribunal of the heads of the Church; but their right of judging the Christian powers was never questioned; and their judgments were almost always received by the people without murmur."<sup>2</sup> Every one knows that the authority of the successors of St. Peter had already made immense progress before the Crusades; the most powerful monarchs had already bowed their heads before the thunders of the Vatican; and all Christendom seemed to have already adopted that maxim of Gregory VII., that the

<sup>1</sup> Lingard, History of England, ann. 1213. In place of the words, "s'attribua le droit," in the present edition of this work, the author used in the first edition, "s'arrogé le droit," in accordance with M. Roujoux's translation of Lingard. The change has been grounded on some observations of Dr. Lingard himself, to whom a copy of the first edition had been presented, and who called attention to the fact, that the English word "assume," which he used, had a much milder sense than the word "arrogate,"—the former implying neither censure nor approbation, but simply that the pope then began to exercise the right of which there is question here.

<sup>2</sup> Michaud, Hist. des Croisades, 4th edit. vol. iv. p. 163. The judgments of which he speaks, it must not be forgotten, were never contested by those who had no interest in contesting them.

pope, in his capacity of Vicar of Jesus Christ, should be superior to all human power.”<sup>1</sup>

122. *Ferrand's Opinion.*

Similar admissions have been made by another modern writer, who has been most severe in his censures on the conduct of the popes of the middle ages towards sovereigns. “Unfortunately,” he complains, “almost all monarchs, by a most inconceivable infatuation, laboured to accredit in public opinion an arm which neither had nor could have any strength except from public opinion alone. When it assailed one of their rivals or enemies, they not only approved it, but they even sometimes solicited excommunication; and by undertaking to execute the sentence which deprived a monarch of his crown, they subjected themselves to that usurped jurisdiction.”<sup>2</sup>

123. *Remarkable Admissions of Protestant Authors.*

It were easy to multiply testimonies from Catholic authors on this subject; but we must invite special attention to the fact, that this general belief is also admitted by Protestant writers, who do not shrink from introducing it in accounting for the extraordinary power which popes attributed to themselves in the middle ages over the temporalities of princes.

124. *Leibnitz.*

Such more especially is the opinion of Leibnitz, whose authority in history and jurisprudence is not less than in philosophical and mathematical science. This great man expressly acknowledges, in many of his works, the existence and even the beneficial influence of those maxims of the middle ages which invested the pope with so extraordinary an authority over princes in the temporal order; and though he does not approve indiscriminately all the pretensions of the popes in this matter, he acknowledges, at least, that their authority was very extensive,

<sup>1</sup> *Ibid.* vol. vi. p. 225.

<sup>2</sup> Ferrand, *Esprit de l'Hist.* vol. ii. Letter 41, p. 413. This text was erroneously attributed to Bolingbroke, in the first edition of this Inquiry (n. 31, p. 62). *L'Esprit de l'Histoire, ou Lettres Politiques et Morales*, by M. Ferrand (4 vols. 8vo.), must not be confounded with the *Lettres sur l'Histoire* of Lord Bolingbroke (1752, 2 vols. 8vo.).

according to the usage and maxims sanctioned by sovereigns themselves. "It must be admitted," he states,<sup>1</sup> "that the vigilance of the popes in enforcing the canons, and upholding ecclesiastical discipline, was productive, from time to time, of excellent consequences; and that, by using their influence with kings in season and out of season, either by remonstrances, which the authority of their office entitled them to make, or by the threat of ecclesiastical censures, they prevented many disorders. Nothing was more common than to see kings subjecting themselves, in their treaties, to the censure and correction of the popes, as in the treaty of Bretigny, in 1350, and in the treaty of Etaples, in 1492."

But it is principally in his treatise *De Jure Suprematûs* that Leibnitz explains his principles on this subject. "It is certain," he says, "that many princes are feudatories or vassals of the Roman empire, or at least of the Roman Church; that some kings and dukes were created by the emperor or the pope; and that others were not anointed kings without, at the same time, doing homage to Jesus Christ, to whose Church they promised fealty, when they were receiving the unction from the hands of the bishop; and this it was that verified the formula, 'Christus regnat, vincit, imperat;'<sup>2</sup> for all history attests, that most of the Western nations submitted to the Church with equal promptitude and piety. I am not now examining whether these things were by divine right. The facts are, they were done with unanimous consent; that they could most properly be done; and that they are not opposed to the good of Christendom; for not unfrequently the salvation of souls and the public good are promoted by the same measure."<sup>3</sup> "From the strict connection that exists between sacred and profane things, it resulted," he observes, a little farther on, "that people believed the pope to have received some authority over kings themselves." Leibnitz

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<sup>1</sup> Leibnitz, *Dissert. 1, De Actorum Publicorum Usu* (*Oper. tom. iv. p. 299*). This dissertation is the preface to the *Codex Diplomaticus Juris Gentium*, published for the first time at Hanover, 1693, fol.

<sup>2</sup> These words, so often the war-cry of the Christian soldiers during the crusades, were the legend on the reverse of all the gold coins minted in France, from Louis VI. or Louis VII. to Louis XVI. See Michaud, *Hist. des Croisades*, vol. ii. p. 38; Paucton, *Métrologie*, ch. xiii. p. 685.

<sup>3</sup> *Tract. de Jure Suprematûs*, part iii. (*Oper. tom. iv. p. 330*).

goes on, in this place, to explain these facts, by enumerating in detail all the sovereigns who, according to him, had formerly been feudatories of the Roman Church. "I am not actually inquiring," he adds, "by what right these things were done, but what were the opinions of men regarding them in preceding ages."<sup>1</sup> He goes still farther in his letter to M. Grimaret, in which he sighs for that ancient custom, which would, he believed, restore amongst men the golden age. "My opinion would be," he says, "to establish, ay, even in Rome, a tribunal (to decide controversies between sovereigns) and to make the pope its president; as he really did, in former ages, figure as judge between Christian princes. But ecclesiastics should, at the same time, resume their ancient authority, and an interdict or an excommunication should make kings and kingdoms tremble, as in the days of Nicholas I. or Gregory VII. This is a plan quite as practicable as that of the Abbé de St. Pierre."<sup>2</sup> And since there is no prohibition against the planning of romances, what harm can there be in suggesting one which would revive the golden age."<sup>3</sup>

125. *Pfeffel.*

A Protestant author, more recent than Leibnitz, and who besides condemns openly the conduct of the popes of the middle ages to sovereigns, admits, nevertheless, that the principles by which Gregory VII. justified his conduct to the emperor of Germany, namely, the principle that excommunication entailed the forfeiture of all civil rights, and of all temporal dignity, was generally admitted, even by doctors, long before the pontificate of Gregory VII.; whence, he justly infers, that this pope could

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<sup>1</sup> De Jure Suprematûs, ubi supra, p. 401. Leibnitz adopts the same principles in his *Systema Theologicum*, in which he writes, "Etsi Christiani principes non minus Ecclesiæ obedientiam debeant quàm minimus quisque fidelium; tamen, nisi ipso jure regni aliter provisum actumque esse constet, ecclesiastica potestas eò extendenda non est, ut subditos in veros dominos amet."—*Exposit. de la Doctrine de Leibniz, &c.* Paris, 1819, 8vo. p. 306.

<sup>2</sup> The Abbé de St. Pierre had lately published his *Projet pour rendre la Paix perpétuelle en Europe* (1713, 1716, 3 vols. 12mo.). In that work he proposed the establishment of a European diet, to decide all differences which might arise among princes.

<sup>3</sup> *Deuxième Lettre à M. Grimaret* (*Cœuvres de Leibniz*, vol. v. p. 65). See, in confirmation of this notion of Leibnitz, the testimony of M. Hurter, and of some other Protestant writers, cited above, n. 19, text and notes.

not have acted otherwise than he did, and that all his measures were the logical realization of principles then universally admitted.<sup>1</sup>

126. *Admissions of Voltaire.*

Finally, the general belief of the people in the middle ages on this point, is admitted likewise by one of the most declared enemies, not only of the papacy, but of all religion. In his *Essais sur les Mœurs*, Voltaire observes: "It appears, that the princes who had the right of electing the emperor, had also the right of deposing him; but to admit the pope to preside in such decisions, was to acknowledge him as the natural judge of the emperor and the empire."<sup>2</sup> Every prince," he adds, in the course of the same work, "every prince who desired to recover or to usurp a territory, addressed himself to the pope, as to his master. No new prince presumed to style himself sovereign, nor could he be acknowledged as such by other princes, without the consent of the pope; and the fundamental principle of the whole history of the middle ages is, that the popes believed themselves sovereign lords of all kingdoms, without a single exception."<sup>3</sup> Even then in the malignant exaggerations of this passage of Voltaire, we have a formal admission of that universal belief of princes and of people, attributing to the pope so vast a temporal authority over all the states of Europe, and especially over the empire.

ARTICLE II.

Special Proofs of this Belief in France.

127. *Remarkable Testimony of St. Gregory on this Subject.*

BESIDES the facts which prove the general belief of the Catholic princes and people of Europe, on the temporal effects of heresy and excommunication in the case of sovereigns during the middle ages, the history of France furnishes in particular evident proofs of the belief, which, in certain cases, subjected

<sup>1</sup> Pfeffel, *Nouvel Abrégé d'Histoire d'Allemagne*, ann. 1106, 4to. edit. vol. i. pp. 228, 229.

<sup>2</sup> Voltaire, *Essai sur les Mœurs*, vol. ii. ch. xlvi.

<sup>3</sup> *Ibid.* vol. iii. ch. lxiv.

the sovereign of that realm to the authority of the pope or of a council, in temporal matters. It may be even confidently asserted, that of all the states of Europe the kingdom of the Franks supplies the most ancient evidences of this belief.

About the close of the sixth century, St. Gregory the Great, granting certain privileges to the monasteries and the hospital of Autun, pronounces all laics, even kings or other lords, deprived of their dignities, if they presumed to violate these privileges.<sup>1</sup> "If any person," he decrees, "king, bishop, judge, or any secular whatsoever, knowing this our constitution, shall dare to violate it, he forfeits the dignity of his honour and power, and must hold himself accountable for his crime before the tribunal of God."<sup>2</sup>

128. *Authenticity of this Testimony.*

The difficulty of reconciling this language with the doctrine of antiquity, and with St. Gregory's known principles on the distinction and mutual independence of the two powers, has led many modern critics to suspect that this clause had been inserted in his letters by some cheat.<sup>3</sup> That opinion is, however, clearly refuted by the authority even of the most ancient manuscripts, and by numerous authentic testimonies, as the learned editors of St. Gregory's works have observed.<sup>4</sup> Hence, a judicious critic of the last century has not hesitated to pronounce, that the privileges, such as they occur in the letters of St. Gregory, must be admitted as authentic by all unprejudiced persons.<sup>5</sup>

129. *Different Explanations proposed by Critics.*

Admitting the authenticity of the clause, some authors solve the difficulty which it presents, by maintaining that the clause

<sup>1</sup> S. Greg. Epist. lib. xiii. epist. 8, 9, 10 (Oper. tom. ii.). Fleury, Hist. Eccl. vol. viii. book xxxvi. n. 43. Hist. de l'Eglise Gall. vol. iii. ann. 602, p. 356. Bossuet, Defens. Declar. lib. ii. cap. ix.

<sup>2</sup> "Si quis regum, sacerdotum, judicum, personarumque sæcularium, hanc constitutionis nostræ paginam agnoscens, contra eam venire tentaverit, potestatis, honorisque sui dignitate careat, reumque se divino judicio existere de perpetrata iniquitate cognoscat."—S. Greg. ubi supra, epist. 8, 9, 10.

<sup>3</sup> This opinion is adopted by P. Maimbourg, Hist. du Pontificat de St. Grégoire, p. 290; Lebeau, Hist. du Bas-Empire, vol. xi. book xlix. n. 50.

<sup>4</sup> See note (b) of the editors, on the 8th letter, already cited.

<sup>5</sup> D. Ceillier, Hist. des Auteurs Ecclés. vol. xvii. p. 317.

was not, strictly speaking, a decree or threat of deposition against its violators, but merely an imprecatory form, threatening them with the vengeance of God, even in this world.<sup>1</sup> This explanation, however, appears utterly irreconcilable with the text of St. Gregory, whose expressions, taken in their natural sense, imply rather an absolute declaration than a mere imprecatory form: "Let him know," the pope says, "that he is responsible before God, for the crime which he has perpetrated." To solve the difficulty completely, the editors of the works of St. Gregory observe, that according to his own letters, the privileges in question were granted at the request of Queen Brunehault, and that all this arrangement was made in compliance with her wish. "It cannot be questioned," they observe,<sup>2</sup> "that if St. Gregory had consulted his own inclination and his natural mildness, he would never insert so severe a clause; but he could not refuse the queen, who wished to intimidate, by this means, those who should attempt to violate the decree. It was in the same way, that the fathers of the fourth Council of Orleans (in 541), at the request of King Childebert, prohibit all persons, of whatsoever rank or dignity they be, to seize the property of the hospital of Lyons, under pain of being punished by an irrevocable anathema, as the murderers of the poor."<sup>3</sup>

The justness of these observations must be obvious on an attentive perusal of the letters which St. Gregory wrote to Queen Brunehault, and to Theodoric her grandson, when conferring the privileges in question. "To have some share in your good works," he writes, "we have granted to the said places, privileges such as you have desired, for the peace and security of the inhabitants; and our wish has been, not to defer for a single instant compliance with the laudable desires of your excellency."<sup>4</sup>

<sup>1</sup> D. Ceillier, *Hist. des Auteurs Ecclés.* ubi supra. Mabillon, *De re Diplom.* lib. ii. cap. ix. Bossuet, *Defens. Declar.* lib. ii. cap. ix. Nat. Alexander, 2nd *Dissert. sur l'Histoire Ecclés. du Onzième Siècle*, art. x. 5th paragraph.

<sup>2</sup> Note (b) on the 8th letter.

<sup>3</sup> *Concil. Aurelian. ann. 541, can. 15.*

<sup>4</sup> "Quâ de re, ut et nos bonis vestris in aliquo participes haberemur, privilegia locis ipsis, pro quiete et munitione illic degentium, sicut voluistis, indulgissimus, nec excellentiæ vestræ amplectenda nobis desideria, vel ad modicum differre pertulimus."—S. Greg. *Epist. lib. xiii. pp. 6, 7.*

130. *The Difficulty solved by the Consent of the French Princes given to the Decree.*

From these observations it manifestly follows, that even in St. Gregory's time, the kings of France subjected themselves, in certain cases, to be deposed by the authority of the pope. Such a concession may, no doubt, appear at the present day very extraordinary; but it is certain, and admitted even by authors most opposed to the maxims of the middle ages in this matter, that the history of this period presents many other instances of similar concessions. It has been already seen,<sup>1</sup> that Bossuet, Fleury, and the majority of canonists, especially in France, explain in this sense the penalty of deposition, and the other temporal penalties decreed against heretical princes, in the third and fourth councils of Lateran. In the sequel of our inquiry there will be occasion to cite many other instances of similar concessions, especially in France under the second race of kings.

We might add, perhaps, that the consent of Queen Brunehaut and of the French kings to the clause in question, was, at the time, in perfect keeping with the customs of the kingdom, and the ancient legislation of the German nations, which deprived of their dignities all dukes or barons who should violate the king's decrees.<sup>2</sup> This provision, it is true, such as we read it at present in the ancient laws of the Franks, directly regards none but the lords inferior in rank to the king; but there is every reason to believe, that the king himself was, at that time, amenable to the general assembly of the nation, and that he, therefore, incurred the penalty of deposition by violating the laws and customs of the state. It is certain, at all events, that this custom was in force under the second race of French kings, and that history does not point out its origin; it is natural to hold that it must have been coeval with the monarchy itself, at

<sup>1</sup> See *supra*, n. 90, 119, &c.

<sup>2</sup> "Si quis autem dux de provinciâ illâ, quem rex ordinaverit, tam audax aut contumax, aut levitate stimulatus, seu protervus et elatus, vel superbus atque rebellis fuerit, qui decretum regis contempserit, donatu dignitatis ipsius ducati careat."—*Lex Bajuvariorum*, tit. ii. n. 9 (Baluze, *Capitularium*, tom. i. p. 104). Daniel, *Hist. de France*, vol. ii. ann. 643, p. 109. This law, enacted originally in the fifth century by Thierry, king of Austrasia, was often revived by the Frank kings of the first race.

least, according to the opinion now generally received, that under the first, as well as the second race of kings, the crown of France was not purely hereditary, but elective among the princes of the blood royal.<sup>1</sup>

131. *The King generally considered amenable to the National Council, under the Second Race of French Kings.*

But whatever may have been the custom of France in this matter under the first race of kings, it is certain, that under the successors of Charlemagne the king was generally regarded as amenable to the national council; which could depose, in the name of God, a king unworthy of the throne, just as the king himself could deprive a magistrate unworthy of his office.<sup>2</sup> We find, in history, princes themselves adopting that principle as the guide of their conduct.<sup>3</sup> This appears especially during the fatal divisions which sprung up between the children of Louis le Débonnaire, in consequence of the partition of his states.<sup>4</sup> One of the principal means employed by each against his rival was, to get him deposed by a council. Thus Lothaire was deposed in 842, by the Council of Aix la Chapelle, which

<sup>1</sup> *Supra*, ch. i. art. i. n. 23-25.

<sup>2</sup> Abbé Jager, in his *Introduction à l'Histoire de Grégoire VII.* (p. 28), supposes this usage to have been grounded on a capitulary of Charlemagne, mentioned in a preceding chapter, which subjects every one in his empire, even his own sons, to the judgment of the bishop, in all that regards the causes of God and the interests of the churches. We can discover in that capitulary nothing to justify us in regarding it as the origin of the usage in question; for, in the first place, it places all the subjects of the empire under the judgment of the bishops in spiritual and ecclesiastical matters only, while under the successors of Charlemagne, the king was considered amenable to the council, even in temporal matters. Secondly, this capitulary deprives of their dignities all subjects, and the sons even of the king, if they refuse to obey the bishop; but that penalty does not extend to the king himself; at least, the capitulary itself contains nothing to authorize such extension. Some other origin must therefore be assigned for this usage; whether it was perhaps subsequent to the reign of Charlemagne, or more ancient, as appears more probable from the reflections just made on some letters of St. Gregory the Great.

<sup>3</sup> Fleury, *Hist. Eccl.* vol. xiii. 3rd Discourse, n. 10; vol. xix. 7th Discourse, n. 5. *Hist. de l'Eglise Gall.* vol. xvii. Prelim. Discourse, p. xlvi. Daniel, *Hist. de France*, vol. ii. pp. 335, 388, 393, &c. P. Griffet's edit. Velly and Garnier, *Hist. de France*, vol. ii. pp. 60, 81; vol. xxi. p. 189. Moreau, *Discours sur l'Histoire de France*, vol. i. pp. 22, 30. Bossuet, *Defens. Declar. lib. ii. cap. xliii.* Montesquieu, *Esprit des Loix*, book xxxi. ch. xxiii. last page.

<sup>4</sup> Nithard, *De Dissensionibus Filiorum Ludovici Pii*, lib. iv. (Labbe, *Concil. vol. vii.* p. 1782). Fleury, *Hist. Eccl.* vol. x. book xlvi. n. 11; book xlix. n. 46. Daniel, *ubi supra*, p. 335.

was convoked against him by his two brothers, Charles the Bald, king of France, and Louis, king of Bavaria. After having pronounced, in this council, a sentence of deposition against Lothaire, the bishops declared to the princes, his brothers, that they would not permit them to take possession of his states, unless they promised to conduct their government according to the law and the orders of God. "We promise so to do," the two kings replied; the president of the assembly then addressed them in the name of all the prelates: "Receive the kingdom by the authority of God, and govern it according to his divine will; this we admonish, we exhort, we command."<sup>1</sup>

Some years later, Charles the Bald having been deposed in the Council of Attigny (in 857), by the intrigues of Venilon, archbishop of Sens, presented a petition to the Council of Savonnières (in 859), as the most effectual means he could employ in defence of his rights, against the sentence which had deprived him of his states. But in the very document which complains so loudly of the injustice of Venilon's sentence against him, he expressly acknowledges the competency of the tribunal. "No man," he urges, "could deprive me of my consecration, or depose me from my throne, without at least the judgment and decision of the bishops, by whose ministry I have been anointed king; who are styled the thrones of God, on whom God is seated, and through whom he pronounces his awards. I have ever been disposed, and I still continue so, to submit to their fatherly corrections, and to the chastisements which they may deem right to inflict on me."<sup>2</sup>

<sup>1</sup> "Verumtamen haudquaquam illis hanc licentiam dedere (regendi regni), donec palam illos percontati sunt, utrum illud per vestigia fratris ejecti, an secundum Dei voluntatem regere voluissent. Respondentibus autem, in quantum nosse ac posse Deus illis concederet, secundum suam voluntatem, se et suos gubernare et regere velle, aiunt: Et auctoritate divina, ut illud suscipiatis, et secundum Dei voluntatem illud regatis, monemus, hortamur atque præcipimus."—Nithard, ubi supra.

<sup>2</sup> "A qua consecratione, vel regni sublimitate, supplantari vel projici à nullo debueram, saltem sine audientia et judicio episcoporum, quorum ministerio in regem sum consecratus, et qui throni Dei sunt dicti, in quibus Deus sedet, et per quos sua decernit judicia; quorum paternis correptionibus et castigatoriis judiciis me subdere fui paratus, et in præsentem sum subditus."—Libellus Proclamationis Domini Caroli adversus Venilonem, n. 3 (Labbe, Concil. tom. viii. p. 679). Daniel, ubi supra, p. 393. Bossuet, ubi supra.

132. *This Fact admitted by our most eminent Historians.*

Struck by these facts, and by the unvarying language of our ancient annalists,<sup>1</sup> a modern author who has studied most profoundly, and written very copiously the history of the primitive ages of the French monarchy, sums up in the following terms the principles generally adopted in this matter under the second race of French kings, and even in the commencement of the third. "Under the second race," he observes, "nobles, laymen, and ecclesiastics, hold the same principle; they suppose the same truth, but they abuse it. The king, say the bishops, has no superior but God; he is a magistrate, depositary of the power of the Eternal one, who alone has a right to call him to account for his actions; but this sovereign judge of kings has appointed us his vicars and representatives; we constitute his court, as the magistrates who stand around the throne constitute the court of the monarch: we have a right to judge him, in the name and by the authority of God himself; and as he deprives his officers by proceedings which he institutes against them, God, in like manner, deposes the king against whom we, in council, have pronounced a sentence declaring him unworthy of the throne."<sup>2</sup>

133. *Their Attempts to elude the Consequences of their Admissions.*

True, this author and some others, though admitting the fact, namely, the general belief that the king was amenable to the council, represent it as an error introduced and propagated by the policy of Pepin and of his successors, who gave it currency with the design of making their own authority more respectable in the eyes of the people.<sup>3</sup> But even admitting this supposition,

<sup>1</sup> On this subject, we may direct attention also to a letter addressed to Charles the Simple, in 899, by Fulk of Rheims, dissuading that prince from alliance with the Normans. In that letter the prelate speaks with a tone of authority, and even of boldness, which appears unaccountable, unless we suppose that the king was then amenable to the council. See Baronius, *Annales*, vol. x. ann. 898, n. 1, 2; Fleury, *Hist. Eccl.* vol. xi. book liv. n. 26; Bossuet, *Defens. Declar. lib. ii. cap. xxv.*; *Hist. de l'Eglise Gall.* vol. vi. p. 399.

<sup>2</sup> Moreau, *ubi supra*, pp. 22-26.

<sup>3</sup> Moreau, *ibid.* Fleury, *Hist. Eccl.* vol. x. book xlix. n. 46; vol. xiii. 3rd Discourse, n. 10; vol. xix. 7th Discourse, n. 5. Daniel, *Hist. de France*, vol. ii. pp. 335, 388, 393. Garnier, *Hist. de France*, vol. xxi. p. 189, &c. Berthier, *Hist. de l'Eglise Gall.* vol. xvii. prelim. Discourse, p. xlv. &c. Sismondi, *Hist. des Français*, vol. ii. p. 172, &c.

what inference can thence be drawn against the existence itself of that general belief—which is, at present, the only point we are discussing? The question is not here, what were the origin and grounds of that belief; we reserve that question for the following chapter; it is enough for us, at present, to prove that the popes and councils of the middle ages, who attributed to themselves so great a power over sovereigns, merely followed principles generally admitted and recognised by sovereigns themselves.

Nevertheless, to elucidate still more the fact of this general belief, especially in France, it may not be useless to examine more minutely the assertion of those authors who regard that belief as an “error, introduced and propagated in France by the policy of Pepin and of his successors.” The least reflection must demonstrate, that such an assertion is utterly gratuitous and improbable.

134. *The Belief in Question was not an Error.*

It supposes in the first place, the general belief of the age, that the king was amenable to the council, to have been an error. But in what was the error? Was it in the theological opinion which attributes to the Church a jurisdiction, at least indirect, over the temporalities of princes? Our best authorities admit, and we shall soon demonstrate, that such an opinion was hardly known in France under the first race of her kings, and that the principle of the distinction and reciprocal independence of the two powers, was still universally admitted and professed at that time.<sup>1</sup> Did the error consist in the false policy of subjecting the crown to the disposal of the bishops? Such a policy may no doubt appear wrong under other circumstances; but was it wrong in the then existing state of society? At a time when the lay barons were, for the most part, so ambitious and so turbulent; when the clergy were the first order in the state, and in that capacity occupied the first rank in all political assemblies; when they were the most enlightened, and the most respected, and the most loyal body in the state; was it not natural that sovereigns should study to increase their authority, as a counterpoise to that of the lay barons, and regard

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<sup>1</sup> *Infra*, ch. iii. art. 1.

their influence as the firmest bulwark of the throne? So far is it from being evident that sovereigns were guilty of an error in this matter, that many even of those authors who attribute the general belief in question to ignorance in the middle ages, admit, nevertheless, that this belief was most advantageous to society.<sup>1</sup> As for France in particular, it must be observed, that most of the writers who censure so severely the great power of the bishops under the second race of her kings, are compelled to admit its beneficial influence. Père Berthier, among others, though characterizing that power as founded on an error, and an intolerable pretension of the clergy, admits, nevertheless, with the abbé Dubos, "that to the great power of the clergy was owing the preservation of the monarchy under the last kings of the second race. While the lay barons," he adds, "were usurping the domains of the crown, the bishops and abbots, who wished after all to maintain the constitution of the state, frequently resisted these usurpations, and always took care that some one master and king should be acknowledged by all; this it was that gradually restored order, and enabled the kings of the third race to recover, in the course of time, the provinces, cities, and rights of which their predecessors had been despoiled."<sup>2</sup>

135. *It was not introduced by the Policy of Pepin and his Successors.*

In the second place, they suppose that this general belief, which regarded the king as amenable to the council, was introduced and propagated in France by the policy of Pepin and of his successors. This supposition is entirely unsupported, and cannot, we believe, show in its favour a single fact, or a single positive testimony. There is no trace of it in the history of Pepin or of Charlemagne; and, judging from the evidence of history alone, it would be difficult to decide whether the general belief in question was introduced before the death of Charlemagne, or after the reign of that great prince; whether it was introduced by the authority of the monarch alone, or by the authority of

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<sup>1</sup> *Infra*, ch. iv. art. 2.

<sup>2</sup> Berthier, *Hist. de l'Eglise Gall.* vol. xvii. Disc. Prelim. p. xlvi. Dubos, *Hist. Critique de la Monarchie Française*, vol. iii. p. 384. See, in confirmation of these observations, what has been already said, *supra*, ch. i. art. ii.

some general assembly, as had been already the case in Spain.<sup>1</sup> Hence the authors against whom we are now reasoning, are very much divided among themselves, when they undertake to assign the true origin of this general belief. Some say it was introduced by Pepin and Charlemagne;<sup>2</sup> others, by Charles the Bald;<sup>3</sup> others, under Louis le Débonnaire, by the bishops themselves, whose pretensions were afterwards sanctioned by the conduct of the kings;<sup>4</sup> but we can find no proof of any of these assertions. To suppose, as some do, that Pepin hoped by propagating this new opinion to supply the defect of his title, and to conceal his crime of usurpation,<sup>5</sup> is merely bolstering up one groundless supposition by another not less improbable. That Pepin was a usurper, is not a matter so clear as to preclude all doubt; authors of eminent reputation have denied that he was a usurper, and their arguments are by no means contemptible.<sup>6</sup>

### ARTICLE III.

Special Proofs of this Belief for the case of those Sovereigns who were Vassals of the Holy See.<sup>7</sup>

#### 136. *Rights of Sovereignty attributed to the Pope over different States.*

The general belief of princes and of people attributed to the pope a much more comprehensive power over sovereigns who were vassals of the Holy See. The pope, it was generally admitted, had a right, not only to judge and depose them in certain cases, but even to make over their states to another prince; and the conduct of sovereigns themselves tended to confirm this belief. The history of the middle ages supplies a great number of facts in support of this assertion; here we shall cite only a few of the most remarkable.

<sup>1</sup> It is certain, that from the seventh century the king of Spain was amenable to the council. See *supra*, ch. i. art. i. n. 29; and *infra*, ch. iii. art. ii. n. 247.

<sup>2</sup> Moreau, *ubi supra*.

<sup>3</sup> Montesquieu, *Esprit des Lois*, book xxxi. ch. xxiii. last paragraph.

<sup>4</sup> Daniel, *ubi supra*, pp. 335, 354, 393, et alibi *passim*.

<sup>5</sup> Moreau, *ubi supra*, p. 23. Garnier, *Hist. de France*, vol. xxi. p. 189.

<sup>6</sup> See *Confirmatory Evidence*, No. 7, at the close of this volume.

<sup>7</sup> See preceding chapter, n. 49, note 1.

137. *Over England.*

In 1211, Pope Innocent III. having pronounced sentence of deposition against John Lackland, king of England, and given his kingdom to Philip Augustus, king of France, the latter did not hesitate to accept the gift, but instantly prepared to enforce by arms the rights to which he had no other title but the pope's grant.<sup>1</sup>

138. *Over Sicily.*

The rights of the Holy See over Sicily were acknowledged not less solemnly by France in the reign of St. Louis.<sup>2</sup> The pope having granted the kingdom of Sicily to Charles of Anjou, brother of the sainted king, the latter for various political reasons, and, perhaps, likewise from delicacy of conscience, appeared unwilling at first to co-operate in that choice: but he consented at last, in 1265, and even authorized the levying of a tenth on the clergy to assist the count of Anjou in taking possession of the throne of Sicily.

139. *Over the Kingdom of Arragon.*

Some years later, in 1282, Philip the Bold gave a much more ready compliance to similar offers.<sup>3</sup> Pope Martin IV. having excommunicated Peter III., king of Arragon, and usurper of Sicily, deprived him not only of this latter kingdom, but also of Arragon, which he granted to Philip the Bold for one of his sons. Instantly the king of France not only accepted the grant, but marched at the head of his army to enforce his rights.

140. *Over the Republic of Venice.*

It is certain, in fine, that even under Philip the Fair, that king whose name is identified most prominently with the maintenance of the independence of the crown of France, the rights of the Holy See over many other Catholic states, and especially

<sup>1</sup> Fleury, *Hist. Eccl.* vol. xvi. book lxxvii. n. 5, 23. Daniel, *Hist. de France*, vol. iii. ann. 1211. Velly, *Hist. de France*, vol. iii. p. 468.

<sup>2</sup> Daniel, *Hist. de France*, vol. iv. ann. 1264, 1265. This important fact is admitted by Velly, Michaud, and many other writers generally very little inclined to favour the pretensions of the Holy See to Sicily.—See Velly, *Hist. de France*, vol. v. p. 328; Michaud, *Hist. des Croisades*, vol. v. p. 42.

<sup>3</sup> Fleury, *Hist. Eccl.* vol. xviii. book lxxxviii. n. 10, 19. Daniel, *Hist. de France*, vol. iv. ann. 1283. Velly, *Hist. de France*, vol. vi. p. 386, &c.

over the empire, were not disputed by the French.<sup>1</sup> So well known were the opinions of Philip the Fair on this point, that at the very moment when he was assailing most ardently the memory of Boniface VIII. (in 1311), Pope Clement V. appealed to him with as much confidence as to the other Catholic sovereigns, requesting his assistance against the doge and republic of Venice, that had been deprived by the Holy See of their temporal rights, in punishment of their rebellion.<sup>2</sup>

#### ARTICLE IV.

Special Proofs of this Belief with regard to the Empire of the West.

##### 141. *General Belief that the Empire of the West was in a peculiar way dependent on the Pope.*

Besides the general power attributed to the Holy See over all the Catholic sovereigns of Europe during the middle ages, it was the common belief of princes and people that the pope had special rights over the empire of the West, at least after the tenth century.<sup>3</sup> At that time, it was considered an unquestionable fact, that the empire, in certain respects at least, was a fief of the Holy See; that the emperor was the pope's man; that from the pope the electors derived their power of electing the emperor; and that, in certain cases, the emperor could be deposed by the pope.

##### 142. *In what Sense was the Empire considered a Fief of the Holy See.*

To exhibit in its clearest light the belief of the middle ages on this point, and to avoid all exaggeration on a question so important, we must observe, in the first place, that the ancient authors who have spoken of the empire as a fief of the Holy See, appear not to have all used that expression in the same

<sup>1</sup> Daniel, *Hist. de France*, vol. v. ann. 1303. Velly, *Hist. de France*, vol. vii. p. 207. *Hist. de l'Eglise Gall.* vol. xii. ann. 1302, pp. 325, 334, &c. Bossuet, *Defens. Declar. lib. iii. cap. xxiv.*; lib. iv. cap. ix. versus finem.

<sup>2</sup> Fleury, *Hist. Eccl.* vol. xix. book xci. n. 33. Raynaldi *Annales*, ann. 1309, n. 7, 8.

<sup>3</sup> I say, after the tenth century; for in truth the origin of these rights may be traced back to the time of Charlemagne. This is manifest from many documents, which we shall have occasion to cite both in the course of this fourth article and of the following chapter (art. ii.).

sense. Many seem to understand it of a fief properly so called ; that is, "a domain which the proprietor or feudatory held by the donation or investiture of a sovereign lord." It was not, however, in that sense the popes and emperors themselves understood the dependence of the empire on the Holy See. In their opinion, the emperor did not, properly speaking, hold from the pope the domain or territory of the empire, but solely the title of emperor. To him, as to other sovereigns, the domain came by the free will of the people who had chosen him, by the constitution of the state, or by his just conquests. The whole right of the pope over the empire consisted, therefore, in this, that he could elect an emperor, either by himself or by the prince electors ; that he could give him his title, and judge of the cases in which he should be deposed. To establish the solidity of this explanation, we need but observe the difference between the oath of fidelity taken to the pope by the emperors, and that which was taken by princes, vassals of the Holy See. The oath of the latter clearly implies that they held their domains by the grant or the investiture of the pope ; whilst the oath of the emperors merely implied an obligation of protecting and defending the interests of the Holy See against its enemies.<sup>1</sup>

These observations may serve to correct or explain those authors of the middle ages who have spoken of the empire as a fief of the Holy See. Some of them, no doubt, may, from incorrect notions on the subject, have understood the term in the sense of a fief, properly so called ; but the majority meant nothing more than a peculiar dependence of the empire on the pope, in the sense already explained. At a time when all ideas of government and jurisprudence were modelled according to the feudal system, every species of authority subordinate to another was termed a fief.<sup>2</sup>

Keeping these explanations in view, it is easy to demonstrate that the dependence of the empire on the Holy See, at least in

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<sup>1</sup> A little further on we shall cite the text of this oath (*infra*, n. 156). In the following chapter we shall also give (*art. ii. n. 253*) the text of the oath of fealty taken to the pope by Robert Guiscard, founder of the kingdom of Naples, in 1059.

<sup>2</sup> Ducange, *Glossar. Infimæ Latin. verbo Feudus*. Hallam's *Europe*, vol. i. p. 225, &c. Lingard, *Antiquities of the Anglo-Saxon Church ; History of England*.

the sense just now stated, was universally admitted, at least since the tenth century.<sup>1</sup>

143. *Dependence of the Empire on the Pope admitted by the German Lords in the time of Gregory VII.*

During their conflict with the emperor Henry IV., the Saxon princes, in concert with many other German lords, appealed to the pope as their only refuge; as one vested with the supreme authority, to restore order in the empire, which had been convulsed by the excesses and despotism of Henry. They not only implored the pope to console, either by his presence or by his legates, their unhappy nation;<sup>2</sup> but, moreover, represented to him, that the empire is a fief of the eternal city, that it is wrong to tolerate on the throne so impious a prince; that Rome should once more resume her ancient right of appointing kings; and that to the pope and the city of Rome, in concert with the princes, belongs the right of choosing a man worthy by his conduct and his prudence of so elevated a rank.<sup>3</sup> This language of the German princes manifestly proves, as Bossuet has remarked, the general belief that the pope had a peculiar right in the election of an emperor, and even the right of deposing him for the violation of the conditions stipulated in the election.<sup>4</sup> It is also equally certain from history, that the partisans of the emperor, and the emperor himself, never disputed these principles, but confined themselves to remonstrances, to mollify the pope, and to induce him to defer the execution of his measures.<sup>5</sup>

<sup>1</sup> Many remarkable facts bearing on this point may be seen collected in the following works: Nat. Alexandre, Dissert. 2, in *Hist. Eccles. sæculi xi. art. 9, versus finem*; Christ. Lupus, *Decreta et Canones*, tom. iv. p. 457; Bossuet, *Defens. Declar. lib. iv. cap. ix.*; Jager, *Introduction à l'Hist. de Grég. VII.* p. 26, &c.; Montagne, *Appendix de Conciliis*, p. 287, ad calcem *Prælect. Theol. de Opere Sex Dierum*, Parisiis, 1743, 12mo.; De Maistre, *Du Pape*, book ii. ch. x. p. 335, &c.

<sup>2</sup> "Quibus ut, vel per se, vel per nuntium, genti penè perditæ consolator addesset, suppliciter oraverunt."—Bruno, *De Bello Saxonico* (*Scriptores Rerum Germanic.* tom. i. p. 133). Voigt, *Hist. de Grégoire VII.* book ix. p. 405.

<sup>3</sup> We have cited above, art. i. n. 93, the very words of the ancient writers on the subject.

<sup>4</sup> "Quæ profectò ostendunt, his jam temporibus, in Romano pontifice fuisse notatum peculiare aliquod jus ad constituendum eum regem, qui postea imperator futurus esset, atque ad eum postea deponendum."—Bossuet, *Defens. Declar. lib. iv. cap. ix.*

<sup>5</sup> Voigt, *ibid.* book viii. &c. Fleury, *Hist. Eccl.* vol. xiii. book lxii. n. 29, 36, &c.

144. *Various Testimonies of the Existence of this Belief.*

Several writers, who lived after these deplorable contests, supply additional proofs of this general belief. Paul Bernried, who wrote the life of Gregory VII., some years after the death of that pontiff, directs special attention to the fact, that his defenders justified his conduct towards Henry, not only by the right then attributed to the pope of deposing kings, in certain cases, and of absolving their subjects from the oath of allegiance, but also, by the crime which Henry had committed in violating the conditions stipulated in his election, and the promise made to the electors, of governing them with justice.<sup>1</sup>

Godefry of Viterbo, an historian of the twelfth century, represents the popes as addressing the emperors in the following words: "We have given you the empire; and you have given us very little: know that if you wear the imperial crown, it is our gift."<sup>2</sup>

Arnold, bishop of Lisieux, in a discourse delivered in the Council of Tours (1163), speaks thus of the emperor:—"Frederick is, moreover, bound by special reasons to acknowledge the holy Roman Church as his superior; he cannot deny it without the most flagrant ingratitude; for it is manifest, from ancient histories, that his predecessors had no other claim to the empire, but the good pleasure of the holy Roman Church alone."<sup>3</sup>

<sup>1</sup> "*Nemo Romanorum Pontificem reges a regno deponere posse denegabit, quicumque decreta sanctissimi Papæ Gregorii non proscribenda judicabit. . . . Præterea liberi homines Henricum eo pacto sibi proposuerunt in regem, ut electores suos justè judicare et regali providentiâ gubernare satageret; quod pactum ille postea prævaricari et contemnere non cessavit. . . . Ergo, et absque sedis apostolicæ judicio, principes eum pro rege meritò refutare possent, cum pactum adimplere contempserit, quod iis pro electione sud promiserat, quo non adimpleto, nec rex esse poterat.*"—Paul Bernried, *De Rebus Gestis Greg. VII. cap. xvii.* (Muratori, *Scriptores Rerum Italicarum*, tom. iii. part i. p. 342). Hallam's *Europe*, vol. iii. p. 366, note. Observe, that the conditions mentioned here by Bernried were made in the election of the emperor, not only by the prince electors, but also by the pope, in whose name they made the election, as we shall soon see (*infra*, ch. iii. art. ii. § 2).

<sup>2</sup> Imperium dedimus, tu pauca dedisse videris:  
Imperio nostro, Cæsar Romanus haberis.

Gothof. Viterb. *Chron. Hist. Paschalis Papæ II.* (apud Pistorium, *Illust. Script. German.* tom. ii.), cited by Bossuet, *ubi supra*.

<sup>3</sup> "Præterea specialem causam habet (Fridericus), quâ sanctam Romanam Ecclesiam dominam recognoscere debet: alioquin manifestissimè poterit reus ingratitude apparere. Si enim ad veteres recurramus historias, certum erit

145. *Opinion of Gervase of Tilbury.*

The same principles are formally adopted and developed at greater length, in the commencement of the following century, by Gervase of Tilbury, an English baron of great character, and as high in favour with the emperor Otho IV., as with the king of England, Henry III. During the contests of the emperor with Pope Innocent III., that is, about the year 1211, Gervase compiled, under the title of *Imperial Recreations*,<sup>1</sup> a work addressed to the emperor himself; in which he supposes, as a point of constitutional law universally admitted, the special rights of the Holy See over the empire. "Consider, great prince," he observes, "that Pope Innocent II. gave to your great grandfather that same empire which you now hold from Pope Innocent III. Heaven grant, that your conduct towards

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prædecessores ejus, imperium non de alio jure, quàm de solâ sanctæ Romanæ Ecclesiæ gratiâ, percepisse."—Labbe, Concil. tom. x. p. 1415.

<sup>1</sup> Gervasius Tilberiensis, *Otia Imperialia* (Leibnitz, *Scriptores Rerum Brunswicarum*, tom. i. p. 881, &c.). The title, and even the plan of this work, were probably suggested to the author by John of Salisbury's work, published some years before, under the title of *Polycraticus, sive de Nugis Curialium*. In substance and the nature of their subjects they are certainly entirely different; the *Polycraticus* being a moral and philosophical work, on the duties of the great; the *Otia Imperialia*, a collection of sketches on history, geography, physics, and natural history. The design of both works is nevertheless the same; namely, to supply the courtiers, in an agreeable and varied form, with instructions useful for their private conduct, and for the good government of the state. Now, it is worthy of remark, that these two works, composed nearly at the same time, for the instruction of the princes and lords of the court, by two authors not less distinguished by their official position than by their talents, both suppose a general belief then existing in the middle ages, that the temporal power was subordinate to the spiritual in this sense, that the sovereign could, in certain cases at least, be deposed by the authority of the Church or pope. (*Polycraticus*, lib. iv. cap. i. ii. iii. *Otia Imperialia*, in the beginning, and in decision ii. ch. xix.; see following note.) The origin of this subjection of the temporal power is nevertheless explained in a very different way by both authors. John of Salisbury supposes that it was founded on divine right, in the sense explained by the advocates of the theological theory of the direct power. (See explanation of this opinion in No. 8 of *Confirmatory Evidence* at the end of this volume.) Gervase of Tilbury, in the preamble to his work, establishes principles directly contrary to that opinion: he supposes that both powers are derived immediately from God, and that they are different one from the other, both by their object and their functions (*Script. Brunswic. ibid.* pp. 881, 883); and he regards Constantine's donation as the real title of the extraordinary power then exercised by the pope over sovereigns (*ibid.* pp. 882, 944). In another place we shall give a more detailed account of the work of John of Salisbury (*Confirmatory Evidence, ubi supra*). Leibnitz gives some interesting details on Gervase of Tilbury and his *Imperial Recreations*, in the preface of the collection cited above (§ 63).

him may be innocent,<sup>1</sup> and that you may prove to him who anointed you the rectitude of your intentions, by works of sincere piety; for you can have no just reason for offending him, nor can you ever sufficiently testify your gratitude for his favours. Though you may think that he wishes to encroach, in some degree, on the rights of the empire, still give up something to him from whom you hold all that empire; from being as you are a donee, you can become a donor, by giving to the pope a part of those rights which you have received from him. Assuredly, the empire is not yours, but Christ's; not yours, but Peter's; it was not from yourself you received it, but from the vicar of Jesus Christ, the successor of Peter; you lose nothing of your own by giving his own to Peter. It was by the good pleasure of the pope, and not by its own authority, that Rome revived the imperial title in the time of Charlemagne; it was the pope's good pleasure that changed a king of the Franks into an emperor; it is by the pope's good pleasure that the empire belongs now to the king of the Teutons, not to the king of the Franks; nor does that empire belong to him whom Teutonia elects, but to him whom the pope has appointed."<sup>2</sup>

146. *Opinion of Ludolph, Bishop of Bamberg.*

About the middle of the following century, we find the same principles developed in several works by Lupold or Ludolphe of Bebenberg, bishop of Bamberg, and a very eminent jurist in his day.<sup>3</sup> In his work, "On the Zeal of the German Princes for

<sup>1</sup> A play on the words "utinam innocens Innocentio exhibearis."

<sup>2</sup> "Considera, princeps sacratissime, quod ab Innocentio Papâ II. sanctissimo proavus tuus accepit Imperium, quod longo tempore intermissum, et post electionem confirmationemque primam relapsum, peræque sanctissimus tibi reddidit Innocentius. Utinam innocens Innocentio exhibearis, et sinceritatem tuam, quam præsumo in te esse, operibus piæ devotionis probes tuo consecratori! Nihil enim est quo justè illum offendas, nec quod tanto merito dignum rependas. Si credis in aliquo illum minuere velle jus imperii, *cedas in modico ei qui totum in te contulit imperium. . . . Dator effici potes de donatario, si partem ei cesseris ejus quod, per ipsum, totum accepisti. Profectò imperium tuum non est, sed Christi: non tuum, sed Petri: non a te tibi obvenit, sed a vicario Christi, et successore Petri. . . . Nihil amittis quod tuum est, si dimittis Petro quod suum est. . . . Beneficio Papæ, non suo, Roma, tempore Caroli, nomen recepit imperii; beneficio Papæ, Francorum regi confertur imperium; beneficio Papæ, regi nunc Teutonum, et non Francorum, debetur imperium; nec cedit imperium cui Teutonia, sed cui cedendum decrevit Papa."*—Gervasii Tilberiensis *Otia Imperialia*, decisione ii. cap. xix. (Leibnitz, ubi supra, p. 944).

<sup>3</sup> A sketch of this author may be seen in Ludewig's *Scriptores Rerum Ger-*

the good of Religion," he enumerates among the proofs of that zeal, the testimony of respect and devotion often given by the emperors to the Roman Church. He recalls and supposes as unquestionable facts, "that after Charlemagne's elevation to the empire, all the emperors received from the Roman Church the anointing and the imperial crown; that from the time of the emperor Otho, all the emperors took an oath of fidelity to that Church at their coronation; that the German barons who were entitled to elect the emperor, had received that right from the Roman Church; that they acknowledged the pope's right to examine the emperor-elect; and that their custom was, to forward to him the decree of election for his approbation."<sup>1</sup> The same author had already demonstrated these principles at greater length, in his "Treatise on the Rights of the Kingdom and Empire of Germany;" to which he refers for more ample details,<sup>2</sup> and in which he proves, moreover, that according to law and custom, the emperor could be deposed by the pope for certain enormous and notorious crimes, "and especially for the crime of heresy."<sup>3</sup>

147. *The same Belief long prevalent in France.*

That the same principles were generally admitted in France, appears from the history of the deplorable contests of Philip the Fair with Boniface VIII., at the close of the thirteenth century.

manic. vol. i. p. 205. See also Cave, *Historia Litteraria Sæculi xiv. ann. 1340*; and Moreri's Dictionary.

<sup>1</sup> "Sic patet quod Germani principes, quoad unctiones et coronationes imperiales ab Ecclesiâ Romanâ percipiendas, se ipsi Ecclesiæ submittere primitus inceperunt; . . . item, a tempore Othonis primi, . . . omnes reges Romanorum, usque ad præsens tempus, *Ecclesiæ Romanæ præstare juramentum*, sub formâ consimili, consueverunt; . . . item principes Germaniæ, ad quos pertinet jus et potestas eligendi regem Romanorum, recognoverunt Innocentio Papæ III. . . . quod jus et auctoritas examinandi personam electam in regem Romanorum, ad imperium postmodum promovendam, pertineat ad Ecclesiam Romanam; . . . item principes Germaniæ, post electionem regis per eos factam, summis pontificibus decretum hujusmodi electionis. . . . transmittere consueverunt."—Lupoldus Bebenburgius, *De Zelo Principum Germ. cap. vii.*; Argentina, 1508, 1609, 4to. This work is given in the 26th volume of the Bibliothec. Pat.

<sup>2</sup> *De Juribus Regni et Imperii*, cap. viii. et seq.; Basileæ, 1566, 8vo.; Argentina, 1609.

<sup>3</sup> "Quodam jure speciali se habet (Papa) intromittere de destitutione seu depositione imperatoris, scilicet, ratione enormis et notorii (delicti), de quo imperator incorrigibilis reperitur, ut supra dictum est in capite decimo, in primâ oppositione."—*Ibid.* cap. xii. versùs medium, pp. 151, 152.

However little inclined the French were, at that time, to favour the pretensions of the pope, they admitted that, in certain cases, he could depose the emperors, as being vassals of the Holy See. An opinion to that effect is thus given by a famous Paris doctor, a devoted adherent of Philip the Fair:—"They object to us, that the pope can depose the emperor; I answer that, as the pope makes the emperor and receives his homage, so can he depose him."<sup>1</sup> Another writer of the same period, equally attached to Philip the Fair, thus explains the deposition of Frederick II., which the adherents of the pope urged in defence of his conduct to the king of France:—"As to the objection from the deposition of Frederick, I admit the fact; the pope is, I admit, temporal lord of the emperor, who is not only raised to his dignity by election, but is, moreover, confirmed by the pope, and receives the crown from him; it is not so, however, with the king of France."<sup>2</sup>

148. *This Belief held even by Sovereigns.*

This general belief was not confined to private individuals; sovereigns themselves also admitted it. Pope Innocent III. having excommunicated and deposed the emperor Otho IV., in 1210, Philip Augustus, in concert with the pope, had so powerful an influence with the German princes, that they were induced to elect another emperor, Frederick II., king of Sicily.<sup>3</sup> The same Frederick having been afterwards excommunicated and deposed by Pope Gregory IX., in 1239, the French king and his barons, though not approving the pope's conduct to the

<sup>1</sup> "Quod dicitur, quod Papa deponit imperatorem; respondeo: Verum est; (Papa deponit) illum quem ipse posuit, quia *ab ipso accepit feudum.*"—Joannes Parisiensis, De Potestate Regiæ et Papati, cap. xvi. (apud Goldastum, Monarchia S. Rom. Imperii, tom. ii. p. 130; necnon apud Richerium, Vindiciæ Doctorum Majorum Scholæ Parisiensis, Colonæ, 1683, 4to.; lib. ii. p. 107).

<sup>2</sup> "Quod autem dicitur de Friderico, quem deposuit Innocentius IV.; dico quod verum est; et de illo imperatore concedo quod *Papa est ejus dominus temporalis*, quoniam ille imperator fit per electionem, et a Papâ confirmationem recipit et coronam; sed nihil horum est in rege Franciæ."—Auctor anonymus, Quæst. de Potestate Papæ (apud Richerium, ubi supra, p. 188). The testimony of this author, and of John of Paris, is cited by Bossuet, Defens. Declar. lib. iv. cap. ix. pp. 37, 38. The anonymous work, De Potestate Papæ, is given at the end of the work, Hist. du Différend entre Boniface VIII. et Philippe le Bel, Paris, 1655, fol. For the text cited, see p. 678.

<sup>3</sup> Bossuet, Abrégé de l'Hist. de France, ann. 1206. Daniel, Hist. de France, vol. iii. ann. 1210, p. 551. Fleury, Hist. Eccl. vol. xvi. book lxxvii. n. 4, 12.

emperor in this instance, did not question the right of the Church to depose him, in certain cases, especially for the crime of heresy. In another place we have cited the words of the letter addressed on the matter to the pope by the French king and his lords.<sup>1</sup>

149. *This Belief proved from the First General Council of Lyons.*

The history of the first general Council of Lyons, convoked by Pope Innocent IV., in 1245, to judge the cause of Frederick II., is sufficiently conclusive evidence of the general belief then existing in all the Catholic states of Europe, regarding the power of the pope and the councils over the emperors.<sup>2</sup> Frederick's cause was examined and discussed in that council, in presence of ambassadors of princes, and of the emperor himself, without any person's ever dreaming of disputing the competency of the tribunal. The sole object of the reclamations of a few ambassadors was to mollify the pope, and to induce him to defer the sentence until further inquiry had been made. The pope did, in effect, grant the delay requested by the ambassadors; and then, considering that the case had been sufficiently discussed, he pronounced sentence of deposition against Frederick, on the 17th of July, 1245.

This statement manifestly proves that the power of the pope and council over the emperor was, at that time, generally admitted by sovereigns themselves. For, is it possible that so enlightened a pope as Innocent IV., and a general council composed of so many prelates, could have ever thought of deposing the emperor, in presence of the ambassadors of kings, and of those of Frederick himself, if usage and the general belief of the day had not authorized such a procedure? Is it credible that if this right could be called in question, it would not be questioned in the council by the ambassadors of kings, and above all, by those of the emperor? Is it not self-evident that no tribunal could ever proceed so calmly to exercise a right of judging a sovereign (without physical force), if that right had not been universally admitted?

Can the force of this argument be eluded by saying that

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<sup>1</sup> See above, n. 86.

<sup>2</sup> See the authors cited in note 1 to n. 86, ch. ii. *supra*.

according to the very title of the sentence pronounced by Pope Innocent IV. against the emperor Frederick II., it was issued "in presence of the sacred council," but not "with its approbation." This evasion is manifestly futile;<sup>1</sup> for, in the first place, though the acts of the council do not expressly mention the approbation of the pope's sentence by the bishops, that approbation appears sufficiently from the circumstances, that is, from the silence of the bishops who had been convoked for the express purpose of examining Frederick's cause with the pope, and who were present at all the details of the trial, and at the fulmination of the sentence. Is it not manifest that the members of a tribunal are always presumed to approve the sentence pronounced in their presence by their president, unless they expressly protest against it? Secondly, the adhesion of the bishops to the pope's sentence, in the Council of Lyons, is positively attested by many contemporary authors. Among others, Matthew Paris, speaking of that sentence, asserts, "that the pope and bishops, holding lighted candles in their hands, pronounced against the emperor that terrible sentence, which, like lightning, covered his ambassadors with confusion."<sup>2</sup> Another contemporary historian, Nicolas de Curbio, confessor of Innocent IV., and eyewitness of the facts which he relates, adds, "that the sentence of deposition pronounced by the pope against Frederick was approved by all the bishops present at the council, as any man may satisfy himself by their signatures and seals attached to that sentence."<sup>3</sup>

<sup>1</sup> This answer is, in a greater or less degree, supposed or insinuated by many modern authors. (See, among others, Bossuet, *Defens. Declarat. lib. iv. cap. viii.*; Fleury, *Hist. Eccl. vol. xvii. book lxxxii. n. 29.*) It is refuted conclusively by Roncaglia, *Animadvers. in Hist. Eccles. Nat. Alex. at the end of Dissert. ii. of Nat. Alexandre, on the Eccles. Hist. of the eleventh century* (§ 3, versus finem).

<sup>2</sup> "Dominus igitur Papa, et prælati assistentes concilio, candelis accensis, in dictum imperatorem Fridericum, *qui jamjam imperator non est nominandus*, terribiliter, recedentibus et confusis ejus procuratoribus, fulgurarunt."—Matt. Paris, *Hist. Anglic. ann. 1245.* (Labbe, *Concil. tom. xi. part. i. p. 665.*)

<sup>3</sup> "Sententiam depositionis sæpe fati Friderici protulit summus pontifex in majori Ecclesiâ Lugdunensi, in pleno concilio, ann. Domini 1244, 15 calendas Augusti, pontificatus sui anno tertio; *quæ fuit ab universis Ecclesiarum prælatis, in eodem concilio residentibus, approbata; sicut liquere potest omnibus, tam presentibus quàm futuris, per subscriptiones ipsorum, et eorundem sigilla, pendentia in eadem.*"—Nicolaus de Curbio, *Vita Innocentii IV. n. 19.* (Muratori, *Scriptores Rerum Ital. tom. iii. part. i. p. 592.* Roncaglia, *ubi supra.*)

150. *This Belief held by the Emperors themselves.*

The special rights of the Holy See over the empire of the West could be fully established by the conduct and admissions alone of the emperors themselves, who had so deep an interest in their own independence. From the foundation of that empire, none of the successors of Charlemagne ever assumed the title and insignia of the imperial dignity, until he had been acknowledged and crowned by the pope, and had promised, on oath, a peculiar dependence on the Holy See.<sup>1</sup>

151. *Proofs of this Belief under the Carlovingian Emperors.*

That the Carlovingian emperors never assumed the title and insignia of the imperial dignity until they had been acknowledged and crowned by the pope, is clearly asserted by the emperor Louis II., in a letter addressed, in 871, to the emperor Basil, who disputed with him the title of emperor of the Romans. Among the arguments urged by Louis in support of his claim, he insists on this circumstance as peculiar to the emperors of Charlemagne's race, "that not one of them had taken that glorious title until they had received, for that purpose, the sacred unction from the hand of the sovereign pontiff."<sup>2</sup>

This formal testimony explains naturally the conduct of Charlemagne and of Louis le Débonnaire, who appear not to have awaited the pope's consent for taking their sons as colleagues in the throne.<sup>3</sup> The language of Louis II., in his letter to the emperor Basil, clearly requires that, in thus taking a colleague, the emperors did not definitively nominate the future emperor, but merely pointed out who he might be; but the title was not irrevocably possessed, until the emperor had been crowned by the pope.

This explanation is confirmed by the language of Lothaire I., who, after having been associated in the empire by his father,

<sup>1</sup> Cenni, Monumenta, &c. tom. ii. Dissert. i. n. 21-24, 40-52; Dissert. vi. n. 13, &c.

<sup>2</sup> "Francorum principes, primò reges, deinde verò imperatores dicti sunt in duntaxat qui à Romano Pontifice ad hoc oleo sancto perfusi sunt."—Ludovici II. Epist. ad Basil. (Baronii Annales, ann. 871, n. 59). Cenni, ubi supra, n. 19, 22. Daniel, Hist. de France, vol. ii. ann. 871, p. 482.

<sup>3</sup> Fleury, Hist. Eccl. vol. x. book xlvi. n. 7, 27. Hist. de l'Eglise Gall. vol. v. ann. 813, 817, pp. 201, 252. Cenni, ubi supra, n. 23, 24.

Louis le Débonnaire, proceeded by his order to Rome, to receive the imperial unction from the hands of Pope Paschal I. In a letter announcing this coronation to his father, Lothaire states, "I have received from the sovereign pontiff, before the altar, and before the body of St. Peter, prince of the apostles, as you willed and desired, the blessing, the honour, and the title of the imperial dignity; the diadem, moreover, and the sword, for the defence of the Church."<sup>1</sup> How could Lothaire state that he had received the title of emperor from the pope, if that title had been already conferred on him, definitively and irrevocably, by his being assumed as colleague in the throne?

So generally was consecration by the pope admitted as indispensable for the imperial dignity, during the Carovingian dynasty, that all aspirants for the empire applied to the pope to obtain that favour; and whenever disputes arose about conflicting titles, no effort was spared by either party to secure the papal vote, and to receive from him the imperial crown; for they knew this was the sole means of having their title recognised by other sovereigns.<sup>2</sup> The example of Charles the Bald is particularly remarkable in this respect; nor can we peruse the details of his election without finding conclusive proofs of the usage for which we are contending.<sup>3</sup>

152. *Proofs of this Belief under the German Emperors.*

That this usage continued under the German emperors, is equally certain.<sup>4</sup> In his *Annals of Italy*, Muratori confidently asserts, after having examined a multitude of charters and diplomas, that in no instance was the title of emperor given to the king of Germany until he had been crowned by the pope.<sup>5</sup>

<sup>1</sup> "Coram sacro altari, et coram sacro corpore B. Petri, principis apostolorum, à summo Pontifice, vestro ex consensu et voluntate, *benedictionem, honorem et nomen suscepi imperialis officii*; insuper diadema capitis, et gladium ad defensionem Ecclesiæ."—Lothar. I. *Epist. ad Ludov. Pium* (Mabillon, *Acta Ordinis S. Bened. sæculi iv.* p. 513). Cenni, *ubi supra*, n. 24.

<sup>2</sup> Cenni, *ubi supra*, n. 22, &c. *L'Art de Vérifier les Dates*; *Chronol. Hist. des Empereurs d'Occident*, p. 432, &c.

<sup>3</sup> The sequel of our Inquiry will furnish an opportunity of entering into a full history of this election. See *infra*, ch. iii. art. ii. n. 260, &c.; also Fleury, *Hist. Eccl.* vol. xi. book lii. n. 23, 30; *Hist. de l'Eglise Gall.* vol. vi. book xvii. pp. 274, 292.

<sup>4</sup> Cenni, *ubi supra*, n. 43, &c.

<sup>5</sup> Muratori, *Annali d'Ital.* ann. 1433, 1493, 1519, &c. Among the charters.

A singularly conclusive proof of this ancient custom is found in the history of the controversies which frequently arose between the electors, or the rival claimants of the empire. The pope was generally regarded as the natural judge of these controversies; whoever was acknowledged emperor by him, soon received the adhesion of the German lords and of all the sovereigns of Europe.

153. *Election of Rodolph in 1077.*

This was particularly exemplified during the pontificate of Gregory VII., in the election of Rodolph, in 1077, by the convention at Forcheim, of German barons disaffected to Henry. The pope having assembled a council at Rome, in 1079, to adjudicate on the claims of the two rivals, they, through their ambassadors, bound themselves by oath to abide by the award of the pope, who, the year after, confirmed Rodolph's election.<sup>1</sup>

154. *Election of Otho IV. in 1201.*

This right of the pope was as solemnly admitted in 1201, in the election of the emperor Otho IV.<sup>2</sup> Germany was, at that time, divided between three pretenders to the imperial crown: Frederick, king of Sicily; Philip, duke of Suabia; and Otho, duke of Saxony. The pope, solicited by all parties, by the three rivals, by the barons of their party, by the king of England and the king of France, declared for Otho, who, in effect, was recognised shortly after by the German lords, and by all the sovereigns of Europe. This important affair is the subject of a great number of the letters of Innocent III., published in the complete edition of his letters, entitled, "Register of Innocent III. on the Affairs of the Empire."<sup>3</sup>

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alluded to here, see especially the acts of the election of Henry VII. in 1309. They are cited by Leibnitz, *Codex Juris Gentium* (tom. ii. p. 252); and by Baluze, *Vitæ Paparum Aven.* (tom. ii. p. 265). See an analysis of these acts in Fleury, *Hist. Eccl.* vol. xix. book xcii. n. 31, 35.

<sup>1</sup> Concil. Rom. ann. 1079 (Labbe, *Concil.* vol. x. p. 879). Fleury, *Hist. Eccl.* vol. xiii. book lxii. n. 42, 43, 60; book lxiii. n. 1. D. Ceillier, *Hist. des Auteurs Ecclés.* vol. xx. p. 639. Voigt, *Hist. de Grég. VII.* book x. pp. 448, 507, 525, &c.

<sup>2</sup> Fleury, *Hist. Eccl.* vol. xvi. book lxxv. n. 3, 32, 37, 38, &c. Daniel, *Hist. de France*, vol. iv. ann. 1299, p. 197.

<sup>3</sup> Baluze, *Epistol. Innocentii III.* tom. i. ad calcem. Fleury, *ubi supra*, n. 32, 37, 38. D. Ceillier, *Hist. des Auteurs Ecclés.* vol. xxiii. p. 442.

Among these very important historical documents, special attention should be given to the letter of March 1st, 1201, addressed to King Otho and the German lords, and to another, written about the same period to the duke of Carinthia. The first closes with the following words: "By the authority of the Almighty God, which has been given to us in the person of St. Peter, we acknowledge you as king, and we order that henceforward they pay to you, as such, respect and obedience; and after the usual preliminaries we shall confer on you the imperial crown."<sup>1</sup> In the letter addressed to the German lords, after having explained the reasons that induced him to pronounce in favour of Otho, the pope orders them to pay him the respect and obedience due to the king of the Romans and emperor elect; and, at the same time, he promises that there should be no stain on their conscience or honour from the oaths that they had previously taken.<sup>2</sup> The letter to the duke of Carinthia is the more worthy of attention, because it has been incorporated in the Corpus Juris, among the decretals of Gregory IX. Therein the pope declares, that the prince electors had received from the Holy See the right of electing the emperor, and that, in conferring on them this right, he never renounced the right of rejecting the elect, if he should be unworthy of the empire. "The power of electing, as king of the Romans, the future emperor, we acknowledge in those princes to whom that power belongs by law and by ancient custom; especially since that power is derived to them from the Holy See, which transferred the Roman empire from the Greeks to the Germans, in the person of Charlemagne. But the princes must also acknow-

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<sup>1</sup> "Auctoritate Dei omnipotentis, nobis in beato Petro collatâ, te in regem recipimus, et regalem tibi præcipimus de cætero reverentiam et obedientiam exhiberi; præmissisque omnibus quæ de jure sunt et consuetudine præmittenda, regiam magnificentiam ad suscipiendam Romani imperii coronam vocabimus, et eam tibi, dante Domino, humilitatis nostræ manibus, solemniter conferemus."—Baluze, ubi supra, Epist. 32, p. 702, col. 2.

<sup>2</sup> "Monemus igitur universitatem vestram, et exhortamur in Domino, et in remissionem vobis injungimus peccatorum, quatenus ei (Othoni) de cætero, sicut regi vestro, in Romanorum imperatorem electo, reverenter et humiliter deferatis, regalem ei honorificentiam et obedientiam impendentes. . . Super primis etiam juramentis, illud auctoritate apostolicâ statuemus, quod ad purgandam et famam et conscientiam redundabit."—Baluze, ubi supra, Epist. 33, pp. 704, 705. See also the 29th Letter, in which the pope states all the reasons that could be urged for or against the three aspirants.

ledge, and they do in fact acknowledge, that the right of examining the person elected king of the Romans, and who is to be emperor, belongs to us, who anoint and crown him."<sup>1</sup> All the assertions made here by the pope were in fact admitted, not only by the emperor Otho, but also by the German lords, and by the other sovereigns of Europe, who soon after acknowledged Otho as emperor, in consequence of his election by the pope.<sup>2</sup>

155. *Deposition of Otho IV. in 1211, and of Louis of Bavaria in 1346.*

The history of Germany presents many other instances of the interference of the pope in the election of emperors, not only when contests arose between the electors and the pretenders to the empire, but also in cases of deposition pronounced by sentence of the pope, against some emperors. It was thus, as we have already remarked, that Frederick II. was elected emperor by Pope Innocent III., and acknowledged as such by all the sovereigns of Europe, after the deposition of Otho IV.<sup>3</sup> A century later, the emperor Louis of Bavaria, being excommunicated and deposed by Pope John XXII., sent ambassadors several times to Avignon, to solicit absolution. All his measures, however, ended in his drawing on himself a new sentence of excommunication by Pope Clement VI., who, in concert with the king of France, in 1346 procured the nomination of Charles of Moravia, in place of Louis of Bavaria. It must be remarked that, during the course of his negotiations with Benedict XII., immediate successor of John XXII., Louis expressly acknow-

<sup>1</sup> "Unde illis principibus jus et potestatem eligendi regem, in imperatorem postmodum promovendum, recognoscimus, ut debemus, ad quos de jure ac antiquâ consuetudine noscitur pertinere; præsertim cum ad eos jus et potestas hujusmodi ab apostolicâ sede pervenerit, quæ Romanum imperium, in personam magnifici Caroli, a Græcis transtulit in Germanos. Sed et principes recognoscere debent, et utique recognoscunt, quod jus et auctoritas examinandi personam electam in regem, et promovendam in imperium, ad nos spectat, qui eam inungimus, consecramus et coronamus."—Baluze, ubi supra, Epist. 62, p. 715. See also in the *Corpus Juris Canonici*, the decretal *Venerabilem*, in the *Decretals of Gregory IX.* lib. i. tit. vi. cap. xxxiv. Fleury, ubi supra, n. 38.

<sup>2</sup> Bossuet (*Defens. Declar.* lib. vi. cap. ix. versus medium), and after him M. l'Abbé Jager (*Introduction à l'Hist. de Grégoire VII.* p. 80), suppose that the decretal *Venerabilem* was given by Innocent III. in favour of Frederick II. The contents of the document itself, and of others connected with it, prove that they were given in favour of Otho IV.

<sup>3</sup> See supra, n. 148.

ledges the pope's right, by submitting to be excommunicated and even deposed, if he did not make satisfaction to the Church within the specified time.<sup>1</sup>

156. *Oath of Fidelity taken to the Popes by the Emperors.*

But a fact equally important, and of itself abundantly sufficient to demonstrate the peculiar dependence of the empire on the Holy See in ancient times, is, that, according to invariable custom, the emperor, no matter how he was elected, could not assume the title and insignia of the imperial dignity without having taken an oath of fidelity to the pope, which promised, if not a feudal subjection, as many suppose, at least a special devotion to the interests of the Holy See. This manifestly appears, both from the terms of the oath itself, and from the manner in which historians speak of it.<sup>2</sup>

157. *Text of this Oath in the Ninth Century.*

The most ancient document that contains this oath is the Sacramentary of St. Gregory, used in Rome and France in the ninth century. It was published by Muratori in 1748, from two copies, then preserved in Rome in the Vatican and Orbonian libraries.<sup>3</sup> This Sacramentary states, that the king emperor

<sup>1</sup> "Item damus dictis procuratoribus nostris plenam potestatem, pro prædictis (sponsionibus) adimplendis et observandis, pœnas infra scriptas, vice et nomine nostro, et pro nobis recipiendi, et ad eas nos obligandi et astringendi; videlicet, quod si, super præmissis, vel aliquo præmissorum, molestaverimus, seu molestari fecerimus Romanam Ecclesiam, . . . liberum sit Romano pontifici, prout sibi expedire videbitur (*præmissis tamen juridicis monitionibus*), ad alias pœnas procedere contra nos, *privando etiam nos, si sibi videbitur, imperiali, regiâ, et quâlibet aliâ dignitate*, absque aliâ vocatione et juris solemnitate." —Ludov. Bavari ad Summum Pontif. Bened. XII. supplices Litteræ. (Raynaldi Annales, ann. 1336, n. 21). For details of these negotiations of Louis of Bavaria with the Holy See, consult Raynaldi, Annales, ann. 1336, &c.; Maimbourg, Hist. de la Décadence de l'Empire, book vi. ann. 1334, &c.; Fleury, Hist. Eccl. vols. xix. xx. books xciv. xcv. passim; Bossuet, Defens. Declarat. lib. iii. cap. xxvi.

<sup>2</sup> Cenni, Monumenta Domin. Pontif. vol. ii. Dissert. i. n. 39, 48. This author, and some others, suppose that Charlemagne himself, in the ceremony of his consecration, took an oath of fidelity to the pope (*ibid.* n. 45). We shall give, in another place, the arguments which prevent us from admitting that supposition. (See No. 6, Confirmatory Evidence.)

<sup>3</sup> Sacramentar. Greg. De Coron. Imper. (Muratori, Liturgia Rom. Vetus, Venetiis, 1748, 2 vols. fol.).

Muratori proves solidly, in our opinion, the antiquity of these copies, by arguments founded both on the form of the characters and the nature of the contents. For in the catalogue which it gives of the festivals then established,

elect, having entered the church for the ceremony of his coronation, places his hands on the Gospels, and takes the following oath: "I N., king of the Romans, by the grace of God future emperor, promise and swear, in presence of God and of St. Peter, that I will be henceforward the protector and defender of the pope, and of the holy Roman Church, in all their necessities and interests; preserving and guarding their possessions, honours, and rights, with the divine assistance, to the best of my knowledge and ability, in pure and sincere fidelity. So help me God, and these holy Gospels."<sup>1</sup>

This oath occurs, in nearly the same terms, in many other Sacramentaries or Roman orders of a more recent date.<sup>2</sup> But independently of the testimony of these liturgical books, the use of this oath during the whole course of the middle ages is attested by a great number of other historical documents. We shall cite here a few only of the most remarkable.

158. *Oath taken by Otho I. in 960.*

Pope John XII. having invited Otho I., king of Germany, into Italy, to deliver it from the tyranny of Berenger, offered

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there is no mention of All Saints, which was established by Gregory IV., in the reign of Louis le Débonnaire; nor of the Rogation days, established in Rome by Leo III.; nor of some other more recent festivals: hence these two copies must have been made before the establishment of those feasts, and, consequently, before the death of Gregory IV. in 844, and even before that of Leo in 816. Secondly, the Orbonian copy closes with a catalogue of many persons, living and dead, for whom prayers were to be offered up in the holy sacrifice of the mass. The first catalogue of living persons is the canons of Paris, commencing with Bishop Erchenrade, who died about the year 857. (*Gallia Christiana*, tom. vii. p. 33.) This copy of the Sacramentary must, consequently, have been used in the church of Paris about the middle of the ninth century. (*Muratori*, ubi supra, tom. i. *Dissert. De Rebus Liturgicis*, cap. vi. pp. 72-77.)

<sup>1</sup> "Ego N., rex Romanorum, annuente Domino, futurus imperator, promitto, spondeo, polliceor atque juro, coram Deo, et beato Petro, me de cætero protectorem et defensorem fore summi pontificis, et sanctæ Romanæ Ecclesiæ, in omnibus necessitatibus et utilitatibus suis; custodiendo et conservando possessiones, honores, et jura ejus, quantum divino fultus adjutorio (fuero), secundum scire et posse meum, rectâ et purâ fide. Sic me Deus adjuvet, et hæc sancta Dei Evangelia."—*Muratori*, ubi supra, tom. ii. p. 455.

<sup>2</sup> *Ordo Romanus ad benedicendum Imperat.* apud *Hittorpium*, *De Divinis Officiis*, p. 153. *Idem*, apud *Mabillon*, *Musæum Italicum*, tom. ii. p. 216. See some other editions of the *Ordo Romanus*, and of the *Sacramentary of St. Gregory*, referred to by *Mabillon*, *ibid.* *Comment. prævius*, § 1; and by *Muratori*, ubi supra, tom. i. *Dissert. De Rebus Liturgicis*, cap. vi.

him the imperial crown as the reward of his services.<sup>1</sup> But the better to insure the execution of the promises, the pope recommended his legates to require from Otho, before he entered Italy, the following oath, before the true cross and the holy relics: "I, King Otho, do make to the lord John, sovereign pontiff, promise and oath, by the Father, and the Son, and the Holy Ghost, and by this wood of the life-giving cross, and by these relics of the saints, that if I shall, with God's aid, arrive at Rome, I will with all my might exalt the holy Roman Church, and thee its ruler; and I shall never injure by my will, or my consent, or my counsel, or my persuasion, thy life, or thy members, or the honour which thou holdest; and that in all concerns that belong to thee or the Romans, I shall not make in Rome any decree or law without thy counsel; and I shall restore to thee whatever part of the land of St. Peter may come into my possession; and whoever is appointed by me over the kingdom of Italy, must swear to be thy ally in defending the land of St. Peter according to the best of his power. So help me God, and these God's holy Gospels."<sup>2</sup> This formula was afterwards inserted in the *Corpus Juris*; and it was observed sometimes in similar circumstances, as we shall see, by Otho's successors.

159. *Oath of the Emperor Henry II. in 1014.*

An author contemporary with Henry II. recites, in the following terms, the oath of fidelity taken by that prince to Pope Benedict VIII., in 1014: "Henry having arrived at the church of St. Peter, where the pope and the clergy were awaiting him, the pope, before he brought him in, asked him whether

<sup>1</sup> Baronii Annales, tom. x. ann. 960, n. 1. Fleury, Hist. Eccl. vol. xii. book lvi. n. 1.

<sup>2</sup> "Tibi domino Joanni papæ, ego rex Otho, promittere et jurare facio, per Patrem, et Filium, et Spiritum sanctum, et per lignum hoc vivificæ crucis et per has reliquias sanctorum, quod si, permittente Domino, Romam venero, sanctam Romanam Ecclesiam, et te rectorem ipsius exaltabo, secundum posse meum; et numquam vitam, aut membra, et ipsum honorem quem habes, meâ voluntate, aut meo consilio, aut meo consensu, aut meâ exhortatione perdes; et in Romanâ urbe nullum placitum aut ordinationem faciam, de omnibus quæ ad te aut ad Romanos pertinent, sine tuo consilio; et quicquid ad nostram potestatem de terrâ sancti Petri pervenerit, tibi reddam; et cuicumque regnum Italicum commisero, jurare faciam illum ut adjutor tuus sit, ad defendendam terram sancti Petri, secundum suum posse. Sic me Deus adjuvet, et hæc sancta Dei Evangelia."—Baronius, *ibid.* n. 5. *Corpus Juris Canonici*, *Decreti parte primâ*, dist. lxxiii. cap. xxxiii. *Tibi Domino.*

he resolved to be the faithful protector and defender of the Church, and sincerely faithful in all things to him and to his successors. The king answered in the affirmative; after which the pope gave to him the unction and royal crown, as likewise to his queen.”<sup>1</sup>

160. *Form of Oath drawn up by Gregory VII.*

It must be remembered that the emperor Henry II. took that oath about sixty years before the pontificate of Gregory VII., a similar oath, moreover, having been taken by Otho I. more than fifty years before. In requiring, therefore, such an oath from the emperor elect, Gregory VII. no more than conformed to a custom established long before his own time. The following are the terms of the oath which he required from Henry IV. and from Rodolph: “From this hour and henceforth, I will be faithful in good faith to the apostle St. Peter, and to his vicar Pope Gregory, now living in the flesh, and whatsoever the pope himself shall order me, with these words, *by true obedience*, I shall faithfully observe, as becomes a Christian, and I shall pay due honour and service to God and to St. Peter, with the help of Christ, and on the day when I shall first see the pope, I will faithfully, in due form, become his soldier and St. Peter’s.”<sup>2</sup>

161. *Dispute on this Subject between Frederick I. and Adrian IV.*

The terms of this oath may have varied with time; but it was certainly taken during the whole course of the middle ages by the emperors at their coronation. Roderic, an author of the twelfth century, saw in the palace of Lateran, a picture repre-

<sup>1</sup> “Henricus, . . . cum dilectâ suimet conjugē Cunegunde, ad ecclesiam sancti Petri, Papâ expectante, venit; et antequam introduceretur, ab eodem interrogatus, si fidelis vellet Romanæ patronus esse et defensor Ecclesiæ, sibi autem suisque successoribus per omnia fidelis: devotâ professione respondit; et tunc ab eodem inunctionem et coronam, cum contactali (id est conjugē) suâ, suscepit.”—Ditmar, *Chronic.* lib. vii. (Leibnitz, *Scriptores Rerum Brunswic.* tom. i. p. 400. Baronii *Annales*, tom. xi. ann. 1014, n. 1. Fleury, *Hist. Eccl.* vol. xii. book lviii. n. 38.)

<sup>2</sup> “Ab hâc horâ et deinceps, fidelis ero, per rectam fidem, beato Petro apostolo, ejusque vicario Papæ Gregorio, qui nunc in carne vivit; et quodcumque mihi ipse Papa præceperit, sub his videlicet verbis: *Per veram obedientiam*, fideliter, sicut oportet Christianum, observabo; . . . et Deo sanctoque Petro, adjuvante Christo, dignum honorem et utilitatem impendam; et eo die, quando illum primitus videro, fideliter per manus meas miles sancti Petri et illius efficiar.” The text of this form is given in the *Letters of Gregory VII.* book ix. epist. 3 (Labbe, *Concil.* tom. x. p. 279).

sending the coronation of the emperor Lothaire II., in 1133, with the following inscription in Latin verse: "The king stood without the gate; first guaranteeing, on oath, the privileges of the city; he then becomes the pope's man, and receives from him the crown."<sup>1</sup> The emperor Frederick I., it is true, having visited Rome in 1155, expressed great displeasure at this painting and inscription, which seemed to represent the empire as a fief of the Holy See. He urgently requested Adrian IV. to efface them. Some time after he was not less offended at some expressions of the pope, which implied, he believed, the same pretensions.<sup>2</sup> The pope expressed his astonishment at the interpretation given to his words; and, to appease the emperor, protested that he never regarded the empire as being, properly speaking, a fief of the Holy See; but had merely wished to convey that, in conferring the imperial crown, he had really conferred a *benefit*.<sup>3</sup> The emperor appeared satisfied with this

<sup>1</sup> "Rex venit ante fores, jurans priùs urbis honores  
Post Homo fit Papæ, sumit quo dante coronam."

Radevicus, De Gestis Friderici I. lib. i. cap. x. (apud Urstium, Germaniæ Historici Illustres, p. 400; also Muratori, Rerum Ital. Scriptores, tom. vi.). Fleury, Hist. Eccl. vol. xiv. book lxviii. n. 22.

<sup>2</sup> An attentive and unprejudiced perusal of Pope Adrian's letter, at which Frederick took umbrage, proves that there was no ground for offence. To induce that prince to repress with more energy impiety in his states, the pope reminds him, in the following terms, of the benefits which he had received from the Holy See: "You ought to remember the favourable reception which the holy Roman Church gave you last year, and with what joy she invested you with the imperial crown. It is not that we repent having complied with all your desires; on the contrary, we would have rejoiced to be able to confer, if possible, greater favours on you, in consideration of the services which you could do for the Church and ourselves. Sed etsi majora beneficia excellentia tua de manu nostrâ suscepisset, si fieri posset, . . . non immeritò gauderemus." (Adriani IV. Epist. 2, ad Frid. Imp. Labbe, Concil. tom. x. p. 1145.) Nothing, assuredly, but a passion for quibbling on words could make one suppose that the pope used the word "beneficia" here in the sense of fiefs: it was a genuine German quarrel. It is amazing to find this quibbling of Frederick revived by many modern writers, especially Sismondi, Hist. des Républiques Ital. ch. ix. Consult also, on these contests, Fleury, Hist. Eccl. vol. xv. book lxx. n. 23, 25, 30; D. Ceillier, Hist. des Auteurs Ecclés. vol. xxiii. p. 350, &c.; Bossuet, Defens. Declar. lib. iii. cap. xviii.; lib. iv. cap. ix.; Bianchi, Della Potestà della Chiesa, vol. ii. book v. § 13.

<sup>3</sup> "Occasione cujusdam verbi, quod est, *beneficium*, tuus animus (sicut dicitur) est commotus: quod utique, nedum tanti viri, sed nec cujuslibet minoris animum meritò commovisset. Licet enim hoc nomen, quod est, *beneficium*, apud quosdam in aliâ significatione quàm ex impositione habeat, assumatur; tunc tamen in eâ significatione accipiendum fuerat, quam nos ipsi posuimus, et quam ex institutione suâ noscitur retinere. Hoc enim nomen ex *bono et facto*, est editum, et dicitur *beneficium* apud nos, non *feudum*, sed *bonum factum*. In quâ significatione, in universo sacræ Scripturæ corpore, invenitur;

explanation ; but so far was the pope from believing that by his explanation he had renounced his rights over the empire, that he addressed to the same emperor, not long after, letters, in which he reminds him of the oath of fidelity which he had taken to St. Peter and the pope, and threatened to depose him if he did not renounce certain pretensions on the ecclesiastical property in Lombardy. "Return," he exclaims, "return from your errors ; follow my counsel ; for I fear that, after having received the unction and the imperial crown from me, you may lose what was conferred on you by usurping what does not belong to you."<sup>1</sup> Frederick, in a rage, answered this letter in extremely harsh terms, which would probably have drawn down on him sentence of deposition, if Eberhard, bishop of Bamberg, a prelate distinguished by his doctrine and his virtues, had not fortunately interposed and reconciled the pope and the emperor. But it manifestly appears from this discussion, first, that the emperor Frederick I., as well as his predecessors, had taken, at his coronation, an oath of fidelity to the pope : secondly, that in the opinion of the emperor and of the pope, this oath did not strictly express a feudal dependence of the emperor on the Holy See, but merely a special devotion to the interests of the Roman Church : thirdly, that Pope Adrian IV., though not regarding the empire properly as a fief of the Holy See, still believed, as well as his predecessors, that he had, both by custom and the constitutional law of his time, a right, in certain cases, to depose the emperor.

162. *Dispute on the same Subject between the Emperor Henry VII. and Pope Clement V.*

Whatever be thought of this dispute between Pope Adrian IV. and Frederick I., it is certain that the emperors continued, during many succeeding centuries, to take at their coronation an oath of fidelity to the pope. Disputes they sometimes

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*ubi ex beneficio Dei, non tamquam ex feudo, sed velut ex benedictione et bono facto ipsius, gubernari dicimur et nutriri. Et tua quidem Magnificentia liquidè recognoscit, quod nos ita bene et honorificè imperialis dignitatis insigne tuo capiti imposuimus, ut bonum factum valeat omnibus judicari.*—Adriani IV. Epist. 4 (Labbe, ubi supra, p. 1147).

<sup>1</sup> "Resipisce ergo, resipisce, tibi consulimus. Quia cùm a nobis consecrationem et coronam merueris, dum inconcessa captas, ne concessa perdas, nobilitati tuæ timemus."—Adriani IV. Epist. 6 (Labbe, ibid. p. 1149).

raised on the meaning and consequences of that oath ; but they made no hesitation about taking it, and rather took it with alacrity, in order to insure the pope's consent to their election. The history of the emperor Henry VII. presents a remarkable example on this point.<sup>1</sup> Pope Clement V. wishing to procure peace, or at least a truce between that prince and the king of Naples, in 1312, pretended to compel them to it, by virtue of the oath of fidelity which both had taken to the Holy See. The emperor positively refused to comply with the pope's wishes, insisting that he was bound to no man by an oath of fidelity. The pope, justly indignant at this assumption, condemned it in a bull published the following year, and afterwards inserted in the *Corpus Juris*.<sup>2</sup> In this bull, he recites, that Henry had, after the example of his predecessors, taken to him an oath of fidelity, both before and at his coronation ; that before his entrance into Italy (in 1311), he had taken the oath according to the form in the *Decretum* of Gratian, which we have already given ;<sup>3</sup> and that, at his coronation (in 1312) he had taken it again, according to the form in the *Roman Pontifical*. "I Henry, king of the Romans, with the permission of God, future emperor, promise and swear before God and St. Peter, that henceforward I shall be the protector and defender of the pope, and of the holy Roman Church, in all its necessities and interests, guarding and defending its possessions, its privileges, and its rights, to the best of my knowledge and ability, with the assistance of God, in pure and sincere faith. So help me God, and these holy Gospels of God."<sup>4</sup> It certainly is astonishing

<sup>1</sup> Fleury, *Hist. Eccl.* vol. xix. book xci. n. 48 ; book xcii. n. 1, 8. *Corpus Juris Can. Clementinar.* lib. ii. tit. ix. *De Jurejurando*.

<sup>2</sup> In this bull the pope writes in the following strain : "Inter cætera, publicè, præsentè multitudine hominum copiosâ, (Henricus) respondit, se non fore cuiquam ad *juramentum fidelitatis* adstrictum, et quod numquam fecerit juramentum, propter quod foret ad juramentum fidelitatis alicui obligatus ; et quod ipse nesciebat, quod antecessores sui Romani imperatores umquam juramentum hujusmodi præstitissent, simulans se immemorem juramentorum, quæ nobis ante coronationem suam præstiterat, et post coronationem etiam innovarat. Nos itaque attendentes quod hujusmodi responsio, si sub dissimulatione pertranseat, vel silentio pallietur, posset in magnum et evidens præjudicium Romanæ Ecclesiæ redundare, dignum admodum et opportunum fore prospeximus, ut de juramentis hujusmodi constitutioni præsentî aliqua breviter annectamus."—*Corpus Juris Canonici*, ubi supra, pp. 118, 119.

<sup>3</sup> See supra, n. 158.

<sup>4</sup> "Ego Henricus, Romanorum rex, annuente Domino, *futurus imperator*,

how the emperor could deny this was an oath of fidelity ; and how doubts could be raised on the point by many modern writers. All, however, acknowledge, as Bossuet remarks, " that the oath expressed at least a great submission." <sup>1</sup>

163. *Remarkable Admissions of Henry IV. and Frederick II. on the Pope's Right to depose them.*

In fine, it is very remarkable, and most clearly established by history, that the emperors, when receiving the unction and imperial crown from the pope, not only took the above-mentioned oaths, but, moreover, admitted his right of deposing them, at least in certain cases. Abundant proofs of the fact have been already given in the case of Henry IV., by his own admissions, at a time when he was most interested in disputing the pope's pretensions.<sup>2</sup> About two centuries after the excommunication and deposition of that prince, Frederick II., when excommunicated and deposed by Gregory IX., in 1239, did not contest the right of pronouncing such a sentence, for he had long since formally admitted it ;<sup>3</sup> but he complained only of the pretended injustice of that sentence, and appealed from it to a future council, whose award he professed himself from the moment ready to obey.<sup>4</sup> Here is a manifest recognition of the competence of a council ; and it was recognised some time after still more manifestly by Frederick ; for the pope, having sum-

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promitto, spondeo et polliceor, atque juro coram Deo et beato Petro, me de cætero protectorem, procuratorem et defensorem fore summi pontificis, et hujus sanctæ Romanæ Ecclesiæ, in omnibus necessitatibus et utilitatibus suis, custodiendo et conservando possessiones, honores et jura ejus, quantum divino suffultus adjutorio fuero, secundum scire et posse meum, rectâ et purâ fide. Sic me Deus adjuvet, et hæc sancta Dei Evangelia."—Corpus Juris, ubi supra, p. 120. In this form of oath Henry takes the title only of " future emperor," the custom and constitutional law of the empire not allowing him to take the title of emperor until he had received the unction and imperial crown from the pope. In another place we shall cite the Law of Swabia on that matter (ch. iii. art. ii. § 2, n. 269).

<sup>1</sup> " Huc accedit, quod jampridem Romanis pontificibus ab imperatoribus id præstitum fuerat juramentum, quod *fidelitatis* fuisse Romani pontifices postea declaraverunt : summi certè obsequii fuisse nemo diffitetur."—Bossuet, Defens. Declar. lib. iv. cap. ix. versus medium.

<sup>2</sup> Supra, n. 85, 97, 98.

<sup>3</sup> Greg. IX. Epist. 2, ad Steph. Cantuar. Archiepis. (Labbe, Concil. vol. xi. p. 313). Fleury, Hist. Eccl. vol. xvi. book lxxix. n. 37.

<sup>4</sup> Fleury, Hist. Eccl. vol. xvii. book lxxxii. n. 9, 20, 46. Michaud, Hist. des Croisades, vol. iv. p. 512.

moned a general council to Lyons, in 1245, to decide this affair, the emperor, not wishing to appear there in person, deputed his procurators to defend him, and among others, Thaddeus of Suessa, an eminent lawyer, who discharged his commission with an ardour and zeal not always tempered with discretion. But, in all the heat of the contest, these deputies, charged as they were with Frederick's defence, never once questioned the competency of the pope and council to judge his cause. Thaddeus alone, in the last session, seeing the pope on the point of pronouncing the sentence, declared that if they proceeded against the emperor, he would appeal from them to a future pope and general council. Such a declaration was, doubtless, insulting alike to the pope and council then present; but, in reality, it was another admission of the competency of the pope and general council to judge the emperor. The pope, therefore, paid no regard to an appeal so palpably evasive, but pronounced against Frederick sentence of deposition, in the presence and with the approbation of the council.<sup>1</sup>

164. *Frederick and Others often change their Opinion on this Point.*

Frederick, it is true, after having long recognised the competence of this tribunal, soon changed his tone, when he heard of his condemnation; he immediately addressed to the king of England, and to many other sovereigns, a letter, protesting against the pope's right to judge princes in temporal matters.<sup>2</sup> It is manifest, nevertheless, that in so doing Frederick contradicted himself and all the sovereigns of Europe, who had expressly acknowledged, in the Council of Lyons, the pope's competency on the matter in question.<sup>3</sup> Frederick's sudden change of opinion must, therefore, be attributed naturally to the extreme agitation into which he was thrown by the sentence of the pope; a state of mind which made him alternate between defiance and submission, according to the influence of his conflicting feelings.<sup>4</sup>

The last observation may be useful also in solving an

<sup>1</sup> See *supra*, n. 149.

<sup>2</sup> Fleury, *ibid.* book lxxxii. n. 30, 31. Michaud, *ibid.* p. 514.

<sup>3</sup> *Supra*, n. 149.

<sup>4</sup> Michaud, *ibid.* p. 187. Velly, *Hist. de France*, vol. iv. p. 328. *Hist. de l'Eglise Gall.* vol. xi. book xxxii. ann. 1245, p. 279.

objection founded on the conduct of some emperors, who, in moments of excitement, disputed more or less openly the rights of the pope over the empire. The facts already stated prove that the emperors could not deny those rights without contradicting both their own admissions and the generally received principles of the day. Hence, a celebrated Protestant writer of the last century, after having proved that the conduct of Gregory VII. to the emperor Henry IV. was a necessary consequence of the principles then universally admitted, on the temporal effects of excommunication in the case of sovereigns, adds: "it was countenanced by the belief which people had, that the empire was a fief of the Holy See; a belief favoured by the emperors themselves, in the singular delicacy with which they abstained from taking the title of emperor until they had been anointed and crowned a second time by the sovereign pontiff."<sup>1</sup> It is certainly surprising how this author can attribute to a singular delicacy of the emperors, a conduct rigorously prescribed by the custom and constitution of the empire;<sup>2</sup> his admissions, however, are not the less important, as proofs of the general belief of the emperors themselves, that they were, in a special manner, dependent on the Holy See.

165. *First Inference: From the preceding Facts the Belief in question was not introduced by Gregory VII.*

From the facts recorded in the course of this chapter it follows clearly, first, that the general belief of the middle ages, which attributed to the Church and the pope so great a power over sovereigns, was not introduced by Gregory VII., as has been supposed or insinuated by so great a number of modern authors.<sup>3</sup> We have seen, that in the principal states of Europe, and especially in Germany, this belief was founded on maxims much more ancient than Gregory VII.<sup>4</sup> He and

<sup>1</sup> Pffeffel, *Nouvel Abrégé de l'Hist. d'Allemagne*, ann. 1106, 4to. edit. pp. 228, 229.

<sup>2</sup> See *infra*, ch. iii. art. ii. § 2, n. 267.

<sup>3</sup> Sismondi, *Hist. des Répub. Ital.* vol. i. ch. iii. p. 180, &c. Michaud, *Hist. des Croisades*, 4th edit. vol. i. p. 87; vol. iv. p. 162, &c.; vol. vi. p. 260. Voigt, *Hist. de Grég. VII.* 2nd edit. p. 171, &c. 605, &c. See also the summary of M. Guizot's system, which we have already given (*supra*, n. 5, note).

<sup>4</sup> See, especially, n. 97, 127, &c. *supra*. - In the sequel we shall see additional proofs of this fact, *infra*, ch. iii. art. ii.

his successors certainly applied those maxims more rigorously than their predecessors ; but it is equally certain, that long before his time, the maxims to which he appealed in justification of his conduct to sovereigns, were admitted in the principal states of Europe, and especially in Germany.<sup>1</sup>

166. *Second Inference: The Popes and Councils of the Middle Ages cannot be accused of Criminal Usurpation.*

Secondly, from all the facts stated in this chapter it also follows, that the power exercised by the popes and councils of the middle ages over sovereigns, cannot be stigmatized as a criminal usurpation of the rights of sovereigns by the ecclesiastical power. The popes and councils that exercised this power, no more than adopted and applied maxims universally received at the time, not only by the credulous and ignorant vulgar, but by the most enlightened and the most virtuous men, and by sovereigns themselves, who were so deeply interested in contesting them.<sup>2</sup> What further defence of the popes and councils from the charge of usurpation can be required by any impartial mind ? Is not such a charge as utterly baseless as that which might be made against a judge, who grounds his sentences on the principles of jurisprudence universally admitted in his time ? If the existing jurisprudence is imperfect, is that the judge's fault ? Is it not, moreover, his duty to follow it in his decisions, until it has been reformed by competent authority ?

167. *Third Inference: Nor can they be accused of a gross Error.*

Will it be said that the popes and councils of the middle ages could not, without a gross error, attribute to themselves so extraordinary a power over sovereigns ? The conduct of popes and councils, we shall soon see, implies no such error ; but supposing that they were in error, never, assuredly, was any error more excusable and innocent than theirs. When can error be excusable, if not when it has been universally adopted during many centuries by princes and people, by men the most enlightened and virtuous, and even by those most interested in contesting the general maxims on which it was based ? Had

<sup>1</sup> See, in confirmation of this remark, n. 101, supra.

<sup>2</sup> See admissions of Bossuet, Fleury, Pfeffel, on this subject, supra, n. 113.

this belief in question been so gross an error as some suppose, how could it possibly be admitted so universally by sovereigns themselves during many centuries? Exaggerate as much as you please the ignorance of the middle ages, it must still be absurd to suppose that all sovereigns, during many centuries, had been so careless of their own interests, as to admit a principle so subversive of their authority and rights; that they not only admitted it in speculation, but had formally approved its practical application, in many cases, though they must have known that, in other circumstances, it could be also turned against themselves. Moreover, the error of the middle ages on this point, if error it was, cannot appear so gross when we reflect that it has been admitted, even in those latter times, by very great men, and even by writers otherwise not favourable to the authority of popes and councils. The following passage from Leibnitz is enough for our purpose:—"Has the pope," asks this great philosopher, "the power of deposing kings, and of absolving their subjects from their oath of allegiance? It is a point that has often been discussed; and Bellarmine's arguments, which deduce from the pope's supposed spiritual jurisdiction, a jurisdiction, at least indirect, over temporalities, have not appeared contemptible even to Hobbes himself. In fact, it is certain, that whoever has received from God power to procure the salvation of souls, has a power of repressing the tyranny and ambition of the great, which destroy such a multitude of souls."<sup>1</sup> The sequel of our inquiry will give us an opportunity of citing many other testimonies, equally decisive in justification of the belief of the middle ages on this subject.<sup>2</sup>

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<sup>1</sup> Leibnitz, *De Jure Suprematûs* (Oper. tom. iv. part. iii. p. 401). *L'Esprit de Leibnitz*, 12mo. edit. vol. ii. p. 22.

<sup>2</sup> See, especially, art. ii. of the following chapter.

## CHAPTER III.

TITLES OF THE POWER EXERCISED BY POPES AND COUNCILS OVER SOVEREIGNS  
IN THE MIDDLE AGES.168. *This Question not much discussed before the Twelfth Century.*

It does not appear that before the twelfth century, there was much inquiry into the grounds of the extraordinary power which popes and councils attributed to themselves over sovereigns. The legitimacy of that power was generally supposed as certain ; it was called into question by none but the declared enemies of the Church and the Holy See, and by a few private individuals, attached by self-interest to the cause of those sovereigns who incurred the anathema of the Church by their disorders. Even they who contested it, did not deny that excommunication entailed the forfeiture of all civil rights ; they rested their cause on the evasion, that sovereigns could not be excommunicated.<sup>1</sup>

169. *Two Principal Opinions on this Matter.*

About the middle of the twelfth century some writers began to inquire into the origin and grounds of this power ; not having considered the question with due attention, they adopted opinions which could not fail, in course of time, to occasion warm disputes. In a work composed about the close of the twelfth century, John of Salisbury assigns the divine right as the source of this power, in the sense maintained by the advocates of the theological opinion, which attributes to the Church and the pope a direct jurisdiction over temporalities.<sup>2</sup> Gervase of Tilbury, who wrote in the commencement of the following century, maintains that Constantine's donation was the real title of this power.<sup>3</sup> During a very considerable time, these were the only

<sup>1</sup> See the authors cited above, n. 96.

<sup>2</sup> See exposition of this opinion in No. 8, Confirmatory Evidence, at the end of this work.

<sup>3</sup> See n. 145, preceding chapter, note. Gervase of Tilbury was not the first that embraced this opinion. More ancient authors had supposed it, by appealing to Constantine's donation to prove against the Greeks the temporal and spiritual jurisdiction of the Holy See. See the extracts from Æneas, bishop of Paris, from St. Leo, and from St. Peter Damian, which we have cited in No. 5, Confirmatory Evidence, at the close of last volume.

opinions held by writers in the middle ages. After the revival of learning, modern authors proposed various theories, which we have already stated,<sup>1</sup> and which we now proceed to discuss in this chapter.

170. *Distinction between the Power of Jurisdiction and the Directive Power.*

For a clear understanding of this question, it is essential to adopt Fenelon's distinction between "a power of temporal jurisdiction," and "a directive power."<sup>2</sup> The former, by its very nature, implies a right of legislative control in matters of the temporal order, which have not been already decided by the divine law, the natural, or the positive. The directive power implies only the right of enlightening and directing by doctrinal decisions, or wise counsels, the conscience of princes and of nations, by making known the obligations imposed on them by the divine law, natural or positive, and especially those which arise from the oath of allegiance. This power does not entitle the Church and the pope to make any law or decree on temporal matters; they can neither confer nor take away the rights and authority of sovereigns: they can merely declare to princes and to nations their conscientious obligations in temporal matters, as well as in other matters. Ecclesiastical history presents us with remarkable examples of this directive power; as when St. Gregory the Great solicited the emperor Maurice to repeal a law which was contrary to the interests of religion;<sup>3</sup> and when St. Ambrose requested Theodosius to make a law suspending capital punishment and confiscation of property, for thirty days after the passing of sentence.<sup>4</sup>

171. *The Present Question regards solely the Power of Jurisdiction, as founded on the Right Divine.*

This distinction being supposed, we must observe, that the question so warmly discussed by theologians in these latter

<sup>1</sup> Nos. 2—20 of this Second Part.

<sup>2</sup> See exposition of Fenelon's system, *supra*, n. 8-13.

<sup>3</sup> Fleury, *Hist. Eccl.* vol. viii. book xxxv. n. 31. Bossuet, *Defens. Declar. lib. ii. cap. viii.* S. Gregorii Vita recens adornata, lib. ii. cap. x. (*Operum tom. iv.*).

<sup>4</sup> Fleury, *Hist. Eccl.* vol. iv. book xix. n. 21. Bossuet, *Defens. Declar. lib. ii. cap. v.*

times, does not regard the directive power of the Church and of the pope in temporal matters; nor their power of temporal jurisdiction over the fiefs and other sovereignties which they may have acquired by special titles; but solely, "the power of temporal jurisdiction, direct or indirect, based on the right divine. Even theologians most decidedly opposed to the opinion which attributes this latter power to the Church, do not contest the two former. Bossuet himself, in several passages of his Defence of the Declaration, so far from denying these two kinds of power to the Church, openly approves them. He has no difficulty in admitting the temporal jurisdiction of the Church and the pope in the fiefs and other temporal sovereignties, which they may have acquired by any special title.<sup>1</sup> As to the directive power, though he does not admit it expressly, he speaks of it with remarkable moderation, and appears inclined to receive it. This is particularly observable in the second book of the Defence, where he discusses, at great length, the answer of Pope Zachary to the French, on the deposition of Childeric.

172. *Bossuet's Opinion on the Directive Power.*

"When we read," he says,<sup>2</sup> "that Pepin was raised to the throne in Childeric's place, by authority of Pope Zachary, it were a manifest extravagance, and a groundless pretension, to maintain that this act was done by the order, and not merely by

<sup>1</sup> Further on we shall cite many remarkable passages in the Defence of the Declaration (*infra*, art. ii. n. 281).

<sup>2</sup> "Cum audimus auctoritate Zachariæ Pipinum Childerico fuisse substitutum, nisi intelligamus *consilio* id, non *imperio* factum, omnino nimii, adeoque vani sumus. . . . Summa est: *deposuisse* (Zachariam), id est, deponendum consensisse, suasisse, consuluisse, idque volentibus: jam *consilium a Papa, ut a viro sapiente ac patre spirituali, exquisitum*. At si pro imperio aliquid *decrevisset*, numquam permissuros fuisse barones regni Franciæ. . . . Neque tamen negamus *justæ decisionis* loco fuisse profectum a tantâ sede, ex ipsâ totius gentis consultatione, responsum; sed aliud est datum ambigentibus, gravissimâ etiam auctoritate, *consilium*; aliud prolatum, de rebus civilibus ordinandis, pro potestate *decretum*. . . . Non id factum est ut pontifex *regnum adimeret aut daret*, sed ut *declararet* adimendum vel dandum ab iis quibus id juris competere judicasset. . . . Sed si vel maximè adversariis concedimus, Francos *jurejurando* a Zachariâ *exsolutos*, nihil hoc ad propositum. Esto enim Franci, . . . tamquam *ad cautelam*, ut aiunt, et propter ipsam jurisjurandi reverentiam, a Zachariâ petierint ut *declararet illud esse irritum, eâque religione rite exsolutos Francos*; . . . quid hoc ad quæstionem nostram? an id propterea extorquebunt, ut pontifex principem pleno imperii jure gaudentem dejicere, aut populos nihil tale cogitantes *jurejurando* solvere possit? . . . Nihil est absurdus."—Def. Declar. part. i. lib. ii. cap. xxxiii. xxxiv. xxxv. (Œuvres, tom. xxxi. pp. 521, 528, 530).

the advice of the pope. Zachary deposed Childeric ; that is, consented to his deposition, suggested, advised it to the French, who wished for it. They had asked *counsel* of the pope, as of a wise man, and their spiritual father. But had he pretended to issue an *order* to that effect, the barons of the kingdom of France would never have allowed it. Still we are not denying that the answer of the Holy See, so consulted by the French nation, was regarded as a *just decision*. But a counsel given by a very high authority, in answer to a consultation, is one thing ; a decree drawn up to decide civil questions, in virtue of an inherent authority, is another. The object of the pope's answer, was not to take away or confer the royal power, but to declare that it ought to be taken away or given by those whose right so to do the pope did not dispute. In fine, though we should concede to our adversaries that the French were absolved from their oath by Pope Zachary, that does not affect the question (disputed between the Gallican and other divines). For, let us suppose that, for greater security, and from respect for their oath, the French had besought the pope to declare the oath null, and themselves absolved from its obligation, what has that to do with our question ? Will our adversaries thence infer that the pope can depose a prince who is in the enjoyment of all his rights, or absolve from their oaths nations, which are not even thinking of being freed from them ? such a pretension is the height of absurdity." A full development of this passage may be seen in Bossuet's work ; though not expressly admitting the directive power, he sanctions it by at least equivalent terms.<sup>1</sup>

This is not the only passage in which Bossuet applies "the directive power" to account for the influence of the pope and the bishops in the middle ages.<sup>2</sup> As one out of many, we shall cite the reflections of the illustrious prelate on the petition of Charles the Bald to the Council of Savonières, in 859, in which that prince formally acknowledges that he could be deposed

<sup>1</sup> In support of Bossuet's reflections on Childeric's deposition, may be consulted the authors cited above, part i. ch. ii. n. 92. On the authenticity of Pope Zachary's decision, see No. 7, Confirmatory Evidence, at the close of vol. i.

<sup>2</sup> Remark, in particular, Defens. Declar. lib. i. sect. ii. cap. xxxiii.-xxxv. ; lib. iii. cap. xvi. et alibi passim.

by the judgment of the bishops.<sup>1</sup> "These words," observes Bossuet, "do not affect our question; for Charles the Bald submits himself to the bishops, viewing them solely as interpreters of God's will. For at present the question is not whether kings may abdicate, by the authority of the bishops, considered as interpreters of the divine will;—a thing, be it observed, which appears not at all proper;<sup>2</sup> but the question is, whether bishops have the right of dethroning princes by judicial sentence."<sup>3</sup>

After these preliminary observations, we proceed now to examine, by the testimony of history, what were the real titles of the power exercised by popes and councils over sovereigns in the middle ages.

173. *The Opinion which assigns Constantine's Donation as the Ground of the Pope's Power over Sovereigns justly abandoned.*

In the first place, it must be acknowledged that this power was not founded originally on Constantine's spurious donation, which was, during so long a period, supposed to be genuine. In fact, the power of the pope and of the council over sovereigns was already universally admitted in the time of Gregory VII., the authenticity of Constantine's donation not being, at that time, generally received. Some authors, no doubt, appealed to it confidently; but a great number of others considered it a dubious document. It is not mentioned by many writers of the tenth and eleventh centuries, who must have known and cited it, had they believed its authenticity. Luitprand, bishop of Cremona, in 968, never cites it in a discourse addressed to

<sup>1</sup> Labbe, Concil. tom. viii. p. 672. Baronii Annales, tom. x. ann. 859.

<sup>2</sup> We must observe, that in Bossuet's opinion the power attributed to the bishops by the general opinion of the French of that day was not at all proper; and, in fact, it is certain, that the inconvenience of intrusting so great a power to the bishops and lords of one nation, led the French, as well as the other Catholic nations of Europe, to reserve to the pope, or a general council, the power of deciding on a sovereign's deposition. See below, art. ii. § 1, n. 246.

<sup>3</sup> "Nihil, inquam, ad rem, quòd Carolus Calvus episcopis, tamquam Dei interpretibus, se submittit; non enim quærimus utrum reges, arbitrio episcoporum, tamquam divini numinis interpretum, abdicare possint, quod tamen vix aut ne vix quidem expedit; sed utrum episcopi, judicio dato, reges solio deturbare possint."—Bossuet, Defens. Declar. lib. ii. cap. xliii. 3rd paragraph.

In support of this directive power, the reader may also consult Fleury, Hist. Eccl. vol. xiv. book lxix. n. 60; Pey, De l'Autorité des Deux Puissances, vol. i. p. 317; vol. ii. pp. 401, 402.

the Greek emperor Nicephoras, in which all the benefits of Constantine to the Roman Church are enumerated.<sup>1</sup> Neither does the emperor Henry II. mention it in his diploma, issued in 1020, to confirm all the donations made to the Holy See, by Pepin, Charlemagne, Louis le Débonnaire, Otho I. and Otho II.<sup>2</sup> It is also omitted in the *Decretum*, or collection of canons, compiled in the beginning of the eleventh century, by Burchard, bishop of Worms. In fine, Gregory VII. himself, who collected so carefully all the arguments and authorities to establish the temporal power of the Holy See, never appealed to Constantine's donation in support of his power over sovereigns.<sup>3</sup> Hence the opinion which assigns that apocryphal donation as the title of the power exercised by popes and councils of the middle ages over sovereigns, is generally abandoned by modern authors.

174. *The Opinion which believes this Power was founded on the Theological Theory of the Divine Right is the more common at the Present Day.*

The majority of modern authors are of opinion, that this power was, at first, founded solely on the theological system of the divine right; that is, the system which attributes to the Church and the pope, by divine institution, a jurisdiction, at least indirect, over temporalities. This title, believed by some to be legitimate, and by others to be absolutely inadmissible, supplies the former with a ready means of justifying the conduct of the popes and councils of the middle ages to sovereigns; while to the second, it appears to be a just ground for censuring that conduct, or, at best, an apology which derives its whole force from the circumstances of the time, and the notions then generally prevalent.

This common opinion of modern authors appears to be the principal source of the difficulties that at once present themselves against our system of accounting for the conduct of popes and councils towards sovereigns in the middle ages, by the then

<sup>1</sup> *Annales*, Baron. ann. 968, n. 27. Fleury, *Hist. Eccl.* vol. xii. book lvi. n. 20.

<sup>2</sup> Cenni, *Monumenta Domin. Pontif.* vol. ii. p. 187. *Baronii Annales*, ann. 1014. Fleury, *Hist. Eccl.* vol. xii. book lviii. n. 46.

<sup>3</sup> For more ample developments of this point, see No. 5, *Confirmatory Evidence*, at the close of vol. i.

received maxims of jurisprudence and of constitutional law ; and we have great reason for believing, that our system would be generally admitted by all intelligent men, could we only prove that the theological theory of a right divine was not really the principle on which popes and councils claimed their temporal power over sovereigns.

175. *The Present Discussion reduced to Two Propositions.*

We shall, therefore, reduce the whole discussion in this third chapter to the two following propositions :—

1. The power exercised by popes and councils over sovereigns in the middle ages was not grounded on the theological theory of the right divine.

2. That power was really grounded on the then existing constitutional laws.

The development of the first proposition will clear the way for the second, and solve, by anticipation, most of the objections against our opinion.

ARTICLE I.

Historical Discussion on the System according to which the Theological Opinion of the Right Divine was the Title of the Power exercised by Popes and Councils over Sovereigns in the Middle Ages.

176. *This System contradicted by History.*

In the commencement of this work, we have disclaimed the intention of reviving theological discussions on the right divine, relating to the distinction and mutual independence of the two powers ; our sole object being to examine historically, what was the real title of the power exercised by popes and councils over sovereigns in the middle ages. In this first article we shall therefore confine ourselves exclusively to the question, whether the popes and councils that formerly attributed to themselves so extraordinary a power over sovereigns, proceeded solely or principally on the theological opinion of the right divine, that is, the opinion which attributes to the Church and to the pope a jurisdiction, at least indirect, by divine institution, over temporal matters.

An attentive examination of history precludes the admission

of that opinion, and furnishes conclusive proofs of the contrary. The power in question could not possibly be founded on an opinion which either did not exist, or was entertained only by a few, when that power itself was universally recognised; an opinion which was not maintained until a much later period, and which was never expressly taught nor implied in the decrees of popes or councils. Now, it can be demonstrated, we believe, from history, that the theological opinion of the divine right did not exist, or, at least, was entertained only by few, at a period when the power of the pope and of councils was already universally recognised. Furthermore, we believe it can be demonstrated, that this opinion was not maintained until a much later period, and that it was never taught nor implied by councils or popes, even in those decrees which are supposed to express the fullest extension of their authority over temporal matters.

These assertions must, no doubt, appear at first sight surprising to a certain class of readers, who have been accustomed to regard the contrary assertions as indubitable and generally admitted truths. An attentive and impartial examination of the monuments of history will, nevertheless, prove that the opinion of those authors whom we are combating is far from being clearly established;—that they often weaken it by their own admissions: finally, that it is controverted by arguments, not merely plausible, but absolutely conclusive for any unprejudiced mind. To set all these assertions in the clearest light, we shall devote our first paragraph to an inquiry into the history of this theological opinion of the right divine; and shall then discuss the principal acts and decrees of popes and councils, which may be objected against our opinion.

### § 1. *Historical Inquiry on the Origin of the Theological Opinion of the Right Divine.*

177. *The Theological Opinion on the Right Divine hardly known in the time of Gregory VII., or for a considerable time after.*

Whatever may be the precise date of the origin of this opinion, it may, we think, be confidently asserted, first, that it was hardly known at all, or at least by very few, at a period when the power of the pope and councils over sovereigns was

universally admitted; and, secondly, that it was not until a much later period that it began to be received.<sup>1</sup>

1. The first point is sufficiently established by the fact, that the general belief which attributed to popes and councils so great a power over sovereigns was already admitted in the pontificate of Gregory VII., and earlier in some states, as we have proved in the preceding chapter; whilst, before that period, hardly any traces can be found of the opinion attributing to the Church and pope any jurisdiction, even indirect, by divine institution, over temporalities. So far was this latter opinion from being received at that time, that from the infancy of the Church to the twelfth century, the principle of the distinction and mutual independence of the two powers was certainly the general doctrine, expressly sanctioned by the popes themselves.<sup>2</sup>

178. *The Doctrine of Antiquity on the Distinction of the Two Powers proclaimed in the Capitularies.*

We have already cited the testimonies of Popes Gelasius, Symmachus, and St. Gregory the Great, which express the doctrine of antiquity on this point with such precision and clearness.<sup>3</sup> The sixth Council of Paris is equally decisive on

<sup>1</sup> We must remark, that the historical truth of these assertions does not decisively settle the controversy on the opinion in question. For the novelty of a theological opinion is not of itself a sufficient reason for rejecting it as false. Catholic dogma alone is invariable, immutable, and as ancient as the Church herself, because it is founded essentially on Divine revelation; but theological systems and opinions are sometimes pure inventions of the human mind, founded on conjectures or probabilities, and consequently liable to variation, to uncertainty, and to error. Hence we see these systems adopted at certain times and in certain countries, whilst they are rejected by others, and left by the Church to the free discussion of the schools. Hence, also, the best theologians make no difficulty in proposing, for the elucidation of Catholic truth, new explanations, and theories unknown to antiquity. All admit that the novelty of these explanations is not of itself a sufficient motive for rejecting them, provided they are not opposed to the Catholic dogma. See, in illustration of these assertions, *Instruct. Past. de M. de Pressy, Evêque de Boulogne, sur l'Accord de la Foi et de la Raison, dans les Mystères de la Relig.*; especially vol. ii. p. 365.

<sup>2</sup> This fact is generally admitted by French authors. Bossuet, especially, contends, that the most celebrated authors of the twelve first centuries may be explained in the moderate sense of the directive power, or in another sense entirely different from the theological opinion of the divine right. (*Defens. Declarat. lib. ii. lib. iii. cap. xiii. xviii.*) He maintains that Gregory VII., by attributing to himself so great a power over sovereigns, departed from the common opinion of his contemporaries, and from the doctrine of antiquity. (*Ibid. lib. i. sect. i. cap. vii. viii.; lib. iii. cap. iii.*)

<sup>3</sup> See ch. i. part i. n. 9, 10, 15.

the point. "By the tradition of the fathers," it declares,<sup>1</sup> "we know that the entire body of holy Church is subject to two admirable powers,—the sacerdotal and the royal. Of this, Gelasius, the venerable bishop of the Roman See, writes to the emperor Anastasius: 'This world, august emperor, is governed by two powers, the sacred power of pontiffs, and the power of kings; and of these the former is so much the greater, as pontiffs must, before the bar of divine justice, render an account even of the kings themselves.'<sup>2</sup> In his treatise on the Truth of Predestination and Grace, St. Fulgentius also says: 'Here below there is no authority in the Church superior to that of the pontiff; nor is there in the world any dignity superior to that of the emperor.'<sup>3</sup> It must be remarked, that the canon of the sixth Council of Paris was afterwards inserted in the

<sup>1</sup> "Principaliter itaque totius sanctæ Dei Ecclesiæ corpus in duas eximias personas, in sacerdotalem videlicet et regalem, sicut a sanctis Patribus traditum accepimus, divisum esse novimus. De quâ re Gelasius, Romanæ sedis venerabilis episcopus, ad Anastasium imperatorem ita scribit: *Duo sunt quippe, inquit, imperator auguste, quibus principaliter mundus hic regitur, auctoritas sacrata pontificum, et regalis potestas; in quibus tantò gravius pondus est sacerdotum quantò etiam pro ipsis regibus hominum, in divino reddituri sunt examine rationem.* Fulgentius quoque, in libro *De Veritate Prædestinationis et Gratia*, ita scribit: *Quantùm pertinet, inquit, ad hujus temporis vitam, in Ecclesiâ nemo pontifice potior; et in sæculo Christiano, imperatore nemo celsior invenitur.*"—Concil. Paris. vi. lib. i. cap. iii. (Labbe, Concil. tom. vii. p. 1599). Capitularium, lib. v. cap. cccix. (Baluzii, Capitularia, tom. i. p. 890). Fleury, Hist. Eccl. vol. x. book xlvi. n. 24.

<sup>2</sup> S. Gelasii Papæ Epist. ad Anastas. Aug. (Labbe, Concil. tom. iv. p. 1182). Fleury, Hist. Eccl. tom. vii. book xxx. n. 31. Bossuet, Defens. Declar. lib. i. sect. ii. cap. xxxiii. &c. Pey, De l'Autorité des Deux Puissances, vol. iii. pp. 582-584.

Instead of those words of Gelasius, "Duo quippe sunt, imperator auguste, quibus principaliter mundus hic regitur," we read, in the Capitularies, and in some copies of the Council of Paris: "Due sunt quippe imperatrices augustæ, quibus principaliter mundus hic regitur." In a note on this passage of the Capitularies, Baluze gives his opinion, that the change was fraudulently made, with the intention of exalting the power of the Church over the temporal power. (Baluze, *ibid.* vol. ii. p. 1213.) To us this conjecture appears utterly groundless. We cannot discover how the reading in the Capitularies is more favourable to the Church than the common reading of the text of Gelasius. The conjecture appears the more unwarrantable, as the distinction of the two powers is clearly supposed in many passages of the Capitularies. See, among others, a Capitulary of the year 800 (Baluze, tom. i. p. 330); Capitular. lib. vii. cap. cccxc.; Capitular. additio secunda, cap. xxviii. versus finem, et alibi passim. (*Ibid.* pp. 1109, 1152, &c.) It is, moreover, well to remark, that the canon of the sixth council of Paris, afterwards inserted in the Capitularies, cites part only of the text of Gelasius, which goes on to develop and inculcate more and more the principle of the distinction and mutual independence of the two powers, as Bossuet evidently proves in his Defens. Declar. ubi supra.

<sup>3</sup> S. Fulg. Rusp. De Verit. Prædest. lib. ii. cap. xxii.

Capitularies, which constituted, for so many centuries, the basis of legislation in France, in Italy, and in Germany; <sup>1</sup> whence the doctrine of antiquity on the distinction and reciprocal independence of the two powers must have been known and received in these different states in the ninth century, and considerably later. It is equally certain that these principles, on the distinction of the two powers, were not mere theories, but a rule generally followed in practice. We know, in truth, from Hincmar of Rheims, who wrote in the ninth century, that in these mixed assemblies, which were then so common, the bishops, according to an ancient usage of the French nation, regulated apart the affairs of religion, and then sat with the lay lords in deliberation on temporal affairs. <sup>2</sup>

179. *This Doctrine professed by the Holy See in the Eighth and Ninth Centuries.*

Pope Gregory II. expresses himself on the subject in terms no less clear and energetic, in his letters to the emperor Leo the Isaurian, which we have already cited; he expressly acknowledges that he has no more right of intruding into the temporal government, than the emperor has of intruding into the ecclesiastical. <sup>3</sup> The same principles are repeated, in nearly the same terms, in a letter of Pope Nicholas to the emperor Michael, in 865, and in that of Pope Stephen V. to the emperor Basil, in 885. <sup>4</sup> We deem it unnecessary to cite the text of these letters, as they are no more than a repetition of the preceding.

180. *The same Doctrine professed at the time in England and Spain.*

The same doctrine is clearly expressed or supposed in numerous mixed assemblies or councils, held in England, in the seventh and eighth centuries. The Council of Becancelde, assembled in

<sup>1</sup> Baluze, *Capitularia Reg. Franc.* Præf. n. 35, &c. Bernardi, *De l'Origine et des Progrès de la Législation Française*, book ii. ch. i.

<sup>2</sup> "Cum separati a cæteris essent (optimates, tam clerici quam laici), in eorum manebat potestate, quando simul, vel quando separatim residerent, prout eos tractandæ causæ qualitas docebat, sive de spiritualibus, sive de sæcularibus, seu etiam commixtis."—Hincmar, *Epist.* 14 (alias 13), ad Proceres Regni, cap. xxxv. Thomassin, *Ancien. et Nouv. Discipline*, vol. ii. book iii. ch. xlvii. n. 1; ch. li. n. 12. De Marca, *De Concordiâ*, lib. vi. cap. xxv. n. 4.

<sup>3</sup> See the first part of this Inquiry, ch. i. n. 28.

<sup>4</sup> Labbe, *Concil.* tom. viii. p. 324, B.; tom. ix. p. 366. Fleury, *Hist. Eccl.* vol. xi. book i. n. 41; book liii. n. 49.

694, to confirm the immunities of churches and monasteries, prohibits laics and even kings themselves to interfere, in any manner, in the election of abbots and abbesses; and ordains that the superintendence of such elections should be reserved exclusively to the bishop. "For," it adds, "as it belongs to the king to appoint secular princes, governors, and dukes, so it belongs to bishops to govern the churches, to select and confirm abbots, abbesses, priests, and deacons."<sup>1</sup> The Council of Calcuth, which was held a century later (in 782), is equally express. "As the dignity of kings is exalted above all others (in the temporal order), so the dignity of bishops is exalted above all others, in all that appertains to the worship of God."<sup>2</sup>

The numerous councils held in Spain about the same period, especially those of Toledo, which, for the most part, were States-General of the nation, manifestly suppose the same principles; in them we see bishops alone regulating all ecclesiastical government, while they interfered in temporal enactments, only in concert with the temporal lords, with the consent and even at the request of the king.<sup>3</sup>

181. *This Doctrine generally acknowledged under Gregory VII.—Testimony of St. Peter Damian.*

We are not acquainted with any respectable writer who contradicted these principles before the pontificate of Gregory VII. There are abundant grounds for believing that they were professed generally, even during his reign. Such appears to be clearly the inference from the doctrine of St. Peter Damian, a contemporary and friend of Gregory VII., and one of the most

<sup>1</sup> "Regis sæcularis est, principes, præfectos, seu duces sæculares statuere. Metropolitanus episcopus est, ecclesias Dei regere, gubernare, atque abbates, abbatissas, presbyteros, diaconos eligere, statuere et sanctificare, firmare et amovere."—Concilium Becanceldense (Labbe, Concil. tom. vi. p. 1357). Fleury, Hist. Eccl. vol. ix. book xli. n. 4.

<sup>2</sup> "Sicut reges omnibus dignitatibus præsent, ita et episcopi, in his quæ ad Deum attinent."—Concilium Calcutense, can. 11 (Labbe, ibid. p. 1866). See, in support of these principles, Lingard's Anglo-Saxon Church, ch. v.

<sup>3</sup> "Instituendum credimus ut, trium dierum spatiis percurrente jejunio, de mysterio sanctæ Trinitatis, aliisque spiritualibus, sive pro moribus sacerdotum corrigendis, nullo sæcularium assistente, inter eos (*sacerdotes sive episcopos*) habeatur collatio."—Concil. Tolet. xvii. cap. i. Thomassin, Ancien. et Nouv. Discipline, vol. ii. book iii. ch. xlvi. ; l. n. 10. Perez Valiente, Juris Hispanici Publici Apparatus, tom. ii. cap. vi. n. 31.

celebrated prelates of his day, both for piety and learning.<sup>1</sup> At the conclusion of his synodal disputation against the anti-pope Cadalous,<sup>2</sup> he addresses the deputies of the pope and of the emperor, and exhorts them, in the following strain, to combine together, for the harmony of the priesthood and of the empire. "O now, you illustrious officers of the imperial court, and you august ministers of the Holy See, combine your exertions to procure the union of the Church and of the empire; that the human race, governed by these two sovereign powers, which preside, the one over the temporal, the other over the spiritual—may no longer be divided into parties, as it has been by Cadalous. Since Jesus Christ, sole mediator between God and man, has established, by his divine wisdom, a harmony between the two powers—the priestly and the royal, the depositaries of both ought to be so strictly united by the bonds of mutual charity, that the emperor may be seen in the person of the Roman pontiff, and the Roman pontiff in the person of the emperor; saving, however, those prerogatives which belong exclusively to the sovereign pontiff. The pope, when the case requires, must coerce the evil-doer by the law of the prince; and the prince, in concert with the bishop, must enforce all that the holy canons prescribe for the salvation of souls; let the pope, as father, have the pre-eminence due to that august title, and let the prince, as his only and well-beloved son, repose in his bosom."<sup>3</sup> Thus, according to St. Peter Damian, the world

<sup>1</sup> The doctrine of St. Peter Damian on this subject is carefully discussed by Bossuet, *Defens. Declar. lib. ii. cap. xxviii. xxix.*

<sup>2</sup> Cadalous, bishop of Parma, was elected pope in 1061, with the title of Honorius II., by the faction of the emperor Henry IV. He made various attempts to take possession of Rome; but all were fruitless. The question between the two popes was discussed in the council of Mantua (in 1064 or 1067), which recognised Alexander II. as legitimate pope; and in consequence of this decision, Cadalous was abandoned by the bishops of Henry's party. Shortly after, Cadalous died miserably, having obstinately refused to renounce the title of pope. (*Annales Baron. tom. xi. ann. 1061, et seq.*) Fleury, *Hist. Eccl. vol. xiii. book lx. n. 47, &c.; book lxi. n. 11.* This work of Peter Damian was composed on occasion of a council convoked to Osbor, in Saxony, by St. Annon, archbishop of Cologne, who on this, as on many other occasions, had rendered most important services to the Church. It is probable that the work of St. Peter was read in this council. P. Labbe has inserted it in vol. ix. of his *Collection of Councils.*

<sup>3</sup> "Amodo igitur, dilectissimi, illinc regalis aulæ consilarii, hinc sedis apostolicæ comministri; utraque pars in hoc uno studio conspiremus laborantes, ut summum sacerdotium, et Romanum simul confederetur imperium; quatenus

is governed by two powers, which preside equally over human affairs; one over the temporal, the other over the spiritual: both are sovereign, each in its own sphere; they ought to be closely united, as friends and allies; but not as subject one to the other in matters which belong to their proper competence. If the prince is permitted to issue orders which tend to the salvation of souls, it is solely by enforcing the sacred canons, in concert with the bishops. In like manner, if the pope represses the evil-doer by temporal penalties, it can be solely by appealing to the law of the prince, and not by virtue of the power attached to his sacred character. Whence, the author concludes, that the pope, as father, is entitled only to the pre-eminence due to that august character; a pre-eminence which by no means implies the right of regulating temporal things, a right reserved, he asserts, by God, to the temporal power.

182. *Pretended Evidences of the Theological Opinion of the Divine Right before Gregory VII.*

We are aware that many modern writers, either not advertent to the testimonies just cited, or believing them to be inconclusive, suppose that, in the period in question, from the seventh to the tenth century, evidences may be found of the theological opinion of the divine right. In proof of their opinion, they cite, first, the mixture of the temporal and spiritual, so common at the time in the acts of the civil and ecclesiastical legislation.<sup>1</sup> Secondly, the mutual encroachments of the two powers: in proof of which they insist particularly on the influence of the French kings and lords on ecclesiastical elections, under the

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humanum genus, quod per hos duos apices in utrâque substantiâ regitur, nullis (quod absit) partibus, quod per Cadaloim nuper factum est, rescindatur; . . . et quatenus, ab uno mediatore Dei et hominum, hæc duo, regnum scilicet et sacerdotium, divino sunt conflata mysterio; ita sublimes istæ duæ personæ tantâ sibi unitate jungantur, ut quodam mutæ caritatis glutino, et rex in Romano pontifice, et Romanus pontifex inveniatur in rege; salvo scilicet suo privilegio papæ, quod nemo præter eum usurpare permittitur. Cæterùm et ipse delinquentes, cùm causa dictaverit, forensi lege coerceat; et rex cum suis episcopis, super animarum statu, prolatâ sacrorum canonum auctoritate, decernat; ille tanquam parens, paterno semper jure præemineat; iste, velut unicus ac singularis filius, in amoris illius amplexibus requiescat.”—St. Peter Damian, *Opuscul. 4* (*Oper. tom. iii. p. 30*). See also *Epistol. lib. vii. epist. 3* (*Oper. tom. i.*); Fleury, *Hist. Eccl. vol. xiii. book lx. n. 49*.

<sup>1</sup> Fleury, *Hist. Eccl. vol. xiii. 3rd Discourse, n. 9, 10; vol. xix. 7th Discourse, n. 5. Annales du Moyen Age, vol. iv. p. 225; vol. v. pp. 462-464.*

first race of kings,<sup>1</sup> the deposition of Wamba, king of Spain, in the twelfth Council of Toledo, in 681; and that of Louis le Débonnaire, in the Council of Compiègne, in 833.<sup>2</sup> Thirdly, the answer of Pope Zachary to the French, on the deposition of Childeric III. Fourthly, the dignity of consul offered to Charles Martel, by Pope Gregory III.; that of patrician, conferred on Pepin by Stephen II.; and that of emperor, given to Charlemagne by Leo III.<sup>3</sup> Fifthly, and finally, the right attributed to the bishops in France, from the ninth century, of judging, and even deposing kings in the name and by the authority of God.<sup>4</sup>

183. *Discussion of the Facts alleged.—1. Admixture of the Temporal and the Spiritual in Acts of Legislation.*

Nevertheless, in all these facts, we cannot discover anything that implies the theological opinion of the divine right. And, first, with regard to the admixture of the temporal and spiritual in the acts of civil and ecclesiastical legislation, it is true, that it was very common at this period; as it, indeed, continued during the whole course of the middle ages. Many capitularies of the French kings, and a multitude of councils held in those ancient times, regard, in their enactments, the government both of the Church and of the state, the maintenance of civil order and of ecclesiastical discipline.<sup>5</sup> This mixture, however, singular though it may at first sight appear, ceases to be surprising, and can be easily reconciled with the principle of the distinction and mutual independence of the two powers, if we but reflect, that the decrees in question were the result of the concurrence and strict union of the two powers; that they were authorized by the express or tacit

<sup>1</sup> Fleury, *Hist. Eccl.* vol. xiii. 3rd Discourse, n. 10. Thomassin, *Ancien. et Nouv. Discipline*, vol. ii. book iii. ch. xi. &c. Héricourt, *Abridgment of same work*, part ii. ch. xxxi.

<sup>2</sup> See, for development of these facts, the authors cited above, ch. i. n. 63, note 4; n. 67, note 2.

<sup>3</sup> These facts are cited, in support of their opinion on the divine right, by Cardinal Bellarmin, and many others.

<sup>4</sup> See the authors cited in the preceding chapter, n. 133, note 1.

<sup>5</sup> See Analysis of the Capitularies, in the *Hist. des Auteurs Ecclés.* by D. Ceillier, vol. xviii. p. 380, &c. An analysis of the councils of the middle ages is given in vol. xix. and following, of the same work. These analyses are scattered over vols. ix. x. and following of the *Hist. de l'Eglise Gallicane*.

consent of both, and generally published in those mixed assemblies, so common at the time, which were at once ecclesiastical councils and political assemblies, and in which the two powers combining ordained in concert all that concerned the good of the Church and of the state.<sup>1</sup> However independent the two powers naturally may be one of the other, it can be easily conceived how they could unite for their common good, for mutual protection against their common enemies, and by mutual concessions to allow to each other a right of making laws on matters that were not properly within their competence. These are the principles by which even authors the most devoted to the doctrine of the independence of the two powers, explain the mixture of the temporal and the spiritual so frequently found in ecclesiastical and civil legislation under the Christian emperors.<sup>2</sup> The same explanation manifestly applies with much greater propriety to the legislative acts of the Christian states in the middle ages; during which, the union of the two powers was much more close than it had ever been under the Christian emperors. Even Fleury has been compelled to admit this in his *Ecclesiastical History*. "After the establishment of the barbarian domination in the West, the temporal seignories became a great source of distraction to the bishops. The lords had a considerable share in the management of state affairs, which were discussed ordinarily either in general assemblies or in the private councils of princes; and the bishops, as lettered men, were more useful on those occasions than the other lords. These assemblies were by primary institution parliaments; but they became councils incidentally," from the opportunity of having so many bishops assembled together. "Their principal objects, therefore, were temporal, or state affairs; in which the bishops could not avoid taking a part, being convoked for that purpose, as well as the other lords. Hence came that confusion of the temporal and the spiritual," so pernicious to religion.<sup>3</sup> "The latter councils of Spain, under the Goths," observes the

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<sup>1</sup> See *supra*, ch. i. art. i. n. 28, &c.

<sup>2</sup> See, on this subject, the authors cited in our Introduction, *supra*, vol. i. p. 61, notes.

<sup>3</sup> Fleury, *Hist. Eccl.* vol. xiii. 3rd Discourse, n. 9. See also vol. xix. 7th Discourse, n. 141.

same writer, "and all the councils of France, under the second race, were mixed assemblies, in which all the great men of the kingdom assisted; hence, it is not surprising that laics appear to be legislating on spiritual, and ecclesiastics on temporal matters. This confusion was, however, productive of fatal consequences in the end."<sup>1</sup> We are not now discussing the consequences of this confusion; they have been demonstrated, we think, in another place not to have been so pernicious as Fleury supposes.<sup>2</sup> For the present, it is enough to remark, that by his own admission, the bishops could not avoid taking a part in the political assemblies, in which great state affairs were discussed; that they were more useful in those assemblies than other lords; and that the confusion of the temporal and spiritual in these decrees, can be very naturally explained by the concurrence of the two powers.

184. *Mutual Encroachments of the Two Powers.*

2. Neither do the mutual encroachments of these two powers on each other prove that they were ignorant of the true principles on their respective limits. Similar encroachments have been made in all ages, even the most enlightened, and in which the true principles on the distinction and mutual independence of each power were best known. We have seen the first Christian emperors publishing decrees on ecclesiastical affairs, and even in favour of heresies,<sup>3</sup> notwithstanding the reclamations of the Church. In the last century, and even at the present time, do not sovereigns and civil magistrates arrogate to themselves the right of regulating points as purely spiritual as any contained in the Christian religion. The innovations of Joseph II. in Germany, the pretensions of the French parliaments, and the civil constitution of the clergy, are too notorious examples of this usurpation. The practical inference from these abuses is, that sovereigns, as well as private individuals, often forget, in practice, the best-established principles; often contradict, by

<sup>1</sup> Fleury, *Nouveaux Opuscules*, p. 193.

<sup>2</sup> *Supra*, ch. i. art. ii. and *infra*, ch. iv.

<sup>3</sup> In the history of the Church, the troubles occasioned by the edicts of Constantius in favour of the Arians, and by Zeno's Henoticon in favour of the Eutychians, and by the Ecthesis of Heraclius, and the Type of Constantine, in favour of the Monothelites, are unhappily notorious.

their conduct, the very principles openly proclaimed by themselves, before they had raised the standard of revolt against the Church.

As to the deposition of Wamba, king of Spain, and of Louis le Débonnaire, of France, it is absurd to cite them as usurpations of the temporal by the ecclesiastical power. First, for it has been already proved that Wamba was not deposed by the twelfth Council of Toledo, but that he voluntarily abdicated; and that, properly speaking, the Council of Compiègne did not depose Louis le Débonnaire, but merely approved his deposition, which had already been effected by Lothaire in an assembly of the principal lords of his army.<sup>1</sup> Secondly, this twelfth Council of Toledo, and the Council of Compiègne, to which the depositions of Wamba and of Louis le Débonnaire are attributed, were not purely ecclesiastical assemblies, but mixed assemblies, with the double character of parliament and council; and in which the bishops, in their capacity as temporal lords, could regulate the affairs of the state in concert with the other lords.<sup>2</sup> Even admitting, therefore, that the conduct of the bishops in those assemblies had been reprehensible, they cannot be accused, at all events, of having usurped their power over temporalities; the worst that could be said is, that they abused an authority with which they were really invested by the state.

185. *The Answer of Pope Zachary to the French on the Deposition of Childeric III.*

3. Neither does the answer of Pope Zachary to the French on the deposition of Childeric III. imply the theological theory of the divine right. From the narrative of the ancient authors, it follows clearly, as Bossuet and Fenelon<sup>3</sup> observe, that Pope Zachary did not, by that answer, pretend to exercise an act of temporal jurisdiction over the kingdom of France, but merely gave a doctrinal decision on a case of conscience, which the French had voluntarily submitted to his tribunal.<sup>4</sup> This is manifestly the meaning of all the ancient annalists who have recorded the fact; nor can it be explained in any other way,

<sup>1</sup> *Supra*, ch. i. n. 63, 67.

<sup>2</sup> *Supra*, ch. i. art. i. n. 28, &c.

<sup>3</sup> We have already cited their testimony, *supra*, n. 9, 172.

<sup>4</sup> See details on this subject in part i. ch. ii. n. 93.

without attributing to Pope Zachary a doctrine diametrically opposed to that which Pope Gregory II., after the example of his predecessors, openly professed some years before, on the distinction and reciprocal independence of the two powers.<sup>1</sup>

186. *The Titles "Consul," "Patrician," "Emperor," given to the Kings of France by the Popes of the Eighth Century.*

4. There are no better grounds for pretending that the popes Gregory III., Stephen II., and Leo III., when giving to the French monarchs the titles of "consul," "patrician of the Romans," and "emperor," pretended to do so in virtue of a power of temporal jurisdiction, even indirect, attached to their sacred character by divine right. On the contrary, it is certain, that those popes, in conferring these titles on the French kings, never appealed to such a power, but solely to that which they, in concert with the Roman lords, exercised in the name and as the representatives of the Roman people, who had voluntarily intrusted their temporal interests to the Holy See.<sup>2</sup>

187. *The King considered as amenable to the Council in France during the Ninth Century.*

5. In fine, the right attributed to the French bishops in the ninth century, of judging, and even of deposing the king, in the name and by the authority of God, can be easily reconciled with that principle of the distinction and reciprocal independence of the two powers, which was then generally admitted in France, as well as in the other states of Europe. To reconcile these two points, we need but observe, that the bishops, considered "as ministers of God," and as exercising "a purely directive power," judge in the name and by the authority of God, who has appointed them to enlighten and direct the people in the order of salvation. The language of these ancient authors who are cited against us, can be very well understood in this sense; and even Bossuet readily admits our explanation.<sup>3</sup> It will appear more natural, if we reflect what was at that time the constitu-

<sup>1</sup> Supra, n. 179, ch. iii.

<sup>2</sup> See details on this point in the first part of this work, ch. i. n. 19, &c.; ch. ii. n. 90.

<sup>3</sup> Bossuet, *Defens. Declar. lib. ii. cap. xliii. cited supra, n. 172.*

tion of the French monarchy.<sup>1</sup> According to that constitution, the clergy, as the first body of the state, was entitled to take a very active part in all public affairs, even in the general assemblies of the nation, which elected the sovereign, and which could prescribe in his election, conditions, whose violation would entail the forfeiture of his rights. It may be easily understood, that, under such a government, notwithstanding the distinction and mutual independence of the two powers, the judgment of the bishops, arraigning and deposing a sovereign in a general assembly of the nation, could be considered as the judgment of God. This mode of speaking is the natural consequence of the principles of religion, which teach us that all power comes from God, and that authority, in whatever hands it be placed, derives all its force from the divine sanction. It was by virtue of this principle that a king of Judah, when establishing judges in the principal cities of his dominion, addressed to them this admirable instruction: "Take heed what you do; for you exercise the judgment, not of man, but of the Lord."<sup>2</sup> If this be true of secular magistrates in general, with how much greater propriety may it be said of bishops, at a time when they were invested with so great a temporal power, acknowledged by sovereigns themselves, and grounded on the profound respect of princes and people for their sacred character?

188. *Inference from these Explanations.*

From these explanations, and from all the testimonies in support of our first proposition, we conclude, that the theological theory of the divine right, either was not held, or only by a few, before the pontificate of Gregory VII. ; that, consequently, it could not have been the foundation of the general belief which attributed, at that time, to the pope and to the Church so great a power over sovereigns. So far was this power from being founded on the theological theory of divine right, that, on the contrary, the theory was very probably founded on the existence of the power; some authors imagining that this power was founded on the same divine right, to which they had also traced

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<sup>1</sup> *Supra*, ch. i. art. i.

<sup>2</sup> "Videte quid faciatis; non enim hominis exercetis iudicium, sed Dei."—  
2 Paralip. xix. 6.

many other privileges and immunities which were in reality granted to the Church by the liberality of princes.<sup>1</sup>

189. *The Theological Theory of the Divine Right hardly known before the Twelfth Century.*

II. But whatever may be thought of that conjuncture, it can, we believe, be confidently maintained, that the opinion which attributes to the Church and to the pope, by divine right, a jurisdiction, even indirect, over temporalities, was not only almost unknown in the time of Gregory VII., but that it did not begin to be received, or at least to have a respectable number of advocates, until long after that period. True, in the course of the following century it began to be gradually introduced, and, subsequently, it made very great progress ;<sup>2</sup> but we do not find that it had at first many defenders. The most eminent authors of the twelfth century expressly oppose it, and say nothing that cannot easily be understood of a directive power, of divine institution, combined with the power of temporal jurisdiction, of human institution, in the sense explained by Fenelon.<sup>3</sup> They assert, it is true, or suppose, with all preceding ages, that the temporal power is subordinate to the spiritual, even by divine right ; in this sense, that the second is more excellent than the first, and is bound to enlighten and direct the conscience of princes and of nations in temporal matters, as well as in others ;<sup>4</sup> but the majority of them are far from supposing that this subordination is founded on the divine right, in this sense, that the Church and the pope have any jurisdiction, direct or indirect, over temporal things, except fiefs and other temporal sovereignties which they may have acquired by a special title. We are free

<sup>1</sup> Many theologians have assigned the divine law, natural or positive, as the title to tithes, and to immunities of ecclesiastics, both real and personal, and to other similar usages, which seem rather to be founded on positive human laws. See, on this subject, Bellarmine, *Controv. de Clericis*, cap. xxv. xxviii. xxix. (*Oper. tom. ii.*) See also in our Introduction, n. 93, 107, *supra*, vol. i.

<sup>2</sup> John of Salisbury, bishop of Chartres, in the twelfth century, is the first author known to us that maintained this opinion ; but in the beginning he does not appear to have had many followers. See, in No. 8, *Confirmatory Evidence*, at the close of this volume, some details on the origin and progress of this opinion.

<sup>3</sup> *Supra*, n. 12, 170.

<sup>4</sup> See the texts of popes Gelasius, Gregory II., Nicolas I., and Stephen V., which we have cited above, n. 9, part i. and n. 179, part ii.

to admit, that some of those ancient authors do not express themselves with all the exactness and precision desirable on so important a matter. Precision of language was, in fact, unusual with authors of this period, at least before the rise of scholastic philosophy; and on this subject they were the more careless in weighing their words, as there was, at that time, no controversy on the titles of that power which popes and councils attributed to themselves over sovereigns. The power itself being generally recognised, few persons troubled themselves about inquiring into its origin, or distinguishing how much of it was founded on divine, how much on human law. Admitting, however, that some persons had those confused and unsettled notions on the subject, it can be proved, we think, nevertheless, that the more enlightened men, and the popes in particular, never attributed to the Holy See or the Church a jurisdiction, even indirect, over temporalities by divine institution.

The limits which we have prescribed for ourselves do not admit of a detailed examination of all those writers; it will be enough for us to state the doctrine of Gregory VII. himself, and of the most eminent authors of the following century.<sup>1</sup>

190. *The Language of Gregory VII. does not suppose that Opinion.*

Gregory VII., who is considered by many modern writers to have been the first that broached the theological opinion of the divine right,<sup>2</sup> really says nothing on the subject which may not very well be explained in the moderate sense just stated. The authors who attribute the first opinion to him, assign as their principal arguments, the sentences of excommunication and deposition which he pronounced against the emperor Henry IV., at first in 1076, and afterwards in 1080; and on his letters to

<sup>1</sup> It must be remarked, that Bossuet and the majority of French authors readily admit our moderate explanation of the most eminent authors of the eleventh and twelfth centuries. (*Defens. Declar. lib. ii. cap. xxviii. xxix.; lib. iii. cap. xiii.-xviii.*) Gregory VII. is the only author of this period whom he interprets as claiming a direct or indirect power by divine institution. Mamachi, Bianchi, and many advocates of this opinion, endeavour, but without effect, in our opinion, to interpret according to their own system the authors whom we interpret in the sense of the directive power. (*Mamachi, Origines et Antiquit. Christ. vol. iv. pp. 171, 251.*)

<sup>2</sup> This is the common opinion of French authors. See, among others, *Nat. Alexandre, Dissert. 2, in Hist. Eccl. sæc. xi. art. ix.; Bossuet, Defens. Declar. lib. i. sect. i. cap. vii.*

Herman, bishop of Metz, in answer to the question which that prelate had addressed to him regarding this sentence.<sup>1</sup> But if these documents be examined attentively and dispassionately, no expression will be found in them which may not, and ought not to be, interpreted in the moderate sense for which we are contending.

191. *Explanation of the Two Sentences of Deposition issued against the Emperor Henry IV.*

In the two sentences pronounced against the emperor, the pope grounding himself on the divine power of binding and loosing, excommunicates that prince, and “absolves all Christians from the oath of allegiance which they have taken or may take to him.”<sup>2</sup> These words, it must be confessed, seem at

<sup>1</sup> We omit the twenty-seven maxims or sentences, intituled *Dictatus Papæ*, attributed to Gregory VII. by some modern authors. (Labbe, *Concil.* tom. x. pp. 110, 111. *Baronii Annales*, ann. 1076, n. 31.) These maxims are generally considered apocryphal; and moreover, they contain nothing on our subject that may not easily be explained by the observations which we are about to offer on the authentic writings of Gregory VII. On this subject, consult Fleury, *Hist. Eccl.* vol. xiii. book lxiii. n. 11; Bossuet, *Defens. Declar.* lib. iii. cap. v.; Christ. Lupus, *Canones et Decreta*, vol. iv. p. 338, &c.; Nat. Alexandre, *Dissert.* 3, in *Hist. Eccl. sæc. xi.*; D. Ceillier, *Hist. des Auteurs Eccl.* vol. xx. p. 659; Voigt, *Hist. de Grég. VII.* book viii. ann. 1076, p. 380.

Neither do we speak here of the censures passed on Gregory VII. and his successors, with regard to the rights of sovereignty which they attributed to themselves over many states. On this point, there cannot be any pretence for charging the popes with claiming the divine right; for they never pretended that such rights of sovereignty were founded on divine institution. Gregory VII. in particular never assigns to them any other title than ancient custom, or the titles preserved, in his time, in the archives of the Roman Church. On this latter point we give more ample details in the next article.

<sup>2</sup> The following are the terms of the first sentence, pronounced in 1076:—“*Beate Petre, apostolorum princeps; . . . credo quòd mihi, tuâ gratiâ, est potestas à Deo data ligandi atque solvendi in celo et in terrâ. Hâc itaque fiduciâ fretus, pro Ecclesiæ tuæ honore et defensione, ex parte omnipotentis Dei Patris, et Filii, et Spiritûs sancti, per tuam potestatem et auctoritatem, Henrico regi, filio Henrici imperatoris, qui contra tuam Ecclesiam inauditâ superbiâ insurrexit, totius regni Teutonicorum et Italiæ gubernacula contradico [i. e. adimo]; et omnes Christianos à vinculo juramenti, quod sibi fecere vel facient, absolvo; et ut nullus ei sicut regi serviat, interdico.*”—Labbe, *Concil.* tom. x. p. 356.

In the second sentence, pronounced in 1080, the pope at first sums up at length the principal crimes committed by Henry, and then proceeds as follows:—“*Quapropter, confidens de judicio et misericordiâ Dei, ejusque piissimæ matris semper virginis Mariæ, fultus vestrâ auctoritate [auctoritate scilicet beatorum Petri et Pauli, quos Gregorius hic alloquitur], sæpe nominatum Henricum, quem regem dicunt, omnesque fautores ejus, excommunicationi subjicio, et anathematis vinculis alligo; et iterum regnum Teutonicorum et Italiæ, ex parte Dei omnipotentis et vestrâ, interdicens ei, omnem potestatem et dignitatem illi regiam tollo; et ut nullus Christianorum ei sicut regi obediat, interdico;*

first sight to imply, that Gregory VII. considered the divine power of binding and loosing, the sole grounds of that power which he attributes to himself of deposing the emperor.<sup>1</sup> But on a closer examination of the matter, it will be seen that his words admit a sense entirely different, and that he could appeal to the divine power of binding and loosing without regarding it as the sole foundation of the right which he claimed for himself of deposing the emperor.

To prove our assertion, we need but state again the incontestable fact, evidently proved by all contemporary history, that in the time of Gregory VII., and for a considerable period before, an emperor persisting obstinately under excommunication during an entire year, without taking any measures to make satisfaction to the Church, forfeited his throne by the laws of the empire.<sup>2</sup> At a time when the laws of the empire annexed this terrible effect to excommunication, it is manifest, that the sentence by which the pope excommunicated and deposed the emperor was founded both on the divine law and on human law. It was founded on divine right, not only inasmuch as it excommunicated the emperor, but also because it instructed the conscience of his subjects on the extent and limits of their obligations, arising from the oath of allegiance which they had taken to him. It was founded also on human law, in so far as it declared the prince deprived of his rights, in punishment of his obstinately

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omnesque qui ei juraverunt vel jurabunt de regni dominatione, à juramenti promissione absolvo."—Labbe, Concil. tom. x. p. 384. See also Fleury, Hist. Eccl. vol. xiii. book lxii. n. 29; book lxiii. n. 1; Voigt, Hist. de Grég. VII. pp. 378, 525, &c.

There is a slight difference between the first sentence, which was issued in 1076, and the second, issued in 1080. In the first, deposition is announced before excommunication; in the second, on the contrary, the excommunication precedes the deposition. The latter form is, no doubt, the more exact; for Gregory intended to depose the emperor by excommunication; but the informality of the first sentence is the less important, as Gregory did not intend by it to depose Henry, but merely to threaten deposition in the event of his obstinately refusing to amend (*supra*, ch. ii. n. 95, &c.).

<sup>1</sup> This is supposed by all the modern authors who charge Gregory VII. with exorbitant pretensions in temporal matters. See especially Bossuet, *Defens. Declar. lib. i. sect. i. cap. vii.*; lib. iii. cap. iii. &c.; Fleury, *Hist. Eccl. vol. xiii. 3rd Discourse*, n. 18.

<sup>2</sup> The details which we have given in the preceding chapter (n. 95, &c.) from contemporary authors, on the contest between Gregory VII. and Henry IV., clearly prove this important fact, which, indeed, is also generally admitted by modern authors.

remaining under excommunication. To pronounce this deposition, the pope had no necessity of attributing to himself any power of jurisdiction, direct or indirect, over temporal things, by divine institution; the directive power already explained in the commencement of this chapter was enough for the purpose.

We can thus easily comprehend why the pope's sentence mentioned only the divine right, or the power of binding and loosing given by Jesus Christ to the Church and to the successor of St. Peter; while it does not allude to the ancient laws of the empire, on which the sentence, so far as it deposed the emperor, was grounded. In truth, the sentence, considered as to its *principal, direct, and immediate object*, was grounded on the divine right; for the deposition was not effected except through excommunication, from which it followed naturally according to the laws of the empire. Neither in the ecclesiastical nor in the civil tribunals does the judge consider himself always bound to state in detail the grounds of his sentence; he frequently mentions only the principal ones; and the omission of the others is very natural when they are sufficiently known by the universal custom and belief; as were the laws of the empire at this period, which declared the emperor deposed if he persisted obstinately under excommunication during a year. Moreover, if Gregory VII. omits this point in his sentence, he asserts, or at least insinuates it clearly enough, in the letter which he wrote to the German lords, on the motives of his proceeding. "Being deeply affected with grief," he says, "we wrote again to Henry exhorting him to repent; and we sent to him three pious men, his own subjects, to admonish him privately to do penance for his numerous crimes, for which he deserved to be not only excommunicated, but even deprived of the royal dignity, according to the laws of God and man."<sup>1</sup> These words prove that, in deposing the emperor, Gregory VII.

<sup>1</sup> "Quâ de re, gravi dolore percussi, . . . misimus ad eum tres religiosos viros, suos utique fideles, per quos eum secretò monuimus, ut pœnitentiam ageret de sceleribus suis, quæ quidem horrenda dictu sunt, pluribus autem nota, et in multis partibus divulgata: propter quæ eum excommunicari, non solum usque ad dignam satisfactionem, sed ab omni honore regni, absque spe recuperationis, debere destitui, *divinarum et humanarum legum testatur auctoritas*."—Paul Bernried, *Vita Greg. VII. Ingolstadii*, 1610, 4to. cap. lxxviii. (Muratori, *Rer. Ital. Script.* tom. iii. part. i. p. 337). See also the authors cited above, n. 95.

did not mean to rest his proceeding on the divine right solely, but on laws human and divine, as we have already explained.

192. *Explanation of his Letters to Herman, Bishop of Metz.*

His letters to Herman, bishop of Metz, may also be explained in the same way.<sup>1</sup> Some of Henry's partisans, to elude the sentence pronounced against him by the pope, went so far as to pretend that a sovereign could not be excommunicated.<sup>2</sup> Embarrassed by their objections, the bishop of Metz proposed it to Gregory himself, who, as Fleury remarks, "found it very easy to prove that the power of binding and loosing was given to the apostles generally, without excepting any person; and that it included princes as well as others."<sup>3</sup> This is really the subject of the letters of Gregory VII. to Herman, and especially of the first.<sup>4</sup> To answer the main question in these letters, he cites, first, the example of Theodosius, and of some other excommunicated sovereigns; and thus proves the superiority of the spiritual over the temporal power, according to the institution of Jesus Christ himself. He proves this superiority, not only by the words of our Saviour giving to St. Peter the power of binding and loosing; but also by the constant doctrine of tradition, binding all the faithful, and princes themselves, to respect the authority of the successor of St. Peter. In his second letter to

<sup>1</sup> Greg. VII. *Epistolæ ad Herimannum Episcopum Metensem*, *Epist.* lib. iv. *epist.* 2; lib. viii. *epist.* 21 (Labbe, *Concil.* tom. x. pp. 149, 267). Fleury, *Hist. Eccl.* vol. xiii. book lxii. n. 32. Voigt, *Hist. de Grég. VII.* book viii. p. 390, &c. D. Ceillier, *Hist. des Auteurs Ecclés.* vol. xx. p. 633, &c.

<sup>2</sup> See note 4, n. 96, ch. ii.

<sup>3</sup> Fleury, *ubi supra*, 3rd Discourse, n. 18.

<sup>4</sup> We have already remarked (*supra*, ch. ii. n. 96, note 2), that in his first letter to Herman, Gregory VII. proposes solely to discuss the objection of those who pretended that a king ought not to be excommunicated. In the second, besides the first point, which is always his principal object, Gregory also discusses the objection of those who asserted that the pope could not absolve subjects from their oath of allegiance. Considering this double object of the second letter, it cannot be expected that all Gregory's arguments should apply equally to the two points; it is enough if each of his proofs applies to one of these points, as Nat. Alexandre has judiciously observed (*ubi supra*, art. x. 2nd paragraph). From not having observed this, Fleury and some other writers criticise Gregory VII. very severely for the very inconclusive arguments by which he proves, in his letter to Herman, the power which he claims of deposing sovereigns. All these censures fall to the ground the moment one forms a correct notion of the principal question which Gregory VII. discusses in his letters. See, on this subject, a note by M. Jager, in the *Hist. de Grég. VII.* book viii. p. 392.

Herman on this subject, Gregory VII. cites the doctrine, and even the very words of Pope Gelasius, which manifestly assert that the two powers are distinct, and both sovereign in their own sphere.<sup>1</sup> All this has a manifest bearing on Gregory's object; for the chief design which he proposed to himself in his two letters, and especially in the first, was to establish the power of excommunicating sovereigns; a power which had been denied by some partisans of Henry, on account of the terrible effects which excommunication then entailed, according to the general belief, and especially by the laws of the empire. In these letters, we also find, that, far from denying the principle of the distinction and mutual independence of the two powers, Gregory VII. expressly acknowledges it, in the very words of Pope Gelasius, whom he cites. He only maintains that the temporal power can be judged by the spiritual, and that sovereigns, like private individuals, may be excommunicated, in punishment of certain crimes. This language supposes certainly the directive power of the Church and of the pope in temporal matters; it also supposes the temporal effects which the general belief of the day, and especially the constitutional law of the empire, attached to excommunication; but this by no means implies that the Church and the pope have, by divine right, the power of deposing sovereigns; for, in the very letter in which Gregory VII. claims the deposing power, he manifestly adopts, with Pope Gelasius, the principle of the distinctive and mutual independence of the two powers, by divine institution.

193. *These Explanations confirmed by the Common Consent of Contemporary Authors.*

However novel and extraordinary this explanation of St. Gregory's language may appear, it is clearly confirmed by the opinions of the most celebrated doctors of his time. And, supposing even that his language appeared obscure or equivocal, it would be most natural to explain it by the common opinion of his contemporaries; for nothing but the most evident proofs could justify us in attributing to him, on so important a subject, a singular opinion, hardly known to his contemporaries. Now, we have already proved, that the theological opinion of the

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<sup>1</sup> See *supra*, n. 178.

divine right of jurisdiction, direct or indirect, over temporals, was hardly known before the pontificate of Gregory VII., and we shall prove immediately, that until long after his time, it did not begin to be maintained by any considerable number of authors. Besides, it is certain that Gregory VII. never intended to depart from the received doctrine of his day, nor to attribute to himself a new right over sovereigns, but simply to exercise the right vested in him by the general opinion of his contemporaries. The authors even who censure his conduct boldly, acknowledge this fact expressly, and admit that the maxims on which he founded his power over sovereigns, were conformable "to the general belief of pious and enlightened men."<sup>1</sup> It is, therefore, not only without proof, but against all probability, that those authors attribute to him the theological theory of the right divine, direct or indirect.

194. *Doctrine of the Blessed Ivo of Chartres.*

The doctrine of Ivo of Chartres appears to be identical with that of Gregory VII., and may be useful to explain the true sentiments of that pope, to whom he was very much attached.<sup>2</sup> We have already seen, that in many of his writings, and especially in his letter to Laurent, a monk of La Charité, the bishop of Chartres clearly supposes the existence of the discipline on the temporal effects of excommunication, even in the case of sovereigns, in the pontificate of Gregory VII.;<sup>3</sup> but he supposes, at the same time, and expressly teaches, that this discipline was not founded on the divine right alone, but on laws human and divine:<sup>4</sup> which agrees perfectly with the explanation just given of the language of Gregory VII.

Ivo's doctrine, in the fifth part of his *Décretum*, or collection of canons, can be naturally explained in the same sense. He proves therein the superiority of the temporal over the spiritual power by a long fragment of that second letter of Gregory VII. to Herman, which we have already cited; and in which the testimony and the very text of Gelasius, on the distinction and

<sup>1</sup> See *supra*, ch. ii. n. 100, 101, 118.

<sup>2</sup> Bossuet, *Defens. Declar. lib. iv. cap. xiv.*

<sup>3</sup> See *supra*, ch. i. n. 80; ch. ii. n. 111.

<sup>4</sup> *Ibid.* ch. i. n. 80.

reciprocal independence of the two powers, are cited; whence it is manifest, that the bishop of Chartres must have admitted on this point the doctrines of antiquity.<sup>1</sup>

These observations may serve to explain a letter of the same prelate to Henry I., king of England, in which many modern writers believed they had found the theological opinion of the divine right.<sup>2</sup> Exhorting the king of England to protect religion and the churches of his kingdom, the prelate repeats those principles which had been at all times admitted, on the union desirable between the priesthood and the empire, and on the subordination of the temporal to the spiritual power. "As human affairs," he says, "cannot be governed except by the union of the priesthood and the empire, I implore your excellency to allow full liberty to those who announce the word of God in your kingdom, and never to forget that the kingdoms of this earth are subject to the kingdom of heaven, which God hath confided to his Church; for as the body ought to be subject to the soul, so secular power ought to be subject to the Church."<sup>3</sup> Here, as in many others of his letters,<sup>4</sup> the writer does no more than prove the principle,—the union of the two powers, and the subordination of the temporal to the spiritual, in the sense of the purely directive power; but he says not a single word implying a jurisdiction of divine right, direct or indirect, over temporalities.

195. *Gratian's Doctrine.*

Gratian's doctrine appears precisely the same; and whatever objections his *Decretum*, or collection of canons, may be liable to under other respects, it can easily be vindicated on this point. For, in very many passages, it lays down the the principle of the distinction and mutual independence of the two powers,

<sup>1</sup> Ivo's *Decretum*, part. v. cap. ccclxxviii.

<sup>2</sup> Mamachi, *Origines et Antiquit. Christianæ*, tom. iv. p. 251.

<sup>3</sup> "Celsitudinem vestram obsecrando monemus, quatenus in regno vobis commisso verbum Dei currere permittatis, et regnum terrenum cœlesti regno, quod Ecclesiæ commissum est, subditum esse debere semper cogitetis. Sicut enim sensus animalis subditus debet esse rationi, ita potestas terrena subdita esse debet ecclesiastico regimini."—Ives de Chartres, *Epist.* 106 (edit. de Juret).

<sup>4</sup> *Idem*. *Epistol.* 214, 239.

enounced in the most formal manner, and enforced by the most decisive testimonies of antiquity. We may mention in particular those of Pope Gelasius,<sup>1</sup> of St. Isidore of Seville,<sup>2</sup> and of Pope Nicholas I.,<sup>3</sup> who is confidently cited, even by Bossuet, among the most unequivocal evidences of antiquity on this subject.<sup>4</sup>

The chief ground for attributing a different opinion to Gratian, is the insertion in the second part of his *Decretum*, of a fragment of Gregory's letter to Herman, which states, that Pope Zachary "had substituted Pepin for Childeric, king of France, and absolved the French from their oath of allegiance to the latter." At the head of that fragment, Gratian places the following title, which clearly shows the object which he had in view:—"The Roman pontiff absolves even from the oath of fidelity, when he deposes persons from their dignity."<sup>5</sup>

It is unaccountably strange that the authors who censure severely this language of Gratian, should allow it to pass with impunity in Ivo of Chartres. This passage of Gregory's letter to Herman is, in fact, inserted literally in Ivo's as well as in Gratian's *Decretum*.<sup>6</sup> The only difference in this point between the two collections, consists in the titles placed at the head of the fragment. In place of the title adopted by Gratian, Ivo adopts the following: "No secular dignity, not even the emperor's, is equal to that of a bishop;" but, in support of that title, Ivo, as well as Gratian, cites the authority exercised by the Church and the pope in certain cases, in absolving subjects from their oath of allegiance.

But what completely solves the objection founded on this passage against the doctrine of Gratian is, that the expressions which he uses here, after Ivo of Chartres and Gregory VII.,

<sup>1</sup> Gratiani *Decretum*, part. i. Dist. 96, cap. x.

<sup>2</sup> *Ibid.* part. ii. causâ 23, quæst. 5, cap. xx.

<sup>3</sup> *Ibid.* part. i. Dist. 10, cap. viii.; Dist. 96, cap. vi.

<sup>4</sup> Bossuet, *Def. Declar.* lib. i. sect. ii. cap. xxxiii. &c. xxxvi. et alibi passim.

<sup>5</sup> "A fidelitatis etiam juramento Romanus pontifex nonnullos absolvit, cum aliquos à suâ dignitate deponit."—*Ibid.* causâ 15, quæst. 6, cap. iii. It is principally on this passage that Bossuet and many other French theologians attribute to Gratian the theological theory of the right divine.—*Defens. Declar.* lib. iii. cap. xiv. xv. De Héricourt, *Analyse du Décret. de Gratien* (p. 40), prefixed to the *Lois Ecclésiastiques de France*, Paris, 1771, fol.

<sup>6</sup> *Ivonis Decretum*, part. v. cap. cclxxviii.

were used, with others equally strong, by a great number of authors whose language appears, even to the most severe critics on Gratian, susceptible of a very fair meaning. We have already cited<sup>1</sup> the remarkable passage in which Bossuet vindicates the language of the ancient authors cited by Gregory VII., Ivo of Chartres, and Gratian, relative to the decision of Pope Zachary.

From these explanations it clearly follows, that Bossuet, though denying to the pope the power of absolving subjects from their oath of allegiance, by an act of jurisdiction, properly so called, does not pretend to deny him the power of so doing by a doctrinal decision, or by an act of simply directive power. Now this is evidently sufficient to justify the language of Gratian, as well as of the ancient authors, who, Bossuet believes, can be understood in that sense.

196. *Doctrine of Hugo de Sancto Victore.*

Hugo de Sancto Victore, one of the most eminent writers of the same century, both for the solidity of his judgment and the variety and extent of his learning, expresses himself in the clearest terms on this subject. We think it necessary to ascertain his real sentiments accurately, because, from misapprehension of the connection and sequel of his discourse, he has been sometimes misrepresented.<sup>2</sup> In his treatise on the Sacraments of the New Law, he thus explains the distinction and the limits of the two powers: "One is called temporal, the other spiritual; they are subdivided into different orders and different degrees; but each under its own head, having its own distinct principle and end. The prince is the source of the temporal power, and the pope of the spiritual. All that is temporal, all that regards civil life, belongs to the royal power; all that is spiritual or that relates to spiritual life, belongs to the power of the pope."<sup>3</sup>

<sup>1</sup> *Supra*, n. 172. Bossuet's interpretation of these ancient authors is generally adopted by French authors. See, among others, Dupin, *Traité de la Puissance Ecclésiastique*, prop. 1, p. 245, &c.

<sup>2</sup> Mamachi, and some other advocates of the theological theory of the divine right, appear not to have seen the true sense of this author. (*Origines et Antiquit.* vol. iv. pp. 171, 252.) Bossuet examined it more closely, and presented it in its true light. (*Defens. Declar.* lib. iii. cap. xvii.)

<sup>3</sup> "Illa potestas dicitur secularis, ista spiritualis nominatur. In utraque potestate diversi sunt gradus, et ordines potestatum, sub uno tamen utrinque capite distributi, et velut ab uno principio deducti, et ad unum relati. Ter-

Here, then, are two distinct powers, each sovereign in its own sphere, and distinguished from each other both by their peculiar functions, and by the head on which they depend. The author, no doubt, after having established these principles, goes on to prove the superiority of the temporal over the spiritual power, and teaches that the latter can appoint the former, and judge it, if it do evil. "As much as the spiritual life is more noble than earthly life, and the spirit than the body, so much does the spiritual power surpass in honour and dignity the earthly or secular power; for the spiritual power can both establish the temporal, so as to give it birth, and judge it, if it does evil. The spiritual power, on the contrary, has been in the beginning established by God, who alone can judge it, if it do evil; as it is written: 'The spiritual man judgeth all things; and he himself is judged of no man.'"<sup>1</sup> Some modern authors believed that, from his citing this text, he maintained the theological theory of the divine right; but the following part of his discourse does not bear out that inference. "That the spiritual power," he says, "is prior to the temporal and superior in dignity, is proved clearly from the history of the people of God in the Old Testament; for we there see, that God first established the priesthood, and that it afterwards established the royal power, by order of God. Hence, in the Christian Church also, it is the bishops that consecrate kings, sanctifying the regal power by their benediction, and directing it by sage counsels. If, therefore, as the apostle asserts, 'the lesser is blessed by the greater,' it follows manifestly, that the temporal power is inferior to the spiritual, from which it receives a benediction."<sup>2</sup> Here we see the sense in which the author

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rena potestas caput habet regem, spiritualis potestas summum pontificem. Ad potestatem regis pertinent quæ terrena sunt, et ad terrenam vitam facta omnia; ad potestatem summi pontificis pertinent quæ sunt spiritualia, et vitæ spirituali attributa universa."—Hugo de St. Victor, De Sacram. lib. ii. part. ii. cap. iv. (Oper. tom. iii. p. 607).

<sup>1</sup> "Quantò autem vita spiritualis dignior est quàm terrena, et spiritus quàm corpus; tantò spiritualis potestas, terrenam sive sæcularem potestatem honore ac dignitate præcedit. Nam spiritualis potestas terrenam potestatem, et instituere habet, ut sit, et judicare, si bona non fuerit; ipsa verò à Deo primùm instituta est; et cum deviat, à solo Deo judicari potest, sicut est scriptum: *Spiritualis homo dijudicat omnia, et ipse a nemine judicatur* (1 Cor. ii. 15)."—Hugo de St. Victor, *ibid.*

<sup>2</sup> "Quòd autem spiritualis potestas, quantum ad divinam institutionem

had previously stated that it belongs to the spiritual power to establish the temporal. He alludes here to the history of Saul's appointment as king by Samuel, who had received from God an express and extraordinary mission for that purpose ; but he does not mean the ordinary power of the priesthood, whose functions he had so manifestly restricted to objects of the spiritual order. So far is he from attributing to the priesthood the ordinary power of appointing temporal sovereigns, that when discussing, a little farther on, the title on which the Church holds temporal property, he teaches expressly, that the superiority of the spiritual over the temporal power does not justify the former in invading the rights of the latter. "If the spiritual power," he states, "holds the first rank, it yet cannot injure the other ; no more than the temporal power can ever, without sin, usurp what belongs to the spiritual."<sup>1</sup> Then discussing in how many ways justice can be administered by the secular power, he thus explains one of those modes : "Justice or right is determined according to the nature of the cause ; that is, that temporal things ought to be judged by the temporal, and spiritual things by the spiritual power. The head of the temporal power is the king or emperor, who communicates it to subordinate officers, dukes, counts, governors, and other magistrates ; all the latter hold their authority from the sovereign power that raised them above other subjects."<sup>2</sup>

From these explanations we infer, that Hugo de Sancto Victore admitted no power of divine right in the Christian

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spectat, et prior sit tempore, et major dignitate, in illo antiquo veteris instrumenti populo manifestè declaratur, ubi primùm à Deo sacerdotium institutum est, postea verò per sacerdotium, jubente Deo, regalis potestas ordinata. Unde in Ecclesiâ adhuc sacerdotalis dignitas potestatem regalem consecrat, et sanctificans per benedictionem, et formans per institutionem. Si ergo, ut dicit apostolus, *qui benedicit major est, et minor qui benedicitur* (Heb. vii. 7) ; constat absque omni dubitatione, quòd terrena potestas, quæ a spirituali benedictionem accipit, jure inferior existimetur."—Hugo de St. Victor, ubi supra.

<sup>1</sup> "Spiritualis siquidem potestas non ideo præsidet, ut terrenæ, in suo jure, præjudicium faciat : sicut ipsa potestas terrena, quod spirituali debetur, nunquam sine culpâ usurpat."—Hugo de St. Victor, *ibid.* cap. vii. p. 608.

<sup>2</sup> "Secundùm causam justitia determinatur, ut videlicet negotia sæcularia à potestate terrenâ, spiritualia verò et ecclesiastica à spirituali potestate examinentur. Sæcularis autem potestas caput habet regem sive imperatorem, ab illo per subjectas potestates, et duces, et comites, et præfectos, et magistratus alios descendens ; qui tamen omnes à primâ potestate auctoritatem sumunt, in eo quod subjectis prælati existant."—*Ibid.* cap. viii.

Church over kings, but that of sanctifying their authority by her blessing, and of directing it by wise counsels; which by no means implies a power of jurisdiction, direct or indirect, over temporals.

197. *Doctrine of St. Bernard—Sense in which he applies the Allegory of the Two Swords.*

St. Bernard, the light of the Church of France, and even of the whole Church at this period, held the same opinions.<sup>1</sup> At least, Bossuet and Fenelon, with whom we agree, believe that such is the meaning of some passages in his writings, which appear, at first sight, favourable to the theological theory of the divine right, and which have been cited as such by the advocates of that opinion.<sup>2</sup> We refer especially to the two passages in which, under the allegory of the two swords which the apostles had at the time of our Lord's passion, St. Bernard saw an emblem of the two powers granted to the Church. The first of these passages occurs in the fourth book *De Consideratione*, in which the holy doctor urges Pope Eugenius to labour for the reform of the people of Rome, not with the material sword, but with the spiritual sword of the word. He there discusses whether the material sword belongs to the Church, and in what sense it can be said to belong to it. "Attack," he writes, "the rebel Romans with the word, and not with steel. Why do you wish to use the sword (material), when you have been ordered to place it in its scabbard? Nevertheless, whoever denies that you have that sword, has not attended sufficiently to the words of Jesus Christ ordering St. Peter to return it to its scabbard. This sword then is really in your possession, to be drawn by your orders, but by another hand. If it does not belong to you at all, when the apostles said to Jesus Christ, 'Here are two swords;' he would not have said to them, 'It is enough;' but he would have said, 'It is too much.' The two swords, therefore, the spiritual and the material, belong to the Church; she

<sup>1</sup> Bossuet, *Defens. Declar.* lib. iii. cap. xv. xvi. Fenelon, *De Auctoritate Summi Pontificis*, cap. xxvii. xl. xlii. pp. 335, 338, 397. Fleury, *Hist. Eccl.* vol. xiv. book lxix. n. 14, 60. Pey, *De l'Autorité des Deux Puissances*, vol. i. p. 124.

<sup>2</sup> Bianchi, *Della Potestà e della Politia della Chiesa*, vol. ii. book v. § 12. Mamachi, *Origines et Antiquit. Christ.* vol. iv. p. 251.

herself draws the spiritual by the hands of the pope; the material must be drawn for the defence of the Church by the soldier, but at the pope's request, and by the order of the prince; and of this we have elsewhere treated."<sup>1</sup> These latter words allude to a letter of the holy doctor's to Pope Eugenius, in which he states the same thing regarding the two swords; which proves that he must have had the same object in both passages. Let us see now what was his object, and what the occasion of his speaking of the two swords in that letter to Pope Eugenius. He is telling the pope there, as in his books *De Consideratione*,<sup>2</sup> of a great defeat of the Crusaders in Palestine; and after having narrated the fatal catastrophe, he thus continues: "Both swords must now be drawn in the passion of Christ, for Christ is now suffering again where he suffered before. By whom are they to be drawn, if not by you? Both are Peter's; and to be drawn when necessary, one by his own hand, the other at his request. It is time, and there is need of drawing both now in defence of the Eastern Church."<sup>3</sup> These words show clearly the sense in which St. Bernard claims the material sword for the Church; it is in this sense solely that the prince is sometimes bound to employ it, under the direction and by the advice of the pope, as happened in the Crusades; St. Bernard's idea, therefore, is, that in certain cases, it is the pope's right and duty, by *advice* and *exhortation*, to urge princes to take up arms, but that the prince alone can give *orders* to that effect; whence, in the opinion of St. Bernard, the material

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<sup>1</sup> "Aggredere eos (Romanos contumaces), sed verbo, non ferro. Quid tu denuo usurpare gladium tentes, quem semel jussus es ponere in vaginam? Quem tamen qui tuum negat, non satis mihi videtur attendere verbum Domini, dicentis sic: *Converte gladium tuum in vaginam*. Tuus ergo et ipse, tuo forsitan nutu, etsi non tuâ manu evaginandus. Alioquin si nullo modo ad te pertineret et is, dicentibus apostolis: *Ecce gladii duo hic, non respondisset Dominus, Satis est*; sed, Nimis est. Uterque ergo Ecclesiæ, et spiritualis scilicet gladius, et materialis; sed is quidem pro Ecclesiâ, ille verò et ab Ecclesiâ exerendus; ille sacerdotis, is militis manu, sed sanè ad nutum sacerdotis, et jussum imperatoris; et de hoc aliàs (egimus)."—S. Bernard. *De Consider. lib. iv. cap. iii.* (Oper. tom. i. p. 438).

<sup>2</sup> *Ibid.* lib. ii.

<sup>3</sup> "Exerendus nunc uterque gladius in passione Domini, Christo denuo patiente, ubi et alterâ vice passus est. Per quem autem, nisi per vos? Petri uterque est: alter suo nutu, alter suâ manu, quoties necesse est, evaginandus. . . . Tempus et opus esse existimo ambos educi, in defensionem Orientalis Ecclesiæ."—S. Bernard. *Epist. 256, ad Eugenium Pontif.* (*ibid.* p. 257).

sword, which belongs properly to the prince, belongs also, in a certain sense, to the pope, because a religious prince will willingly take up arms in defence of the cause of God and the Church, at the request of the pope.<sup>1</sup> This, no doubt, clearly implies the directive power of the Church in temporal matters, but not a power of jurisdiction, which St. Bernard attributes exclusively to the prince, by reserving to him the right of giving orders on this matter.

198. *In what Sense he attributes to the Pope the Right of disposing of Kingdoms and of Empires.*

The same explanation applies to another passage of St. Bernard, which might be plausibly objected to us, though it has not been noticed by many defenders of the indirect power.<sup>2</sup> Having heard that the cardinals had elected as pope, Eugenius III., who had formerly been his disciple at Clairvaux, he expresses his surprise in the following terms: "May God pardon you: what have you done? you have drawn a man from the tomb, and cast into the turmoil of affairs one whose great wish was to avoid them. Was there, then, no person among yourselves whose wisdom and experience would be more adapted for so great a dignity? Was it not ridiculous to select a poor creature, covered with rags, to preside over princes, to command bishops, to dispose of kingdoms and empires?"<sup>3</sup> These words can be easily explained by the principles developed in the other extracts from St. Bernard which we have cited. For, as the pope can in a certain sense command the use of the material sword, by his advice and exhortation, so can he, in the same sense, dispose of kingdoms and empires, by announcing to princes and people

<sup>1</sup> Fleury adopts this explanation of St. Bernard's text, *Hist. Eccl. ubi supra*, n. 60, last paragraph.

<sup>2</sup> S. Bernard, *Epistol. 237, ad Cardinales*. Bianchi (*ubi supra*, n. 3) was the first that endeavoured to prove the indirect power from these words. The abbé Leroy, in a note on ch. xv. lib. iii. *Defens. Declarat.*, undertook to solve the objection that might be founded on it. See edit. of 1745.

<sup>3</sup> "Parcat vobis Deus; quid fecistis? sepultum hominem revocastis ad homines; fugitantem curas et turbas curis denudè implicuistis, et immiscuistis turbis. . . Sic non erat inter vos sapiens et exercitatus, cui potius ista convenirent? Ridiculum profectò videtur pannosum homuncionem assumi, ad præsidendum principibus, ad imperandum episcopis, *ad regna et imperia disponenda*."—S. Bernard, *Epist. 237, ubi supra*. Fleury, *Hist. Eccl. vol. xiv. book lxix. n. 8. Hist. de l'Eglise Gall. vol. ix. p. 119.*

the obligations arising from their oaths and reciprocal engagements ; and such language could have been used in St Bernard's time with the greater propriety, as the laws of the empire and of other states attached to excommunication the penalty of deposition. This legislation once established, it naturally followed, that the pope could, in certain cases, dispose of kingdoms and empires by excommunication, as we have already explained, when speaking of the sentence of Gregory VII. against the emperor Henry IV.<sup>1</sup>

199. *Different Interpretations of the Allegory of the Two Swords in the Authors of this Period.*

The same principles may explain the language of a great number of contemporary authors, who, like St. Bernard, used the allegory of the two swords to express the union of the two powers in the hands of the Church and of the pope. It is true, that some of them carried the allegory so far as to assert that the two powers had been given directly to the Church, and that she, not being able to use the material sword in person, should intrust it to princes, to use it conformably to the order of God ; and should deprive them of it, if they used it against that order.<sup>2</sup> But most of the authors who used this allegory of the two swords, can easily be explained in the sense of a purely directive power of the Church in temporal matters.

200. *Sense in which it is used by Geoffroy of Vendôme.*

Such is certainly the meaning of Geoffroy of Vendôme, a contemporary of Ivo of Chartres, and who is generally supposed to have been the first that used the allegory of the two swords to express the distinction of the two powers.<sup>3</sup> The following are the exact words of this author, in his fourth treatise on the Inves-

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<sup>1</sup> See *supra*, n. 191.

<sup>2</sup> John of Salisbury, bishop of Chartres in the twelfth century, appears to have been the first author that maintained that opinion. See *supra*, note, n. 189.

<sup>3</sup> Bossuet supposes that St. Bernard was the first that used the allegory of the two swords on this subject. (*Defens. Declar. lib. i. sect. ii. cap. xxxvii. p. 392.*) The abbé Leroy has already detected that mistake. (Note on ch. xvi. of book iii.) Fleury had also remarked long before, that this allegory first occurred in the writings of Geoffroy of Vendôme. (*Fleury, Hist. Eccl. vol. xiv. p. 301 ; vol. xvii. p. 41.*)

tures: "Jesus Christ willed that the spiritual and the material sword should be employed in defence of the Church. If one of them blunts the other, it is contrary to his wish; this it is that banishes justice from the empire, and peace from the Church; hence flow scandals and schisms; and, consequently, the loss both of souls and of bodies; and while the priesthood and the empire are at war against each other, both are exposed to the greatest perils."<sup>1</sup> Here we find the author only enforcing the principles universally admitted on the concord of the two powers, and on the necessity of employing the temporal power also for the good of religion. In the course of the same work, no doubt, when representing the evils resulting from discord between the priesthood and the empire, he mentions the deposition of princes who had been excommunicated by the Church. "The king," he says, "is deprived both of ecclesiastical communion, and of his royal dignity."<sup>2</sup> These latter expressions, however, by no means imply the theological theory of the right divine; they merely suppose, what every one knew, that the general belief and custom of the day attached the penalty of deposition, in certain cases, to excommunication.

201. *And by Hildebert, Bishop of Mans, and the Majority of Ancient Authors.*

About the same period we find the allegory of the two swords used by Hildebert, bishop of Mans, in a letter from the prison, in which he was detained by the Count du Perche. The letter was addressed to Serlon, bishop of Séez, requesting him to excommunicate the count, and compel him to restore the writer to liberty. "You know," it states, "that at the last supper there were two swords in the hands of the apostles; and most appropriately too; for these two swords are still possessed by members of the body of Jesus Christ, the king and the bishop

<sup>1</sup> "Voluit bonus Dominus et magister noster Christus, spirituales gladium et materiale esse in defensione Ecclesiæ. Quod si alter ab altero retunditur, hoc fit contra illius voluntatem. Hæc occasione, de regno justitia tollitur, et pax de Ecclesiâ; scandala suscitantur et schismata; et fit animarum perditio simul et corporum. Et dum regnum et sacerdotium unum ab altero impugnantur, periclitatur utrumque."—Geoffroy de Vendôme, *Opuscul. iv.* (Biblioth. Patrum, tom. xxi. p. 61, col. 2, H). Fleury, ubi supra.

<sup>2</sup> "Rex sacrosanctâ communione pariter et regiâ dignitate privatur."—Geoffroy de Vendôme, ubi supra.

being both members of that divine head. You know what the bishop's sword is, and the king's. The latter is the judgment of the palace; the former, the penalties of ecclesiastical law. If the king's sword delivered me, I would not appeal for help to the bishop."<sup>1</sup> Now this whole passage can be perfectly reconciled with the distinction and mutual independence of the two powers; Hildebert only proves that there are two swords, or two distinct powers; that both belong to members of the Church, and that, in certain cases, the sword of the king is bound to succour the Church; but no part of the letter justifies the belief that he held the theological theory of the divine right, or even that he inclined to that opinion.

It could be easily shown that most of the authors who used this allegory of the two swords, understood it in the moderate sense just explained. This is certainly its meaning in all the decrees issued by the Holy See, which we shall examine in another place.<sup>2</sup> The examples already cited are, however, abundantly sufficient to show how groundless was the general and unmitigated censure pronounced by Fleury and other modern writers on the application of this allegory by all the authors of the middle ages.<sup>3</sup> One should think that Fleury ought to have been more cautious on this matter, for in many passages in his history he does not presume to censure the application of that allegory by St. Bernard, and he even adopts plainly enough the moderate interpretation of the saint's words, approved by Bossuet.<sup>4</sup>

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<sup>1</sup> "Duos in cœna (nosti) fuisse gladios; . . . Aptè profectò inventus est uterque apud discipulos Christi, quia adhuc uterque ostenditur in membris corporis Christi. Membrum enim Christi, rex: membrum Christi, sacerdos. Scienti loquor; nosti gladium regis, nosti gladium sacerdotis. Gladius regis, censura curiæ; gladius sacerdotis, ecclesiasticæ rigor disciplinæ. Hos Evangelistam figurasse legisti, dicentem: *Domine, ecce gladii duo hic*. Si esset qui in gladio regni liberaret me, non peteretur duci gladius sacerdotii propter me."—Hildeberti Epist. 40, ad Herlonem, Sagiensem Episc. (Biblioth. PP. tom. xxi. p. 136). Hildeberti Opera, Epistol. lib. ii. epist. 18.

<sup>2</sup> See, a little farther on, an inquiry into the doctrine of Innocent III. and of Boniface VIII. on this subject.

<sup>3</sup> Fleury, Hist. Eccl. vol. xvii. 5th Discourse, n. 12.

<sup>4</sup> Ibid. vol. xiv. book lxxix. n. 14, 60.

§ 2. *Discussion of the principal acts and decrees of Councils and Popes, cited in support of the theological opinion of the divine right.*

202. *This Discussion, though very useful for our Purpose, is not indispensable.*

The most conclusive argument against that system which represents the theological theory of the divine right as the foundation of the power exercised by popes and councils in the middle ages, is that this opinion was never taught nor supposed, much less defined as an article of faith, by councils or popes. The language of Gregory VII., we have already proved, can and must be understood in quite a different sense. The same, we believe, may be said of the councils and popes after Gregory VII., even of those who seemed to have given the greatest stretch to their authority in temporal matters.

But before we enter on the detailed inquiry necessary to establish this latter point, we must remark that it is by no means necessary for our purpose, and that our opinion is sufficiently proved by the preceding observations, though we should fail in fully vindicating the language of all the councils, and of all the popes after the time of Gregory VII. For, even admitting that many of these councils or popes insinuated or supposed in their decrees the theological theory of the divine right, the fact still remains untouched, that during the pontificate of Gregory VII. that opinion was either unknown or adopted only by a few; and that it was not until a much later period that this opinion began to spread, or at least to be maintained by a considerable number of writers; finally, that Gregory VII. himself never taught or even supposed it; the extraordinary power, therefore, which the Holy See attributed to itself over sovereigns from that period, could not be grounded on the theological opinion of the divine right. If the popes and councils, after the pontificate of Gregory VII., have sometimes insinuated or supposed that opinion, the most that can thence be inferred is, that they admitted the notions of their time on the origin and titles of the extraordinary power which they possessed; and that, in vindicating a power sanctioned by universal consent, and other solid arguments, they sometimes introduced a principle liable to objection. Nevertheless, it may be asserted confidently,

that no popes or councils, after the pontificate of Gregory VII., ever taught or supposed in their solemn acts or decrees, this theological theory of the divine right; and that their language, as well as his, admits an entirely different interpretation.<sup>1</sup> A detailed examination of all the testimonies and of all the facts that might be objected to our opinion, would lead us far beyond our limits; we shall discuss those only which seem most plausible, and the refutation of which will supply general principles for solving all the others.

203. *Pretended Donation of Ireland to the King of England by Adrian IV.*

Many modern writers have asserted that Adrian IV., not content with attributing to himself the right of judging sovereigns, had also attributed to himself the right of disposing of states with absolute control, for the greater good of religion.<sup>2</sup> It was by virtue of this pretended right, if we believe these authors, that Adrian IV. granted Ireland to Henry II., king of England, in 1156, "to subject it to the laws of Christianity, saving, however, the right to the Peter pence, which were to be paid every year by each house."<sup>3</sup>

The letter of Adrian IV., for which he is charged with this extraordinary assumption, makes no such claim.<sup>4</sup> He certainly assumes in the letter as a certain fact, acknowledged by the king of England himself, "that Ireland, and all the islands

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<sup>1</sup> However great the respect which we had from the beginning for the authority of Fenelon, who explains by the directive power all the decrees of popes and councils on this subject, the difficulties of his theory appeared so great that we at first hesitated to adopt it absolutely. (See first edition of this Inquiry, p. 303.) But on more mature reflection we have adopted it. We think, moreover, that it may be applied even to many of the ancient theologians, who are generally considered advocates of the theological opinion of the divine right. See, on this subject, No. 8, Confirmatory Evidence, at the close of this volume.

<sup>2</sup> Bossuet, *Defens. Declar.* lib. i. cap. ii.; lib. iii. cap. xviii. pp. 209, 653. *Hist. Eccl.* vol. xv. book lxx. n. 16.

<sup>3</sup> *Epist. Adriani IV. ad Henricum II.* (Labbe, *Concil.* tom. x. p. 1143).

<sup>4</sup> Bianchi, *Della Potestà e della Politia della Chiesa*, vol. ii. book v. § 14, n. 10. We must remark, that M. Augustin Thierry, who cites all this letter, changes the order of the sentences in such a manner as to misrepresent totally the context, and the mind of Adrian IV. By the aid of such inversions, an author can be made to say directly the contrary of what he means. See Augustin Thierry, *Hist. de la Conquête d'Angleterre par les Normands*, vol. iii. ann. 1156. (See Translator's Appendix, on this bull of Adrian, at the close of this volume.)

enlightened by the Christian faith, belong to the jurisdiction of St. Peter, and of the holy Roman Church: 'ad jus beati Petri et sacrosanctæ Romanæ Ecclesiæ pertinere.'" But what jurisdiction does the pope mean here? Is it spiritual jurisdiction or temporal? Most certainly the former, as manifestly appears from the following part of the letter; for, immediately after the words cited, it recites that, the king of England having formed the design of conquering Ireland, and of maintaining there the rights of the churches, the pope praises and approves the project, for the good of religion and the sanctification of souls; saving the rights of the churches and the Peter pence, which the inhabitants used to pay to the Holy See.<sup>1</sup> Here there is not a single word that supposes or authorizes the extravagant right of disposing, with absolute control, of Ireland, and of all the islands enlightened by the light of the Gospel. The only right which the pope attributes to himself over Ireland is the right to the Peter pence, which the Irish were in the habit of paying annually to the Roman Church, before the conquest of their country by the English.

204. *Decrees of the Third and Fourth Councils of Lateran on Temporal Matters, sanctioned by Sovereigns.*

The third and fourth councils of Lateran, which were held in 1179 and 1215, decree against the Albigenses, and many other heretics of that period, temporal penalties, among which were the forfeiture of all civil rights and temporal dignities, by lords who either embraced or favoured heresy.<sup>2</sup>

<sup>1</sup> "Significasti nobis, fili in Christo carissime, te Hiberniæ insulam, ad subdendum illum populum legibus, et vitiorum plantaria inde extirpanda, velle intrare, et de singulis domibus annuam unius denarii beato Petro velle solvere pensionem, et jura ecclesiarum illius terræ illibata et integra conservare. . . . Nos itaque pium et laudabile desiderium tuum cum favore congruo prosequentes, et petitioni tuæ benignum impendentes assensum, gratum et acceptum habemus ut, pro dilatandis Ecclesiæ terminis, pro vitiorum restringendo decursu, pro corrigendis moribus, et virtutibus inferendis, pro Christianæ religionis augmento, insulam illam ingrediaris, et quod ad honorem Dei et salutem illius terræ spectaverit, exequaris; et illius terræ populus honorificè te recipiat, et sicut Dominum veneretur; jure nimirum ecclesiastico illibato et integro permanente, et salvâ beato Petro et sacrosanctæ Romanæ Ecclesiæ, de singulis domibus, annuâ unius denarii pensione. *Si ergo quod concepisti animo, effectu duxeris complendum, stude gentem illam bonis moribus informare, etc.*"—Adriani Epist. 1, ad Henric. II. ubi supra.

<sup>2</sup> We have cited elsewhere the texts of these councils, ch. ii. n. 88, &c.

But the objections which might be proposed against us from those decrees have been fully solved by the explanations already given in a preceding chapter. From these explanations it follows, that the councils never assumed to decree those temporal penalties by their own authority, but with the consent and co-operation of the Christian princes, who assisted at these councils either in person or by their ambassadors. It must be remembered, moreover, that when these councils were held, the temporal penalties which they enacted against heresy had been already established by universal custom, and applied even to sovereigns themselves, by the constitutional laws of their states;<sup>1</sup> so that, in truth, these councils merely confirmed by their authority a point of law already long established and recognised in Catholic Europe.

205. *Doctrine of Innocent III.—In what Sense he maintains the Pre-eminence of the Spiritual over the Temporal Power.*

Many letters of Innocent III., some of which were inserted in the canon law, have been interpreted as asserting the theological theory of the divine right; but M. de Marca, and even Bossuet, with whom we agree, contend that these letters admit quite a different meaning, and that every position of Innocent III. can be fully reconciled with the principle of the distinction and mutual independence of the two powers.<sup>2</sup>

The first letter which we must discuss, contains a discourse pronounced by the pope in full consistory, in presence of the ambassadors of Philip of Swabia (then a candidate for the empire), who had sent them to Rome to support his pretensions against those of Otho, duke of Saxony.<sup>3</sup> To dispose men to receive his decision with respect, the pope proves, by many

<sup>1</sup> Proofs of this fact shall be given in the following article.

<sup>2</sup> Neither M. de Marca nor Bossuet speaks of the first of these three letters; nor would we have mentioned it at all, had it not been so confidently cited by Fleury, as favouring the theological theory of the divine right. M. de Marca defends the second letter, but thinks that the third does not admit of a satisfactory explanation. Bossuet discusses none except the third, which is in reality more difficult than the others; and he manifestly inclines to interpret it conformably to the doctrine of antiquity on the distinction and mutual independence of the two powers.

<sup>3</sup> *Responsio Domini Papæ, facta Nuntiis Philippi in Consistorio* (vol. i. Baluze, *Epistol. Innocent. III.* pp. 547, 692). See *supra* (ch. ii. n. 154, p. 496) some details on this point. See also Hurter, *Hist. d'Innocent III.* vol. i. p. 286.

passages from Scripture, the pre-eminence of the spiritual over the temporal power. "The power of princes," he says, "is exercised on earth, that of the priesthood in heaven; the former govern the body, the latter the soul. Hence the priesthood is as much above royalty, as the body is above the soul. The power of every prince is confined to his province, and that of every king to his kingdom; but Peter surpasses them all, by the extent and plenitude of his power, because he is the vicar of Him 'to whom belongs the universe, and all that it contains; the earth, and all its inhabitants.'" <sup>1</sup>

It is strange that Fleury and other historians could have cited these words so confidently, as confounding the two powers, and investing the priesthood with temporal authority; though the pope so clearly distinguishes the two powers by saying that princes have power on earth and over bodies, but that the priest has power in heaven and over souls. He adds, it is true, that Peter surpasses all princes and kings by the extent and plenitude of his power; but it is evident, from the context, that he means the extent of the spiritual jurisdiction of Peter, which includes the whole world. Fleury could not take Innocent's words in any other meaning, without adding to them an explanation entirely opposed to the natural meaning of the text.<sup>2</sup> This interpretation is the more unjustifiable because, at the close of his discourse, the pope himself grounds his rights in the election of an emperor, not on the divine right, but solely on the origin of the empire itself, and the constant usage which reserved to

<sup>1</sup> "Principibus datur potestas in terris, sacerdotibus autem potestas tribuitur et in cœlis; illis solummodo super corpora, istis etiam super animas. Unde quantò dignior est anima corpore, tantò dignius est sacerdotium quàm sit regnum. . . . Singuli (principes) singulas habent provincias, et singuli reges, singula regna; sed Petrus, sicut plenitudine, sic et latitudine, præminet universis; quia vicarius est ejus, *cujus est terra et plenitudo ejus, orbis terrarum et universi qui habitant in eâ.*"—Baluze, ubi supra, p. 548, col. 1.

<sup>2</sup> Fleury, Hist. Eccl. vol. xvi. book lxxv. n. 32.

Berault-Bercastel, in his Hist. de l'Eglise (book xxxviii. edit. Toulouse, 1809, vol. vi. p. 409), repeats substantially, though in a different form, this interpretation of Fleury's. M. Henrion, in his new edition of Bercastel, suppresses these interpretations, and explains Innocent's language by the jurisprudence of the time, according to which he considered himself a legitimate and supreme judge of political questions of the first order. (Paris edit. 1841, vol. v. p. 208.) We admit fully the existence of this ancient jurisprudence; but it seems to us by no means necessary to have recourse to it for an explanation of the passage of Innocent III., of which there is question here.

the pope the right of crowning the emperor elect. "Long since," he declares, "they ought to have applied to the Holy See, which, they are aware, has the principal and definitive right of deciding this matter; the principal right, because the Holy See transferred the empire from the East to the West; the definitive right, because the pope confers the imperial crown."<sup>1</sup> Any obscurity in Innocent's discourse, moreover, should be explained naturally by the doctrine which he expressly professed, about the same time, in a letter to the count of Montpellier, in which he acknowledges and clearly defines the distinction of the two powers, as Fleury himself admits. "It is far from our intention," the pope states in that letter, "to prejudice the right of another,<sup>2</sup> or to usurp a power which does not belong to us; for we are not ignorant of that word of Jesus Christ in the Gospel, 'Give to Cæsar the things that are Cæsar's, and to God, the things that are God's.'<sup>3</sup> For the same reason, when solicited to divide an inheritance between two brothers, he answered them, 'Who hath appointed me judge between you?'"<sup>4</sup>

206. *Sense in which he employed the Allegory of the Two Great Luminaries.*

The second letter of Innocent, which we have to examine, was written by him in the first year of his pontificate, to the emperor Alexis Comnena, to exhort him to effect the reunion of the Greeks to the Roman Church, and the deliverance of the Holy Land.<sup>5</sup> The emperor at first gave these proposals a favourable reception, but he soon repented of his promises; and in a

<sup>1</sup> "Verùm ad apostolicam sedem jampridem fuerat recurrendum, ad quam negotium istud *principaliter et finaliter* dignoscitur pertinere; *principaliter*, quia ipsa transtulit imperium ab Oriente in Occidentem; *finaliter*, quia ipsa concedit coronam imperii."—Baluze, ubi supra, p. 549, col. 1.

<sup>2</sup> "Non quòd alieno juri præjudicare velimus, *vel potestatem nobis indebitam usurpare*; cùm non ignoremus Christum in Evangelio respondisse: *Reddite quæ sunt Cæsaris Cæsari, et quæ sunt Dei Deo*. Propter quod, postulatus ut hæreditatem divideret inter duos, *Quis*, inquit, *constituit me judicem super vos?*"—Baluze, Epistol. Innocent. III. tom. i. p. 676, col. 1. Fleury, Hist. Eccl. vol. xvii. book lxxv. n. 42.

<sup>3</sup> Matt. xxii. 21.

<sup>4</sup> Luke xii. 14.

<sup>5</sup> Gesta Innocentii III. n. 62, 63 (Baluze, Epistol. Innoc. III. tom. i. p. 28, &c.). Fleury, Hist. Eccl. vol. xvii. 4th Discourse, n. 7; book lxxv. n. 14; vol. xvii. 5th Discourse, n. 12. D. Ceillier, Hist. des Auteurs Ecclés. vol. xxiii. p. 432. De Marca, De Concordiâ, lib. ii. cap. i. n. 8.

letter which he wrote to evade them, he maintained that the empire was superior to the priesthood. The pope in his reply refutes this paradox at great length, as being evidently contrary to the constant doctrine of tradition; and concludes the discussion in the following terms: "You should know, moreover, that God hath made two great lights in the heavens; the greater to rule the day, and the lesser to rule the night. Heaven, in this passage, represents the Church; the day means spiritual things, and the night corporal things. God has, therefore, placed in the heavens two great lights, that is to say, two great dignities,—the pontifical and the royal dignity; but that which presides over the day, namely the spiritual, is greater than that which presides over corporal things; and as great as the difference between the sun and moon, so great also that between prince and pontiff."<sup>1</sup> The sole object of this allegory, as the sequel manifestly shows, is to prove the superiority of the spiritual over the temporal power; such is this superiority, according to Innocent III., that the temporal power derives all its splendour from the spiritual, as the moon borrows its light from the sun; because princes receive from bishops the necessary rules for living and governing well. We recognise here the same doctrine taught long before by Pope Gelasius, and by all antiquity, on the superiority of the spiritual as compared with the temporal power; but to infer from this, as some authors have done, that in Innocent's opinion, the prince derives his authority from the Church, or that she can take it away, if they

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<sup>1</sup> "Præterea nosse debueras quòd fecit Deus duo magna luminaria in firmamento cæli, luminare majus et luminare minus; *luminare majus ut præset diei, et luminare minus ut præset nocti*; utrumque magnum, sed alterum majus; quia nomine cæli præsignatur Ecclesia, juxta quod Veritas ait: *Simile est regnum cælorum homini patrifamilias, qui summo mane conduxit operarios in vineam suam. Per diem verò spiritualis (potestas) accipitur; et per noctem, carnalis, secundum propheticum testimonium: Dies diei eructat verbum, et nox nocti indicat scientiam.* Ad firmamentum igitur cæli, hoc est, universalis Ecclesiæ, fecit Deus duo magna luminaria, id est, duas magnas instituit dignitates, quæ sunt pontificalis auctoritas, et regalis potestas; sed illa quæ præest diebus, id est, spiritualibus, major est; quæ verò carnalibus, minor est; ut quanta est inter solem et lunam, tanta inter pontifices et reges differentia cognoscatur."—Decretal. lib. i. tit. xxxiii. cap. vi. (Baluze, ubi supra, n. 63, col. 2). Pope Innocent III. uses this allegory in some other letters also. See, among others, Epist. lib. i. ep. 401; lib. ii. ep. 296. In this last letter he uses the allegory of the two swords to illustrate the union which ought to exist between the two powers.

abuse it,<sup>1</sup> is manifestly stretching the comparison beyond the limits required by the object and general connection of the pope's letter. To justify such a meaning, it should be proved that the allegory used by the pope was understood in that comprehensive sense by the common usage of his day; but so far is this from being certain, that a contemporary of Innocent III., Berengose, abbot of St. Maximin of Treves, explains this same allegory in such a way as to obviate its injurious application to the authority of princes; for, representing the two powers as figured in the two great lights, he supposes, at the same time, that each is sovereign in its own sphere; and expressly states, "that it is not contrary to the principles of Catholic faith, nor to those of the Christian doctrine, that for the honour both of the empire and of the priesthood, the king should obey the pontiff, and the pontiff should obey the king."<sup>2</sup>

207. *He appoints himself Arbiter of Peace between Philip Augustus and John Lackland.*

Another letter of Innocent III. presents, at first sight, a greater difficulty, but, in reality, it reduces the temporal power of the pope to a merely directive power. The occasion and subject of the letter were as follow:<sup>3</sup> John Lackland, king of England and duke of Normandy, had assassinated and cast into the Seine, at Rouen, in 1202, his nephew Arthur, count of Bretagne, who was disputing his claim to the crown of England. At the news of this crime, Philip Augustus, king of France, who was a near relative of the deceased, and feudal superior, moreover, of the duke of Normandy, as well as of the count of

<sup>1</sup> This is Fleury's interpretation of the text; and, starting with it, he imputes absurd reasoning to the pope. In defence of Innocent we need only state, that Fleury's interpretation is purely arbitrary: nor would he have proposed it so confidently, had he known, or read attentively, the passage from M. de Marca, which we are about reciting, and which we adopt. See the authors cited in last page, note.

<sup>2</sup> "Sciendum est quod nec Catholicæ fidei, nec Christianæ contrarium est legi, si, ad honorem regni et sacerdotii, rex pontifici, et pontifex obediat regi."—Berengose, *De Mysterio Ligni Domini* (Biblioth. Patrum, tom. xii. p. 374, col. 2, H). This text is cited by M. de Marca, *De Concordiâ*, ubi supra.

<sup>3</sup> Raynaldi *Annales*, ann. 1202, n. 25; ann. 1203, n. 54, &c. Spondani *Annales*, ann. 1202, n. 7, 8. Fleury, *Hist. Eccl.* vol. xvi. book lxxv. n. 57, &c. D. Ceillier, *Hist. des Auteurs Ecclés.* vol. xxi. p. 731. Lingard, *History of England*. Hurter, *Hist. d'Innocent III.* vol. i. ann. 1203, pp. 595, &c. 696, &c. *Hist. de l'Eglise Gall.* vol. x. ann. 1203, p. 250, &c.

Bretagne, cited John, as his vassal, to stand his trial before the French barons. John having refused to appear, the court of peers pronounced him guilty of felony and treason, and condemned him to forfeit all the fiefs which he held in France as vassal of the king. In execution of this sentence, Philip immediately marched into Aquitaine, then into Normandy, where he conquered many fortresses and cities of the king of England. Innocent III., grieved at this contest, which he foresaw must prove ruinous to the prospects of the Crusade, on which Europe was then entering, interposed his authority to pacify the two kings, and ordered them, by his legates, to suspend hostilities, to assemble the lords and bishops of the kingdom, and to examine anew the conduct of the king of England.

208. *Motives of this Conduct—The Pope's Vindication of it.*

Such an injunction of a pope to two sovereigns appears, at the present day, most extraordinary; but there was nothing strange in it at a time when the pope was invested, by the confidence of all Christian powers, with so great an authority for the direction of the Crusades, of which religion was the soul, and the pope the prime mover.<sup>1</sup> However, the king of England, aware that his interests required a suspension of hostilities, appeared inclined to enter into the pope's views; Philip, on the contrary, was so opposed to them, that he even declared to the legates, he was not accountable to the pope in matters that concerned his vassals, and that the differences between the kings were no concern of the pope's. On receiving this answer, the pope wrote to the king and bishops of France, "that he never intended to diminish or trouble in any way the king's jurisdiction, nor to attribute to himself in any case the right of adjudicating on a fief which belonged to the king, unless he had acquired such right by a special privilege or by custom; but that he intended solely to judge of sin, because he was entitled and bound to exercise his authority in that matter over all the faithful without exception."<sup>2</sup> Here we find the pope attributing

<sup>1</sup> See *supra*, ch. i. n. 51.

<sup>2</sup> "Non enim intendimus judicare de feudo, cujus ad ipsum (*regem Gallie*) spectat judicium, nisi fortè juri communi, per speciale privilegium vel contrariam consuetudinem, aliquid sit detractum; sed decernere de peccato, cujus

to himself, not a power of jurisdiction over temporalities, but solely a power to judge of sin, or the right of directing the consciences of princes in temporal, as well as in other matters ; which implies no more than a directive power, in the sense explained in the commencement of this chapter.<sup>1</sup>

209. *Injustice of the Censures passed on him in this Matter.*

Many modern authors have imagined, it is true, that Innocent's words imply a claim of intermeddling in the government of all kingdoms, under the pretext of the sins which princes might commit in governing them.<sup>2</sup> There would be some grounds for this imputation, had Innocent III. claimed a power of jurisdiction, direct or indirect, over temporalities ; but an attentive perusal of the letter proves, that he claims none but a directive power in temporal matters ; a power, no doubt, which may be abused, but which is essentially different from the power of jurisdiction, which the pope certainly does not claim for himself.

The principal pretext for charging him with these extravagant pretensions was, that, not content with admonishing as a father the kings of England and France, he ordered them formally to suspend hostilities, and to submit the case of the king of England to a new inquiry. But admitting, even, that the desire of peace between those kings had led Innocent to stretch his authority at first beyond its proper limits, what inference can thence be drawn against his doctrine, which manifestly expresses no more than a purely directive power in temporal matters ? At worst, his conduct could be charged with imprudence or precipitancy, though we are far from admitting even such censures on a pontiff so eminent for virtue, for intelligence, and for prudence, as Innocent III. ; on the contrary, we are convinced that his conduct was fully justified by the circumstances in

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ad nos pertinet sine dubitatione censura, quam in quemlibet exercere possumus et debemus."—Decretal. lib. ii. tit. i. De Judiciis, cap. xiii.

<sup>1</sup> Bossuet manifestly inclines to this explanation in his *Defens. Declar.* book iii. ch. xxii. Even Sismondi, though censuring severely the pope's intervention between the two kings on this occasion, applauds this letter, and considers that it atones for the extravagant pretensions which he had at first put forward.—Sismondi, *Hist. des Français*, vol. vi. pp. 225, 226.

<sup>2</sup> Fleury, ubi supra, n. 60, versus finem. Lingard, ubi supra. De Marca, *De Concordiâ*, lib. ii. cap. iii. n. 6, &c. ; lib. iv. cap. xiv.

which he was placed, and on which we have often insisted in the course of this work.<sup>1</sup> It is a generally admitted, and indeed notorious fact, that during the Crusades the popes were often chosen by sovereigns themselves as guarantees of their treaties, and arbiters of their differences; and that in the holy wars especially, the princes were pleased to have the popes at the head of these expeditions, that all things might be conducted with greater harmony, and greater respect for religion. Such a combination of circumstances naturally entitled the pope to interfere in many temporal concerns, with at least the tacit consent of sovereigns themselves. Is it strange, then, that on such an occasion, Innocent III. believed that he might assume a tone of authority, to put an end to fatal dissensions, which had already caused, and could not fail still more to cause, such frightful evils in church and state?

210. *Wise Remonstrances of the Pope with Philip Augustus.*

These views were fully laid before Philip Augustus by the pope himself, in a letter in which he complains of that prince's rejection of the advice of the papal legates. "We have deputed to you," he writes, "the abbot Casamario, with propositions of peace, hoping that this difference may terminate like that which you had with Richard.<sup>2</sup> But judge of our astonishment, to find you endeavouring to restrict the jurisdiction of the Holy See, a jurisdiction established in spiritual matters by the Man-God, in a manner so clear and comprehensive that it is impossible to exaggerate it; for plenitude admits of no increase. You should have remembered, moreover, that the Holy See gave to you, as to your predecessors, counsels for your greater good; that the chances of war are doubtful; that we asked nothing either disgraceful or unjust to you. We would be a hireling and not a true shepherd, if we could look with indifference on churches destroyed, the servants of God troubled in their functions, temples pillaged, the consecrated virgins of the Most High dishonoured, and compelled to return to that world which

<sup>1</sup> *Supra*, ch. i. art. ii. n. 51, &c.

<sup>2</sup> Innocent III. had been mediator of a peace, some years before, between Philip Augustus and Richard, king of England, predecessor of John Lackland.—Fleury, *Hist. Eccl.* vol. xvi. book lxxv. n. 11. Daniel, *Hist. de France*, vol. iv. p. 107, &c.

they had renounced. The Gospel orders us to be reconciled with our brother, to hear witnesses, or to refer to the decision of the Church. The king of England, your brother in the faith, complains that you have sinned against him ; he has admonished you ; he has taken a great number of his barons to witness his desire for peace ; and finding all these measures useless, he makes his complaint to the Church. The Church has wished to show the kindness of a father, and not the severity of a judge ; she exhorts you to conclude a peace, or at least a truce. Now, if you refuse to hear the Church, ought you not to be regarded as a heathen and a publican ? Could we remain silent ? Certainly not. Once more we admonish you : hearken to our counsel ; it comes from a disinterested heart. We have charged the archbishop of Bourges and the abbot Casamario to judge, not the rights of the suzerain (that question belongs to yourself), but to decide on the sin, the punishment of which belongs to our office. If the complaint of King John be well grounded, we shall be obliged to use the arms of ecclesiastical discipline to compel you to desist from the war. If you slight a mother's mildness, you must feel a father's severity. Come what will, we fear God more than man ; we shall brave all persecution for justice sake ; we shall not sacrifice truth to escape any evil ; and we shall make the abbot execute those measures which our duty and our office require."<sup>1</sup>

211. *Conduct of Innocent III. on this Occasion vindicated by M. Hurter.*

The circumstances in which the pope was placed being considered, this statement fully explains his conduct, and justifies him in the estimation of all impartial persons. Hence, he has been defended in our times by a Protestant author, whose profound researches on the life and times of this pope qualify him, in an eminent degree, for justly appreciating his conduct. "The pope's language to the two kings," observes M. Hurter,<sup>2</sup> "is the energetic expression of his sense of duty. The question whether it belongs to the pope to interfere in the concerns of kings, is at once solved by the idea which every one forms to

<sup>1</sup> Innocent III. Epist. lib. vi. ep. 163. Hurter, Hist. d' Innocent III. vol. i. p. 593.

<sup>2</sup> Hurter, Hist. d' Innocent III. vol. i. p. 600, &c.

himself of the nature and limits of the influence of a divine empire including the whole world. Who can deny, that if a purely moral influence could always be recognised in the affairs of nations, the interests of the people would be much better preserved than by conferences and congresses, and exchange of diplomatic notes, which, for the most part, give scope solely to a craft and dexterity of negotiation that never troubles itself about moral principle? Innocent speaks here like a man who was superior to all parties, and who proposes in the clearest light to each, the arguments which must make him feel more strongly the advantages and the necessity of peace. His great object was to make peace between the two monarchs, whose power could most effectually contribute to the deliverance of the Holy Land. In both his letters he enforces the necessity of that peace, and dwells on his own duty of preventing bloodshed; and though he states that Philip is most in the wrong, though he addresses him with greater severity, he nevertheless does not conceal from John, that he would sustain the rights of his adversary in proper time and place. Free from all party spirit, and steering his course according to the light in which matters appeared to him, he soars above the rivalry of kings, and seeks only to calm and avert it from those whom it might involve in ruin."

212. *Deposition of the Emperor Frederick II. in the First General Council of Lyons.*

The sentence of deposition pronounced in 1245, against the emperor Frederick II., in the first general Council of Lyons, can be explained, like that of Gregory VII. against Henry IV., by a purely directive power of the Church and of the pope in temporal matters.<sup>1</sup> The pope's sentence against Frederick, after a long enumeration of crimes, concludes in the following terms: "For all these excesses, and for a great many others equally revolting, after a careful deliberation with our brethren, and with the holy council, by virtue of the power of binding and loosing which Christ has given to us in the person of St. Peter, unworthy though we be; we declare and pronounce, that the said emperor, who has rendered himself so unworthy of the

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<sup>1</sup> Fleury, *Hist. Ecclés.* vol. xvii. book lxxxii. n. 29. See also the authors cited above, ch. ii. n. 86, note 1.

empire, of all honour and dignity ; . . . we declare and pronounce him, in the name of God, bound for his sins, rejected, and deprived of all honour and dignity ; and we hereby deprive him of them by this sentence, absolving for ever from all their oaths to him, those who have sworn allegiance to him.”<sup>1</sup>

213. *The Sentence of Pope Innocent IV. against the Emperor explained by the same Principles as that of Gregory VII.*

The explanation already given<sup>2</sup> of the sentence of Gregory VII. against the emperor Henry IV., may evidently be applied to that of Innocent IV. against the emperor Frederick II. The divine power of binding and loosing which the pope invokes in support of his sentence, relates solely to the power of excommunicating obstinate sinners, and to the directive power, in the sense explained in the commencement of this chapter. The deposition pronounced in the same sentence, was simply a consequence of excommunication, according to the general belief of the age, founded on the ancient laws of the empire ; it was no more than an interpretation of the oath of allegiance, given by virtue of the said directive power. Such is the explanation of this sentence given by the archbishop of Cambrai, in his Dissertation on the Authority of the Pope. “The Ultramontanes will answer,” he says,<sup>3</sup> “that the pope could well say, ‘We

<sup>1</sup> “Nos itaque, super præmissis et compluribus aliis ejus nefandis excessibus, cum fratribus nostris et sacro concilio deliberatione præhabita diligenti, cum Jesu Christi vices immeriti teneamus in terris, nobisque in beati Petri apostoli personâ sit dictum : *Quodcumque ligaveris super terram*, etc., memoratum principem, qui sese imperio et regnis, omnique honore ac dignitate reddidit tam indignum, quique, propter suas impietates, à Deo ne regnet vel imperet est abjectus, suis ligatum peccatis, et abjectum, omnique honore et dignitate privatum à Domino ostendimus, denuntiamus, ac nihilominus sententiando privamus ; omnes qui ei juramento fidelitatis tenentur adscripti, à juramento hujusmodi perpetuò absolventes.”—Concil. Lugd. I. Sententia contra Fridericum in Concilio lata (Labbe, Concil. tom. xi. part. i. p. 645).

<sup>2</sup> See supra, n. 191.

<sup>3</sup> “Transalpini dicturi sunt pontificem ita pronuntiavisse, *Sententiando privamus*, eo quod pontifices contendant Francum et Germanicum recens hoc Romanum imperium, solâ pontificiâ auctoritate fuisse institutum, atque adeo hoc imperium esse feudum Romanæ sedis. Innocentius ait, *Sententiando privamus*, in hoc scilicet, quod *absolvimus omnes qui ei juramento fidelitatis tenentur adstricti*. Idem est prorsus ac si diceret : Declaramus eum, ob facinora et impietatem, indignum esse qui gentibus Catholicis præsit : declaramus contractum ab imperatore palam violatum, jam populos imperii non adstringere ; quandoquidem populi, non nisi pactis conditionibus, subesse et parere volunt. In hoc, Innocentius exercet potestatem à Christo datam : *Quodcumque ligaveris*

deprive, by this sentence, the emperor Frederick of all honour and of all dignity ;' because the popes maintain, that the new empire of the Franks and Germans had been established by their authority alone, and that it is, by the very fact, a fief of the Holy See.<sup>1</sup> These words of Innocent IV., ' We deprive by this sentence,' signify, ' we loose all those who are bound to him by the oath of allegiance.' It is precisely as if he had said, We declare him unworthy, on account of his crime, to rule a Catholic people ; we declare that the contract which has been openly violated by the emperor, is no longer binding on the people of the empire ; because those people never engaged to obey him except on certain stipulated conditions. In pronouncing this sentence, Innocent IV. exercises that power which Jesus Christ had given to him, by the words, ' Whatsoever you shall bind on earth, shall be bound also in heaven ;' he exercises, I say, that power, by declaring Frederick bound by his sins, and the people freed from their oath of allegiance."

214. *Why he does not mention the Laws of the Empire.*

It may, perhaps, be asked, why Innocent does not appeal to the laws of the empire, on which his sentence against the emperor was founded? We have anticipated this objection in discussing the sentence of Gregory VII. against the emperor Henry IV. We have remarked that, as the sentence of the pope deposed the sovereign by excommunication, this latter was the principal, direct, and immediate object of the sentence ; and, consequently, that of which the grounds should be more fully stated, as it was the cause of the deposition, which it then entailed, in certain cases, by the constitution of the empire. We added, moreover, that neither in the ecclesiastical nor in the civil tribunals, is the judge considered bound to state in detail the grounds of his sentence ; frequently, he states only the principal ones. Even French authors apply this principle to the

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*super terram*, etc. ; videlicet, ut Fridericum *ligatum peccatis*, et populos juramento fidelitatis solutos declaret."—Fenelon, Dissert. de Auctorit. Summi Pontificis, cap. xxxix. p. 387.

<sup>1</sup> We have seen already that the empire was not a fief of the Holy See, in the proper and rigorous sense of that term ; but in a more general sense, " implying a special dependence of the empire on the Holy See." See *supra*, ch. ii. n. 142, &c.

sentence of Innocent IV. against Frederick ; for they admit that it was, to a great degree, founded on the special dependence of the empire on the Holy See, at that period, though the pope does not expressly mention that dependence.<sup>1</sup>

215. *Examination of the Bull of Boniface VIII., Unam Sanctam.*

Of all the acts of the Holy See on this matter, the most celebrated, and beyond all question the most difficult at first sight, is the bull of Boniface VIII., *Unam Sanctam*, published by that pope in 1302, in the warm contests which he had with Philip the Fair.<sup>2</sup> It has been asserted that, in this constitution, Boniface VIII. carried his authority farther than any pope since the time of Gregory VII., and attributed to himself, manifestly, the right of disposing, as universal monarch, of all the kingdoms of the earth.<sup>3</sup> This interpretation of the bull *Unam Sanctam* is, however, very far from being unquestionable. Fenelon explains it as the directive power,<sup>4</sup> and such, we also believe, its real sense must appear to all unprejudiced readers. The chief difficulty lies in the following passage: "The gospel teaches us that there are in the Church, and that the Church has in her power, two swords, the spiritual and the temporal ; both are in the power of the Church ; but the first must be drawn by the Church, and by the arm of the sovereign pontiff ; the second, for the Church, by the arm of kings and soldiers, at the pontiff's request. The temporal sword ought to be subject to the spiritual ; that is, the temporal power to the spiritual, according to these words of the Apostle: 'There is no power but from God ; and those that are, are ordained of God :'<sup>5</sup> now the two powers would not be well ordained, if the temporal sword were not subject to the spiritual, as the inferior to the superior. It cannot be denied that the spiritual power as much surpasses the temporal in dignity, as

<sup>1</sup> Bossuet, *Defens. Declar. lib. iv. cap. ix.* Fleury, *ubi supra*, n. 29.

<sup>2</sup> *Hist. du Différend entre Boniface VIII. et Philippe le Bel*, ann. 1302. Raynaldi et Spondani *Annales*, ann. 1302. Fleury, *Hist. Eccl. vol. xix. book xc. n. 18.* *Hist. de l'Eglise Gall. vol. xii. ann. 1302, p. 342, &c.* Daniel, *Hist. de France, vol. v. ann. 1302, p. 75.* Bossuet, *Defens. Declar. lib. iii. cap. xxiii. &c.* Fénelon, *De Auctoritate Summi Pontif. cap. xxvii. De Marca, De Concordiâ, lib. iv. cap. xvi.*

<sup>3</sup> Bossuet, Fleury, *De Marca, ubi supra.*

<sup>4</sup> Fenelon, *ubi supra.*

<sup>5</sup> *Rom. xiii. 1.*

spiritual things in general surpass the temporal. The very origin itself of the temporal power demonstrates this; for, according to the testimony of truth, the spiritual has the right of appointing the temporal power, and of judging it when it errs; thus also is verified in the Church and the ecclesiastical power the oracle of Jeremias: 'Lo, I have set thee this day over nations and over kingdoms.'<sup>1</sup> If, therefore, the temporal power errs, it must be judged by the spiritual; if the spiritual power of inferior rank commit faults, it must be judged by a spiritual power of a superior order; but if the supreme spiritual power commit faults, it can be judged by God alone, and not by any man, according to the words of the Apostle: 'The spiritual man judgeth all things, and he himself is judged of no man.'<sup>2</sup> This sovereign spiritual power has been given to Peter by those words: 'Whatsoever thou shalt bind,'<sup>3</sup> &c.; whoever, therefore, resisteth this power so ordained by God, resisteth the order of God."<sup>4</sup>

216. *The strongest Expressions of this Bull borrowed from St. Bernard and Hugo de Sancto Victore.*

The boldest assertions in this passage are, "that the Church

<sup>1</sup> Jer. i. 10.

<sup>2</sup> 1 Cor. ii. 15.

<sup>3</sup> Matt. xvi. 19.

<sup>4</sup> "In ecclesiâ ejusque potestate duos esse gladios, spirituales videlicet et temporales, Evangelicis dictis instruimur. . . . Uterque est in potestate ecclesiæ, spiritualis scilicet gladius et materialis; sed is quidem pro ecclesiâ, ille verò ab ecclesiâ exerendus; ille sacerdotis, is manu regum et militum, sed ad nutum et patientiam sacerdotis. Oportet autem gladium esse sub gladio, et temporalem auctoritatem spirituali subjici potestati; nam cum dicat apostolus: *Non est potestas nisi à Deo; quæ autem sunt, à Deo ordinata sunt*; non autem ordinata essent, nisi gladius esset sub gladio, et tamquam inferior reduceretur per alium in suprema. . . . Spirituales autem, et dignitate, et nobilitate, terrenam quamlibet præcellere potestatem, oportet tantò clarior nos fateri, quantò spiritualia temporalia antecellunt. Quod etiam ex decimarum datione, et benedictione, et sanctificatione, ex ipsius potestatis acceptione, ex ipsarum rerum gubernatione, claris oculis intuemur. Nam veritate testante, spiritualis potestas terrenam potestatem instituere habet, et judicare, si bona non fuerit: sic de ecclesiâ et ecclesiasticâ potestate verificatur vaticinium Jeremiæ: *Ecce constitui te hodie super gentes et regna*, etc. Ergo si deviat terrena potestas, judicabitur à potestate spirituali; sed si deviat spiritualis minor, à suo superiori: si verò suprema, à solo Deo, non ab homine poterit judicari, testante apostolo: *Spiritualis homo judicat omnia, ipse autem à nemine judicatur*. Est autem hæc auctoritas (etsi data sit homini, et exerceatur per hominem) non humana, sed potius divina, ore divino Petro data, sibi que, suisque successoribus, in ipso quem confessus fuit, petram firmata: dicente Domino ipsi Petro: *Quodcumque ligaveris*, etc. *Quicumque igitur huic potestati, à Deo sic ordinatæ resistit, Dei ordinationi resistit*."—*Extravag. Commun. lib. i.*; *De Majoritate et Obed. cap. i. Hist. du Différend, &c. Preuves, p. 54, &c.*

has at her command two swords, or two powers," that "the temporal sword is subject and subordinate to the spiritual, as the inferior to the superior;" that "the power of the prince ought to be exercised at the request of the pontiff;" finally, that "it belongs to the spiritual power to appoint the temporal, and to judge it, when it errs." Now, however strong such assertions may appear, their difficulty disappears when they are compared with those of St. Bernard and Hugo de Sancto Victore, which we have already explained, and which this bull of Boniface VIII. repeats, almost word for word. In truth, the holy doctor expressly teaches in many of his works, "that the two swords belong to the Church, to be drawn when necessary, one by the arm of the pontiff, and the other at his request;" expressions which Bossuet and Fleury explain in the sense of the directive power, by virtue of which the Church and the pope are entitled, and even bound, to solicit princes, by advice and exhortation, to take arms.<sup>1</sup>

The other expressions of Boniface VIII.—"that it belongs to the spiritual power to appoint the temporal, and to judge it, when it errs"—are taken from Hugo de Sancto Victore, who certainly intends by these words, not the ordinary power of the priesthood, but the extraordinary power which Samuel had received from God to establish kingly government among the Hebrews.<sup>2</sup> That is the meaning given by Bossuet himself to the words of Hugo, and which the glossarist gives to Boniface VIII.; so that the sole design of the pope, as well as of Hugo, was to prove the superiority of the spiritual over the temporal power, by the mission and authority which the first had received to establish the latter. This explanation, which naturally results from the context of Hugo's discourse, is not less obvious from that of Boniface VIII.; for his sole object in the passage cited is to prove the superiority of the spiritual over the temporal power, "by the very origin of the latter, according to the testimony of truth;" that is, according to sacred history, to which the allusion is manifestly made. We may add, with Fenelon and Bossuet himself, that by virtue of a power merely directive, the Church can, in a certain sense, "appoint, judge,

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<sup>1</sup> See *supra*, n. 197.

<sup>2</sup> *Ibid.* n. 196.

and depose the temporal power ;” not by conferring or taking away civil or temporal jurisdiction, but by pointing out, like a good mother, to the electors, those whom they ought to choose as sovereigns, and to depose them, or confirm them in that exalted state, as Pope Zachary once acted with regard to the French barons.<sup>1</sup>

217. *Remarkable Conclusion of this Bull.*

After these observations, which are grounded on the text itself of the bull, should any doubts yet remain on the true sense of Boniface VIII., they must, we believe, be completely removed by the conclusion of the bull itself. For it is certain, that in that conclusion the pope only defines this Catholic dogma, which has been at all times admitted in the Church ; namely, “ that every human creature is subject to the pope.”<sup>2</sup> Now, is it credible that Boniface VIII. would have drawn only that conclusion from the principles laid down in his bull, if his object had been to establish therein a jurisdiction, even indirect, of the Church and pope over temporal matters ? Should he not naturally infer from such principles, that the secular power was subject to his jurisdiction, even in the temporal order. So naturally should this conclusion follow from the principles attributed to Boniface VIII., that even the authors who charge him with them, are surprised to find so moderate an inference from principles so extravagant.<sup>3</sup>

218. *Moderate Explanation of this Decree given by Boniface VIII. himself.*

Finally, admitting even that there was something obscure or ambiguous in this bull, should it not be naturally explained by the pope’s language in the very council in which its promulgation was decided. In reply to the reproach made by the French in that council, that the pope “ required the king of France to acknowledge that he held his temporalities from the pope,” Boniface states, “ We have had now an experience of forty years

<sup>1</sup> Fenelon, ubi supra, n. 213. See the other passages of Fenelon and Bossuet cited above, n. 10 and 172.

<sup>2</sup> Even the authors who censure most severely Boniface VIII. admit that the conclusion of his bull defines no more than this Catholic dogma. See, among others, Bossuet, *Defens. Declar. lib. iii. cap. xxiv.* ; Fleury, ubi supra.

<sup>3</sup> De Marca, Bossuet, and Fleury, ubi supra.

in the law, and we know that there are two powers ordained by God. How is it possible, then, to attribute such an absurdity to us? We protest, therefore, solemnly, that we never intended to usurp, in any manner, the king's jurisdiction; but the king cannot deny, any more than any other Christian, that he is subject to us with regard to sin."<sup>1</sup> Here we recognise that doctrine of Innocent III., which consists, as we have already seen, in maintaining the subordination of the temporal to the spiritual power, in the sense of the directive power. Bossuet himself manifestly favours this explanation of the words of Innocent III., which Boniface VIII. merely copies in his bull.<sup>2</sup>

219. *His Doctrine by no means favourable to the Theological System of the Divine Right.*

From this discussion we infer, that the views of Boniface VIII. on this matter were the same as those of his predecessor; that the bull *Unam Sanctam* especially gives no countenance to the theological theory of the divine right; finally, that if, in the heat of conversation, as it was reported at the time, Boniface VIII. had dropped any expressions favourable to that opinion, he has manifestly disavowed them by an authentic declaration of his real sentiments. Philip the Fair was, no doubt, very indignant at Boniface's doctrine, and especially with what had been announced in the bull *Unam Sanctam*; and believing that this bull was destructive of the independence of sovereigns, he spared no exertions to get it revoked. But it is equally certain that all his exertions were fruitless; the most he could obtain was

<sup>1</sup> "Quadragesima anni sunt quod nos sumus experti in jure; et scimus quod dæ sunt potestates ordinatæ à Deo. Quis ergo debet credere vel potest, quod tanta fatuitas, tanta insipientia sit vel fuerit in capite nostro? Dicimus quod in nullo volumus usurpare jurisdictionem regis; . . . non potest negare rex, seu quicumque alter fidelis, quin sit nobis subjectus, ratione peccati."—*Hist. du Différend*; *Preuves*, p. 77, ver. finem. *Hist. de l'Eglise Gall.* vol. xii. ann. 1302, p. 340. *Daniel, Hist. de France*, vol. v. ann. 1302, p. 75.

<sup>2</sup> See *supra*, n. 208. M. de Marca imagined there was some difference on this matter between the doctrine of Innocent III. and of Boniface VIII. (*De Concordiâ*, ubi *supra*, n. 5). According to him, Pope Innocent III., when adjudicating on the war between the king of England and the king of France, did not, like Boniface VIII., attribute to himself the right of judging the king of France "in matters relating to the government of his kingdom." A little reflection, however, must satisfy any one, that the act of a king declaring war against another king is a most important "act in the government of a kingdom."

the following declaration from Clement V.: "We define and declare that the bull or decretal *Unam Sanctam* of our predecessor Boniface VIII., of happy memory, shall not prejudice the rights of the king or kingdom of France; and that the said king, and his kingdom, and his subjects, are not more subject than before the said bull to the Roman Church; but that all things shall be considered to be in the same state as before that bull, in regard both to the Church, the king, the kingdom, and the subjects."<sup>1</sup>

220. *Why it was at first understood in a Sense favourable to that System.*

The declaration certainly contains nothing contrary to the bull *Unam Sanctam*, understood in the moderate sense which we have given to it. We may therefore infer, that if it was at first understood in a different sense, the misapprehension must have arisen wholly from the troubled circumstances in which the bull was published, and which made it be viewed in France with the most bitter prejudices. In such circumstances, nothing is more common than to fix the most malignant interpretations on the most harmless expressions. Such was really the state of feeling at this time in France, as we learn from the best historians,<sup>2</sup> and even many modern writers notoriously prejudiced against the Holy See, and most severe in their censures on Boniface VIII., have also acknowledged that the prejudices against the pope were carried to extravagant excess in France. Sismondi thinks so; for though he charges Boniface VIII. with haughtiness of character and insolence in his contests with Philip the Fair, he accuses that prince of having, by his excesses, incurred the just censures of the pope; and of having, by his influence, involved the clergy of his kingdom in proceedings prejudicial to the liberty of the Church. "Then,"

<sup>1</sup> "Nos regi et regno (Francorum), per definitionem ac declarationem bonæ memoriæ Bonifacii Papæ VIII., prædecessoris nostri, quæ incipit *Unam sanctam*, nullum volumus vel intendimus præjudicium generari; nec quoddam per illam rex, regnum, et regnicolæ prælibati, amplius Ecclesiæ sint subjecti. Romanæ, quàm antea existebant; sed omnia intelligantur in eodem esse statu, quo erant ante definitionem præfatam, tam quantum ad Ecclesiam, quam etiam ad regem, regnum, et regnicolas superiùs nominatos."—*Extravag. Comm. lib. v. tit. De Privileg. cap. ii. Meruit. Hist. du Différend, Preuves, p. 288. Fenelon, ubi supra, p. 333. Bossuet, ubi supra, cap. xxiv. vers. finem. Fleury, Hist. Eccl. vol. xix. book xci. n. 2.*

<sup>2</sup> See in particular, Raynaldi and Spondanus, ubi supra.

he says, "for the first time, the nation and the clergy were up in action to defend the liberties of the Gallican Church. Hungering for slavery, they styled as 'liberty,' the right of sacrificing even their conscience to the caprice of their masters, and of repelling that protection which a foreign and independent chief secured to them against tyranny. In the name of these liberties of the Church, they denied to the pope the right of taking cognizance of the arbitrary taxes which the king levied on his clergy, of the arbitrary imprisonment of the bishop of Pamiers, of the arbitrary seizure of the ecclesiastical revenues of Rheims, of Chartres, of Laon, of Poitiers; they denied to the pope the right of directing the king's conscience, of remonstrating with him on the administration of his kingdom, and of punishing him by the censure of excommunication, whenever he violated his oaths.<sup>1</sup> The court of Rome had no doubt manifested a grasping ambition, and kings were bound to be on their guard against its omnipotence; but too happy would it have been for the people, had despotic sovereigns acknowledged above them a power from heaven, which might arrest them in the career of crime."<sup>2</sup>

221. *Decrees of the Holy See for the Partition of newly-discovered Countries.*

More than a century after these fatal contests, we see popes Nicholas V., Calixtus III., Sixtus IV., Innocent VIII., and Alexander VI., partitioning between the kings of Spain and Portugal many newly-discovered islands and provinces of Africa

<sup>1</sup> Lettres du Clergé de France au Pape, in 1302. (Raynaldi Annales, ann. 1302, §§ 11, 12.)

<sup>2</sup> Sismondi, Hist. des Républiques Ital. vol. iv. ch. xxiv. p. 143, &c. The author confirms these observations in his Histoire des Français, in which he gives a more detailed exposition of the contest between Boniface VIII. and Philip the Fair (vol. ix. ch. xx. ann. 1301, 1302). It must be remembered, too, that our most respectable historians, in spite of all their indulgence and consideration for Philip the Fair, adopt more or less Sismondi's judgment on this matter, and admit that in many respects Philip well deserved the censures passed on him by Boniface. See especially Bossuet, Abrégé de l'Hist. de France, art. Philippe le Bel, towards the end; Hist. de l'Eglise Gall. vol. xii. ann. 1297, 1302 (see especially p. 574); Daniel, Hist. de France, vol. v. p. 124, et alibi passim; Pey, de l'Autorité des Deux Puissances, vol. i. p. 165; L'Ami de la Religion, vol. cvi. p. 243; L'Université Catholique, vol. x. p. 233. There was also an interesting Dissertation on Boniface VIII. read by M. (Cardinal) Wiseman in a session of the Academy of the Catholic Religion in Rome, June 4, 1840. This dissertation is published in vol. xvi. of the Démonstrat. Evangéliques, published by the Abbé Migne, Paris, 1843 (p. 591).

and America: from this many modern writers have taken occasion to charge those popes with claiming to dispose, with absolute control, of all the kingdoms of the earth, for the good of religion.<sup>1</sup>

If we examine, however, the decrees of these popes in this matter, the charge is proved to be utterly baseless.<sup>2</sup> The object of these decrees manifestly was, not to authorize the kings of Spain and Portugal to conquer the newly-discovered countries, but solely to terminate, as arbitrators freely chosen and approved by the interested parties, the disputes raised on the subject; and, at the same time, to excite the two monarchs to procure the blessings of the Gospel for the barbarous nations of the new world. This is the sense in which those decrees are generally explained by historians,—by those of Spain and Portugal in particular;<sup>3</sup> and even by Protestant writers, who never omit an opportunity of venting their spleen against the popes.<sup>4</sup> Nor

<sup>1</sup> Bossuet, Defens. Declar. lib. i. cap. ii. ; lib. iii. cap. xviii. pp. 209, 653. Fleury, Hist. Eccl. vol. xxiv. book cxvii. n. 41.

<sup>2</sup> See especially, on this subject, Raynaldi, Annal. Eccles. ann. 1484, n. 82 ; ann. 1493, n. 18, &c. ; ann. 1494, n. 31, &c. ; Bianchi, ubi supra, lib. vi. § 9 ; Bellarmin, De Rom. Pontif. lib. v. cap. ii. ; Mamachi, Origines et Antiquit. Christianæ, vol. iv. p. 176.

<sup>3</sup> See, in particular, Mariana's History of Spain, and Ferrera's, ann. 1492, 1493 ; Hist. de Portugal, by Lequien de la Neuville, &c. ; Hist. Gén. de Portugal, by De la Clède, ann. 1493, Paris edit. 1823, vol. iv. p. 487.

<sup>4</sup> Grotius plainly inclines to this opinion in many passages of his treatise De Mari Libero, published for the first time about the year 1609, to support the rights, then claimed by the Dutch, of navigation to certain islands of the East Indies,—a right which was contested, for various reasons, by the Spaniards and Portuguese. See some interesting details on that controversy in the Biographie Universelle, arts. Selden and Grotius. Discussing particularly the title which the Spaniards and Portuguese might ground on the bull of Alexander VI., Grotius answers it in the following terms: " Si Pontificis Alexandri Sexti divisione utentur (*Lusitani*), ante omnia illud attendendum est, voluerintne pontifex contentiones tantum Lusitanorum et Castellanos dirimere ; quod potuit sanè, ut lectus inter illos arbiter, sicut et ipsi reges jam antè inter se, eâ de re, fœdera quædam pepigerant ; et hoc si ita est, cum res inter alios acta sit, ad cæteras gentes non pertinebit ; an verò propè singulos mundi trientes duobus populis donare (cap. iii.). . . . Cum denique jus suum auferre alicui Papa minimè possit, quæ erit istius facti (scilicet, *donationis pontificiæ*) defensio, si tot populos immerentes, indemnatos, innoxios, ab eo jure quod ad ipsos non minùs quàm ad Hispanos pertinebat, uno verbo voluit excludere ? Aut igitur dicendum est, nullam esse vim ejusmodi pronuntiationis ; aut, quod non minùs credibile est, eum pontificis animum fuisse, ut Castellanos et Lusitanos inter se certamini intercessum voluerit, aliorum autem juri nihil diminutum" (cap. vi.). This work of Grotius, the most remarkable that appeared during this memorable controversy, was reprinted several times, especially in 1618, in duodecimo, and 1633 in 32mo. (Lugd.

is there anything in those decrees inconsistent with this explanation; it is even manifestly confirmed by the bull of Alexander VI. (*Inter cætera*), which is considered the strongest argument against us.

222. *Examination of the Bull of Alexander VI. (Inter cætera).*

After a glowing panegyric on the king of Spain, for the zeal which he had shown in procuring the light of the Gospel for the barbarous nations of the New World, the pope encourages that monarch to persevere in the holy work; and the more efficaciously to excite him, he declares, that "*proprio motu*, and of his pure liberality, and certain knowledge, and by the plenitude of his apostolic power, he gives to the king of Castille and Leon, and to his successors, for ever, the dominion and jurisdiction of the islands and continent already discovered, or which he may discover," within certain limits, which the pope himself determines.<sup>1</sup>

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Batav. Elzevir.) It was printed in 1680, with Gronovius's edition of the treatise of Grotius, *De Jure Belli et Pacis* (Hagæ-Comitis, 8vo.). It has been given since that time in many editions of the same treatise.

Maltebrun, in l'*Histoire de la Géographie*, which serves as an introduction to his *Précis de la Géographie Universelle* (8vo. edit. 1831, vol. i. p. 619), pronounces still more decisively for the explanation given by Grotius to the decree of Alexander VI. "Spain and Portugal," he observes, "jealous of each other's discoveries, applied to the pope for a decision, which should divide the world between them, assigning to the ambition of each its own hemisphere." The author, it is to be supposed, must have forgotten this explanation, when he advances in another passage of the same work, that the pope at first endeavoured to reconcile both parties, "by authoritatively tracing the famous line of demarcation," a hundred leagues west of the isles of Cape Verd. (*Ibid.* vol. xi. p. 648.)

<sup>1</sup> "Et ut tanti negotii provinciam, apostolicæ gratiæ largitate donati, liberius et audacius assumatis; motu proprio, non ad vestram vel alterius pro vobis super hoc nobis oblatæ petitionis instantiam, sed de nostrâ merâ liberalitate, et ex certâ scientiâ, ac de apostolicæ potestatis plenitudine; omnes insulas et terras firmas, inventas et inveniendas, detectas et detegendas versûs occidentem et meridiem, fabricando et construendo unam lineam à polo arctico, scilicet septentrione, ad polum antarcticum, scilicet meridiem; sive terræ firmæ, et insulæ inventæ et inveniendæ sint versûs Indiam, aut versûs aliam quamcumque partem; quæ linea distet à quâlibet insularum, quæ vulgariter nuncupantur *de los Azores y Cabo-Vierde* [the Azores and Cape de Verd], centum leucis versûs occidentem et meridiem; ita quod omnes insulæ et terræ firmæ repertæ et reperiendæ, detectæ et detegendæ, a præfatâ lineâ versûs occidentem et meridiem, per alium regem aut principem Christianum non fuerint actualiter possessæ usque ad diem Nativitatis Domini nostri Jesu Christi proximè præteritum, à quo incipit annus præsens, millesimus quadragesimus nonagesimus tertius, quando fuerunt per nuntios et capitaneos vestros inventæ aliquæ prædictarum insularum; auctoritate omnipotentis Dei, nobis in beato Petro concessio, ac vicariatûs Jesu Christi, quâ fungimur in terris; cum omnibus

This decision may be considered under two aspects ; first, *as to its substance* ; that is, so far as it determines the respective rights of the kings of Spain and Portugal over the countries in question ; and, secondly, *as to its form* ; that is, the language in which the decision is expressed, and which appears, at first sight, not a little extravagant. Considered in the first light, it manifestly implies no claim of disposing, as absolute master, of countries which he had been expressly invited to partition, by the authority of the two contending monarchs themselves. The occasion, the circumstances, and the object of his decree, which was addressed, not to the whole Church, nor even to all kings, but to the king of Spain alone, prove clearly, that he had no intention of acting in this matter as absolute master of the countries in question ; but solely as an arbitrator, selected by the contending parties, to terminate their disputes, and to fix their respective rights ; so that his decision in no degree prejudiced the rights of the other sovereigns, on which he had not been consulted, and which he does not examine in his decree.

The form of this decision, that is, the terms in which it is conceived, may also be easily explained by the same circumstances. The selection of Alexander VI. by the two monarchs as umpire of their disputes, being founded principally on the respect which both professed for the sacred character of the pope, he was, by the very fact, authorized to “ promulgate his decision, not only as given with full liberty, and an entire knowledge of the cause submitted to him, but also as given in virtue of that apostolical authority,” which had been the main cause why the two monarchs had submitted to him so important a question. The pope, moreover, in giving this decision, was so

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illarum dominiis, civitatibus, castris, locis et villis, juribusque et jurisdictionibus ac pertinentiis universis, vobis hæredibusque et successoribus vestris (Castellæ et Legionis regibus) in perpetuum, tenore præsentium, donamus, concedimus et assignamus ; vosque et heredes, ac successores præfatos, illarum dominos, cum plenâ, liberâ et omnimodâ potestate, auctoritate et jurisdictione, facimus, constituimus et deputamus ; decernentes nihilominus, per hujusmodi donationem, concessionem et assignationem nostram, nulli Christiano principi, qui actualiter præfatas insulas et terras firmas possederit usque ad dictum diem Nativitatis Domini nostri Jesu Christi, jus quæsitum, sublatum intelligi posse, aut auferri debere.”—Alex. VI. Constit. 2 (Bullar. Rom. tom. i. p. 454). This bull of Alexander VI. has been inserted in the 7th book of the Decretals, lib. i. tit. ix. De Insulis Novi Orbis (after the Extravagantes Communes, in many editions of the Corpus Juris Canonici). See also Raynaldi, ubi supra, ann. 1493, n. 19, &c.

far from attributing to himself the absolute dominion of the countries in question, that he expressly, and more than once, declares, in the bull itself, that he does not interfere with the rights of any Christian princes who may have taken possession of those isles or territories before Christmas day of the preceding year, 1492; giving it thereby to be understood, that the sole object of his decree was to put an end to the disputes which had arisen, or might arise, between the kings of Spain and Portugal, who had voluntarily chosen him as arbitrator, and by no means to intrude himself as judge between them and other monarchs, who had neither asked nor accepted his mediation.

223. *Injustice of the Censures passed on the Popes for Decrees of this kind.*

Assuredly these observations demonstrate sufficiently that the decrees of the Holy See, in this matter, by no means prove that the popes claimed a right of disposing, as absolute masters, of kingdoms and countries, for the greater good of religion. These decrees rather supply an additional proof of the salutary influence of the papal authority during the middle ages, in preserving peace between Christian princes. "A magnificent spectacle it undoubtedly was," exclaims Count de Maistre, "to behold two nations consenting to submit their present, and even future quarrels, to the disinterested judgment of the common father of all the faithful, and to establish for ever a most venerable court of arbitration, in place of interminable wars. A great benefit it was to mankind, that the Holy See still retained ascendancy enough to obtain this great concord. So worthy was this noble arbitration of a true successor of St. Peter, that it is a pity the bull 'Inter cætera' does not belong to some other pope."<sup>1</sup>

224. *Decrees of the Councils of Constance and Basil in Temporal Matters authorized by Princes.*

Many decrees of the general Councils of Basil and of Constance decree temporal penalties against heretics, schismatics, and abettors of heresy or schism, so as to deprive them, in

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<sup>1</sup> De Maistre, *Du Pape*, vol. i. book ii. ch. xiv.

certain cases, of their properties and rank, even regal or imperial.<sup>1</sup> These penalties are decreed not only against those who should impede the operations of these councils in the extinction of the schism which then desolated the Church;<sup>2</sup> but also against the partisans and abettors of future schisms,<sup>3</sup> and against the partisans and abettors of the errors of Wicliffe and John Huss.<sup>4</sup>

These decrees can present no difficulty after the observations which we have made on those of the third and fourth Councils

<sup>1</sup> Consult on these decrees, Bossuet, *Defens. Declar. lib. iv. cap. x.*; Tournely, *De Ecclesiâ*, tom. ii. p. 459, &c.; De la Hogue, *De Ecclesiâ*, p. 275, &c.; Pey, *De l'Autorité des Deux Puissances*, vol. i. pp. 106, 117, &c.; Bianchi, *Della Potestà e della Politia della Chiesa*, vol. i. book i. §§ 12, 19.

<sup>2</sup> "Sacrosancta synodus exhortatur invictissimum principem Dominum Sigismundum, Romanorum et Hungariæ regem, quatenus placeat patentes litteras sub suæ majestatis sigillis dare, et omnibus principibus, vassallis et subditis sacri imperii, et præsertim civibus et incolis civitatis Constantiensis, præcipere et mandare, quòd manutenebunt et defendent prædictum concilium, . . . quamdiu duraverit; et quicumque . . . (decretum istud) non observaverit, ejuscumque dignitatis, statûs aut conditionis existat . . . eo ipso sententiam imperialis banni incurrat, perpetuò sit infamis, nec ei unquam portæ dignitatis pateant, nec ad aliquod officium publicum admittatur; quinimò omnibus feudis, ac aliis bonis quæ à Romano tenet imperio, sit ipso jure privatus."—*Concil. Constant. sess. 14 et 17* (Labbe, *Concil. tom. xii. pp. 115, 161. Concil. Basil. sess. 9* (Ibid. p. 501).

<sup>3</sup> "Ut autem metus, seu impressionis molestia, in electione Papæ, eò formidulosius evitetur, quòd toti Christianitati lamentabiliùs eorum incussio perpetratur; ultra prædicta duximus specialiter statuendum, quòd si quis hujusmodi metum vel impressionem aut violentiam electoribus ipsis, aut alicui ipsorum, in electione Papæ intulerit seu fecerit, aut fieri procuraverit, aut factum ratum habuerit, aut in hoc consilium dederit vel favorem; . . . ejuscumque statûs, gradûs aut præeminentie fuerit, etiamsi imperiali, regali, pontificali, vel aliâ quâvis ecclesiasticâ aut sæculari præfulgeat dignitate, illas pœnas *ipso facto* incurrat, quæ in constitutione felicis recordationis Bonifacii papæ octavi, quæ incipit, *Felicitis*, continentur, illisque effectualiter puniatur."—*Concil. Constant. sess. 39* (p. 240, &c.).

The constitution of Boniface VIII., to which the Council of Constance alludes here, is given in the *Decretals* (lib. v. tit. ix. *De Pœnis*, cap. v.). It declares infamous, and deprived of their temporal rights and honours, all who unjustly use violence against a cardinal. See an extract and explanation of this decree in Bossuet, *Defens. Declar. lib. iv. cap. xx.*

<sup>4</sup> "Volumus insuper, ac statuimus et decernimus, . . . ut contra omnes et singulos utriusque sexûs, hujusmodi errores tenentes, approbantes, ac fautores et receptatores eorum, ejuscumque dignitatis, statûs vel conditionis existant, auctoritate nostrâ inquirere studeant (episcopi et inquisitores hæreticæ pravitatis); et eos quos hujusmodi hæresis et erroris labe respersos repererint, etiam per excommunicationis pœnam, suspensionis, interdicti, necnon privationis dignitatum, personatum, et officiorum, aliorumque beneficiorum ecclesiasticorum, ac feudorum, quæ à quibuscumque Ecclesiis, monasteriis, ac aliis locis ecclesiasticis obtinent, ac etiam bonorum, et dignitatum sæcularium, ac graduum scientiarum quarumcumque facultatum, et per alias pœnas, sententias et censuras ecclesiasticas, ac vias et modos, quos ad hoc expedire viderint . . . corrigant et puniant."—*Concil. Const. sess. 45*; *Bulla Martini V. contra errores Wicli et Joan. Hus.* (p. 270, &c.).

of Lateran, &c.<sup>1</sup> In the decrees of Constance and of Basil, as in those of Lateran, the bishops do not claim for themselves the right of enacting temporal penalties by their own authority; they did so only by the express or tacit consent of the Christian princes, who assisted at these councils either in person or by their ambassadors. The Councils of Constance and Basil could the more easily count on the assent of Christian princes to the decrees in question, because they merely revived or confirmed the temporal penalties which had long since been attached to heresy and excommunication, by the universal custom and legislation of Catholic Europe. Hence, we find no protest from any prince against the decrees of Constance or of Basil in temporal matters, either during these councils or after their close.

225. *Similar Decree of the Council of Trent.*

A decree of the Council of Trent, Session 20, prescribes temporal penalties against duellists, and their abettors.<sup>2</sup> The following are the terms of this decree:—"The emperor, kings, dukes, princes, marquises, counts, and all temporal lords permitting duels on their properties are, *ipso facto*, excommunicated, and deprived of the jurisdiction and dominion of that city, chateau, or place, in or near which they have permitted the duel, *if such places are held under the Church*; and if they be fiefs, they revert immediately to the direct lord. . . . As to the duellists and their seconds, they incur excommunication, the confiscation of all their property, and perpetual infamy."<sup>3</sup>

To remove all the objections which may be raised on this decree, we need only observe, first, that it does not deprive the abettors of duellists of all their property, and of all their temporal jurisdiction, but only of the properties or jurisdiction

<sup>1</sup> Supra, ch. ii. n. 87, &c.

<sup>2</sup> Bossuet, *Def. Declar. lib. iv. cap. xi.* See also authors cited note 1, p. 244.

<sup>3</sup> "Imperator, reges, duces, principes, marchiones, comites, et alio quocumque nomine domini temporales, qui locum ad monomachiam in terris suis inter Christianos concesserint, eo ipso sint excommunicati, ac jurisdictione et dominio civitatis, castri aut loci, in quo vel apud quem duellum permiserint fieri, *quod ab Ecclesiâ obtinent*, privati intelligantur; et, si feudalia sunt, directis dominis statim acquirantur. Qui verò pugnam commiserint, et qui eorum patroni vocantur, excommunicationis, ac omnium bonorum proscriptionis, ac perpetuæ infamiæ pœnam incurrant."—Concil. Trid. sess. 25, *De Reform. cap. xix.* (Concil. tom. xiv. p. 916).

which they may hold under the Church. The decree, therefore, does not imply that the Church has, by divine right, any jurisdiction, direct or indirect, over the temporalities of princes ; but solely that the Church herself had acquired, in the lapse of ages, properties and temporal jurisdiction—an assumption which cannot reasonably be denied. We must observe, in the second place, that the temporal penalties enacted generally in this decree against all duellists and their seconds, are enacted only in the supposition of the assent of sovereigns to the decree. It is well known, that though generally received in the Catholic states of Europe, it was not received in France and some other states ; and that the Holy See never interfered on that point with the independence of the French kings ; which clearly proves that the Church did not intend to encroach on the rights of sovereigns, nor to make laws on temporal concerns, without their consent.

226. *Decrees of the Holy See against the Monarchs of England in the Sixteenth Century.—General Principle for the Explanation of these Decrees.*

Some years before the opening of the Council of Trent, arose that deplorable schism which separated the kingdom of England from the Catholic Church. This melancholy event gave rise to several decrees of the Holy See, which raised among Catholic theologians, both in England and in foreign countries, very severe and protracted controversies on the respective authority of the two powers. All these controversies might have been cut short, and, perhaps, decided at their very birth, had a careful distinction been made between the power which the Holy See attributes to itself, in those decrees, by divine institution, and which cannot be contested consistently with Catholic faith ; and that which the Holy See formerly possessed, by a constitutional law, voluntarily established by man, and generally admitted at the time. This distinction solves, in our opinion, most of the objections against those decrees. The reader can judge for himself, after the observations which we shall now offer on the most remarkable of those documents.<sup>1</sup>

<sup>1</sup> See Bossuet, *Defens. Declar.* lib. iv. cap. xxiii. ; Bianchi, *Della Potestà e della Politia della Chiesa*, vol. ii. tit. vi. § 10, n. 2-5 ; Affre, *Essai Historique sur la Suprèmatie Temporelle du Pape*, ch. xxv.

227. *Bulls of Excommunication and Deposition issued by Pope Paul III. against King Henry VIII.*

After having employed, to no purpose, the most paternal exhortations, and the most earnest entreaties to Henry VIII., to compel him to dismiss Anna Boleyn, his adulterous mistress, and to take back his lawful wife Catherine of Arragon, Pope Clement VII. at last excommunicated him, in 1534. Far from submitting to the pope's sentence, the king openly raised the standard of schism, renouncing obedience to the Holy See, and declaring himself supreme head of the Church within his states. Paul III., successor of Clement VII., despairing of this king's conversion, resolved to employ more severe measures, and prepared a bull, not only renewing the excommunication already pronounced by Clement VII., but ordering the king, under pain of excommunication and deposition, to present himself in Rome, either in person or by procurator, within the space of three months, to submit his cause to the judgment of the Holy See. In this bull, the pope added, that if the king did not comply with this injunction within the prescribed time, he incurred, *ipso facto*, excommunication, and the forfeiture of all his dominions; all his subjects would be absolved from their oath of allegiance; all princes freed from the treaties and engagements made with him; and authorized to wage war on him, and take possession of his dominions.<sup>1</sup> This bull, though

<sup>1</sup> "Quòd si Henricus rex et alii prædicti (ejus complices et fautores), intra dictos terminos eis præfixos non comparuerint, et prædictam excommunicationis sententiam per tres dies, post lapsum dictorum terminorum, animo (quod absit) sustinerint indurato; censuras ipsas aggravamus et successivè reaggravamus, Henricumque regem privationis regni et dominiorum, et tam eum quàm alios prædictos, omnes et singulas pœnas prædictas incurrisse, decernimus et declaramus (No. 7); . . . Ipsiusque Henrici regis vassallos et subditos à juramento fidelitatis, et omni erga regem et alios prædictos subjectione absolvimus, ac penitus liberamus (No. 10). . . . Præterea, omnes et singulos Christianos et principes, per viscera misericordiæ Dei nostri (cujus causa agitur) hortamur et in Domino requirimus, ne Henrico regi, ejusque complicitibus et fautoribus, etiam sub prætextu confederationum aut obligationum quarumcumque, etiam juramento roboratarum, à quibus eos absolvimus, . . . consilium, auxilium vel favorem quomodocumque præsent (No. 15). . . . (Eisdem) similiter hortamur et requirimus, quatenus contra Henricum regem, ejusque complices et fautores, dum in erroribus prædictis permanserint, armis insurgant; eosque et eorum singulos persequantur, ac ad unitatem Ecclesiæ, et obedientiam sanctæ sedis redire cogant et compellant; . . . eorumque bona mobilia et immobilia, etiam extra territorium dicti Henrici regis ubilibet consistentia, capiant (No. 16)." — Pauli III. Constit. 7 (Bullar. Rom. Luxemburgi, 1742, tom. i. p. 707). See, on this decree, the *Annals of Spondanus*, ann. 1535, n. 15; ann. 1538, n. 14; Lingard, *History of England*.

dated 30th August, 1535, was not issued until the month of December, 1538; the pope having judged it advisable to suspend its execution, at the request of some sovereigns, who still hoped to win over the king of England to a better course. But the fresh excesses of that prince soon convinced the pope that the time had come to employ extreme remedies; and he was encouraged in that resolution by many sovereigns; among others, the king of France and the emperor, who promised to give effect to his sentence against the king of England.

228. *This Decree by no means supposes the Theological Theory of the Divine Right.*

The question is not here, whether this bull was prudent, a point on which writers unfavourable to the Holy See have not failed to raise doubts, which were afterwards adopted by well-meaning authors. The sole question is, did the pope really attribute to himself, in this decree, a power, direct or indirect, by divine right, of deposing sovereigns, and of disposing of their dominions? Now, there is nothing in the bull of Pope Paul III. to justify such a supposition. He appeals, it is true, to the divine power of binding and loosing, as the title for his sentence, considered as to its direct and immediate object, namely, the excommunication of the king of England; but he does not assert that deposition of that king was, by divine right, the consequence of that excommunication; he only supposes that, in the circumstances of the case as it then stood, deposition did follow, as a matter of course, from excommunication; a thing which was, in fact, then generally admitted, and considered as a point of constitutional law in all the Catholic states of Europe, and especially in the kingdom of England.<sup>1</sup> Besides the general arguments which establish this provision of constitutional law in all the Catholic states of Europe, it was moreover confirmed, with regard to England, by a special title, namely, the right of sovereignty which many of its kings had voluntarily conferred on the pope over themselves and their subjects, and which had been solemnly recognised on many occasions, by foreign princes.<sup>2</sup>

<sup>1</sup> In the preceding chapters we have given the proofs of this ancient belief. In the following article we shall see that it was really founded on the constitutional law of all the Catholic states of Europe during the middle ages.

<sup>2</sup> We have already spoken of this right of sovereignty in the preceding

This point of constitutional law once assumed as in force, the deposition of the king of England was a natural consequence of his rebellion against the Church, and of his obstinate persistence in heresy and excommunication; to pronounce that deposition, the pope had no necessity of appealing to or supposing the theological opinion of the *direct or indirect power*; it was enough for him to *declare* the king deprived of his royal dignity, in punishment of his crimes. This was the sense in which Pope Paul III. himself explained his bull, in the letters which he wrote to the emperor Charles V. and to the king of France, when making the matter known to them.<sup>1</sup> In the first of these letters he expressly states, "that the king of England deprived himself, by his crimes, of his kingdom and his royal dignity; so that nothing remained but to *declare* against him the *fact* of that deposition; and though," adds the pope, "such a declaration is not necessary, the fact being so notorious, we resolve to proceed with it, in concert with the cardinals of the Holy Roman Church."<sup>2</sup> The pope repeats the same thing, in nearly the same terms, in his letter to the king of France; and remarks to him, moreover, that the declaration in question was grounded on laws both human and divine:<sup>3</sup> an evident proof that the pope did not consider the divine right as the sole foundation of the sentence pronounced against the king of England.

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chapter (art. iii. n. 136). Additional illustrations on this point shall be given in the next article.

<sup>1</sup> These letters are cited by Raynaldi, *Annales*, ann. 1535, n. 11, 13; and by Bianchi, *ubi supra*, n. 2.

<sup>2</sup> "Ex quibus, et aliis quæ hoc toto triennio accumulavit, sceleribus, ut ejus dedecora breviter recenseamus, hæreticus, schismaticus, adulter notorius, homicida, sacrilegus, rebellis, læsor majestatis, multorumque aliorumque criminum reus effectus est, ac se ipse illo regno, et regid dignitate privavit; ita ut sola declaratio privationis adversus eum supersit; quæ tamen, ob notorietatem præmissorum, necessaria non esset; ad quam, unâ cum venerabilibus fratribus nostris S. R. E. cardinalibus, omninò procedere intendimus."—*Epist. Pauli III. ad Carolum V. imperat.* (Raynaldi and Bianchi, *ubi supra*.)

<sup>3</sup> "Nos, maximo quidem cum dolore animi nostri, sed tamen extremâ necessitate compulsi, ad ea remedia, cum venerabilibus fratribus nostris S. R. E. cardinalibus, idipsum nobis unanimiter suadentibus, venire decrevimus, quæ jus commune tam divinum, quàm humanum nobis injungit; ut scilicet eundem Henricum, qui priùs per rebellionem, per hæresim, et schisma, aliaque enormissima crimina, novissimè autem per indignam cædem S. R. E. cardinalis, et tot aliorum clericorum et religiosorum, regno se, ac regid dignitate privavit, privatam declaremus."—*Epist. Pauli III. ad Franciscum I. Francorum regem.* (Raynaldi and Bianchi, *ubi supra*.)

229. *The Bull of Pius V. against Elizabeth explained by the same Principles.*

The bull of Pius V. against Elizabeth may be easily explained by the same principles.<sup>1</sup> Finding the queen obstinate in schism, openly persecuting the Catholics in her dominions, rejecting the advice and remonstrances of foreign princes on the subject, and refusing even to admit into her dominions the ambassadors of the Holy See, the pope resolved to proceed against her, as his predecessor Paul III. had done against Henry VIII., the author of the schism. He was confirmed in this resolution by the instances of the king of Spain, and of a great number of English Catholics, who believed the measure necessary for the preservation of religion in England. He accordingly published against the queen a bull, dated Feb. 25th, 1570, in which, after having enumerated her crimes and impieties, he declared her, by virtue of his apostolic power, a heretic, and, moreover, deprived of her pretended right to the crown of England; he absolves, at the same time, all her subjects for ever from the oath of allegiance which they have taken to her.<sup>2</sup> The pope's language in this bull is easily understood after the observations made in the bull of Paul III. against Henry VIII. Pius V., in the first place, declares, by virtue of his apostolic power, that Queen Elizabeth is a heretic; which, as head of the Church, he had an unquestionable right to declare. Explaining, moreover, the consequences of that fact, he further declares, that the queen is deprived of her right to the crown of England; and that her subjects are absolved from

<sup>1</sup> See the authors cited above, last note, n. 226. See also Mamachi, *Origines*, &c. vol. iv. p. 256, note 4. This last author, as well as Bianchi, expresses his surprise that Bossuet, in the third book of his *Defens. Declarat.* (ch. xxvii. xxviii.), has altogether omitted the bull of Pius V. against Elizabeth. They were not aware that Bossuet does speak of it in the following book (ch. xxiii.).

<sup>2</sup> "Illius itaque auctoritate suffulti, qui nos in hoc supremæ justitiæ throno, licet tanto oneri impares, voluit collocare; de apostolicæ potestatis plenitudine; declaramus prædictam Elisabeth hæreticam, et hæreticorum fautricem, eique adhærentes in prædictis, anathematis sententiam incurrisse, esseque à Christi corporis unitate præcisos; quin etiã ipsam prætenso regni prædicti jure, necnon omni et quocumque dominio, dignitate, privilegioque privatam; et item proceres, subditos et populos dicti regni, ac cæteros omnes qui illi quomodocumque juraverunt, à juramento hujusmodi, ac omni prorsus dominio, fidelitatis, et obsequii debito, perpetuè absolutos, prout nos illos, præsentium auctoritate, absolvimus; et privamus eandem Elisabeth prætenso jure regni, aliisque omnibus supradictis."—Pii V. *Constit.* 101, n. 3, 4, 5 (*Bullar. Rom. tom. ii. p. 324*). Spondanus, *Annales*, ann. 1570, n. 3, 4. Lingard, *History of England*.

their oath of allegiance to her; and this was really a consequence of heresy, according to the general belief, not only of the English Catholics, but of all the Catholic nations of Europe at that time, who regarded this consequence as a part of their constitutional laws.<sup>1</sup> Assuredly the pope could, and even should, suppose this law still in force, as it had never been repealed by any competent authority; and as it was generally admitted at this time, not only by the English Catholics, but by all those of other states, and by the foreign kings, who interfered with the queen on behalf of the English Catholics.<sup>2</sup>

230. *Oaths of Supremacy and Allegiance required of the English Catholics at this Period.*

But of all the decrees of the Holy See relating to the English schism, none gave rise to more protracted or warm disputes than the briefs of Paul V. against the oaths of supremacy and allegiance required by King James I., in 1606.<sup>3</sup> From the commencement of the schism the government had always exacted from a certain number of ecclesiastics and laymen an oath of supremacy, acknowledging "that the supreme authority in matters both spiritual and temporal belonged to the king alone, and that none other, prince or prelate, had any jurisdiction or authority, ecclesiastical or spiritual, within the kingdom of England."<sup>4</sup> After the discovery of the Gunpowder Plot;

<sup>1</sup> See note 1, p. 248.

<sup>2</sup> Additional proofs of this fact shall be given in the following article. See also the authors cited No. 9 of Confirmatory Evidence, at the end of this vol.

<sup>3</sup> Dupin, in the fourth part of his Ecclesiastical History of the Seventeenth Century (p. 622), gives a list of the principal works published on both sides during this controversy. He should have added, Suarez, *Defensio Fidei Catholicæ adversus Anglicæ Sectæ Errores*, Coloniae, 1614, fol. Various acts of the Faculty of Theology, Paris, in the collection entitled, *Censures et Conclusions de la Faculté de Théologie de Paris, touchant la Souveraineté des Rois*, Paris, 1720, 4to. See especially p. 186, &c. 393, &c.

A summary of that controversy may be seen in the following works: Bossuet, *Defens. Declar. lib. iv. cap. xxiii.*; Bianchi, *Della Potestà della Chiesa*, vol. ii. book vi. § 11, n. 5; Spondanus, *Annales*, ann. 1606, n. 4; Lingard, *History of England*; Dupin, *Hist. Ecclés. du xvii. Siècle*, part i. p. 370; D'Avrigny, *Mémoires pour servir à l'Hist. Ecclés. du xvii. Siècle*, vol. i. 22 Sept. 1606; 26 Nov. 1610; 2 June, 1614; *Vie du Cardinal Bellarmin*, by Père Frizon, p. 322, &c.; *Hist. Societatis Jesu*, part. v. tom. ii. lib. xiii. n. 62, 147, &c.; L'Abbé Goujet, *Hist. du Pontificat de Paul V.* vol. i. p. 287, &c. We must remark, that this latter work should be read with caution, in consequence of the well-known prejudice of the author against the Jesuits and the Holy See.

<sup>4</sup> Lingard, *History of England*, vol. vii. pp. 92, 97, fifth edit. The text

James I. judged it necessary to adopt new measures against some Catholics who regarded his authority, even in temporals, as subordinate to the pope's. He had accordingly adopted in the two chambers a new form of oath, which all persons suspected of being Catholics should be bound to take, on being summoned by the local authorities. The following is the tenor of that oath.<sup>1</sup> "I do sincerely profess and declare in my conscience, before God and the world, that our sovereign lord King James is rightful king of this kingdom, and of all his other dominions dependent thereon; that the pope, neither by himself, nor by any authority of the Church or the See of Rome, nor by any other means, hath any power to depose the king, or to dispose of his kingdoms or his other dominions; or to authorize any foreign prince to invade or annoy him or his countries, or to discharge any of his subjects of their allegiance and obedience to his majesty;—that, notwithstanding any declaration or sentence of excommunication or of deprivation, made or granted by the pope or by his successors, or by any authority whatsoever, against the king or his successors, or any absolution of the said subjects from their obedience, I will bear true faith and allegiance to his majesty, his heirs and successors. I do further swear, that I do abhor, from my heart, as *impious and heretical*, this damnable doctrine and proposition, that princes which be excommunicated, or deprived by the pope, can be deprived or murdered by their subjects, or by any other person whatsoever. And I do believe, and am resolved in my conscience, that neither the pope, nor any person whatsoever, hath the power to absolve me from this oath, or from any part thereof. I acknowledge this oath by good and lawful authority to be lawfully ministered unto me, and I do renounce all dispensations to the contrary," &c. &c.

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of this oath is given in the following works: Suarez, *Defensio Fidei*, lib. vi. *Præmium*; Bellarmin, *Responsio ad Apologiam pro Juramento Fidelitatis*; *Præambul.* (Oper. tom. vii. p. 640).

<sup>1</sup> We give the text of this oath, with the exception of some unimportant expressions. It is given in full in the *History of England*, by Rapin de Thoyras, vol. viii. book xviii. ann. 1606; Bellarmine, *ubi supra*, p. 641; Suarez, *ubi supra*; Gretser, *Commentarius Exegeticus in Apologiam pro Juramento Fidelitatis*, cap. vi. (Oper. tom. vii. p. 47); Dupin, *Hist. Ecclés. du xvii. Siècle*, part i. p. 371; *Censures et Conclusions de la Faculté de Théologie de Paris*, p. 394; l'Abbé Goujet, *ubi supra*, p. 290.

231. *Brief of Paul V. against the Oath of Allegiance.*

The lawfulness of this oath became a source of great controversies among the English Catholics; some condemned it, as reviving under equivocal terms the oath of supremacy; others maintained that it could be taken without scruple, as it expressed but a promise of political or purely civil allegiance, from which a subject cannot be dispensed, to his legitimate sovereign. Pope Paul V. being informed of these controversies, addressed to the English Catholics a brief, dated September 22nd, 1606, which condemns "the oath of *allegiance as unlawful, and containing many things manifestly contrary to faith and to salvation.*"<sup>1</sup> This decision, however, did not set the controversy at rest; the partisans of the new oath circulated a rumour that the brief was not authentic, or that it had been grounded on false information; that, in any case, it was not obligatory, being only the private opinion of the pope. Informed of these new difficulties, Paul V. addressed a second brief to the English Catholics, dated September 22nd, 1607, confirming the first, "and obliging the English Catholics to observe it exactly, and to reject all interpretations that might lead them away from that obedience."<sup>2</sup>

232. *These Briefs do not in any manner favour the Theological Opinion of the Divine Right.*

It does not belong to our place to record the result of this decision, which became a new source of controversy among Catholic theologians, both in England and on the Continent, and which was frequently confirmed by the Holy See, during the course of the seventeenth century.<sup>3</sup> It is sufficient for our

<sup>1</sup> Rapin Thoyras (ubi supra), by a singular mistake, attributes this brief to Urban VIII., who did not become pope until about twenty-eight years later. He also dates this brief October 31, instead of September 22. The brief is given entire in the following works: Suarez, ubi supra, p. 79; Bellarmin, *Responsio ad Apologiam Juramenti* (Oper. tom. vii. p. 641); D'Argentré, *Collectio Judiciorum*, tom. iii. p. 172.

<sup>2</sup> The second brief is also found in the authors mentioned in last note.

<sup>3</sup> From a short notice, *Sur le Serment d'Allégeance*, in the collection already cited, of *Censures et Conclusions de la Faculté de Théologie de Paris* (p. 393), we learn that this oath was condemned anew by Pope Innocent X. in 1648. Nor did this new decision terminate the controversy. Many English Catholics having consulted the Faculty of Paris on the subject, in 1680, sixty doctors signed a response to this consultation, declaring that the English Catholics

purpose to prove that there are no grounds for citing the briefs of Paul V. in favour of the theological theory of the indirect or direct power. In truth, the sole object of these briefs was to condemn the oath of allegiance, as containing many things contrary to faith and to salvation; and the same oath manifestly contained many things contrary to faith and to salvation, unconnected altogether with the theological controversies on the direct or indirect power.

233. *The Oath of Allegiance censurable independently of that Opinion; 1st, as reviving the Oath of Supremacy.*

For, in the first place, it is manifestly contrary to faith and to salvation to attribute to any other but the pope, the vicar of Jesus Christ, and successor of St. Peter, supreme spiritual authority over a particular church. Now, it is certain, that by taking the oath of allegiance, the English Catholics attributed the supreme spiritual authority over the English Church, not to the pope, but to the king of England himself: for, in that oath, they declare, before God, that they acknowledge King James *as their sovereign lord*; expressions which, in that oath, mean supreme authority, not only in the civil and temporal order, but also in the spiritual and ecclesiastical. The words "sovereign lord" have not that meaning, it is true, essentially and by themselves; but they certainly had it in the intention of the king of England, clearly manifested, not only by the daily usage and conduct of that prince, and of the English government of the day, but also by many other clauses in the oath of allegiance itself, which attributed to the king the

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could in conscience, and without prejudice to their faith, take the oath in question. (*Censures et Conclusions de la Faculté, &c. ibid.*) Bossuet asserts that this response was placed on the Index at Rome, in 1683 (Bossuet, *ubi supra*, cap. xxiii. initio). Still we have not been able to find it in any edition of the Index, nor in the different appendices to the Index of 1681, which we have been able to consult. If it be not on the Index, we should incline to believe that it was erased after the conclusion of the affairs of 1682, in order to remove all occasion for fresh controversies on questions so delicate. Possibly it may be in some appendix, published between 1681 and 1704, which has escaped our notice. Whatever be the value of this conjecture, it must be observed, that Bossuet himself, notwithstanding all the decisions of the Holy See against the oath of allegiance, appears very doubtful about the lawfulness of that oath: on the one hand, he speaks with respect of those decisions; on the other, he seems anxious to excuse the Paris doctors. This chapter of the Defence of the Declaration is probably one of those which the author would have most extensively modified if he had given the final revision to his work.

power of regulating the belief of the faithful in matters of faith, "by a just and competent authority," as we shall see in the sequel of this discussion.<sup>1</sup>

234. *As censuring as heretical a Doctrine not condemned by the Church.*

It is manifestly contrary to faith and to salvation to forestall the judgment of the Church, by condemning as impious and heretical an opinion which she has not thought proper to condemn; an opinion honestly entertained by a great number of pious and learned men; now, it is certain, that the English Catholics would be guilty of that excess by taking an oath of allegiance, in which they would condemn as impious and as heretical the doctrine, that the ecclesiastical authority can, in certain cases, depose sovereigns, especially for the crime of heresy. The English Catholics, it is true, like other Catholics, might regard that opinion as doubtful, or even false; "but to condemn it as impious and heretical," without waiting for the decision of the Church, was (to use the words of Bossuet), "what appeared rash and extravagant."<sup>2</sup>

<sup>1</sup> For a development of this reasoning, see Suarez, *ubi supra*, cap. ii. n. 2, 3; Gretser, *ubi supra*, cap. vi. p. 49, 50.

<sup>2</sup> "Et quidem ab eâ sententiâ abhorreere, prospectis meliùs rebus, uti nos Franci facimus, erat licitum ac bonum; damnare ut hæreticum, absque Ecclesiæ auctoritate, nimium et temerarium videbatur."—Bossuet, *ubi supra*, p. 100. Suarez, *ubi supra*, cap. iv.

It appears that the doctors of the Paris Faculty, who defended the oath of allegiance, grounded themselves principally on the decision of the Council of Constance, which condemns as heretical the following proposition:—"Tyrants may be killed by their vassals or subjects, notwithstanding any oaths or confederation to the contrary, and even without waiting for the order or sentence of any judge." (Labbe, *Concil.* vol. xii. p. 144. Fleury, *Hist. Eccl.* vol. xxi. book ciii. n. 108. *Hist. de l'Eglise Gall.* vol. xvi. p. 14.) There is, nevertheless, a great difference between this proposition and that which the oath of allegiance condemns as heretical. The first authorizes any vassal or subject to put a tyrant to death, without waiting for the sentence or order of any judge; that is, it authorizes the first-comer to kill a tyrant by his own private authority. The second only says that a prince excommunicated or deprived of his states by the pope can be deposed or killed by his subjects; but it does not say that this can be done by private authority: whence it follows, that the proposition can very well be restricted to the case in which subjects would be authorized so to act by a decision emanating from a competent authority,—such, for instance, as that of the legitimate successor of the deposed prince. The proposition, it is true, even explained in this sense, may be impugned without any error against faith; but it is manifestly different from that which the Council of Constance condemned as heretical. (See Suarez, *ubi supra*, cap. iv. n. 20.) It would seem, even, that the English Catholics could, absolutely speaking, defend it at the time when the oath of allegiance was proposed;

235. *As subverting the Rule of Faith established by Jesus Christ.*

It is not less contrary to faith and to salvation to acknowledge in a temporal prince the power of deciding on questions of faith, or of regulating, in that matter, the belief of the faithful ; to attribute such an authority to a temporal sovereign, is evidently to subvert the rule of faith established by Jesus Christ ; which consists in the teaching of the episcopal body, united to the sovereign pontiff, their head. Now, the English Catholics, by taking that oath of allegiance, were evidently guilty of this excess ; for they acknowledged, in express terms, that this oath, which laid down decisions on questions of faith, was required of them lawfully, by a just and competent authority. In this respect, the oath of allegiance, it is clear, did not in reality differ from the oath of supremacy, for both equally attributed to the sovereign a just and competent authority in matters of faith.<sup>1</sup>

236. *The Theological Opinion of the Divine Right always a free Opinion in England as well as in other Countries.*

We have merely touched on the arguments developed at the time with great energy, by learned theologians, especially by Cardinal Bellarmine and by Suarez, in their writings on this controversy. These authors, it is true, also urged against the oath of allegiance many arguments founded on the theological opinion of the indirect power, which was then generally received ; but it is certain that Pope Paul V. and his successors, when condemning the oath of allegiance, never intended to oblige the English Catholics to adopt the opinion of the direct or indirect power ; that the Holy See never censured such of them as rejected that opinion ; finally, that the English Catholics were always allowed the same liberty on that question, that all Catholics have with regard to theological opinions on which the Church has not thought proper to pronounce a decision.<sup>2</sup>

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for they could still suppose the old constitutional law of England in force, which excluded from the throne heretical princes. [Not after that law had been abrogated by competent authority.—Ed.]

<sup>1</sup> Suarez, ubi supra, cap. v. n. 6.

<sup>2</sup> See infra, Nos. 240, 241, of this first article ; and No. 8, Confirmatory Evidence at the close of this volume.

237. *Bull of Sixtus V. against the King of Navarre (Henry IV.) and the Prince of Condé.*

We cannot close this discussion without devoting a few words to the bull published by Sixtus V., in 1585, against the king of Navarre (afterwards Henry IV.), and his near relative the prince of Condé, heads of the Calvinistic party in France.<sup>1</sup> The pope having resolved to protect the league which had many years before been formed in France, to exclude the heretical princes from the throne, published in the month of September, 1585, a bull, declaring them to have forfeited all their temporal rights and honours. After a preamble, setting forth in magnificent terms the prerogatives of the Holy See, he recites the various changes of these two princes, who, after having been educated in Calvinism, had abjured it under Charles IX., and had again publicly professed it, and even took arms in its defence. "In consequence of these public and notorious facts," the pope adds, "we pronounce and declare, by virtue of the plenitude of power which we have received from the King of kings, in the name of God Almighty, and of the blessed apostles St. Peter and St. Paul, that Henry, late king of Navarre, and Henry, prince of Condé, are heretics, relapsed, chiefs and abettors of heretics, guilty of treason against God, and enemies of the Catholic faith; that, consequently, they have incurred the censures and penalties decreed by the sacred canons, and by the laws general and particular against relapsed and impenitent heretics; that they are deprived *pleno jure*, the first, of the kingdom of Navarre and of Bearn, and both, of their principalities, domains, and dignities; that they are disqualified and incapable of retaining such, or of obtaining them in future; especially in the kingdom of France, where they have committed such excesses; and that all their vassals and subjects are for ever absolved from all oaths of allegiance to them," &c. &c.<sup>2</sup>

<sup>1</sup> Bossuet, *Defens. Declar.* lib. iii. cap. xxviii. Bianchi, *Della Potestà e della Politia della Chiesa*, tom. ii. lib. vi. § 10, n. 5, &c. Mamachi, *Origines et Antiquit. Christ.* vol. iv. p. 257. For the development of these facts, see Davila, *Hist. des Guerres Civiles de France*, vol. ii. ann. 1585; Spondanus, *Annales*, ann. 1585; Daniel, *Hist. de France*, &c.

<sup>2</sup> "Quæ omnia cùm manifesta, publica et notoria sint; . . . nos in plenitudine potestatis, quam ipse Rex regum et Dominus dominantium licèt nobis indignis tribuit, constituti; auctoritate Dei omnipotentis, ac beatorum Petri et

238. *This Bull explained by the same Principles as those of Paul III. and of Pius V.*

To this bull may be easily applied the observations which we have already made on those of Paul III. against Henry VIII., and of Pius V. against Elizabeth. The *direct* and *principal* object which Sixtus V. proposes to himself in his bull against the king of Navarre and the prince of Condé, is to pronounce and declare, in virtue of his apostolical power, that these two princes are heretics, relapsed, and abettors of heresy. He then deduces the consequence of that declaration, namely, that both princes are deprived of all their rights and temporal honours. Such was really, in those days, the consequence of heresy, according to the general belief of the Catholics of France, and of all the Catholic nations in Europe, who regarded this consequence as a point of constitutional law, established by imme-

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Pauli apostolorum ejus, et nostrâ ; . . . pronuntiamus et declaramus, Henricum quondam regem, et Henricum Condensem supradictos, fuisse et esse hæreticos, in hæresim relapsos et impœnitentes, hæreticorum quoque duces, fautores et defensores manifestos, publicos et notorios, sicque læsæ majestatis divinæ reos, et orthodoxæ fidei Christianæ hostes ; . . . ac proinde eos damnabiliter incurrisse in sententias, censuras et pœnas sacris canonibus et constitutionibus apostolicis, legibusque generalibus et particularibus contentas, ac hæreticis relapsis et impœnitentibus debitas ; et specialiter eos fuisse et esse *ipso jure* privatos, Henricum quondam regem videlicet, prætenso Navarræ regno necnon Bearnii, alterum verò Henricum, Condensi (principatu) ; et utrumque eorumque posteros, omnibus et quibuscumque aliis principatibus, dominiis, necnon dignitatibus, honoribus, muneribus, ac officiis etiam regis ; . . . eosdemque propterea se illis reddidisse indignos ; ac fuisse et esse inhabiles et incapaces ad illa retinenda, et alia hujusmodi in posterum obtinenda ; . . . specialiter in regno Franciæ, in quo tot atrocita et nefaria crimina patrârunt ; . . . quin etiam proceres, feudatarios, vassalos, subditos et populos, . . . ac cæteros omnes qui illis quomodocumque juraverunt, à juramento hujusmodi perpetuò absolutos esse, etc.”—Bulla Sixti V. adversus Henricum, regem Navarræ.

This bull, which was published at Rome in 1585 (in 8vo.), is omitted in the Bullarium Romanum, and in most of the historical collections published in France, on the affairs of the League, after Henry's reconciliation with the Catholic Church. The *Mémoires de la Ligue* (vol. i. 8vo. edit. p. 236) give only a French translation of the edition which had appeared in 1585 (8vo.), under the date Cologne. The Latin text is printed (from the Roman copy) at the end of the book published against the said bull, by the famous legist Hotman, with the title *Brutum Fulmen Papæ Sixti V. adversus Henricum Seren. Regem Navarræ, et Illust. Henricum Borbonium, principem Condæum* (8vo. pp. 234, no date). There is a second edition of this work, published in 1603, in 12mo., with various Latin pieces. The whole work was published in French, with the title *Protestation et Défense pour le Roi de Navarre, contre l'injuste et tyrannique Bulle de Sixte V.*, 1587, 8vo. The Latin text of this bull is also given in the following collections : *Scripta utriusque Partis, Francofurti, 1586, 8vo.* ; *Goldast, Monarchia S. Rom. Imperii, Francofurti, 1614, fol. vol. iii. p. 124.*

morial usage.<sup>1</sup> That this law was still in force, could not be questioned, for it had never been reformed or changed by competent authority; and it had been publicly appealed to by the chiefs of the League in a manifesto which received the sanction of nearly all the princes of Europe, and of almost all France. Accordingly, the pope's bull, after being published at the request of the chiefs of the League, was circulated by them through the kingdom, by the tacit authorization, at least, of King Henry III., who then occupied the throne of France.<sup>2</sup>

239. *This Explanation is totally independent of the Opinions of the Popes as Private Doctors.*

It may perhaps be objected to us, that the theological opinion of the direct or indirect power being in those times generally admitted by theologians, especially in Italy, there is every reason to believe that the popes Paul III., Pius V., and Sixtus V. adopted that opinion as the grounds of the extraordinary authority which they exercised over sovereigns.

It is certainly very natural to suppose that those popes held, as private doctors, the opinion then generally received by theologians.<sup>3</sup> But whatever may have been their private opinions on the point, it is utterly improbable that they regarded that opinion as the principal, much less as the sole ground of their decrees; whilst they had a title much less liable to doubt in the fundamental laws of France and England, whose enforcement the Catholics of both kingdoms confidently requested. Supposing the existence of those fundamental laws, the popes, in order to depose these princes in question, had no need of recurring to the theological opinion of the direct or indirect power; they need but pronounce or declare, in virtue of their directive power, that these princes had incurred the deposition enacted against them by the fundamental law of their own states. Resting on this directive power, the popes had a prin-

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<sup>1</sup> See note 1, n. 228, ch. iii. supra.

<sup>2</sup> See, in support of these reflections, the authors cited note 1, n. 237, supra. All these facts shall be further illustrated in the following article, in which we shall prove the existence of the ancient constitutional law appealed to by the advocates of the League.

<sup>3</sup> Of the opinion of Pope Sixtus V., especially, there seems to be no doubt. See No. 8, Confirmatory Evidence, at the close of this volume.

ciple admitted without dispute by all theologians, even by the advocates of the theological opinion of the direct or indirect power; whilst this latter opinion, though in high repute at the time, was still a subject of great controversy among theologians; some admitting the direct power, others the indirect, others, in fine, the directive power alone, which is very different from the other two.<sup>1</sup>

240. *Conclusion of this Discussion: 1st, No Decree of Popes or Councils sanctions the Theological Opinion of the Divine Right.*

It is, we believe, unnecessary to protract our examination of the decrees published by popes and councils on the present subject. The details which we have given are more than sufficient to authorize the assertion, that the theological opinion of the divine right, direct or indirect, was never supposed, either by popes or by councils, in their decrees; and that, even at a time when that opinion was in highest repute, it never became more than a scholastic opinion, on which the Church and the Holy See never pronounced any decision. We could go farther, and prove that, in these latter times, the Holy See, far from adopting or sanctioning this opinion, has frequently intimated that she does not by any means wish to approve it, nor to adopt it as the principle of her conduct to sovereigns.<sup>2</sup> The limits prescribed oblige us to suppress these considerations, as not being connected in any manner with the principal object of our Inquiry.

241. *2nd, This System was never defined to be an Article of Faith.*

We shall close this article by simply observing, that if it be unjust to reproach the popes and councils of the middle ages with having authorized, by their decrees, the theological theory of the right divine, direct or indirect, it is still more unjust to pretend that they ever defined that opinion as an article of faith. We confidently defy the enemies of the Church to produce a single authentic testimony in favour of such an assertion; the lengthened accounts which we have given of the principal

<sup>1</sup> An exposition of these different opinions is given in No. 8, Confirmatory Evidence, at the end of this volume.

<sup>2</sup> See some important details on this point in No. 8, Confirmatory Evidence.

decrees of popes and councils in this matter, clearly demonstrate the falseness of such an assertion. The deposition of the emperors Henry IV. and Frederick II., the most remarkable of their kind, were human facts, not decrees of faith. The grounds alleged by the popes in support of these sentences, are arguments more or less liable to objection, and which the popes themselves never proposed as articles of faith.<sup>1</sup> The constitution of Boniface VIII., *Unam Sanctam*, which appears to express the fullest extension of the temporal power of the Holy See, merely decides a point denied by no Catholic; namely, that all men must, under pain of salvation, be subject to the pope; but it does not define that they must be subject to him "even in temporals."<sup>2</sup> Hence, it is generally admitted, even by the Ultramontane theologians themselves, that the opinion which attributes to the Church and the pope a jurisdiction, even indirect, over temporals, has never been regarded in the Church as an article of faith; and that it has been always free, like any other simple opinion left to the discussion of the schools.<sup>3</sup>

#### ARTICLE II.

Real Ground of the Power in Question the Constitutional Law of the Middle Ages.

##### 242. *Some Idea of Constitutional Law and of Common Law.*

The better to understand and develop the opinion by which we account for the power exercised by popes and councils over sovereigns in the middle ages, it may be desirable to give, in a

<sup>1</sup> It is a common opinion of theologians, that the arguments used even by general councils, to prove a dogma of Catholic faith, are not themselves always of faith, because the councils do not always propose them as such. See *De la Hogue, De Ecclesiâ*, p. 219; *S. Pont. Greg. XVI. Il Trionfo della S. Sede et della Chiesa*, cap. xxiv.; *Carrière, De Matrimonio*, tom. i. n. 582. This subject is fully explained in *Montagne's work, De Censuris seu Notis Theologicis*, art. i. ad calcem *Prælect. Theol. de Opere Sex Dierum*.

<sup>2</sup> "Porro subesse Romano pontifici omnem humanam creaturam declaramus, dicimus, definimus, et pronuntiamus omnino esse de necessitate salutis." See the text of Boniface VIII., cited by Bossuet, *ubi supra*, p. 679.

<sup>3</sup> In support of these observations, see *l'Hist. Littéraire de Fénelon*, part iv. art. ii. § 1; *Bossuet, Defens. Declar. lib. i. sect. i. cap. ii.*; *lib. iii. cap. i. v. et alibi passim*, pp. 43, 46, 248, 571, 589, &c.; *Mamachi, Origines et Antiquitates Ecclesiast.* vol. iv. p. 244; *Pey, De l'Autorité des Deux Puissances*, vol. i. p. 114, &c.; *Fleury, Hist. Eccl.* vol. xix. book xc. n. 18.

few words, a correct idea of what is called constitutional law (*droit public*), and the meaning which we attach to that word. We cannot better explain it than by giving, in the words of the celebrated Domat, the common doctrine of juriconsults on this point. "With regard," he says, "to that part of the order of society which refers solely to persons united in one state under the same government, the matters arising from this order are of two kinds, which it is necessary to distinguish. The first consists of those which relate to the general order of the state; such as those that relate to government, the power of the authorities, and the obedience due to them, &c. The second consists of those which regard the relations between private individuals, their various obligations to each other, whether with or without a contract. The first kind of matters, having reference to the general order of a state, is the object of constitutional law; and the second, which regards only what passes between private persons, is the object of that other class of laws, which, for that reason, is called *private* law. Of these two kinds of law there are two sorts, admitted in practice by all the nations of the earth. One consists of those which belong to the natural law; the other, of laws peculiar to each country; such, for instance, as customs sanctioned by long usage, and laws such as the reigning power may enact."<sup>1</sup> Thus, in the opinion of Domat and of all juriconsults, the constitutional law of any society is that whose object is the general order of that society, especially its government, the authority of its prince, the obedience due to him, &c. *Private* law regards solely the relations of private individuals among themselves, and their mutual obligations.

243. *How both can be known.*

Both are founded partly on the natural law and partly on human positive law, which may be known not only by written statutes, but also by custom which long usage has sanctioned.

<sup>1</sup> Domat, *Droit Public*, Preface, pp. 15, 16. See, in confirmation of these notions, Suarez, *De Legibus*, a treatise not less esteemed by lawyers than by theologians, and generally regarded as "the most clear, the most complete, and the most profound ever written on this subject."—Christian. de Bacon, *Discours prélim.* p. lxiv. See also Conférences d'Angers, *Traité des Lois*; Zallinger, *Instit. Juris nat.* lib. iii. cap. iv. n. 211.

The author explains this part afterwards in the following terms : “Laws or rules,” he observes, “are of two sorts ; one which belongs to the natural law, and the other to positive law, otherwise called human or conventional law, because men have enacted them. Human laws are of two sorts ; the first, such as from their first institution were written and promulgated by competent authority ; as, for instance, the ordinances of the kings of France ; and the other, those whose origin and first establishment cannot be traced, but which are found sanctioned by the universal approbation and immemorial usage of the people : these latter rules, or laws, are called customs. Customs derive their obligatory force from the people who have received them, where, as in republics, the authority is vested in the people. But, in monarchical states, customs are not established, and cannot acquire the force of law, except with the assent of the sovereign. Thus, in France, the kings have fixed and drawn up in writing, and confirmed as laws, all the customs, preserving for each province the laws which they already had, either from the ancient consent of the people that instituted them, or of the princes who governed them.”<sup>1</sup> A little farther on, the same author concludes from these principles, that “if the difficulties which arise in the interpretation of a law or custom, are found explained by an ancient usage, which fixes its sense, and which is confirmed by an uninterrupted succession of uniform decisions, we must adhere to the sense as decided by custom, which is the best interpreter of laws.”<sup>2</sup>

244. *Power of the Pope and of Councils over Sovereigns during the Middle Ages founded on the Constitutional Law of the Time.*

Keeping these preliminary explanations in view, it can be easily proved, that the power of the pope and of councils over sovereigns in the middle ages, was the necessary consequence of a point of constitutional law, purely human and conventional, then forming part of the constitution or fundamental law of all the Catholic states of Europe, as we have already stated in our exposition of Fenelon’s opinion on this subject.<sup>3</sup> We mean the

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<sup>1</sup> Domat, *Lois Civiles*, livre prélim. tit. i. sect. i. n. 2, 3, 4, 10, 11.

<sup>2</sup> *Ibid.* sect. ii. n. 19.

<sup>3</sup> *Supra*, n. 10, &c.

condition then stipulated in the election of sovereigns, by the very constitution of their states ; a condition by which a sovereign becoming notoriously a heretic or rebel against the Church incurred deposition. This provision of constitutional law is clearly proved, both by the constitution then common to all the Catholic states of Europe, and by the national constitution of certain states.<sup>1</sup>

§ 1. *Proofs founded on the Constitution common to all the Catholic States of Europe during the Middle Ages.*

245. *Two important Facts to be remembered on this Subject.*

To ascertain what was the constitutional law common to all the Catholic states of Europe on this matter, we need but combine these two facts which we have already proved in the preceding chapters.

1st, That in all the monarchies of the middle ages, at least during the earlier ages of that period, the authority of the sovereign was limited by the general assembly of the nation ; which, according to the nature of elective governments, could prescribe certain conditions in the election of the sovereign, make him responsible for his acts, and even depose him, in certain cases, for the violation of the conditions stipulated at his election.<sup>2</sup>

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<sup>1</sup> We have already seen that Count de Maistre believed that the existence of this constitutional law was sufficiently proved by the sole fact of the universal custom and belief of the middle ages (*supra*, n. 14). We at first inclined to the same opinion (see first edition of this work, p. 64, n. 33) ; but on mature reflection we have been led to believe, that that fact considered in itself—that is, independently of the circumstances which accompanied it,—does not prove conclusively the constitutional law in question. It is true that, generally speaking, the sole fact (*i. e.* the universal belief and custom) is enough to prove a point of constitutional law in favour of sovereigns, because from that fact alone arises a sort of prescription, which supplies, if necessary, the flaw in the original possession. (Grotius, *De Jure Belli*, lib. ii. cap. iv. Puffendorf, *De Jure Nat. et Gent.* lib. iv. cap. xiii. § 8 ; lib. vii. cap. vii. § 4 ; cap. viii. § 9.) But when there is question of proving a point of constitutional law in favour of the Church, or of the Holy See, it is not enough, in the opinion of the enemies of the Church, to appeal to this argument of prescription, which would still leave it doubtful, or possible that such prescription arose originally from an error, or usurpation ; we must prove, moreover, that from the beginning the Church had possessed it legitimately. Now it is manifest that this latter point cannot be proved decisively by the sole fact of a long and peaceable possession, independently of the circumstances of said possession.

<sup>2</sup> *Supra*, ch. i. n. 25.

2nd, That, from the tenth century at least, it was generally admitted, that sovereigns were invested with supreme authority under the express condition of submission to the Church and to the Catholic faith ; so that, by heresy or excommunication, they incurred the penalty of deposition.<sup>1</sup> This condition in the election of sovereigns was a public fact, manifested by the universal custom and belief, founded evidently on the actually existing constitutional law. Of the fact itself, that such a universal custom and belief existed, there cannot be a shadow of doubt after the proofs given in the preceding chapter. And with regard to the grounds or origin of that custom and belief, none can be assigned with any appearance of probability except an existing constitutional law. Such a provision of constitutional law cannot, in fact, be questioned, unless by supposing that the universal belief and custom in question were founded in an error, if not criminal, as has been sometimes supposed by the enemies of the Church, at least, material and inculpable, as has been asserted or insinuated by more moderate writers. Now, the falseness of this supposition is proved by a mere statement of the facts cited in the preceding chapter. For, first, supposing even that the conduct of popes and councils to sovereigns during the middle ages was founded in error, we have proved that never was error so excusable and so inculpable.<sup>2</sup> Secondly, the authors who suppose that the conduct of popes and councils to sovereigns was founded on an error, material, at least, and inculpable, assert that this error came either from the general belief of the middle ages in the authenticity of the pretended donation of Constantine, or from the theological theory which attributes to the Church, by divine right, a jurisdiction, at least indirect, over temporals ; two suppositions which we have shown to be equally inadmissible.<sup>3</sup>

246. *Obvious Inferences from these Facts, as bearing on the present Question.*

This point of constitutional law once established, it is obvious, that the natural consequence of this condition stipulated in the election of sovereigns, should be to invest the pope and council

<sup>1</sup> Ch. ii. art. i.

<sup>2</sup> See the conclusion of the preceding chapter, *supra*, n. 165, &c.

<sup>3</sup> *Supra*, n. 173, 176, &c.

with a great authority over them, so as, in certain cases, even to depose them. For the pope and councils being, in truth, the natural judges of all questions relating to faith, to morals, and to ecclesiastical discipline, it was their duty to declare and to denounce to the people, the sovereigns who had fallen into heresy and excommunication; and such a declaration they could not make without pronouncing these princes deprived of their rights, by the very custom and the constitution of their states. To pronounce such deposition, the pope needed no more than the directive power, in the sense explained by us in the commencement of this chapter; <sup>1</sup> a power generally admitted even in our own days, and much more in those ancient times when the pope and councils were universally regarded as the supreme tribunal, before which should be judged the case of sovereigns incurring the penalty of deposition. We shall only remark, that in the commencement, the custom and constitution of states did not reserve this judgment to the pope, or to the Church, but left it to the general assembly of the nation. <sup>2</sup> But it is certain that, at least from the tenth century, <sup>3</sup> universal custom reserved that judgment to the pope or a general council, for the good of the sovereigns themselves, and of society at large. It was, in truth, of the most vital interest to society, that the decision of a cause so momentous should not be abandoned to the people, ever liable to be led astray, nor to particular barons, often intriguing and ambitious. Sovereigns themselves should naturally wish to have the decision reserved to the pope, or to a general council, as being more disinterested, more enlightened, and more free, than that of the people or the barons. It was, therefore, gradually established, that the judgment of sovereigns who incurred the penalty of deposition, for rebellion against the

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<sup>1</sup> Supra, n. 170.

<sup>2</sup> In the following paragraph we shall see that from the seventh century the constitutional law of the kingdom of the Goths excluded heretical princes from the throne. But it does not appear that then, nor for a long time later, the judgment of an heretical prince was reserved to the pope or a general council.

<sup>3</sup> It must be remarked, that the bishops of the Council of Troyes, held in 867, in their letter to Pope Nicholas I., reproach the children of Louis le Débonnaire with having deprived their father of the empire without the advice or consent of Pope Gregory (Labbe, Concilia, tom. viii. p. 871), words which clearly imply that the deposition of a sovereign was then considered in France a *causa major*, the decision of which was reserved to the Holy See.

Church, should be reserved to the Holy See, or to a general council. By means of this restriction, wicked princes were protected against the revolts of which their disorders might be made a pretext; while there is yet a sufficiently urgent motive for their amendment in the dread of that terrible sentence which the pope and council had power to pronounce against them.

## § 2. *Proofs founded on the Constitution of particular States.*

### 247. *Conditions in the Election of the Kings of Spain in the Seventh Century.*

Besides the arguments drawn from the constitution common to all the Catholic states of Europe, during the middle ages, there are others founded on the constitutions of particular states, which prove the existence of the law in question. In the development of this proof we shall have occasion to remark, that this constitutional law was not established simultaneously in all the Catholic states of Europe, but that it was adopted gradually in all from the fifth to the tenth century.

I. *Constitution of Spain.*—From the seventh century we find important limitations prescribed to the authority of the king of Spain, in a general assembly of the nation.<sup>1</sup> The bishops and lords to whom the constitution intrusted the right of electing the king, decided unanimously in the sixth Council of Toledo (held in 638), “that in future no king should ascend the throne until he had promised on oath, among other conditions, that he would not tolerate heretics in his states.”<sup>2</sup> From the text itself of this decree, and from the circumstances in which it and several others were passed in councils held at Toledo, about the same time, it is manifest, that the chief object of these enactments was to insure the tranquillity of the state, by maintaining unity of religious belief. But whatever was the object of these decrees, it is manifest from that just cited, that by the constitution of the kingdom of the Visigoths, no sovereign could be elected except on the express condition of his maintaining

<sup>1</sup> Fleury, *Hist. Eccl.* vol. viii. book xxxviii. n. 14. Mariana, *Hist. d’Espag.* book i. n. 32. Ferreras, *Hist. d’Espag.* vol. ii. p. 312. Perez Valiente, *Apparatus Juris Publici Hispanici*, tom. ii. cap. vi. n. 38-40; cap. vii. n. 17.

<sup>2</sup> We have already cited this text of the Council of Toledo in our Introduction, vol. i. p. 81, n. 2.

within his dominions the unity of the Catholic faith ; so that a prince who notoriously embraced or favoured heresy incurred the forfeiture of his rights, as the violator of an express stipulation in his election, and, consequently, could be deposed by a general assembly of the nation ; that is, by the councils or mixed assemblies, in which the great affairs of the nation were discussed, and in which the bishops had the principal authority.

248. *Lawfulness of these Conditions.*

There is nothing astonishing in this stipulation, and in some others imposed on the Gothic kings by the councils of this period, if we reflect for a moment on the character already given of the Gothic monarchy in Spain, which was elective, and on the authority of the States-General in such governments.<sup>1</sup> “It is not surprising,” observes a judicious author, “that the councils imposed new laws and conditions on the Gothic kings. All the grandees of the kingdom assisted at these councils ; they were a sort of States-General. The bishops, it is true, had the exclusive management of ecclesiastical affairs ; but on questions of civil affairs the barons had their voice and votes, as well as the prelates.”<sup>2</sup>

249. *Continuance of this Ancient Law in Spain during the Middle Ages.*

It must be remarked, moreover, that most of the conditions imposed on the sovereign, in those councils just mentioned, and especially the obligation of professing the Catholic religion, and of maintaining unity of religious belief among his subjects, remained constantly in force in the Spanish monarchy during the whole course of the middle ages.<sup>3</sup> In the ceremony of their coronation, all the kings swore to observe these conditions. It was not until after the fourteenth century that this oath was gradually discontinued, probably, as a famous Spanish legal writer has observed, because it was no longer necessary to

<sup>1</sup> *Supra*, ch. i. art. i. n. 25.

<sup>2</sup> Note by P. Charenton, a Jesuit, on Mariana's History of Spain, book i. n. 32.

<sup>3</sup> Perez Valiente, *Apparatus Juris Publici Hispanici*, vol. ii. cap. vii. n. 18.

insure the attachment of the princes and subjects to the Catholic faith.<sup>1</sup>

250. *A King rebelling against God and the Church deprived of his Titles by a Law of St. Edward.*

II. *English Constitution.*—After the tenth century the history of England furnishes a remarkable proof of the progress of that ancient constitutional law, by which a prince rebelling against God or the Church incurred the forfeiture of his rights. The fourteenth article of the Laws of St. Edward, published by William the Conqueror and his successors, decides expressly, that a king refusing the respect and protection due to the Church forfeits his title. The following is the text of this article: “The king,<sup>2</sup> as he holds here below the place of the supreme King, is appointed to govern his earthly kingdom and the people of the Lord, and especially to honour the holy Church, to defend her against her enemies, to tear from her bosom, to destroy and ruin utterly the evil-doers. If he acts

<sup>1</sup> Perez Valiente, *ibid.*

<sup>2</sup> “Rex autem, qui vicarius summi Regis est, ad hoc est constitutus, ut regnum terrenum, et populum Domini, et super omnia sanctam veneretur Ecclesiam ejus, et regat, et ab injuriosis defendat, et maleficos ab eâ evellat et destruat, et penitus disperdat. *Quod nisi fecerit, nec nomen regis in eo constabit; verùm, testante papâ Joanne, nomen regis perdit.*”—Leges Eduardi Regis, art. 17 (alias 15); apud Wilkins, *Leges Anglo-Saxonicae*; Londini, 1721, fol. This edition, which is far more complete than any other, has been faithfully reprinted in Canciani's collection, *Barbarorum Leges Antiquæ*, Venetiis, 1781-1792, 5 vols. fol. (tom. iv. p. 337).

It is strange that the last phrase of the text just cited is not found in the edition of the Laws of St. Edward given in Houard's collection, *Traité sur les Coutumes Anglo-Normandes*, Paris, 1776, 4 vols. 4to. (See vol. i. p. 167, of that collection.) The suppression is the more surprising, as the editor assigns no reason for it; as he follows in all other points Wilkins's text faithfully, according to the promise in his preface (p. 7); and, finally, because the passage in question is found in all the editions which we have met with of the Laws of St. Edward. (See, in particular, Spelman, *Concilia, Decreta, Leges, Constitutiones orbis Britannici*, Londini, 1639, fol. p. 622; Wilkins, *Concilia Magnæ Britanniae*, Londini, 1727, tom. i. p. 312; Hardouin, *Concil. tom. vi. p. 988*; Labbe, *Concil. tom. ix. p. 1023.*) The omission of so important a passage in Houard's collection can hardly have been a mere editorial oversight. Possibly it might have been expunged by the censors of that day; or perhaps the editor was puzzled to reconcile that article of the Laws of St. Edward with the true principles of the mutual independence of the two powers. His embarrassment on that point must have been the greater, as he evinces throughout his work a strong attachment to the principles then so common among the legal writers, who in general are prone to extend the authority of the prince at the expense of the authority of the Church. (See, especially, vol. i. pp. 49, 58, &c.) But whatever may have been the cause of the suppression, one thing is certain, that it is very difficult to excuse it.

not thus, he does not realize his title of king ; but, as Pope John has declared, he forfeits his royal title.”<sup>1</sup> In the course of the same article, after a detailed enumeration of the principal duties of a king to his subjects and to the Church, it is ordained, “that the king, in his own person, placing his hand on the holy Gospels, and on the sacred relics, in presence of his kingdom, priests, and clergy, shall, before he is crowned by the archbishops and bishops, swear to observe all these things.”<sup>2</sup> From this article of the Laws of St. Edward, it follows manifestly, that according to the constitution or fundamental law of the kingdom of England, which the king swore to observe before he received the crown, a prince rebelling against God and the Church could be deposed.

251. *Authenticity of this Law, and its real Meaning.*

To comprehend the force of this testimony, it may not be useless to discuss briefly the objections that might be raised against this testimony itself, or against our interpretation of it. With regard to the first point, the common opinion of critics is, that the laws attributed to St. Edward, in the different collections of the ancient laws of England, are not, properly speaking, his, but that they were published under his name by William the Conqueror and his successors, not long after the Norman

<sup>1</sup> None of the editors of the different collections cited in the last note mention who was the Pope John whose authority is appealed to in this article of the Laws of England. The text of this article supposes that he was the pope whom Pepin and the French barons consulted on the deposition of Childeric ; but that is a gross anachronism ; for there was no Pope John contemporary of Pepin ; and the consultation on the deposition of Childeric, it is well known, was addressed to Pope Zachary. There is every reason to believe that the Pope John mentioned here is John VIII., to whom the Decretum of Gratian attributes a decree similar to the one in question. (Decretum Gratiani, part. ii. causâ 23, quæst. 5, cap. xxvi. Administratores.) There is, however, a great difference between this article in the Decretum of Gratian and that in the English Laws. The former only excommunicated princes who, after having been thrice admonished by the bishop, refused to fulfil their duty to the Church and to the poor, and to punish malefactors. The English laws go further, and deprive in such cases the king of his title. This very remarkable difference was probably a consequence of the usage introduced after Pope John's (VIII.) time, and admitted by sovereigns themselves, after the tenth century, on the temporal effects of excommunication, as we have already seen (ch. ii. art. i. ; ch. iii. art. ii. § 1).

<sup>2</sup> “Ista verò debet omnia rex in propriâ personâ, inspectis et tactis sacrosanctis Evangeliiis, et super sacras et sanctas reliquias, coram regno et sacerdotio et clero, jurare, antequam ab archiepiscopis et episcopis regni coronetur.” —Leges Eduardi Regis, ubi supra.

conquest of England. The laws of St. Edward may, therefore, be regarded as monuments of the legislation in force under the first Anglo-Norman kings. In this sense, the authenticity of these laws is generally admitted by the best critics, and is supported by the uniform evidence of manuscripts.<sup>1</sup>

Some readers may perhaps incline to believe, that the article cited from these laws ought to be interpreted in a sense very different from that which we have given to it, and that it does not necessarily mean that the king, in the case supposed, forfeits his rights to the throne; but only, that he deserves to forfeit them, and that he is unworthy of the royal title. This explanation, nevertheless, appears irreconcilable with the natural sense of the text; for it not only says that the king is unworthy of his title, and that he does not realize it, but that, in fact, he loses it; expressions which convey, as clearly as possible, the loss of the royal dignity, and of the rights attached to it. Moreover, if there were any ambiguity in the text, it should naturally be interpreted by the usage and constitutional law of Catholic Europe at this period.<sup>2</sup>

252. *Many Sovereigns declare themselves Vassals of the Holy See after the Tenth Century.*

III. *Particular Constitutions of many States considered as fiefs of the Holy See.*—The power attributed to the pope and to councils over sovereigns in the middle ages, by the maxims of constitutional law then common in all the Catholic states of Europe, was much more extensive over many sovereigns who had voluntarily conferred on the Holy See a right of sovereignty over their states.<sup>3</sup> Nothing is better authenticated in history than those solemn covenants, by which sovereigns otherwise independent of the Holy See in temporals, voluntarily declared themselves its vassals, and did homage for their dominions. We are not discussing now the motives of these acts of submission, which to the present age appear so extraordinary; we have already seen that, in the existing state of society, they were

<sup>1</sup> Wilkins, *Concilia Magnæ Britanniae*, tom. i. p. 310. Canciani, *Barbarorum Leges*, tom. iv. p. 224.

<sup>2</sup> See, in confirmation of these views, Receveur, *Hist. de l'Eglise*, vol. v. p. 127.

<sup>3</sup> See note, n. 49, ch. i.

founded, not only on religious motives, but also on evident considerations of public interest.<sup>1</sup> But, whatever may have been the influence of these motives, it is enough for us to prove the fact of this dependence on the Holy See which most of the princes of the Catholic states of Europe voluntarily imposed on themselves, after the tenth century.

253. *Oath of Fealty taken to the Pope by Robert Guiscard.*

The first example occurring in history is that of Robert Guiscard, founder of the kingdom of Naples, in 1059.<sup>2</sup> The following is the form of oath taken by him to the pope, on receiving the investiture of his states; it is given by Baronius in his Annals, from the original, which was preserved in his day in the Archives of the Vatican. "I, Robert,<sup>3</sup> by the grace of God and of St. Peter, duke of Apulia and of Calabria, and by the same protection, duke elect of Sicily, will be faithful from this day forward to the holy Roman Church, and to thee, my liege lord, Pope Nicholas. I will take no part in any act or counsel against thy life, thy limb, or liberty; nor will I knowingly disclose, to thine injury, the plans which thou

<sup>1</sup> Supra, n. 50.

<sup>2</sup> Leo Ostiensis, *Chronic. Cassin. lib. iii. cap. xii. &c.* Baronii *Annales*, tom. xi. ann. 1039, n. 67, &c. Fleury, *Hist. Eccl. vol. xiii. book lx. n. 39.* Voigt, *Hist. de Grégoire VII. books i. xii. p. 19, &c. 549, &c.*

<sup>3</sup> "Ego Robertus, *Dei gratiâ et sancti Petri, dux Apuliæ, et Calabriæ, et utrâque subveniente, futurus Siciliæ; ab hac horâ et deinceps ero fidelis sanctæ Romanæ Ecclesiæ, et tibi domino meo Nicolao papæ. In consilio vel in facto, unde vitam aut membrum perdas, aut captus sis malâ captione, non ero. Consilium quod mihi credideris, et contradices ne illud manifestem, non manifestabo ad tuum dampnum, me sciente. Sanctæ Romanæ Ecclesiæ ubique adjutor ero, ad tenendum et ad acquirendum regalia sancti Petri, ejusque possessiones, pro meo posse, contra omnes homines; et adjuvabo te, ut securè et honorificè teneas papatum Romanum, terramque sancti Petri, et principatum: nec invadere, nec acquirere quæram, nec etiam deprædari præsumam, absque tuâ tuorumque successorum, qui ad honorem sancti Petri intraverint, certâ licentiâ, præter illam, quam tu mihi concedes, vel tui concessuri sunt successores. Pensionem de terrâ sancti Petri, quam ego teneo aut tenebo, sicut statutum est, rectâ fide studebo ut illam annualiter Romana habeat Ecclesia. Omnes quoque ecclesias, quæ in meâ persistunt dominatione, cum earum possessionibus, dimittam in tuâ potestate; et defensor ero illarum ad fidelitatem sanctæ Romanæ Ecclesiæ. Et si tu, vel tui successores, ante me ex hac vitâ migraveritis, secundum quod monitus fuero à melioribus cardinalibus, clericis Romanis et laicis, adjuvabo ut papa eligatur, et ordinetur ad honorem sancti Petri. Hæc omnia suprascripta observabo sanctæ Romanæ Ecclesiæ et tibi, cum rectâ fide, et hanc fidelitatem observabo tuis successoribus, ad honorem sancti Petri ordinatis, qui mihi firmaverint investituram à te mihi concessam. Sic me Deus adjuvet, et hæc sancta Evangelia."—Baronii *Annales*, ubi supra, n. 70.*

may entrust to me, and which you forbid me to reveal. In all places, and with all my might, I will assist the holy Roman Church against all men, to hold and to preserve the property and the domain of St. Peter ; I will assist you to preserve in security and honour the Roman popedom, the territory, and the principality of St. Peter ; I will not seek to invade, to acquire, or to seize, without your permission, or that of your successors in the dignity of St. Peter, any other possessions but those which may be granted to me by you or your successor. I shall endeavour in good earnest to pay annually to the Roman Church the tribute which has been fixed on the lands of St. Peter which I now hold, or which I may hereafter acquire. I shall surrender into your hands all the churches of my dominions, with their dependencies ; and I shall maintain them in fidelity to the holy Roman Church. Should you or any of your successors die before me, I will give my aid to the election of a pope and successor worthy of St. Peter, according to the advice that shall be given to me by the best Cardinals, and the Roman clergy and laity. I will observe all these things faithfully to the Roman Church and to you ; and I will observe the same fidelity to your successor in the dignity of St. Peter, who will confirm to me the investiture now granted by you."

254. *Rights of Sovereignty of the Holy See both before and after the time of Gregory VII.*

Many letters of Gregory VII. suppose, that before his time the Holy See had acquired similar rights of sovereignty over other states ; for in maintaining his rights over Spain, Hungary, and some other kingdoms, he grounds his claim principally on ancient custom, admitted by the sovereigns themselves.<sup>1</sup> The origin of this custom, and the titles of the various grants

<sup>1</sup> "Non latere vos credimus, *regnum Hispaniæ, ab antiquo, proprii juris sancti Petri fuisse*, et adhuc (licet diu à paganis sit occupatum) lege tamen justitiæ non evocata, nulli mortalium, sed soli apostolicæ sedi, ex æquo pertinere."—Gregorii VII. Epist. lib. i. epist. 7.

"Nam, *sicut à majoribus patriæ tuæ cognoscere potes, regnum Hungariæ sanctæ Romanæ Ecclesiæ proprium est*, à rege Stephano olim beato Petro, cum omni jure et potestate suâ, oblatum et devotè traditum."—Idem, lib. ii. epist. 13, &c. See some other letters of the same pope, cited by Bossuet, *Defens. Declar. lib. i. sect. i. cap. xii. xiii. xiv.* ; Fleury, *Hist. Eccl. vol. xiii. book lxxiii. n. 11* ; D. Ceillier, *Hist. des Aut. Ecclés. vol. xx. p. 662* ; Voigt, *Hist. de Grégoire VII. book v. p. 184* ; book x. p. 442.

appealed to by Gregory VII. are no longer extant; but they could be either extant, or at all events well known, in his own time; nor can the manner in which he speaks of them leave any doubt of the fact; for it is utterly incredible that he would have appealed to them so confidently, had they not been admitted at this time as unquestionable.<sup>1</sup>

After the pontificate of Gregory VII. many other sovereigns did homage for their dominions to the Holy See. We may mention particularly Godfrey de Bouillon, king of Jerusalem, in 1099;<sup>2</sup> Roger, founder of the kingdom of Sicily, in 1130; and Charles I., king of Sicily, in 1276;<sup>3</sup> Peter of Arragon, in 1204;<sup>4</sup> finally, the kings of England, Henry II., in 1172, John Lackland, in 1213, and Henry III., in 1216.<sup>5</sup> All these states, and several others which we omit here, were, at the time, universally regarded as fiefs of the Roman Church; sovereigns themselves publicly acknowledged the fact, by their conduct, as we have already shown in the preceding chapter.<sup>6</sup>

255. *Remarkable Consequences of these Rights.*

One of the chief effects of the feudal dependence was, to give to the pope over his vassal sovereigns special rights, much more extensive than those which he had over other sovereigns; it was not a merely directive power, but a real power of temporal jurisdiction, and even a real sovereignty, founded on the very constitution of the state, and on legitimate treaty. According to the principles of feudal government, the revolt of the vassal against his sovereign entailed on the former the forfeiture of his rights, which then reverted to the sovereign lord. In virtue of these maxims, the pope was manifestly entitled to pronounce the deposition of a prince who was a vassal of the Holy See, when,

<sup>1</sup> Oppose these observations to a great number of modern authors who censure severely Gregory VII. and his successors for their pretensions over Spain, Hungary, and many other states. See, in confirmation of our views, notes by M. Abbé Jager, on the History of Gregory VII. *ubi supra*.

<sup>2</sup> Fleury, *Hist. Eccl.* vol. xiii. book lxiv. n. 67; book lxxv. n. 2. Michaud, *Hist. des Croisades*, vol. ii. p. 10.

<sup>3</sup> Fleury, *Hist. Eccl.* vols. xiii. xviii. book lviii. n. 3, 57; book lxxxv. n. 35; book lxxxvii. n. 2. Daniel, *Hist. de France*, vol. ii. ann. 1264.

<sup>4</sup> Fleury, *Hist. Eccl.* vol. xvi. book lxxvi. n. 10.

<sup>5</sup> Lingard, *History of England*, ann. 1176, note.

<sup>6</sup> *Supra*, n. 136.

by obstinately persisting in heresy, or in excommunication, he became notoriously guilty of felony to his sovereign lord.

256. *The King of France and some Others exempt from all Feudal Subjection.*

It must not be forgotten, however, that while most of the sovereigns of Europe acknowledged themselves vassals of the Holy See, the French king and his barons prided themselves on maintaining the crown of France exempt from all feudal subjection; and this independence was clearly acknowledged by the Holy See.<sup>1</sup> The sentiments of the French on this subject were manifested signally at the election of Hugh Capet to the throne of France. The great motive which he urged to attach the barons of the kingdom to his party, was the baseness of his competitor, the duke of Lorraine, in acknowledging himself a vassal of the emperor.<sup>2</sup> Many events in subsequent times evinced how deeply this feeling was rooted in the hearts of Frenchmen. It was manifested particularly in the reign of Philip Augustus, on occasion of the deposition of John Lackland, king of England, in 1213;<sup>3</sup> and in the reign of Philip the Fair, during his contests with Boniface VIII., in 1302.<sup>4</sup>

<sup>1</sup> Pope Innocent III., in particular, expressly acknowledged the feudal independence of the king of France, in the Decretal, *Per Venerabilem*, addressed about the year 1201 to William, count of Montpellier, and afterwards inserted in the *Corpus Juris Canonici*. In that letter the pope proves clearly this essential difference between the king of France and the count of Montpellier, that the former acknowledged no superior in temporal matters, whilst the second, as vassal of the pope, is subject to him both in temporals and spirituals. "*Cùm rex ipse (Philippus Francorum rex) in spiritualibus nobis subiaceat, tu nobis et in spiritualibus et in temporalibus es subjectus, cùm partem terræ ab Ecclesiâ Magalonensi possideas, quam ipsa per sedem apostolicam temporaliter recognoscit. . . . Insuper cùm rex ipse superiorem in temporalibus minimè recognoscat, sine juris alterius læsione in eo se jurisdictioni nostræ subjicere potuit et subjecit, in quo forsitan videretur aliquibus, quod per se ipsum, non tamquam pater cum filiis, sed tamquam princeps cum subditis, potuerit dispensare.*"—Baluze, *Epistol. Innocentii III.* tom. i. p. 675, col. 2. *Corpus Juris Canon. Decretal. lib. iv. tit. xvii. cap. xiii.* On the cause and subject of this Decretal, see Fleury, *Hist. Eccl. vol. xvi. book lxxv. n. 42*; D. Ceillier, *Hist. des Auteurs Ecclés. vol. xxiii. p. 441*; De Marca, *De Concordiâ, lib. ii. cap. iii.* This letter of Innocent III. is the more worthy of attention, as the pope himself acknowledges clearly therein (as Fleury has remarked) the distinction between the two powers. (See *supra*, n. 205.)

<sup>2</sup> Daniel, *Hist. de France, vol. iii. ann. 987, p. 265.* Velly, *Hist. de France, vol. ii. p. 262.* *Hist. de l'Église Gall. vol. vii. p. 2.*

<sup>3</sup> Fleury, *Hist. Eccl. vol. xvi. book lxxvii. n. 60.* Daniel, *Hist. de France, vol. iv. ann. 1216, p. 236.*

<sup>4</sup> Daniel, *Hist. de France, vol. v. ann. 1303.* Velly, *Hist. de France, vol.*

This feeling was not peculiar to France: we have already seen that it prevailed in the empire of Germany; <sup>1</sup> it did not, however, exclude the profession in those kingdoms, no more than in others, of other principles which, in certain cases, subjected the temporal to the spiritual power. <sup>2</sup>

257. *The Rights of the Holy See over the Empire of the West established by these Facts.*

IV. The rights of the Holy See over the new empire of the West, though not, properly speaking, rights of sovereignty, were, nevertheless, very considerable, arising naturally from the primitive constitution of the empire, and from the circumstances of its first establishment. To prove this position, we need but call to mind the great share which the pope had in the election of Charlemagne, and which he naturally continued to exercise in the election of his successors during the middle ages. We may restate here, in a few words, some facts which throw light on this point of history, so intimately connected with the object of our Inquiry.

258. *First Fact: Charlemagne acquired the Title of Emperor from the Pope.*

*First fact.* It is certain that Charlemagne owed his title of emperor to the voice of the pope, considered as chief and representative of the Roman people, and chosen guardian of their interests.

It does not appear, in truth, that Charlemagne could acquire his title of emperor in any other way than by the pope's choice, or by a right of conquest of the capital of Italy, and of the provinces which then acknowledged the sovereignty of the Holy See. It is not possible, nor has it, we believe, been ever attempted to explain the origin of the title in any other way. Now the supposition of conquest is evidently contrary to history. For, first, Charlemagne could have no right of conquest except over the provinces which he had taken from the Lombards;

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vii. p. 207, &c. *Hist. de l'Eglise Gall.* vol. xii. ann. 1302, pp. 325, 334, &c. Bossuet, *Defens. Declar.* lib. iii. cap. xxiv.; lib. iv. cap. ix. versus finem.

<sup>1</sup> *Supra*, ch. ii. art. iv. n. 142, 161.

<sup>2</sup> *Ibid.* art. i. ii. iv.

now they, certainly, never had possession of Rome, in which Charlemagne was acknowledged and proclaimed emperor.<sup>1</sup>

Secondly, it is equally certain that Pepin and Charlemagne, when giving up to the Holy See the cities and territories of the duchy of Rome and of the Exarchate, which they had wrested from the Lombards, never pretended to retain any claim over them by *right of conquest*; their expressed intention was, to make over these provinces for ever to the Holy See, and to acknowledge the pope as their sole legitimate sovereign. This assertion, we are aware, has been contested by many modern authors; but we believe it to be sufficiently established by the testimony of contemporary authors, especially Eginhard, and Anastasius the Librarian; who invariably represent the cession made to the Holy See of the said provinces, not as a pure donation, but as a restitution of the provinces of which the Lombards had unjustly deprived it.<sup>2</sup>

Thirdly, all the monuments of history point out Charlemagne's coronation, in 800, as the real date of his election to the empire. No historian gives him the title of emperor before that time; he himself never assumed it before that time; and it is from it that he invariably dates the years of his imperial reign, in all his succeeding decrees.<sup>3</sup> What grounds can there be, then, for asserting that Charlemagne owed his title of emperor to the conquest of Rome and of Italy? He did not go to Rome in the year 800 to conquer it; he went there solely at the request of the pope, to judge in his capacity as patrician of the Romans, or as defender of the Holy See, the seditious who had dared to attempt the life of Pope Leo III.<sup>4</sup>

259. *Second Fact: The Pope did not renounce at that Time his Right in future Elections.*

*Second fact.* It is certain that the pope, when giving the title of emperor to Charlemagne, did not intend thereby to resign his right in future elections.

<sup>1</sup> See, in the first part of this Inquiry, note 3, n. 65.

<sup>2</sup> See, in support of these assertions, the first part of this Inquiry, n. 40, 46, 63. See especially the passages from Anastasius and Eginhard, cited in the notes to these paragraphs.

<sup>3</sup> See, in the first part of our Inquiry, last note, n. 47.

<sup>4</sup> See Fleury, Daniel, Lebeau, and all historians, ancient and modern, on Charlemagne's coronation, in the year 800.

Such renunciation is not only unsupported by positive historical testimony; there are, moreover, solid proofs of the contrary; principally the will made by Charlemagne, in the diet of Thionville, in 806, for the partition of his dominions between his children. This act, which we have already cited to prove that even after his election to the empire Charlemagne had no sovereignty over Rome, proves also, that he did not believe he had a right to dispose of his title of emperor, or to transmit it to his children.<sup>1</sup> It is an unquestionable fact, that, in this act, which was designed to remove all occasion of discord between his three sons, by partitioning his whole empire between them, Charlemagne totally omits the duchy of Rome and the Exarchate; he does not bequeath to any of his sons his imperial title; he contents himself with advising them all to take on themselves conjointly the care and the defence of the Roman Church, as had been done by Charles Martel, his grandfather; by Pepin, his father, of happy memory, and by himself.<sup>3</sup> Can there be a more clear intimation that the duchy of Rome, and the Exarchate, did not constitute part of *the body of his dominions*, and that he had not a right to dispose of his imperial title? If he could dispose of those provinces, and of that title, would he have omitted them in so important an act, drawn up precisely for the purpose of removing all subject of discord among his children? By such an omission, far from attaining his object, namely, the prevention of all discord among his sons, would not he have left among them the most powerful incentive to discord, by neglecting to dispose of the most august of his titles, and of that part of his dominions to which this title seemed to be specially annexed?

The force of this argument appears more manifestly when we see how it embarrasses those authors who deny to the pope the right of election in question; and how vain are their attempts to solve the difficulty founded on this solemn deed, which we have just cited. Fleury, and after him Père Daniel, pretend that the emperor "omits, in that deed, all mention of the empire and of the duchy of Rome, connected with it, because he

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<sup>1</sup> See the first part of this Inquiry, ch. ii. n. 70.

<sup>2</sup> See *supra*, note 2, n. 70.

<sup>3</sup> *Ibid.* note 4.

reserved the disposal of it for himself ;”<sup>1</sup> a supposition manifestly contrary to the object proposed by Charlemagne in the deed, as we have already remarked. De la Bruère, in his *Histoire de Charlemagne*, acknowledges “that it is difficult to assign any reason for Charlemagne’s silence on that occasion ;”<sup>2</sup> and he advances some most improbable conjectures to account for it ; namely, “that Charlemagne’s children, in order to destroy all possible seeds of disunion, agreed among themselves to renounce the title of emperor, or that all three assumed it.” The author himself acknowledges that those conjectures are improbable, and that, in proposing them, he intended rather to show than to solve a difficulty, to which historians seemed not to have paid sufficient attention.<sup>3</sup>

260. *Third Fact : He retained this Right long after the Reign of Charlemagne.*

*Third fact.* Long after the election of Charlemagne to the imperial throne, the pope still retained the right of electing the emperor of the West.

History, in fact, shows the popes invariably exercising this right, without any protest, not only in the Carlovingian, but even in the earlier German dynasty.

1. *Under the Carlovingian emperors*, that is, from the imperial reign of Charlemagne to the transferring of the empire to the Germans, in 962, the pope personally exercised this right, which, from that period, devolved on the electors of the empire.<sup>4</sup> During the whole of this first period, we see him electing an emperor, sometimes from Charlemagne’s family, sometimes from other families, as he deemed expedient for the good of the Church. Occasionally, we see him even leaving the imperial throne vacant, either from the difficulty of making a suitable selection, or from the opposition given to his selection by the barons of Rome, who, by an abuse of their power,

<sup>1</sup> Fleury, ubi supra. Daniel, *Hist. de France*, vol. ii. ann. 806, p. 145.

<sup>2</sup> De la Bruère, *Hist. de Charlemagne*, vol. ii. p. 170.

<sup>3</sup> *Ibid.* p. 171.

<sup>4</sup> Cenni, *Monumenta Domin. Pontif.* tom. ii. Dissert. i. n. 31, 35, 36 ; Dissert. vi. n. 2. For a full exposition of the facts indicted by this author, see, in the *Art de Vérifier des Dates*, the *Chronologie Historique des Empereurs d’Occident*, fol. edit. 1770, p. 432 ; Receveur, *Hist. de l’Eglise*, vol. iv. pp. 429, 430 ; Bossuet, *Defens. Declar. lib. ii. cap. xl.*

impeded the free exercise of the sovereign authority of the popes.<sup>1</sup>

261. *Exercise of this Right under the Carolingian Emperors.*

The history of the Carolingian emperors supplies a great number of facts in support of those assertions; we shall cite here a few only of the most remarkable. Three years only after the death of Charles the Fat, sixth emperor of the family of Charlemagne, Pope Stephen V. appointed as his successor in the imperial dignity, not his nephew Arnulph, who had succeeded him as king of Germany, but Guy, duke of Spoleto, descended from Charlemagne by the female line only.<sup>2</sup> The motive of this choice was the greater aid expected by the Holy See from Guy; and from a similar motive, Pope Formosus, some years later, permitted Guy to take as colleague in the empire, his son Lambert, who afterwards succeeded, as sole emperor, in 894.<sup>3</sup> But Guy's family not realising the hopes held out by them, Pope Formosus conferred the imperial crown on Arnulph, even during the lifetime of Lambert, and thus restored it, for a time, to the family of Charlemagne.<sup>4</sup>

This election of Arnulph is the more remarkable, as it appears to be the first instance in which the pope substituted one emperor for another still living. On this occasion, it is certain, that the Romans took an oath of fidelity to Arnulph, by which

<sup>1</sup> We have already seen, that in the ages immediately after the establishment of the temporal sovereignty of the Holy See, the Roman senate and people had no share in the government; the senate itself was no more than a municipal body, such as existed in many other Italian cities; its jurisdiction being confined to purely city concerns, and limiting in no respect the rights of the sovereign in the government of the state (*supra*, part i. ch. ii. n. 68). Nevertheless, at different times the Roman lords attributed to themselves more extensive rights, and impeded by their pretensions the exercise of the pope's sovereign authority. This was the source of those disorders which convulsed Italy during the first half of the tenth century, and which were also revived in the middle of the twelfth, under the pontificate of Innocent II. But these transitory crises, from which the most legitimate and the best consolidated governments are not always exempt, in no respect impaired the rights of the Holy See, which soon recovered its authority, either by its own strength, or with the assistance of the emperor, or of some other foreign prince. See Cenni, *ubi supra*, tom. ii. Dissert. i. n. 36-39; Fleury, *Hist. Eccl.* vol. xiv. book lxix. n. 1, 6; Baronius, *Annales*, ann. 1144, 1152.

<sup>2</sup> Fleury, *Hist. Eccl.* vol. xi, book liv. n. 18.

<sup>3</sup> Fleury, *ibid.* Pagi, *Critica in Baronii Annales*, ann. 892, n. 2; ann. 894, n. 3.

<sup>4</sup> Pagi, *ibid.* ann. 895, n. 4; ann. 896, n. 3.

they renounced their allegiance to Lambert, who had some years before been crowned emperor by the pope.<sup>1</sup> In fine, after the death of Berenger, the last of the Carlovingian emperors, the factions which convulsed the city of Rome prevented the pope from providing for the empire, which remained vacant from the year 924 until the year 962, the date of its translation to the Germans.<sup>2</sup>

262. *This Right generally acknowledged at the Time by Sovereigns.*

Before this event the pope's rights in the election of an emperor, far from being disputed, were, on the contrary, generally recognised, even by sovereigns. This fact is decisively proved by the history of Charles the Bald.<sup>3</sup> Pope Adrian II. had promised this prince to acknowledge him as emperor, in case he survived Louis II., who was then enjoying the imperial title. "We promise, and we protest to you," he writes, "but as a secret not to be divulged except to the most trusty adherents, saving, moreover, the allegiance that we owe to our emperor, that if you and we survive him, we shall never ask nor recognise any other emperor but you, though they should offer us heaps of gold."<sup>4</sup> Louis II. dying a few years after, the pretensions of Charles the Bald were disputed by Louis, his eldest brother, king of Germany. Charles had no more effectual means of supporting his claim than by proceeding speedily to Rome, to obtain the confirmation of Pope John VIII., who then filled the Holy See. The king of Germany employed every means to prevent the execution of that design; but all his efforts were useless: Charles was crowned emperor by the pope on Christmas

<sup>1</sup> In another place we have given the text of this oath, part i. ch. ii. n. 77. It is given entire in Cenni, Monumenta, &c. (vol. ii. Dissert. i. n. 25), and in Pagi's Critica (ann. 896, n. 3). See also our observations on Lambert's deposition, part ii. ch. ii. n. 84, note 1.

<sup>2</sup> Fleury, ubi supra, n. 25.

<sup>3</sup> Fleury, Hist. Eccl. vol. xi. book lii. n. 23, 30. Hist. de l'Eglise Gall. vol. vi. book xvii. pp. 274, 292. Receveur, Hist. de l'Eglise, ubi supra.

<sup>4</sup> "Integrâ fide, et sincerâ mente, devotâque voluntate, ut sermo sit secretior, et litteræ clandestinæ, nullique nisi fidelissimis publicandæ, vobis confitemur devovendo, et notescimus affirmando, salvâ fidelitate imperatoris nostri, quia si superstes ei fuerit vestra nobilitas, vitâ nobis comite, si dederit nobis quislibet multorum modiorum auri cumulum, numquam acquiescemus, exposcemus, aut sponte suscipiemus alium in regnum et imperium Romanum, nisi teipsum."—Adriani II. Epist. 34, ad Carolum Calvum. (Labbe, Concil. tom. viii. p. 938.)

day, in the year 875, and was acknowledged the following year in a general assembly of the lords of Lombardy; whose decision was confirmed the same year by the national council of Pontyon.<sup>1</sup> It must be observed, that these two assemblies, in the solemn act which they drew up in confirmation of the election of Charles, assign as their reason, the choice already made by the pope in raising that prince to the imperial dignity. The following are the very words of the decree of the lords of Lombardy: "The divine goodness, through the intervention of the holy Apostles, St. Peter and St. Paul, and by their vicar John, sovereign pontiff, universal pope, and our spiritual father, having already raised you to the empire, according to the light of the Holy Ghost, for the good of holy Church and of us all, we unanimously choose you, as the protector, lord, and defender of us all."<sup>2</sup> In the following year, 877, Pope John VIII. confirmed this election in a council held at Rome for the purpose. After a great panegyric on Charles the Bald, the pope states that the election was the result of a divine inspiration; but declares also, that it was done with the concurrence of the clergy, of the senate and the people of Rome. "Aware," he says, "that our predecessor, Nicholas I., had been already enlightened on the subject by a divine inspiration, we have, for that reason, selected prince Charles; we have approved his election, in concert with our brethren and fellowbishops, with the other ministers of the holy Roman Church, the venerable senate, all the Roman people and their magistrates; and we have solemnly raised him to the imperial dignity, according to the ancient custom."<sup>3</sup> It must be observed, that while attributing to

<sup>1</sup> Labbe, Concil. tom. ix. p. 283, &c.

<sup>2</sup> "Quia divina pietas vos, beatorum principum apostolorum Petri et Pauli interventione, per vicarium ipsorum, dominum videlicet Joannem, summum pontificem et universalem papam, spiritualeque patrem vestrum, ad profectum sanctæ Dei Ecclesiæ nostræque omnium, invitavit, et ad imperiale culmen, Sancti Spiritûs judicio, provexit; nos unanimiter vos protectorem, dominum, ac defensorem omnium nostrâum eligimus."—Ibid.

<sup>3</sup> "Et quia pridem apostolicæ memoriæ decessori nostro, papæ Nicolao, idipsum jam inspiratione cœlesti revelatum fuisse comperimus; elegimus hunc meritò, et approbavimus, unâ cum annisu et voto omnium fratrum et coepiscoporum nostrorum, atque aliorum sanctæ Romanæ Ecclesiæ ministrorum, amplique senatûs, totiusque Romani populi, gentisque togatæ; et secundùm priscam consuetudinem solemniter ad imperii Romani scepra proveximus, et Augustali nomine decoravimus."—Labbe, Concil. ibid. p. 296.

These praises lavished on Charles the Bald by the pope do not agree well

himself the right of electing the emperor, the pope did not pretend to do so in virtue solely of his authority as head of the Church, but in concert with the Roman lords and people, whose head and representative he had been long since admitted to be in the electing of emperors, as well as in all other affairs relating to the government of Rome and of the Exarchate.

263. *How to reconcile this Right with the Fact of several Emperors having assumed their Sons as Colleagues in the Throne.*

Some other modern authors object to us here the example of Charlemagne, of Louis le Débonnaire, and of Lothaire I., who appear not to have asked the pope's consent when making their sons colleagues in the empire; a proceeding which implies that they did not acknowledge in the pope the right which we attribute to him.<sup>1</sup> Historians do not mention, it is true, that the pope's consent was given to the selection made by these princes; but the silence of historians is no argument against the positive proofs of the necessity of this consent. From the facts already cited, it is evident, that Charlemagne owed the imperial title to the pope alone; that when conferring that title the pope never intended to surrender the right of election in future; that Charlemagne did not believe that he, even in concert with the lords of the empire, could dispose of the title of emperor; and, finally, that long after the death of Charlemagne, his successors still recognised in the pope the right of electing the emperor. What more can be required to prove that this right still continued during the Carlovingian dynasty? The permanence of this right once demonstrated by proofs so decisive, does it not naturally follow, that the conduct of Charlemagne, of Louis le

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with what Fleury and many others state, from the Annals of Fulda, that this prince insured his election by corrupting the senate with bribes. It must be remembered, however, that the Annals of Fulda are a very suspicious authority on this point, for they were written under the power of the king of Germany, the declared enemy of Charles, as we have seen.

<sup>1</sup> This objection was proposed by Bossuet, Velly, and some other modern writers, who appear not to have sufficiently attended to the series of facts which prove our opinion. (Bossuet, *Defens. Declar. lib. ii. cap. xxxix.* Velly, *Hist. de France, vol. ii. p. 113.*) Velly in particular appears to have been utterly ignorant of them; had he known them, he certainly would not have stated so confidently that the elevation of Charles the Bald to the imperial dignity is the real date of the authority which the popes afterwards attributed to themselves in the election of the emperors, and that this pretension had been unprecedented hitherto.

Débonnaire, and of Lothaire I., in assuming their sons as colleagues, cannot be explained except by the express or tacit consent of the popes. Such consent may the more easily be presumed, because at the period of these imperial nominations, the princes in question were in perfect harmony with the popes. This good understanding, we know, was never interrupted during the reign of Charlemagne; and with regard to Louis le Débonnaire and Lothaire I., it is certain, that far from pretending to associate their sons in the empire without the pope's concurrence, they sent these young princes to Rome, after their nomination, to receive there the crown and imperial unction from the pope's hands, whose concurrence was regarded by themselves as indispensably necessary for their promotion.<sup>1</sup>

264. *The Empire transferred from the French to the Germans by the Authority of the Pope.*

2. The translation of the empire to the Germans, in 962, by the authority of Pope John XII., proves that at this period the pope's right in the election of an emperor still subsisted, though he had been impeded in its exercise by the lords of Rome, who had usurped his sovereign authority in this city.<sup>2</sup> Already Pope Agapetus II., predecessor of John XII., to crush this evil, had called in the assistance of Otho I., king of Germany, who, though partly successful in Italy, had failed in advancing to Rome; but this prince, being invited a second time into Italy, by John XII., delivered it at last from the tyranny of Berenger II., and advanced to Rome, where the pope gave him the imperial crown, Feb. 2nd, 962.<sup>3</sup> Thus, the empire of the West passed from the French to the Germans, with whom it has ever since remained. The history of this translation proves that the election of Otho I. to the imperial dignity, like that of Charlemagne, was affected by the authority of the pope, acting as sovereign of Rome and of the Exarchate. It is certain, that Otho I. king of Germany, far from regarding himself as sove-

<sup>1</sup> See, in confirmation of these facts, the details given in the preceding chapter, art. iv. n. 150.

<sup>2</sup> See note 2, n. 260, ch. iii. supra.

<sup>3</sup> Cenni, Monumenta, vol. ii. Dissert. i. n. 38-41; Dissert. vi. n. 3. Fleury, Hist. Eccl. vol. xii. book lvi. n. 1. Receveur, Hist. de l'Eglise, vol. v. p. 7. Bossuet, Defens. Declar. lib. ii. cap. xl. xli.

reign of Rome, by virtue of his conquests in Italy, was not admitted into Rome by Pope John XII., until he had promised on oath to acknowledge, and to maintain there with all his power the sovereignty of the pope.<sup>1</sup>

265. *Influence of the Pope in the Election of the Emperor from that Period.*

After Otho's election to the imperial throne, we no longer see the pope personally electing the emperor. History shows, on the contrary, that this election devolved, after the tenth century, on the Germanic diet; and sometime later (about the middle of the thirteenth century) on the prince-electors, who retained that right until our own days.<sup>2</sup> It is certain, however, that though the pope did not directly elect the emperor, he continued to have a very great influence on that election. Radulph Glaber, a monk of Cluny, who wrote about the middle of the eleventh century, speaks of this fact as being universally admitted. "It appears most reasonable," he says, "and admirably decreed for the preservation of peace, that no prince shall take the title of emperor, until he has been chosen by the pope for his merit, and has obtained from him the imperial titles."<sup>3</sup>

Not only did the pope retain a great share in the election of the emperor, but there is every reason to believe that the new mode of election, established after the tenth century, was intro-

<sup>1</sup> See *supra*, ch. ii. n. 158.

<sup>2</sup> We are not going to discuss here that obscure question, the origin of the electors of the empire. Such a discussion would be both too long, and not at all necessary for the main object of our inquiry. We shall only remark, that the few details given in this chapter, on the origin of the new empire of the West, may contribute not a little to the elucidation of that question, and to correct many modern authors who have meddled with it. See especially, Cenni, *Monumenta*, tom. ii. *Dissert.* vi. n. 1, 3-15. See also *Dissert.* i. n. 44, &c. Leibnitz, *Dissert.* i. *De Actorum Public. Usu*, n. 18, 19; *Dissert.* ii. n. 25, 26. These *Dissertations*, which serve as prefaces to vols. i. and ii. of the *Cod. Diplom.* of the same author, were republished in vol. iv. of his works, part iii. p. 287, &c. Bossuet, *Defens. Declar. lib. ii. cap. xl. xli.* Baronius, *Annal. Eccles.* tom. x. ann. 996, n. 38-71. Pagi, *Critica in Annales Baronii*, tom. iv. ann. 996, n. 10, 17; ann. 1024, n. 5, 6.

<sup>3</sup> "Illud nimirum condecens ac perhonestum videtur, atque ad pacis tutelam optimum decretum, scilicet: ut ne quisquam audacter imperii Romani sceptrum, præposterus gestare princeps appetat, seu imperator dici aut esse valeat, nisi quem papa sedis Romanæ, morum probitate delegerit aptum reipublicæ, eique commiserit insigne imperiale."—Rad. Glaber, *Hist. lib. i. versus finem.* (*Recueil des Hist. de France*, by Duchesne, vol. iv.) Baronius, *Annales*, vol. xi. ann. 1013, n. 5. Fleury, *Hist. Eccl.* vol. xii. book lviii. n. 38. D. Ceillier, *Hist. des Auteurs Ecclés.* vol. xx. p. 240.

duced by the sanction of the Holy See. This was the general belief of the middle ages, as we have already seen ;<sup>1</sup> and Pope Innocent III., in a letter addressed to the German princes, in the commencement of the thirteenth century, assumes that original institution of the electors, as a fact unquestioned even by the electors themselves.<sup>2</sup> This supposition is, moreover, confirmed by the custom invariably observed during the whole course of the middle ages, that the king of Germany, elected by the German princes, assumed, by virtue of that election, the title of king of the Romans, but not emperor, until he had been acknowledged and crowned in Rome by the pope.<sup>3</sup>

266. *Consequence of this Mode of Election.*

The natural inference from all these facts is, that the pope when conferring the title of emperor on Charlemagne, never intended to resign the right of electing the emperor in future ; that he long continued to enjoy that right ; and that, even when he had ceased to exercise it personally, he always continued to have a great share in that election. Now, it is obvious, that this influence of the pope in the election of the emperor naturally gave him a right of prescribing certain conditions to the emperor elect, and, consequently, of deposing him in case of their violation.<sup>4</sup> We do not mean, however, to infer thence that the empire was originally a fief of the Holy See, in the strict sense of that term. For, it is certain, that Leo III., when conferring the imperial title on Charlemagne, gave him no new territory ; he only conferred on him a honourable title, to reward and to excite still more his zeal in the protection and defence of the Holy See. Such was invariably the sole view of the successors of Leo III. in conferring the imperial crown on

<sup>1</sup> See supra, ch. ii. art. iv. p. 484, &c. See also Maimbourg, *Hist. de la Décadence de l'Empire*, p. 110.

<sup>2</sup> Innocent III. *Epist. ad Bertholdum Zaringæ Ducem, initio Sæculi xiii.* (Baluze, *Epist. Innoc. III.* vol. i. p. 715.) We have cited the text of this letter in the preceding chapter, n. 154.

<sup>3</sup> Supra, ch. ii. art. iv. n. 150. It was in consequence of this ancient usage that in those latter times, and even in our own days, since the emperors of Germany ceased to be crowned at Rome, the pope gave them the title only of emperor elect, but never emperor absolutely. This may be seen especially in two briefs of Pius VI. to the emperors Leopold II. and Francis II. (*Collect. des Brefs de Pie VI.* Paris, 1798, p. 557, 561.)

<sup>4</sup> Supra, ch. i. art. i. n. 25.

Charlemagne's successors. The oath of fidelity required from them on receiving the imperial title, by no means implies that the emperors held their dominions from the Holy See ; it implied only an obligation of defending it against its enemies ; and the popes, when claiming the right of electing the emperor, and even of deposing him, in certain cases, did not regard themselves properly as sovereign lords of his dominions, but only as judges of his conduct and of his rights, according to the custom and constitution of the empire.

267. *Fourth Fact : The Pope's Rights over the Empire established by the Ancient Laws of Germany.*

The most ancient monuments of German law establish, or clearly suppose, the special dependence of the emperor on the pope, and the pope's rights in the emperor's election, and even deposition, in certain cases.

To be convinced of this, we need but inspect the Saxon Law, and the Suabian Law, compiled in the thirteenth century, from the ancient customs of the empire,<sup>1</sup> and retained in force long after that period in Germany. The most eminent German juriconsults of the last century, and even of our own time, admit the high authority of these two codes in Germany, in judicial matters, from the thirteenth to the sixteenth century, as containing evidences of the laws and customs of the time.<sup>2</sup> They tell us, that they are not so much two different codes, as two compilations of the same code ; one made by a Saxon, the other by a Suabian. We shall produce here the principal provisions of the Suabian code only, because it is more ample in its details than the Saxon code on the question before us.

268. *Supremacy of the Spiritual over the Temporal Power according to this Code.*

In the preamble of this code, it is expressly stated, that the emperor, as well as all other secular princes and magistrates, is bound to use his authority to enforce the obedience due to the pope. The following are the words of this preamble :<sup>3</sup> " The

<sup>1</sup> See preamble to the Suabian Code, cited above, ch. i. art. iii. n. 78, note 1.

<sup>2</sup> Senckenberg, in his preface to the Suabian Code (§ 20), states that no one now questions this point. It is also Eichorn's opinion, in his History of the German Empire and Laws, 3rd edit. vol. ii. p. 276.

<sup>3</sup> " *Ensis ecclesiasticus Papæ ipsi est concessus, ut debito tempore judicet,*

Church sword is given to the pope, that he may pronounce judgment at the proper times, seated on a white horse (as a sign of his pre-eminence). The emperor must hold the stirrup, lest the saddle should stir from its place.<sup>1</sup> This signifies, that if any person resist the pope, and cannot be reduced to obedience

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*sedens super equum candidum ; et imperator debet Papæ stapiam tenere, ne ephippium loco moveatur. Hoc ipso indicatur quod omnem eum quicumque Papæ resistit, quemque ipse iudicio ecclesiastico cogere non valet ad obediendum, debeat imperator, et alii sæculares principes et iudices, cogere per prescriptionem.*—*Juris Alamannici seu Suevici Præfamen, n. 21-24. (Senckenberg, ubi supra, p. 6, &c.)*

In this place there is an important difference between the text of the Suabian and that of the Saxon law. In the former we find, "God, the king of peace, left, after his ascent to heaven, two swords on the earth, for the defence of Christianity. Both he intrusted to St. Peter: one for the secular, the other for the ecclesiastical judgment. . . . The pope gives the sword of secular judgment to the emperor; the sword of ecclesiastical judgment is given to the pope, &c." The Saxon law is expressed in very different terms: "God has left two swords on earth for the protection of Christianity: to the pope the spiritual,—to the emperor the secular sword. The pope is also permitted at certain times to mount a white horse, and the emperor is bound to hold his stirrup, that the saddle may not stir, &c.: this signifies that, &c." (*Specul. Saxon. lib. i. art. i.*) This latter text clearly supposes the two powers distinct, and immediately instituted by God. The Suabian law, on the contrary, seems to confound them, by supposing that Jesus Christ gave both directly to St. Peter, with an injunction to intrust the secular power to princes. We have already remarked, that this opinion did not begin to be broached until after the twelfth century (*supra, n. 189, text and notes*). But the very difference between the texts just cited, proves, 1st, that this opinion was not universally admitted in the thirteenth century; 2nd, that even those who rejected it still admitted the supremacy of the spiritual over the temporal power; as also the pope's power of deposing the emperor in certain cases. On these two points there is not, in truth, any difference between the Saxon law and the Suabian law.

<sup>1</sup> The custom which required that the emperors should act as the pope's esquires (*écuyer*), especially at the time of the coronation, was much more ancient than the date of the compilation of the Saxon and Suabian codes. About a century earlier (in 1155), the emperor Frederick Barbarossa, having made some objection against complying with this usage, on the ground that it was not sufficiently established, yielded at once when it was proved to him that the custom was founded on ancient authorities, and on the testimony of many lords who had assisted, in 1133, at the interview of the emperor Lothaire II. and Pope Innocent II. (*Muratori, Antiquit. Italicæ Medii Ævi, tom. i. Dissert. 4. Fleury, Hist. Eccl. vol. xv. book lxx. n. 5.*) This custom appears to be even more ancient still; for it is expressly mentioned in many copies of the Sacramentary of St. Gregory, which were in use in France and Rome in the ninth century. (*Sacram. Greg. De Coronatione Imper. in Liturg. Rom. vet. edited by Muratori, Venetiis, 1748, 2 vols. fol. vol. ii. p. 464.*) We have in another place assigned the principal proofs of the antiquity of these copies of the Sacramentary of St. Gregory (*ch. ii. n. 156, note 1*). But however that point of criticism be settled, it is certain that the emperors who showed this mark of respect to the pope, did no more than follow the example set by Pepin the Little, who considered it an honour to perform the function of esquire to Pope Stephen II. in 754. (*Anastas. Bibliothec. Vita Stephani II. Fleury, Hist. Eccl. vol. ix. book xliii. n. 11.*)

by the judgment of the Church, the emperor, as well as the other secular princes and judges, are bound to compel him by proscription (civil).

269. *Provisions of the same Code on the Election of the Emperor.*

Many articles of this code give remarkable details on this matter. The following are the principal provisions relating to the election of the emperor. "The election of the *king* (of the Romans) belongs by right to the Germans; he receives the power and the title of king, when he is consecrated (crowned) and placed on the throne at Aix-la-Chapelle, with the consent of those who have chosen him; but *when the pope has consecrated (crowned) him, then he receives the plenitude of the imperial power*, and the title of emperor.<sup>1</sup> The princes (electors) must not raise to the kingly dignity a person deformed, or leprous, or *excommunicated*, or *proscribed*, or a *heretic*. Should they choose a king with any of these defects, the other princes (of the empire) have a right to reject him, in the place where the imperial court assembles, provided, however, it be proved, as it must be, that the king elect is tainted with any of these defects."<sup>2</sup>

270. *Three Cases determined by this Law in which an Emperor may be excommunicated by the Pope.*

The twenty-ninth chapter specifies the case in which the emperor can be excommunicated. "None but the pope can put the emperor under ban (that is, excommunicate); nor can the pope do so except in three cases; first, if the emperor doubts the Catholic faith; second, if he abandons his lawful wife; third, if he destroyed churches (or other holy places). The pope has this right over the emperor after the emperor's coronation. If before that ceremony the emperor conduct himself in

<sup>1</sup> "Germani eligunt regem (*Romanorum*). . . . Quando ipse consecratur (et coronatur), et collocatur in solio Aquisgranensi, ex eorum voluntate qui ipsum elegere, tunc accipit potestatem et nomen Regis. Quando autem Papa eum consecravit (coronavitque), tunc plenariam habet imperii potestatem, et nomen Imperatoris."—Juris Alamannici cap. xviii. n. 1, 2, 3.

<sup>2</sup> "Membris capti, item leprosi, et qui sunt *vel excommunicati, vel proscripti et hæretici*, non debent eligi (in regem Romanorum) à principibus (electoribus). Quod si autem eligunt talem aliquem, reliqui principes eum jure rejiciunt in illo loco, quo curia imperialis est convocata, si electus de unico horum defectuum est convictus, uti juris est."—Juris Alamannici cap. xxii. n. 8, 9.

a reprehensible manner to a bishop, or to any other person, the complaint must be lodged, first, with the *count Palatine of the Rhine*,<sup>1</sup> who shall present it in person to his archbishop; then the latter can put the king under ban (excommunicate him)."<sup>2</sup>

271. *Consequences of this Excommunication according to the Ancient Laws of the Empire.*

To comprehend fully the sense of this article in all its consequences, we must observe, in the first place, that the law of Suabia distinguishes, in several passages, two sorts of *bans*; namely, the Church ban, or excommunication, and the secular ban, or proscription, involving the loss of civil rights.<sup>3</sup> The ban, mentioned in chapter 29, being pronounced by a bishop, or by the pope himself, is properly the Church ban, or excommunication. But it must be remarked, in the second place, that, according to the civil law then common to all the Catholic states of Europe, and especially in Germany, excommunication ordinarily entailed, within a certain time, civil proscription; as the latter ordinarily entailed, within a certain time, excommunication. We have already given the principal provisions of the Suabian law on that point.<sup>4</sup> On that occasion, we observed, that the interval of time required to give to excommunication its temporal effects, was not the same for princes as for private individuals. According to the law of Suabia, the interval of time for the latter was six weeks; but, *by the ancient customs of the empire*, this time was extended to an entire year for the emperor. This had been the law or custom long before the compilation of the Law of Suabia, as appears from the testimony of authors contemporary with Gregory VII.<sup>5</sup> The language of those

<sup>1</sup> According to ch. xxi. of the Laws of Suabia, the count Palatine of the Rhine was the ordinary judge of the emperor.

<sup>2</sup> "Imperatorem in bannum declarare nemo potest, nisi Papa. Hoc tamen non facere debet, nisi ob tres causas. Una est si imperator de fidei orthodoxia dubitaret. Altera est si ab uxore diverteret. Tertia est si Ecclesias (aut alia loca pia) destrueret. Hoc juris obtinet circa imperatorem, quando coronatus est. At si antea (quam coronatus est) contra episcopum aliquem aut alium, aliquid (*querelâ dignum*) agit, tum primo loco querela illa ad comitem Palatinum debet deferri, qui inde archiepiscopo suo rem defert; qui (archiepiscopus) potest ipsum in bannum declarare."—Juris Alamannici seu Suevici cap. xxix.

<sup>3</sup> *Ibid.* cap. i. ii. cxxvii.

<sup>4</sup> Juris Alam. cap. i. iii. See especially ch. i. art. iii. n. 78, p. 418, &c.

<sup>5</sup> See the authors cited above, ch. ii. n. 96, 97.

authors, confirmed as it is by the admissions of the emperors themselves, justifies us in asserting, with a celebrated critic of the seventeenth century, that the penalty of deposition against an emperor who remained during a whole year under excommunication, "was founded on an ancient law of the empire, though it may be impossible to fix its precise date."<sup>1</sup>

272. *The Penalty of Deposition pronounced by the same Laws against heretical Princes.*

The 351st chapter of the Laws of Suabia, which treat of heretics, contains the following clauses. "All lay princes not punishing heretics, but defending and protecting them, ought to be excommunicated by the ecclesiastical judge; and if they do not amend within a year, the bishop who had excommunicated them must denounce them to the pope; stating, at the same time, how long the criminal has been under the sentence of excommunication inflicted on him in punishment of his crime. After that, the pope ought to deprive the prince of his princely rank, and of all his honours. Thus must the great ones as well as the poor be judged. We read also that Pope Innocent III. deprived the emperor Otho IV. of the empire for other crimes. And justly have the popes acted so; for God said to Jeremias, 'I have appointed thee judge over every man and every kingdom.'"<sup>2</sup>

273. *Inferences from these Provisions.*

From these various provisions of the ancient German law, it clearly follows, that the sentence of the pope which deposed the

<sup>1</sup> "Istâ lege (depositione scilicet imperatoris excommunicati), licet proprium ejus fontem nequeam producere, *vivebat olim Romanum* [id est, *Romano-Germanum*] *imperium*: ideoque Romani pontifices, antequam ad augusti principis procederent exauctorationem, excommunicationem præmittebant."—Christ. Lupus, *Decreta et Canones*, tom. iv. Scholia in Gregorii VII. Dictatus, can. xii. p. 457.

<sup>2</sup> "Quicumque principum laicorum hæreticos non punit, sed ipsos defendit et fovet, hunc judicium ecclesiasticum debet excommunicare; et si intra integrum annum non respicit, episcopus qui ipsum excommunicaverat, Papæ denuntiare debet ipsius crimen, et simul exponere per quantum temporis ille, ob crimen suum, sit in statu excommunicatorum. Hoc facto, *Papa debet illum privare munere principis, et omnibus honoribus suis*. Ita judicandum est, tam de magnatibus quam de pauperibus. Nos etiam legimus quod papa Innocentius deposuerit imperatorem Othonem ab imperio, ob alia crimina. Id pontifices jure faciunt: Deus enim dixit Jeremiæ: *Ego te judicem constitui omni homini et omni regno*."—Juris Alamannici seu Suevici cap. cccli.

emperor, deprived him, not only of the imperial title, but of all his rank, and all his honours ; and, consequently, of the title and the rights of king of Germany ; so that, by that sentence, the electors were authorized to elect another king, who should then apply to the pope, to obtain from him the imperial title and crown. These provisions of the German law, in the middle ages, will, no doubt, astonish many readers ; and it is much to be regretted that the majority of modern writers who have treated of the history of that period, were ignorant of this ancient jurisprudence, which throws such a flood of light on the history of those painful contests which so long divided the priesthood and the empire.

§ 3. *Discussion of the Principal Objections that may be raised against our opinion.*

274. *First Objection: The Divine Power of binding and of loosing appealed to by the Popes in support of their Sentences of Deposition.*

The mere statement of our proofs presents, we believe, a solution of the objections that may be proposed against our opinion, and which have really been proposed in some periodicals which reviewed the first edition of this work.<sup>1</sup>

The chief objection, and that which at first sight appears most plausible, is founded on the language usually employed by the popes, who, in the sentences of deposition pronounced against princes, proceed on the divine power of binding and loosing, without mentioning this constitutional law of which we speak ; a course which appears to imply that they regarded the divine right as the sole foundation of that power which they claimed of deposing princes.

The observations which we have already made on the sentences of Gregory VII. against the emperor Henry IV., and of Innocent IV. against Frederick II., fully solve this difficulty.<sup>2</sup> From these observations it follows, in fact, first, that Gregory VII., the first that ever pronounced a sentence of deposition against a sovereign, did not pretend to ground his pro-

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<sup>1</sup> Journal des Débats, 29 September, 1839. Revue Ecclésiastique, January, 1840. Le Semeur, 8 Sept. 1841.

<sup>2</sup> Supra, n. 191, 213.

ceeding solely on the divine right, but on laws both human and divine.<sup>1</sup> Secondly, that in the opinion of Gregory VII. and of his successors, as well as of all their contemporaries, the deposition of an excommunicated prince was not a necessary consequence of excommunication, and did not follow from the divine power of binding and loosing alone, but from a special provision of a human law, and principally from the laws of the empire, which declared deposed of his throne any prince remaining obstinately under excommunication during a whole year.

These important facts once proved, there is no difficulty in understanding how the popes could most naturally cite, in support of their sentences of excommunication and deposition against princes, the divine power of binding and loosing, though not considering it as the sole title of that deposing power which they claimed. It is, in fact, evident, that at a time when constitutional law attached the penalty of deposition to excommunication or heresy, the pope's sentence against such excommunicated or heretical prince was grounded both on the divine right and on human law. It was founded on the divine right, not merely in so far as it declared the prince heretical or excommunicated, but still more in so far as it enlightened the conscience of his subjects on the extent and limits of the obligation arising from the oath of allegiance which they had taken to him. It was founded on human law also, in so far as it declared the prince deprived of his rights, in punishment of his remaining obstinately in heresy or excommunication. It is obvious also why the pope's sentence mentioned only the divine power of binding and loosing; for it was on that divine power that the sentence was really grounded, considered in its principal, direct and immediate object; for the deposition was effected by excommunication,—its natural result, according to the constitutional law then in force.

275. *Second Objection: Pretended Incompatibility of the Spirit of the Gospel with the Temporal Power of the Pope in the Middle Ages.*

Another objection, which has been very confidently proposed in the periodicals already cited, is founded on the pretended

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<sup>1</sup> See the letter of Gregory VII. to the German lords, which we have already cited, n. 191.

incompatibility of the spirit of the Gospel with the prodigious power which the maxims of the middle ages attributed to the Church in temporal matters. A custom or maxims contrary to the spirit and the maxims of the Gospel never can have the force of law, nor, consequently, establish a constitutional law. Now, the custom and maxims of the middle ages, which attributed to the pope and council so great a power over sovereigns, were contrary, it is contended, to the spirit and maxims of the Gospel. "If ever there was an extraordinary contrast," it is said, "is it not that of this Church, which, while it presented a Gospel of purity and simplicity, exhibited, nevertheless, all the pomp of wealth and power?"<sup>1</sup> It has, moreover, been contended, "that the custom and maxims in question were incompatible with the religious duties and obligations imposed on the bishops; and especially with the character and duties of the pope; finally, that the alliance of coercive authority with spiritual authority was repugnant to the essence of Christianity, and contrary to its spirit."<sup>2</sup>

276. *Temporal Power not necessarily Incompatible with Spiritual Power.*

*Answer.* We are at some loss to understand how this objection can be proposed sincerely against our opinion, at least by Catholic writers;<sup>3</sup> and we are convinced that those who propose it so confidently never adverted to the manifestly untenable consequences which would follow from the principle of their objection.

This pretended incompatibility of the temporal with the spiritual power, in the person of ministers of religion, should, in fact, arise either from the nature of that ministry itself, or from the free and positive institution of God; now, a moment's reflection proves clearly the falseness of both suppositions.<sup>4</sup>

<sup>1</sup> Journal des Débats, ubi supra, p. 4, col. 2.

<sup>2</sup> Revue Ecclésiastique, ubi supra, pp. 228-230.

<sup>3</sup> This objection, we have already stated, was proposed by Calvin, and some other heretics before him, against the temporal power of the clergy in general, and against the temporal sovereignty of the Holy See in particular. See first part of this work, ch. ii. art. ii. n. 87, note. See also second part, n. 5, ch. i.

<sup>4</sup> Bellarmin, De Rom. Pontif. lib. v. cap. ix. x. Recueil de Pièces d'Hist. et de Litt. (by the Abbé Granet and P. Desmolets), vol. i. Dissert. sur la Grandeur Temp. de l'Eglise. Carrière, Præl. De Just. et Jure, vol. i. n. 94, p. 132, &c.

To pretend, in the first place, that the sacred ministry is, by its nature, incompatible with temporal power, is a palpable contradiction to the Scriptures, which show us the temporal power united with the spiritual in the most holy personages in the old law: Melchisedec, Abraham, Isaac, Jacob, Moses, and many other personages, were both kings and pontiffs, priests and prophets. As priest, Moses offers to God incense and victims, consecrates the altar and the tabernacle, and confers the sacerdotal dignity on his brother Aaron; <sup>1</sup> as prince and temporal governor, he gives laws to the people of God, administers justice, exercises the right of life and death, and all other rights attached to temporal sovereignty.<sup>2</sup> The high priest Heli held, during forty years, the office of priest and that of judge in Israel.<sup>3</sup> Judas Machabæus, Jonathan, Simon, and their successors, down to Herod's time, were all priests, and, at the same time, political heads of the Jewish people.<sup>4</sup> Further still, the union of the spiritual and temporal in the person of the high priest of the Jews was ordinary and normal, by the institution of God himself; for it is certain that the high priest had a very extensive authority in the administration of justice, and that most causes were subject to his court of final appeal.<sup>5</sup> These examples prove evidently, that temporal power is not essentially, or by its nature, incompatible with the character and perfection of the ministers of God.

277. *This Incompatibility not introduced into the New Law by Jesus Christ.*

Will it be said that this incompatibility, though not founded in the nature of things, was established in the New Law by the free will of its divine Author? This second supposition is not more tenable than the first. For, first, in what text of the Gospel has Jesus Christ prohibited his Church and her ministers to possess riches, and to hold temporal power? He did not, it is true, confer on them either wealth or power; He declared to his Apostles that his kingdom was not of this world; and He left to his Church no other jurisdiction, but that whose object is

<sup>1</sup> Exod. xl. ; Levit. viii.

<sup>2</sup> Exod. xviii. xxxi.

<sup>3</sup> 1 Kings i. iv.

<sup>4</sup> 1 and 2 Machab. Joseph. Hist. of the Jews, book xii. &c.

<sup>5</sup> Deut. xvii.

to govern men in the order of eternal salvation. But where is it said that He prohibits his ministers to acquire or to possess wealth or temporal power, by titles legitimate in themselves, and acknowledged as such by society at large? Where do we find that he has rendered them incapable of accepting wealth and power when offered to them; and which might be conferred on them by the liberality of princes or of people? Such suppositions are so manifestly groundless, that no intelligent man can seriously support them.

278. *Constant Belief and Practice of the Church on this Point.*

If there were any doubt on this point, it should naturally be explained by the constant practice and belief of the Church from her first institution. Now, the least knowledge of history shows, that the Church has, at all times, believed her ministers capable of acquiring and of possessing wealth and temporal power. Every one knows that, from the time of Constantine's conversion, the wealth and temporal jurisdiction of the Church daily increased by the favour and liberality of that great prince, of his most illustrious successors, and of almost all Christian princes. Every one knows that most holy bishops, since Constantine's time, including St. Leo, St. Gregory the Great, St. John the Almoner, and many others, possessed, as bishops, or as heads of the Church, very extensive temporal jurisdiction; frequently considerable principalities, and real temporal sovereignties, many of which exist to this day. Every one knows, in fine, that the Church, far from condemning this wealth, this jurisdiction, these temporal principalities and sovereignties, has often defended them, by her decrees, against the invasions of the temporal power, so as even to condemn, in many councils, the doctrine of heretics, who had presumed to attack, on that ground, the right of the ministers of religion; and also to excommunicate laymen, even of the highest station, who deprived the Church unjustly of her property, her jurisdiction, or her temporal rights.<sup>1</sup> What more can a true Christian, and especially a Catholic require, to prove that wealth and temporal

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<sup>1</sup> Concil. Constant. ann. 1415, sess. 8 (Labbe, Concil. vol. xii. p. 46). Concil. Trid. sess. 22, cap. xi. De Reform. See also the authors cited above, n. 276, note 2.

jurisdiction, and even sovereignty, are compatible with the office of ministers of religion ?

279. *This Practice and Belief justified by Reason.*

Reason alone justifies the belief and practice of the Church in this matter. Our present adversaries admit, in fact, the vast benefits which society derived from that temporal power which custom, and the principles of the middle ages, attributed to the Church and to the pope. They even admit that, politically speaking, this power has produced more good than evil.<sup>1</sup> "Were there question," observes one of our adversaries, "of judging the Church as a political institution, and the popes as sovereigns, or even as heads of a religion excellent indeed, but still not divine, I would cordially admit, that the great power of the Church and of the popes was, politically speaking, rather a good than an evil. I confess, I can hardly believe that the sting of pride and ambition did not inflame somewhat the zeal of these proud popes ; I admit, however, that *many* of the princes whom they deposed deserved it by their crimes."<sup>2</sup> I know that as the clergy had knowledge, it was natural they should have power. I admire that ascendancy of faith, which subjected kings and nations to a feeble priest. The monarchy of the pope is the miracle of moral power." After such admissions, it is difficult to conceive how he can represent the temporal power of the clergy, during the middle ages, as opposed to the spirit of the Gospel. What can be more conformable to that spirit than the exercise of a power so useful to society in its actual circumstances ? This power, no doubt, like all human institutions, may have had many inconveniences ;<sup>3</sup> but since it is admitted that it produced more good than evil, it must, therefore, have been a useful power ; the Church and the pope conferred a real benefit on the Church by exercising it ; and far from being liable to censure for having accepted it, the zeal

<sup>1</sup> *Revue Ecclés.* ubi supra, p. 228. *Journal des Débats*, ubi supra, p. 4, col. 2. *Le Semeur*, ubi supra, p. 284, col. 1.

<sup>2</sup> This author seems to think there were many kings deposed : a mistake, as we shall soon see (*infra*, ch. iv. art. i. § 2).

<sup>3</sup> In the following chapter it will be seen, that the evils occasioned by this power have been palpably exaggerated by a crowd of modern authors.

which they were bound to have for the good of society, required them to accept it.

280. *Inadmissible Consequences of the contrary Opinion.*

Though these reflections are amply sufficient to solve the objection proposed to us, we must add, that the principles on which the objection is founded, lead necessarily to consequences which no true Catholic can admit. From these principles, it would, in fact, necessarily follow, not only that the Holy See could not lawfully exercise the extraordinary power which the principles of the middle ages attributed to its own Catholic sovereigns, but also, that it could not lawfully acquire that temporal sovereignty of which we see it possessed since the eighth century ; and farther still, that the wealth and temporal power which the clergy has enjoyed in all the Catholic states of Europe, since Constantine's conversion, are contrary to the spirit and maxims of the Gospel. We do not see how those consequences can be admitted, without reviving the doctrine of Wickliffe, which was solemnly condemned by the Council of Constance, in 1415.<sup>1</sup>

§ 4. *Confirmation of our Opinion by Eminent Authorities, and by the Constitution of many Modern States.*

281. *Remarkable Admissions of Bossuet.*

Having established our opinion by the testimony of history, it may not be useless to confirm it by some eminent authorities, and by the constitution even of many modern states.

I. Among the authors favourable to our system, the great bishop of Meaux may, we believe, be confidently cited. In fact,

<sup>1</sup> Among the errors of Wickliffe, condemned in the eighth session of the Council of Constance, we find the following propositions :—

10. "Contra Scripturam sacram est, quòd viri ecclesiastici habeant possessiones.

32. "Ditare clerum, est contra regulam Christi.

33. "Silvester papa, et Constantinus imperator errârunt, Ecclesiam dotando.

36. "Papa, cum omnibus clericis suis possessionem habentibus, sunt hæretici, eò quòd possessiones habent ; et consentientes eis, omnes videlicet domini sæculares, et cæteri laïci.

39. "Imperator et domini sæculares sunt seducti à diabolo, ut Ecclesiam dotarent bonis temporalibus."—Labbe, Concil. tom. xii. p. 46, &c. Fleury, Hist. Eccl. vol. xxi. book ciii. n. 28.

it is certain that, though not embracing our opinion in all its extent, Bossuet manifestly favours it in several passages in his Defence of the Declaration of 1682 ; that is, the very work in which he protests most energetically against the conduct of Gregory VII., and of other popes, who attributed to themselves the power of deposing sovereigns. We have had already occasion to show how favourable he is to the directive power of the Church and of the pope in this matter.<sup>1</sup> But he goes much farther in many passages of the same work, in which he freely admits the consent formerly given by princes to the decrees of councils which declare heretics deprived of their dignities, and of all their temporal rights.<sup>2</sup> He also acknowledges the rights of sovereignty which the Holy See formerly enjoyed over many European states ; and he almost admits that the pope had over the empire of Germany an equal, if not a superior right. “ We know full well,” he writes,<sup>3</sup> “ that the popes and the whole ecclesiastical order held, from the concession of princes, and by long possession, properties, rights, and sovereignties, as legitimately acquired as the most inviolable properties among men. Still more, should it be contended that the popes have acquired over the Roman-Germanic empire by usage, by custom, or by legitimate prescription, a right equal, or superior, or similar in any manner to what they had acquired over the two Sicilies, Sardinia, and over, perhaps, other kingdoms, we leave the discussion and settlement of that question to the Germans, and to all those whom it concerns, and to the interpreters of the civil law. As for us, it is no concern of ours ; the clergy of France have no interest whatsoever in it ; for we merely declare

<sup>1</sup> Supra, n. 172.

<sup>2</sup> Supra, ch. ii. n. 118.

<sup>3</sup> “ Nos enim satis scimus, *Romanis pontificibus et sacerdotali ordini, regum concessione, ac legitimâ possessione, bona quesita, jura, imperia ita haberi ac possideri, uti quæ inter homines optimo jure habentur ac possidentur. . . . Ac si contendant Romanis pontificibus, quale in utraqûe Siciâ aut in Sardinia, aliisque fortè regnis, tale sibi, aut majus etiam, aut aliquatenus simile, usu, consuetudine, possessione legitimâ, in Imperio Romano-Germanico ordinando, quesitum esse jus ; illud Germani et quorum interest omnes, et juris civilis interpretes querant, et decidant utcumque libuerit : nihil hæc ad nos pertinent, neque ullam, eâ de re, questionem movet clerus Gallicanus ; id enim tantum declarat, reges et principes in temporalibus nulli ecclesiasticæ potestati, Dei ordinatione, subjici, neque auctoritate clavium Ecclesiæ directè vel indirectè deponi, aut illorum subditos à fide atque obedientiâ, ac præstito fidelitatis sacramento solvi posse.*”—Defens. Declar. lib. i. sect. i. cap. xvi. pp. 272, 273.

that kings and princes are not subject, in the temporal order, to any ecclesiastical power by the order of God; that they cannot be deposed, either directly or indirectly, by virtue of the keys of the Church; finally, that by virtue of that power, their subjects cannot be absolved from the fidelity, obedience, and oath of allegiance which bind them to their prince."

In the course of the same work, Bossuet applies these principles to explain the rights which the Holy See attributed to itself over the empire of Germany, over England, and over many other states. When treating of the contests between Philip the Fair and Boniface VIII., he expresses himself on this subject to the following effect.<sup>1</sup> "Whilst Germany, England, and other countries had submitted to the pope in temporals, the French believed that the dignity and liberty of the kingdom of France had been maintained by our kings more effectually than those of other kingdoms. At once Christian and powerful, the kings of France were more submissive than many others to the pope in spirituals; but they were not, in any way, subject to his authority in temporals."

282. *These Admissions should correct many Parts of the Defence of the Declaration.*

From these different passages we must conclude, that, in reality, Bossuet is not so opposed as might be imagined to the opinion which assigns the constitutional law of the middle ages to explain the conduct of popes and councils that formerly deposed secular princes. We are not called upon here to explain how Bossuet could reconcile with opinions so moderate, the severity with which he condemns the conduct of those popes, in the course of the same work.<sup>2</sup> It is enough for us to have shown that, notwithstanding his well-known opposition to Ultramontane principles, he is yet so favourable to explanations

<sup>1</sup> "Huc accedit quod, cùm Germani, Angli aliique, *in temporalibus colla subdidissent*, Franci existimabant super alia regna hujusce regni dignitatem ac libertatem, à regibus ac majoribus suis, fuisse defensam: quippe qui, Christianissimi pariterque fortissimi, in spiritualibus quidem Romano pontifici maximè omnium paruerant, in temporalibus verò minimè omnium huic potestati se obnoxios fecerant."—Defens. Declar. part. i. lib. iii. cap. xxiv. p. 682. See, in the same work, ch. ix. book iv. We have already seen the grounds for Bossuet's assertion, that France had maintained her independence, n. 256, supra.

<sup>2</sup> Bossuet, Defens. Declar. lib. i. sect. i. cap. vii.; lib. iii. cap. ii. ix. x. et alibi passim.

which, in reality, vindicate most triumphantly the conduct of these popes. We shall only remark, that the bitterness with which he expresses himself on this subject, in many passages of his work, arose, very probably, from the painful circumstances in which it was composed, and which should naturally impart to his pen, at least in the first draught, a certain tincture of harshness and asperity. Of this Bossuet himself appears to have been sensible; it is well known, that during the closing years of his life he applied himself ardently, and at different times, to revise that work, with the view of softening down its manner, and of expunging whatever might appear inconsistent with the respect and deference due to the Holy See. It is equally certain, that, notwithstanding all the corrections and modifications which he thought it his duty to make in the first draught of his work, he never thought it expedient to publish it; it was even his own wish that it never should be published, lest its publication might revive painful controversies, and draw down on his own head the anathema of the Holy See.<sup>1</sup>

283. *Opinion of the Old Faculty of Louvain.*

But whatever countenance the bishop of Meaux may have shown to the opinion which explains and vindicates the conduct of popes and councils to sovereigns, during the middle ages, by the constitutional laws of that period, it is certain that this opinion was advocated much more plainly during the last century, and in our own times also, by learned authors. In support of this explanation, we have cited already the authority of Fenelon and of Count de Maistre.<sup>2</sup> To these eminent authorities we may also add that of the old Faculty of Theology of Louvain, whose opinion on the present question was made known to us by the testimony of M. Van-Gils, one of its most distinguished members, in his "Letters on the Opinions of the old Faculty of Theology of Louvain regarding the Gallican Declaration of 1682."<sup>3</sup> M. Van-Gils attests, that Fenelon's

<sup>1</sup> Hist. de Bossuet, vol. ii. book vi. Confirmatory Evidence, n. 1, pp. 393, 394, 418, 419, &c. Nouveaux Opuscules de Fleury, 2nd edit. p. 295, &c. editor's note.

<sup>2</sup> Supra, n. 8, &c.

<sup>3</sup> This letter, which was addressed in 1826 by M. Van-Gils, then president of the seminary of Bois-le-Duc, to a Paris ecclesiastic, was printed at Louvain,

opinion on the constitutional law of the middle ages relating to the deposition of sovereigns, was the opinion generally held by the Louvain Faculty of Theology at the time of its suppression, in 1788. "I declare," he writes, "that in my time (and I passed a long period of my life in Louvain), I never heard the subject of the first proposition of the Declaration of 1682 discussed, either in the public defences, or in the lectures, or in theological theses. It was not regarded as a theological question; but rather as a part of constitutional law; and whenever it was the subject of private conversation, the opinion commonly adopted was Fenelon's, though not known to be his until the publication of the complete edition of his works.<sup>1</sup> This opinion maintained that, after the conversion of all Europe to the one Catholic faith, the constitutions, or constitutional laws, of all these nations, which were so deeply attached to the Catholic religion, were, so to speak, rooted in the Catholic faith, and in its laws, as the sole foundation of the fidelity of the sovereign, and of the subjects; that constitutionally the sovereign, or the legislative power, and the laws themselves, should be Catholic; so that the legislator, by ceasing to be a Catholic, and an acknowledged member of the Catholic Church, ceased to be legitimate sovereign, and laws contrary to Catholic laws ceased to be laws. And who had the right of pronouncing on the Catholicity of these sovereigns and laws, if not the supreme head of the Church? It even appeared to follow, that any citizen or subject, by ceasing to be Catholic, ceased to be a citizen, and became a *felon* or rebel to the fundamental law, and subjected himself to the penalties of felony.<sup>2</sup> Possibly these laws are not found written in national codes (things unknown in

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in 1835 (14 pp. 8vo.), from a copy given to the editor by M. Van-Gils himself, who had died the preceding year in the seminary of Bois-le-Duc. A short notice of this respectable ecclesiastic is given in the *Ami de la Religion*, vol. lxxx. p. 489.

<sup>1</sup> The author alludes here to the *Dissertation sur l'Autorité du Souverain Pontife*, published for the first time in 1820, in vol. ii. of *Œuvres de Fénelon*.

<sup>2</sup> This conjecture of the writer is substantiated by facts. It is certain that, by the jurisprudence of all the Catholic states of the middle ages, notorious heretics were deprived of civil rights. We have already seen that this legislation was then common to all the Catholic states of Europe, and that it had its origin in the Roman law. (*Supra*, Introduction, n. 67.)

many countries),<sup>1</sup> but they were not the less engraved, like many others, in the hearts of all ;—of sovereigns themselves, as well as of their subjects.”<sup>2</sup>

284. *General Disposition in the Present Day to admit this Explanation.*

Many Catholic authors have openly adopted or favoured this opinion latterly ; it can, we think, be confidently asserted, moreover, that there is at present a general disposition among intelligent men to adopt this explanation, and thus to do justice to the memory of the popes and councils of the middle ages, so long the butt of odious declamations upon this subject. This assertion of ours is, perhaps, sufficiently proved by referring to the account already given in our Preface, of the favourable reception which our first edition met with in France. But, to confirm our assertion more fully, we shall collect here some testimonies, selected from a great number of others, which the

<sup>1</sup> We have seen that these laws were written in the national codes of Spain, England, and the German empire (supra, § 2, n. 247).

<sup>2</sup> Lettre de M. Van-Gils, pp. 6, 7. The opinion here attributed by the author to the doctors of the Louvain, seems at first sight very different from that given in an answer of the theological faculty of that city to the questions addressed to them by Mr. Pitt, in 1788, on the independence of the English crown of the Holy See. (This answer is found in Butler's *Memoirs of English Catholics*, London, 1816, fol. It was republished among the *Pièces Justificatives* of the following works :—*Lettre de Monseigneur l'Evêque de Chartres à un de ses Diocésains*, Paris, 1826, 8vo. ; *Antidote contre les Aphorismes de M. de Lamennais*, par M. Boyer, Paris, 1826, 8vo. ; *Affre, Essai Hist. sur la Suprém. Temp. du Pape*, Amiens, 1829, 8vo.) But it should be remarked, in the first place, that this was not an answer of the old and true Faculty of Louvain ; it came from some professors in the séminaire général, which was then established in that city by Joseph II., and which, without the faintest shadow of right, assumed to itself the titles and prerogatives of the old faculty. This answer was, in fact, dated in 1788, November 18. Now it is certain that at this time the true Faculty of Louvain could not answer the questions of Mr. Pitt, the majority of its members having been dispersed or banished the preceding year, in punishment of their attachment to the Catholic doctrine, and their opposition to the innovations of Joseph II. (See the *Letter of M. Van-Gils*, p. 5 ; *Mémoires pour servir à l'Hist. Ecclés. du xviii. Siècle*, vol. iii. pp. 125, 161, &c. ; *Synopsis Monument. Ecclesiæ Mechlin. tom. iii. p. 1099.*) Moreover, the answer addressed to Mr. Pitt is signed “*De Mazière, doyen.*” Now this ecclesiastic certainly was not dean of the old Faculty of Louvain, but a member of the new Faculty established by Joseph II., the doctrine of which was denounced as dangerous and incorrect by the Cardinal de Frankenberg, archbishop of Malines. In fine, if the answer in question be attentively examined, it will be seen that it does not consider the question of the independence of the crown of England, according to the constitutional law of the middle ages, but according to the divine law, and the constitutional law of the eighteenth century.

limits of our work prevent us from citing, and which we can only refer to in our notes.

One of the most eminent, unquestionably, is the learned Mœhler, professor at Munich, so well known by his controversial writings. "It is true," he writes, "that the pope's authority extends to spiritual things only. If he passed those limits during the middle ages, the state of the times accounts for it. Besides their essential rights, the popes acquired, by the force of circumstances, accessory rights, liable to various modifications; so that this branch of their power seems to change with the times."<sup>1</sup> On this principle also, the conduct of the popes and councils of the middle ages to sovereigns is accounted for, in the new *History of the Church*, published by M. l'abbé Receveur, professor of Theology in the Sorbonne, and in a great number of other works, more or less known, according to the different talent and reputation of their authors.<sup>2</sup>

285. *Proofs of this Disposition, even among Protestants.—Testimony of Leibnitz and Eichorn.*

But it is especially worthy of remark, that many Protestant writers, notwithstanding their fatal prejudices against the Church and the Holy See, readily admit this same principle to account for the extraordinary power which popes and councils of the middle ages claimed over sovereigns. This is the opinion particularly of Leibnitz, in different passages already cited from his works.<sup>3</sup> A recent writer, not less attached to the Protestant

<sup>1</sup> Mœhler's *Symbolick*, vol. ii. book i. ch. v. § 43.

<sup>2</sup> Receveur, *Hist. de l'Eglise*, vol. v. pp. 127, 141, 161, 198, 203, 409, 591, &c. We have already remarked (*supra*, n. 16, note), that in his new edition of Berault-Bercastel's *History of the Church*, M. Henrion substantially adopts this opinion, without, however, absolutely excluding the opinion of the divine right, which he favours plainly enough in many passages of that work. The explanation adopted by M. Receveur had been admitted long before by Feller, *Diction. Historique*, art. Grégoire VII. and IX., Martin IV., Frederick I. and II. &c.; *Catéchisme Philos.* n. 510, second last note; Milner, *Excellence of the Christian Religion*, vol. ii. p. 580; Mœhler, *Manual of the History of the Middle Ages*, ch. viii. § 2, p. 418. See review of that work in the *Ami de la Religion*, vol. xcvi. p. 289, and especially p. 292, in which the editor points out several corrections to be made in the passage which we have cited. De Montalembert, *Hist. de Sainte Elisabeth*, Introduction, p. 21, 26, &c.; De Falloux, *Hist. de S. Pie V.* Préface, p. 8; De Châteaubriand, *Etudes Historiques*, Préface, p. 117; Artaud de Montor, *Consid. Histor.* pp. 75, 227, &c.; *Journal des Savans*, ann. 1841, p. 469, &c.

<sup>3</sup> *Supra*, ch. ii. n. 124, &c.

religion, than justly famous for his researches on the history of the German empire and laws, expresses himself on this subject in a manner more decisive and more favourable to the Holy See. Frederick Eichorn, son of the famous commentator on the bible, and professor of history in the University of Gottingen, published, in 1821, the third edition of his History of the German Empire and Laws, in which he sums up in the following terms the system of the constitutional law of Europe during the middle ages. "According to the divine destiny of the Church, Christianity embraces all the nations of the earth, forms a whole; whose interests are confided to the charge of a power, which God himself has vested in certain persons. Power is of two sorts, spiritual and temporal. Both are intrusted to the pope, in his capacity as vicar of Jesus Christ, and supreme head of the Christian religion.<sup>1</sup> From him, consequently, and dependently on him, and under his surveillance, the emperors, as visible heads of Christendom in the temporal order, and all princes in general, held their temporal power.<sup>2</sup> The two powers are bound mutually to support each other.<sup>3</sup> All power, therefore, comes from God, since the state itself is of divine institution; but the spiritual power belongs exclusively to the pope, who communicates a share of it to the bishops, as his assistants (*adjutores*), to exercise it under him. The Church and State form but the one Christian society, though externally they appear to be two distinct societies, and can, in that capacity, regulate by contracts their mutual relations with each other. Power, whether spiritual or temporal, to be exercised, must be in part *enfeoffed* to others, whose submission to him from whom

<sup>1</sup> In support of this assertion, Eichorn cites in a note the extracts from the laws of Suabia, and the laws of Saxony, which we have already given (n. 267). He adds, that the constitutional law of the time was understood in this sense, not only by the papal court, but also by the general belief; and that the opinions of the papal court on this point are developed by Gervase of Tilbury (a lord of Otho's court), in the Prolegomena to his work entitled, *Otia Imperialia*. In another place we have cited the opinion of this last author (ch. ii. n. 145).

<sup>2</sup> Eichorn says, in a note to this passage, "that the power of princes is an emanation from that of the emperor." This opinion is held by many German juriconsults, but is far from being unquestionable.

<sup>3</sup> In support of this assertion, Eichorn cites in a note the provisions of the law of Suabia on the temporal effects of excommunication, which we have stated in another place (ch. i. n. 78).

they hold it is engaged by an express promise of special fidelity."<sup>1</sup> In support of this exposition, the author cites many passages from the ancient German law, to which we have just referred in a note, and which we have cited at greater length in another place.<sup>2</sup>

We venture not to assert that the system of constitutional law, such as is explained by this learned author in the passage just cited, was so generally admitted as he supposes, either in the time of Gregory VII. or at any later period. It is certain, that under Gregory VII. the king of England had not yet acknowledged, as Henry II. and his successors afterwards did, the pope as their sovereign lord.<sup>3</sup> Equally certain is it, that even when his sovereignty was admitted by a great number of the sovereigns of Europe, it was not admitted by the king of France; and also, that the dependence of the emperor on the pope was not, properly speaking, that of the vassal on his sovereign.<sup>4</sup>

286. *Importance of these Admissions.*

But, whatever may be thought of this constitutional law, in the sense just explained, the language of these Protestants is

<sup>1</sup> Eichorn, *Hist. de l'Empire et du Droit Germanique*, 3rd edit. vol. ii. p. 376. This remarkable passage was cited in full by Cardinal Wiseman, in the second number of *Annal. des Scien. Relig.* (supra, ch. i. n. 19, note). A summary of it is also given in Mœhler's *Manual of the Middle Ages*, p. 418.

<sup>2</sup> Since the first edition of this work, we have learned that M. Eichorn had published, in 1835, a fourth edition of his *History*, in which he modifies considerably the passage which we have quoted from him, and does not pronounce nearly so decisively for the existence of this constitutional law. The tone of hesitation, and even embarrassment, with which he expresses himself in the fourth edition, made us doubt at first whether we should retain the quotation from the third edition: however, on examining the matter more closely, we came to the conclusion that we should not expunge the passage, because it not only records the opinion which M. Eichorn had held during a long time, but also the opinion of many learned men, Protestants among the number, who received the third edition of his *History* with the highest admiration. Moreover, we are convinced that intelligent readers examining closely the texts of the *Swabian and Saxon laws*, cited by M. Eichorn in support of the passage in his third edition, will be of opinion that the said passage is but a true and faithful interpretation of the ancient German law.

<sup>3</sup> *Baronii Annales*, ann. 1079, n. 25. *Lingard, History of England*, vol. i. p. 510, 5th edit.

<sup>4</sup> See supra, ch. ii. n. 142; ch. iii. n. 256. Perhaps the author, though laying down the principle as general, knew that there were some exceptions. So Cardinal Wiseman supposes (supra); for he remarks that, in the time of Gregory VII. the king of England did not acknowledge the sovereignty of the Holy See.

certainly a keen reproof to a great number of Catholic writers, who can never touch on any of the delicate questions now under consideration without introducing reflections most injurious to the Holy See and to the Catholic Church. This complaint has already been made by the judicious editor of the *Pensées de Leibniz*, in a note on the passages which we have already cited from that author. "The grounds," he observes, "which Leibnitz has assigned for the power which popes claimed over the temporalities of kings is more imposing, and more specious than that proposed by the Ultramontanes. The respect with which this great man, though a Protestant, has always spoken of the bishops of Rome, and his anxiety to exculpate them, are a lesson to some Catholics, who, pursuing a directly opposite course, labour to exaggerate all that is objectionable in the conduct or measures of the popes; and who violate, in this matter, all the rules of decency and moderation, from which we should never depart, in the defence even of the most important truths."<sup>1</sup>

287. *This Constitutional Law retained in the Constitutions of even many Modern States.*

II. It will, no doubt, come with surprise on many readers when we add, that our opinion on the constitutional law of the middle ages, relating to the deposition of sovereigns, is confirmed by the constitutions even of many modern states. And yet it is certain, that after the fifteenth century, the period at which the middle ages close,<sup>2</sup> we find in the constitutions, or fundamental laws of the principal states, even many Protestant states, manifest remains of that ancient constitutional law which we say existed in the middle ages. The details which we are now about to present on this matter will serve at once to confirm our opinion, and to mark the duration of the ancient law and the date of its disappearance.

288. *Proofs of this Point with regard to Germany.*

To commence with the Catholic states of Europe; it is certain, that in the sixteenth century the emperor of Germany

<sup>1</sup> *Pensées de Leibniz sur la Religion et la Morale* (collected by M. Emery, superior general of St. Sulpice), Paris, 1803, 2 vols. 8vo. vol. ii. p. 400.

<sup>2</sup> See, on this subject, our Preface, p. i. note 1.

was elected under the express condition of his defending the Christian commonwealth and the pope, and of being his protector; that is the first article of the Imperial Capitulation, signed by Charles V. at his election in 1519; <sup>1</sup> its object and occasion are thus explained by the abbé Lenglet-Dufresnoy. "The just apprehensions," he observes, <sup>2</sup> "entertained by the electors, that they and the other princes and electors of the empire, after having once surrendered the reins of empire to a powerful master, should be reduced to slavery, suggested to them the necessity of prescribing limits to the authority of him whom they might select as their chief. They accordingly revived the old custom of the capitulations, which is traced back to the famous convention of Coblentz, in the year 860, whereby Louis the German promised to decide nothing in important matters, relating to his ecclesiastical or secular states, without their counsel and consent. With this view they drew up the convention afterwards so well known under the name of the Imperial Capitulation. This forms, as it has been well observed by the ingenious and profound author of the *Lettres Suisses*, <sup>3</sup> a treaty composed of many articles, a sort of contract made by the electors with him whom they wished to place on the imperial throne. He binds himself by oath to observe all the articles of that contract; by violating them he absolves all his subjects from their oaths to him; he forfeits all his rights over the empire; for the empire intrusted them to him on the condition that he would observe these articles. <sup>4</sup> . . . . It was at the election of Charles V. that these articles were revived, under the form of a written contract. That prince was already very formidable as king of Spain. And it was for that reason that

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<sup>1</sup> The text of this Capitulation is given in the *Corps Diplom. Universel* of Jean Dumont, vol. iv. part i. p. 298, &c.

<sup>2</sup> *Méthode pour Etudier l'Histoire*, by Lenglet-Dufresnoy, part iv. ch. v. art. i. (vol. ii. of the 12mo. edit. p. 333). See also Moreri's Dictionary, art. Capitulation; *Annales Raynaldi*, ann. 1519, n. 27.

<sup>3</sup> He alludes to the anonymous letters, published in 1703 and 1704, by John de la Chapelle, under the title *Lettres, Mémoires, et Actes concernant la Guerre présente* (the war of the Spanish succession), Bâle, 1703, 1704, 8 vols. 12mo. The passage cited by Lenglet-Dufresnoy, which we have marked in the inverted commas, is taken from the sixteenth letter, vol. iii. p. 146, &c. See also the thirteenth letter, *ibid.* p. 34.

<sup>4</sup> The continuation of this passage of the *Lettres Suisses* has been already cited, ch. i. art. i. n. 25.

Frederick, elector of Saxony, after refusing the empire himself, proposed Charles V., but only on condition that they should restrict his power by a capitulation, which would preserve the liberty of the nation; and that laudable custom has been happily retained in the election of every emperor since that time. The following are nearly the conditions of the contract: first, to defend the Christian republic and the pope, and to be his protector; secondly, to do justice, and to secure peace, &c."

289. *Kingdom of England.*

In the midst of the terrible agitation caused in England by the schisms of Henry VIII., in the sixteenth century, the English Catholics confidently cited against Elizabeth's claims the ancient laws of the Catholic states of Europe, and especially of England, which excluded heretical princes from the throne. This argument is urged with great energy in many works published at that time by English Catholics, and which produced a great sensation in England and on the continent.<sup>1</sup> These authors, it is true, contested Elizabeth's claims by arguments founded on the theological theory, then so common, which attributed to the Church and to the pope a jurisdiction, at least indirect, over temporals, by divine right. But on reading their works attentively, it is manifest that they never grounded their arguments on that opinion alone; but that they urged against Elizabeth laws human and divine, especially the ancient laws of England, which excluded heretics from the throne: and the express stipulation of professing the Catholic religion, made in the election of all the Catholic sovereigns of Europe since the sixth century. All the Catholics of England, it must be confessed, did not admit the force of these arguments; but it was denied by bad Catholics only, attached to the queen's party by fear or personal interest. The majority of those who remained faithful to the religion of their fathers, regarded Elizabeth as deprived of all right to the crown of England,<sup>2</sup> by a fundamental

<sup>1</sup> See the works of Allen and Doleman, mentioned in No. 9 of Confirmatory Evidence, at the end of this volume.

<sup>2</sup> [If they did, their conduct was directly contrary to their belief. See Lingard, *History of England*, vol. vi. pp. 212, 214, 225; see also p. 692, 5th edit. They may (as should naturally be expected) have been not loyal in heart, but they were not true to the standard of their faith in the field.—TRANS.]

law of the kingdom; and they were confirmed in that impression by the pope, and by many other sovereigns in Europe. It is well known, that the bull of Pius V., which declared Elizabeth's right to the English throne null, was published at the request, not only of a great number of English Catholics, but at the instigation also of the king of Spain; nor does it appear that other sovereigns regarded it as a violation of the royal dignity in the person of Elizabeth.<sup>1</sup> But what is most remarkable in this matter is, that Queen Elizabeth and Queen Mary Stuart, the two claimants of the crown of England, both attached the same importance to the pope's decision, in seeking to support their rights.<sup>2</sup> Elizabeth, though she affected to ridicule the pope's sentence, which declared the nullity of her pretension, really feared it, and left no means untried to obtain its revocation; and procured even the interference of the emperor Maximilian for that purpose. "The pope," Dr. Lingard writes, "answered the solicitations of that prince by asking whether Elizabeth deemed the sentence valid or invalid? If valid, why did she not seek a reconciliation with the Holy See? if invalid, why did she wish it to be revoked?"<sup>3</sup> With regard to Mary Stuart, it is certain that, immediately before her death, she wrote to Pope Sixtus V., on the 23rd November, 1586, a letter, in which, after professing her attachment to the Catholic faith, she confides all her rights to the care of the pope and the king of Spain. In that remarkable document, as the same historian observes, she recommends to the pope's care the conversion of her son to the Catholic religion; and conjured him to act for the attainment of that object in co-operation with the king of Spain (Philip II.), the only prince who had done her real service during her captivity. If James could not be converted, she makes over all her rights to the crown of England to the pope and that monarch. But if James is converted, her most cherished earthly wish is that he should be married to the infanta of Spain.<sup>4</sup>

<sup>1</sup> Spondanus, *Annales*, ann. 1569, n. 8, 9. Bzovius, ann. 1569, n. 30; ann. 1570, n. 13, &c. Bianchi, *Della Potestà e della Politia della Chiesa*, tom. ii. lib. vi. § 10, n. 4. Lingard, *History of England*, vol. vi. p. 222, 5th edit.

<sup>2</sup> Lingard, *ibid.*

<sup>3</sup> *Ibid.* p. 225.

<sup>4</sup> *Ibid.* p. 449.

290. *Spain and Sicily.*

About the same time the history of Spain supplies a remarkable illustration of the ancient laws of the kingdom, which excluded heretic princes from the throne. Philip II., when ceding Belgium, in 1598, to his daughter Isabella and her future husband, Albert of Austria, inserts the following among other stipulations: "Item; on condition, and not otherwise (this being the principal, and the greatest obligation), that all the children and descendants of the said spouses, imitating the piety and religion so eminent in them, shall live and die in our holy Catholic faith, as it is held and taught in the holy Roman Church; and before taking possession of the said Low Countries, they shall make oath to that effect, in the form appended to this article. And in case (which God avert) any of the said descendants should stray from our holy faith, and fall into any heresy, they, after having been declared such by our holy father the pope, shall be deprived of the administration, possession, and property of the said provinces, and their subjects and vassals shall not obey them more; but they shall admit and receive the nearest akin, being Catholic, who should succeed in the event of the death of the said apostate from the faith; and said heretic shall be reputed as if he had really died a natural death."<sup>1</sup> This remarkable provision was conformable to the ancient constitution of Spain, which is in force to this day in that kingdom, and which the constitution of 1808 secures, in these terms: "The religion of the Catholic, Apostolic, and Roman Church is, in Spain, and in all the Spanish possessions, the religion of the king and the nation; no other is tolerated."<sup>2</sup>

The Sicilian constitution, which has been maintained to the present time, is still more express on this point. The third title of that constitution is expressed in the following terms: "The king must profess the Catholic religion; if he profess any other worship, he forfeits, by the very fact, the throne of Sicily."<sup>3</sup>

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<sup>1</sup> This act is given in the *Corps Universel Diplomatique* of John Dumont, under the date of May 6, 1598 (vol. v. part i. p. 574). See, on this subject, *Spondani Annales*, ann. 1598, n. 15; *Synopsis Monument. Ecclesiæ Mechlin.* tom. iii. p. 1041.

<sup>2</sup> Dufau and Gaudet, *Collection des Constitutions*, vol. v. pp. 65, 86.

<sup>3</sup> *Ibid.* vol. iv. p. 464.

291. *Poland.*

This was also the ancient constitution of the kingdom of Poland, and it continued in force in the last century. Frederick Augustus I., who ascended the Polish throne in 1697, could not be elected until he had renounced Lutheranism. "Notwithstanding his conversion," observes a recent historian, "he found it difficult to defeat his competitor, the prince of Conti, who, by his high character, and the secret influence of the abbé de Polignac, French ambassador at Warsaw, had secured a strong party. Augustus had recourse to extraordinary largesses, and even to arms, to obtain an ascendancy in the diet. He was supported by the pope's nuncio, who certified the fact of his conversion."<sup>1</sup>

The ancient constitutional law of Poland on this point was expressly revived in 1768, by the Polish diet, in the following terms: "No prince, not being a Catholic, can aspire to the throne; nor can any princess be crowned queen, if she does not profess the Catholic religion: those who change their religion shall be punished by exile."<sup>2</sup> This article, it must be observed, is part of a treaty adopted by the Polish diet under the influence of the empress Catherine II., and which granted to Protestants some rights, invariably denied to heretics by the ancient laws of the kingdom of Poland.<sup>3</sup>

292. *Kingdom of France.—Motives and Object of the League under Henry III.*

The world knows the troubles occasioned in France, at the close of the sixteenth century, by the danger to which the kingdom was then exposed of having an heretical prince on the throne. It does not come within our plan to sketch the rise and progress of the League which was formed at this period to exclude from the succession the king of Navarre (Henry IV.), who professed the Protestant religion. It is sufficient to state, that the main object of this association, that which was constantly proclaimed above all others by the partisans of the League, was the ancient usage and fundamental law of the

<sup>1</sup> Mémoires pour servir à l'Hist. Ecclés. du xviii. Siècle, vol. i. Introduction, p. clx. Lenglet-Dufresnoy, Méthode pour étudier l'Histoire, vol. viii. p. 346.

<sup>2</sup> Dufau, Collection des Constitutions, vol. iv. pp. 34, 35.

<sup>3</sup> Mémoires pour servir à l'Hist. Ecclés. du xviii. Siècle, vol. ii. ann. 1767, 13th October.

kingdom, which obliged the sovereign to profess the Catholic religion, and the manifest danger to which that religion would be exposed under an heretical prince.

293. *Manifesto of the League.*

In confirmation of this fact might be cited an immense number of memoirs, published at the time, by the most famous among the Leaguers.<sup>1</sup> But it is sufficient to mention the manifesto published in 1585, by the Cardinal Bourbon, in concert with many princes of the blood, cardinals, prelates, and other eminent personages, in all orders of the state.<sup>2</sup> As the first grounds of their association, the authors of this manifesto assign the danger of having an heretical prince succeed to the throne, and the obligation of professing the Catholic religion imposed by the oath of allegiance which the French take to their king; an obligation so rigorous, that they take *their* oath, only on condition of that which the king himself takes to preserve the Catholic, Apostolic, and Roman faith. "It is clear," the manifesto states, "that no greater evil could happen than the succession of an heretical prince to the throne, considering that the people are not obliged to acknowledge, or to tolerate, the authority of a sovereign who has abandoned the Christian and Catholic faith; for the first oath taken by the kings is, to maintain the Roman, Catholic, and apostolic religion; and it is in consideration of that oath of the king, that his subjects take to him the oath of allegiance." It is well known that this manifesto, which was first published in the name of a respectable number of the princes and most distinguished lords

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<sup>1</sup> See especially the works of William Rose, bishop of Senlis; of John Boucher, curé of St. Benoît; and of Louis d'Orléans, advocate of the Parliament of Paris, which we refer to in No. 9 of Confirmatory Evidence, at the close of this volume. In support of this fact may be consulted also a great number of other writings in the Memoirs of the League, published at the time, by Simon Goulart, under the name of Samuel du Lys (Geneva, 1602, 6 vols. 8vo.), and reprinted with historical and critical notes, by the abbé Goujet (Paris, 1758, 6 vols. 4to.) Amsterdam.

<sup>2</sup> This manifesto appeared in the month of March, 1585, with the title: *Déclaration des Causes qui ont mû le Cardinal de Bourbon, et les Pairs, Seigneurs, Villes et Communautés Catholiques de ce Royaume, de s'opposer à ceux qui veulent subvertir la Religion de l'Etat*; Reims, 1585, 8vo. This declaration is printed in the following works: vol. i. of *Mémoires de la Ligue*, already cited in the preceding note; *Hist. des Guerres Civiles de France*, by Davila, Paris, 1557, vol. ii. p. 139.

of the kingdom, was subsequently sanctioned by almost all the princes of Europe, with the pope at their head; and by degrees received the adhesion of almost all France.<sup>1</sup>

294. *Results of this Act.*

One of the chief results of this act, supported by all the influence of the League, was the Edict of Union, published by Henry III., in the month of July, 1588, and declared for ever a fundamental law of the kingdom, in the States-General of Blois, in the following October. The first articles of this edict are, first, that the king shall make oath to spare no means, not even his own life, to exterminate heresy in his kingdom, and shall never make peace or truce with the heretics, nor any edict in their favour; secondly, that all his subjects, without distinction, shall take the same oath; thirdly, that the king shall neither favour nor advance any heretic, and that all his subjects shall swear not to admit to the throne, after his death, any heretical prince, or abettor of heresy; fourthly, that all offices, whether in the army, in the finance, or in the judicature, shall be given to none but Catholics.<sup>2</sup>

295. *Conversion of Henry IV.—Edict of Nantes and its Revocation.*

In consequence of these provisions, the king of Navarre (Henry IV.) was not recognised king of France, after the death of Henry III. (in 1589), until he had promised, on oath, to maintain the Catholic religion in the kingdom, and to carry into effect the proposal which he had often made before, of abiding in the matter of religion by the decision of a general or national council, to be assembled, if possible, before six months.<sup>3</sup> His conversion, which occurred some time after (in 1593),

<sup>1</sup> See the Annals of Spondanus, ann. 1585, et seq.; Davila, *Hist. des Guerres Civiles*, vol. ii. ann. 1585, &c.; Anquetil, *Esprit de la Ligue*, ann. 1585, &c.; Daniel, *Hist. de France*, vol. xi. p. 184, &c.; De Péréfixe, *Hist. de Henri IV.* vol. i. pp. 72, 142; Ferrand, *Esprit de l'Histoire*, vol. iii. letters 68, 69; De Saint-Victor, *Tableau Historique et Pittoresque de Paris*, vol. iii. part i. p. 323; Clausel de Coussergues, *Du Sacre des Rois de France*, ch. xxvi. p. 350, &c.

<sup>2</sup> *Collection des Procès-Verbaux des Assemblées Génér. du Clergé de France*, vol. i. p. 472, &c. Davila, *ubi supra*, pp. 357, 371. Daniel, *ubi supra*, pp. 318, 338. Anquetil, *Esprit de la Ligue*, vol. iii. pp. 32, 39.

<sup>3</sup> Besides the authors already cited, see De Thou, *Hist. Univ.* book xcvi.; Clausel de Coussergues, *ubi supra*, ch. xxvii.

terminated those protracted contests, and the disorders of which they had been the occasion or the pretext; still, it did not prevent him from making important concessions to the Protestants, which, in truth, in the actual circumstances, it would have been very difficult to withhold. This was the subject of the famous edict of Nantes, April, 1598, which granted to the Protestants the free exercise of their religion in certain places determined by the edict; the right of eligibility to all offices; courts half Protestant and half Catholic, in some parliaments; and many other privileges, on condition, nevertheless, that they should effectually renounce all practices, leagues, and concert with the enemies of the state.<sup>1</sup> All these concessions, extorted from the monarch by a party which it was his interest to keep in hand, manifestly tended to perpetuate in the kingdom those religious dissensions of which the fatal effects had been too severely felt during the last two reigns; hence they were successively restricted, under Louis XIII. and Louis XIV., according as circumstances allowed; finally, they were altogether annulled in 1685, by the edict of Revocation, which placed matters in the position in which they had been before the edict of Nantes.<sup>2</sup> By that revocation the Catholic religion became, as before, "the religion of the state; and the exercise of any other worship was interdicted in the kingdom."<sup>3</sup> This was also the constitution of France during the last century, until Louis XVI., to relieve the Protestants, revived in their favour, in 1787 and 1789, most of the provisions of the edict of Nantes.<sup>4</sup>

296. *Remains of the Ancient Constitutional Law of the Middle Ages in many Protestant States, especially in England.*

The history even of the principal Protestant states of

<sup>1</sup> The text of this edict is published at the close of vol. i. of the *Histoire de l'Edit de Nantes* (by Elias Benoît, Protestant minister at Delft), Delft, 1693-1696, 5 vols. 4to. For more ample details on that edict, see Daniel, *Hist. de France*, vol. xii. ann. 1598; *Essai Historique sur l'Influence de la Religion pendant le xvii. Siècle*, vol. i. pp. 44, 101.

<sup>2</sup> The text of the edict of revocation is given in vol. v. of Benoît's work, already cited. See, on this subject, D'Avrigny, *Mémoires Chronologiques*, vol. iii. July, 1685; *Hist. de Bossuet*, by Cardinal de Bausset, vol. iv. book xi. n. 15; *Essai Historique sur l'Influence de la Religion pendant le xvii. Siècle*, vol. ii. pp. 235, 270.

<sup>3</sup> Dufau and Guadet, *Collection des Constitutions*, vol. i. p. 79.

<sup>4</sup> *Mémoires pour servir à l'Hist. Ecclés. pendant le xviii. Siècle*, vol. iii. Nov. 24, 1787. *Les dernières Années de Louis XVI.* by M. Hue, pp. 504-506.

Europe, since the Reformation, presents on this subject many remarkable facts. For it is certain, that the maintenance of the dominant religion—the motive which induced all Catholic states of Europe formerly to exclude heretics from the throne—made Catholics themselves be excluded from the throne in many Protestant states. A bill passed in the English Parliament, under William III., in 1688, fixes the crown for ever in the family of that prince; and failing that, in the family of the princess of Denmark (Anne), to the exclusion of James II. and of his family. The same act excludes for ever from the throne Catholics, and the husbands of Catholics.<sup>1</sup> Another law, passed in 1701, confirms these provisions, and admits to the throne the princess Sophia of Hanover, grand-daughter of James I., failing the princess of Denmark.<sup>2</sup> And in accordance with these statutes, Anne, princess of Denmark, was proclaimed queen in 1702, and George of Hanover was acknowledged in 1714, to the exclusion of James III. These ancient statutes were revived in our days (in 1805), by a parliament which expressly enacted, that if a king of England embraced the Catholic religion, he should, by the very fact, forfeit the crown.<sup>3</sup>

297. *Sweden and Norway.*

The same principle has been adopted in Sweden since Protestantism became the dominant religion. It was on that principle that Charles IX. dethroned his nephew Sigismund III., and placed the crown on his own head, in 1604.<sup>4</sup> This principle was solemnly re-enacted in 1720, by the States of the kingdom, on occasion of the coronation of the queen Ulric Eleonara and

<sup>1</sup> Dufau, *Collection des Constitutions*, vol. i. p. 387, &c.

<sup>2</sup> *Ibid.*, p. 396, &c. See also *Mémoires pour servir à l'Hist. Ecclés. du xviii. Siècle*, vol. i. Introduction, p. clxxxiv. pp. 5, &c., 135, &c.; *Diction. de Moréri*, art. Angleterre, p. 59, col. i.; *Lenglet-Dufresnoy*, *ubi supra*, p. 158.

<sup>3</sup> *Parliamentary Debates*, vol. iv. London, 1805, 8vo. p. 677. Cited by *Count de Maistre, Du Pape*, vol. ii. Conclusion, p. 251.

<sup>4</sup> *Diction. de Moréri*, arts. Suède and Sigismund III. *Lenglet-Dufresnoy*, *ubi supra*, p. 260.

[Sweden retained also the old Catholic discipline on the temporal effects of excommunication; any person remaining long under that sentence being condemned to imprisonment or exile. For the civil effects of excommunication under English modern law, see *Blackstone's Commentaries*, book iii. ch. vii. p. 1; and for the frightful use of that power by Protestants against the Irish Catholics, in the reign of James I., see *O'Sullivan, Historiæ Catholicæ Compendium*, p. 312, Dublin, 1850.—TRANS.]

her husband Frederick of Hesse-Cassel; the latter was not admitted to the throne except on the express condition that he should bind himself to embrace the Lutheran religion, the dominant creed of the kingdom, to uphold it, and to enforce all laws relating to it; <sup>1</sup> such is, to this day, the constitutional law of Sweden, according to the constitution drawn up in 1809, by the States of the kingdom, and published the same year by King Charles XIII. It is there expressly stated, that "the king and all the public functionaries must profess the evangelical (Lutheran) creed:" <sup>2</sup> such is the constitutional law of Norway also, by the constitution of 1814. <sup>3</sup>

298. *Difference between the Modern Law of those States and that of the Middle Ages.*

But the great difference between the constitutional law of Protestant states and that of the Catholic states of the middle ages is, that the latter was grounded on the sincere attachment

<sup>1</sup> Diction. de Moréri, arts. Ulrique Eléonore, and Frédéric de Hesse-Cassel. Lenglet-Dufresnoy, ubi supra, pp. 220, 237.

<sup>2</sup> Dufau, Collection des Constitutions, vol. iii. p. 306. In conformity with this article of the Swedish constitution, General Bernadotte, marshal of the French empire, and prince of Ponte Corvo, having been elected by the States of Sweden in 1810, and adopted by King Charles XIII. as presumptive heir to the Swedish throne, could not obtain that honour without abjuring the Catholic religion, and professing Lutheranism. (See, on this revolution, the Biographie Universelle, arts. Charles XIII. and Gustavus IV., kings of Sweden, vols. lx. lxi.; Maltebrun, Précis de la Géog. Univers. vol. iv. p. 383, edit. of 1832.) This apostasy, which did him no credit, even in the opinion of men who cared little for religion, was condemned severely, by Napoleon especially. It was on this occasion that the emperor had, with Madame Montesquieu, then governess of the king of Rome, a curious conversation, which she often related afterwards to several persons, and especially to the abbé Dassance, who records it in the following terms, in the *Ami de la Religion* (vol. cxxi. p. 515):—"So Bernadotte is a king," said Napoleon; "what an honour for him!" "Yes, sire; but there is a dark side to the picture: for a crown he has renounced the faith of his fathers." "Yes, that is base, indeed. Even I, who am supposed to be so ambitious, I would never abandon my religion for all the crowns in the world." Such language seems, no doubt, not a little surprising in the mouth of Napoleon, who appeared a few years before disposed to embrace Mahometanism to establish his power in Egypt. There is, however, every reason to believe, that the ambition which then was ruling him made him dissemble the faith which he still retained in his heart. Many circumstances of his past public and private life, and especially the details of his Christian death, seem to prove that he never completely forgot the principles of the Catholic religion, in which he had been educated. (See, on this subject, *l'Ami de la Religion*, *ibid.*; *Supplém. de la Biographie Universelle*, art. Napoleon. This article, which was written by M. Michaud, jun., was published separately, with the title *Vie Publique et Privée de Napoléon*, Paris, 1844, 8vo.)

<sup>3</sup> Dufau, ubi supra, p. 322.

of the people to the religion of their fathers, and the desire of maintaining it against all the innovations of schism and heresy ; whilst the constitutional law of Protestant states is principally founded on hatred of the Catholic Church, and on a purely political attachment to the established religion. This disposition has been manifested especially in Sweden and England, on many remarkable occasions. Before the reign of Charles IX., king of Sweden, the public exercise of no other religion except the Lutheran was tolerated in that kingdom. That prince published, in 1687, a declaration, prohibiting "any of his subjects, under the severest penalties, the public or private exercise of the Catholic religion or of Calvinism ; insisting, moreover, that their children should all be educated in the creed and confession of Augsburg." Some time after he revoked that order, so far as it affected the Calvinists ; but confirmed it against the Catholics, whose creed he resolved, from motives of jealousy and interest, to banish totally from his dominions.<sup>1</sup>

In the session of the English Parliament, March 23rd, 1701, the princess Sophia, grand-daughter of James I., was declared next in the succession to the crown of England, after the death of William, of the princess of Denmark, Anne, and of their children. Now this Princess Sophia did not belong to the Anglican communion ; both she and her son, George of Brunswick-Hanover, professed Lutheranism. It was assumed that neither would have any objection to conform to the established Church, in the event of their being called to the English throne.<sup>2</sup>

This mode of treating religion as a question of politics may, perhaps, find favour in the eyes of false philosophers, who regard all religions with equal indifference ; but it cannot be approved by any sincere Christian ; and it is very astonishing that authors who so readily pardon modern governments this profane policy, should indulge so frequently in the most offensive declamations against the eminently religious policy of the middle ages ; as if the maintenance of the true religion were of less importance to the welfare of society than that of a new religion,

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<sup>1</sup> Lenglet-Dufresnoy, *ibid.* p. 237.

<sup>2</sup> Moréri, art. Angleterre, pp. 59, 60. *Mémoires pour servir à l'Histoire Ecclés. du xviii. Siècle*, vol. i. p. 5.

founded solely on a spirit of revolt and of insubordination, the distinctive character of all sects outside the true Church.

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## CHAPTER IV. .

PRACTICAL RESULTS OF THE POWER EXERCISED BY POPES AND COUNCILS OVER SOVEREIGNS DURING THE MIDDLE AGES.

### 299. *Plan and Design of this Chapter.*

IN these latter times much has been said of the evil consequences of that prodigious authority which the maxims of the middle ages attributed to the Church and the pope in the temporal order. These maxims, it has been urged, were a fruitful source of disorder; they favoured the ambition and exorbitant pretensions of the popes; weakened among the people the respect due to sovereigns, and occasioned between the two powers that violent and obstinate contest whose consequences have been fatal alike to the interests of religion and to the peace of kingdoms.<sup>1</sup>

We are far from pretending that these maxims in question occasioned no evil results. On this earth it is the inevitable lot of even the best institutions to be the occasion or the pretext for many abuses. It can, nevertheless, we feel, be confidently asserted, first, that the abuses in this case have been manifestly exaggerated by a great number of modern writers; secondly, that they have been amply compensated for by the advantages which religion and society derived from the extraordinary power with which popes and councils were so long invested. The development of these two propositions will illustrate their truth in the clearest light.<sup>2</sup>

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<sup>1</sup> Fleury's Ecclesiastical History has contributed very much to propagate these prejudices, especially among the French magistrates, who often appeal to his authority. See Fleury, *Hist. Eccl.* vol. xiii. 3rd Discourse, n. 9, 10, 18; vol. xvii. 5th Discourse, n. 12; vol. xix. 7th Discourse, n. 5, et alibi passim; De Héricourt, *Lois Ecclés. de France*, part iv. edit. of 1771, p. 185; Ferrand, *Esprit de l'Histoire*, letters 35, 41, 42; *Annales du Moyen Age*, vol. iv. p. 225; vol. v. pp. 402, 464, et alibi passim.

<sup>2</sup> For the development of these two points, see especially the work of De Maistre, *Du Pape*, parts ii. and iii.

## ARTICLE I.

Supposed Evil Results of this Power.

300. *Three Principal Evils attributed to it.*

The ambition and exorbitant pretensions of the popes ; the degrading of the sovereign power in the estimation of the people ; and the wars produced by the contest between the two powers, these are the evil results commonly attributed by modern writers to the maxims of the middle ages, on the supremacy of the spiritual over the temporal power. Now it can be easily proved that these evil results have been vastly exaggerated by a great number of modern writers.

§ 1. *Of the Ambition and exorbitant Pretensions of which the Popes of the Middle Ages are accused.*

301. *Injustice of this Reproach.*

To refute the charges made against the popes on this subject, we need but state one very remarkable fact, which has never received a degree of consideration commensurate with its importance ; namely, that from the establishment of their temporal sovereignty down to our time, that is, a period of more than a thousand years, this great power with which they were invested, as temporal sovereigns, and as arbiters of princes, and as suzerains of many states in Europe, was never employed by them for the extension of their own dominions.<sup>1</sup>

302. *Moderation of the Popes, considered as Sovereigns.*

Considered first simply as sovereigns, the popes present an example of moderation, singular and perhaps unique, in the exercise of sovereign power.<sup>2</sup> During the thousand years since they acquired it, they have never betrayed that natural tendency to extend itself, which seems in a manner to be the distinctive character of all sovereign powers. Read their history attentively ; in no dynasty is there found more respect for the

<sup>1</sup> De Maistre, *Du Pape*, book ii. ch. vi. pp. 241, 244. Michaud, *Hist. des Croisades*, vol. vi. p. 231.

<sup>2</sup> De Maistre, *ubi supra*, ch. vi. p. 243, &c.

territory of others, or less ambition to extend their own. The popes never attempted to seize favourable opportunities for extending their sway. They never possessed, nor do they possess at this day, more than what was originally granted to them by the voluntary piety of princes and people.<sup>1</sup> Julius II. was, perhaps, the only pope that acquired a territory by the ordinary course of international law;<sup>2</sup> that is, by virtue of a treaty terminating a war.<sup>3</sup> It was in that manner that he acquired from

<sup>1</sup> In Ferrand's *Esprit de l'Histoire* (vol. ii. letter xl. p. 406), we read that "the popes sometimes profited of their temporal power to augment their properties." This, as M. de Maistre observes, is a false assertion, without the least shadow of proof. "I have yet to learn," he says, "when and how the popes employed their spiritual power, or their political influence, to extend their territory at the expense of the lawful owner."—De Maistre, *ubi supra*, p. 242.

<sup>2</sup> [The words in the original are "*droit public*," which in this passage alone are translated "*international law*;" but in all other passages, and in the title-page of the work they are translated "*constitutional law*." The word "*international*" is adopted here, because it is obviously the only one which the context admits, a treaty between two independent powers being included under that denomination of laws. The word "*constitutional*" was adopted in all other passages, because, though not perhaps representing with rigid propriety the meaning of the French term, as now understood, it does represent with sufficient fidelity Domat's definition of "*droit public*" (*supra*, p. 262). It is also the only English term that could be used consistently with M. Van-Gils's exposition, which is approved by our author (*supra*, n. 283); and, finally, it conveys at once to the English ear a distinct idea of the kind of law by which the pope formerly deposed princes, namely, a law limiting the supreme power, making the profession of the Catholic faith by the sovereign a part of the constitution, as the profession of the Protestant faith by the sovereign is now a part of the British constitution.]

In many notices of this work by English writers, and also in English translations of other works treating partly of the same subject, "*droit public*" is translated "*common law*," in the sense of "*general*," *i. e.* not confined to any particular state. That certainly is not the meaning of the French terms; and moreover, the term "*common law*" misleads by suggesting to the English reader a well-known class or division of English law, which certainly was not the general law of Europe. Others have adopted the English form "*public law*," meaning "*international law*," the law of nations; but I know not on what authority. *Public law* in that sense is not as yet a current phrase in the English language. Finally, the term "*international*" implies an error, both on the origin of the law in question, and on the title by which it was enforced by the pope. The origin of the law was not a treaty with the pope, or any foreign power; it arose, both in Spain and France, &c. &c. without the direct interference of the pope, and was for a time enforced by the councils of those countries without reference to the pope. Its origin, therefore, was not *international*. Subsequently, when the enforcement of this law was reserved to the pope, by the common consent of European states, he did not exercise it as a foreign power, as sovereign of the Roman states, but as the acknowledged head of the Christian commonwealth. The relations between him, in that capacity, and the different states of Europe, were no more "*international*" than the relations between the president of the United States and the different states of the Union.—TRANS.]

<sup>3</sup> Raynaldi *Annales*, ann. 1509. *Hist. de la Ligue de Cambrai*, by Dubos.

the republic of Venice the duchy of Parma, which had been usurped, he believed, by that republic from the Holy See. This acquisition, however, though justifiable enough, appeared not becoming the character of the popes; it soon passed away from their possession. "To them alone," observes Count de Maistre, "belongs the honour of not possessing at this day more than they possessed ten centuries ago. Here you meet neither treaties, nor battles, nor intrigues, nor usurpations; as you trace back their history you always meet donations. Pepin, Charlemagne, Louis, Lothaire, Henry, Otho, the Countess Matilda, formed this temporal order of the Church, which is of so inestimable value to Christendom. But it owed its origin to the necessity of circumstances; and their concealed operation is one of the most curious events in history."<sup>1</sup>

303. *Their Moderation as Arbiters of Princes, and as Suzerain Lords.*

Considered as arbiters of princes, and as suzerain lords of many European kingdoms, the popes present a still more astonishing example of moderation. Had they been under the influence, as has often been contended, of ambitious views, they naturally would have turned to their own aggrandizement, the extraordinary power attributed to them by the maxims of the time. Nevertheless, they never did so; they never endeavoured to retain for themselves any portion of those states of which they disposed as suzerain lords, and of which they deprived princes in punishment of their felony or crimes. They never disposed of fiefs of the Holy See except to foreign princes, and in the manner which they believed to be most conducive to the good of religion and the tranquillity of kingdoms. It was thus Gregory VII. and Innocent III. used those rights of sovereignty which the Holy See claimed over Spain; they made over to the first occupiers whatever part of the kingdom they could recover from the Saracens, the sworn enemies of the Christian name.<sup>2</sup> It was thus that Clement IV.

Daniel, *Hist. de France*, ann. 1503. De Maistre, *ubi supra*, ch. vi. pp. 243, 244, 259-266.

<sup>1</sup> De Maistre, *ibid.* p. 245.

<sup>2</sup> Voigt, *Hist. de Grégoire VII.* book v. p. 184, &c. 273. Innocentii III. *Epistol. lib. xv. epist. 24* (Baluze, vol. ii. p. 609). *Baronii Annales*, vol. xii. ann. 1179, n. 17. Hurter's *Hist. d'Innocent III.* vol. ii. ann. 1211, 1212.

and his successors, when disposing of the kingdom of the Two Sicilies, which was regarded as a fief of the Holy See, imposed on the princes to whom the grant was made, conditions admirably suited to preserve the liberty, both of the Holy See and of Italy.<sup>1</sup> The popes, it is true, when disposing of those states, as suzerain lords, exacted, according to the custom of the times, certain homage and obligations in acknowledgment of their right, and of the favours conferred by them on their feudatories; still, it is true, that even in the moment of their greatest power, they never used nor sought an opportunity of extending their dominions, a thing which it would have been at once so easy and so natural for them to do.

304. *Object and Aim of their Policy.*

All their ambition, or rather their policy, was devoted to one object, the maintenance of the liberty of Rome and of Italy against the emperors of Germany, who frequently revived the most unjust pretensions<sup>2</sup> on that matter. "To me it appears evident," observes Voltaire himself, "that the real cause of the quarrel (between the popes and the emperors) was, that the popes and the Romans did not wish to have an emperor at Rome;"<sup>3</sup> that is, adds Count de Maistre, "they did not wish to have a master in their own house."<sup>4</sup> "It appears evident," Voltaire continues, "that the great design of Frederick II. was to establish in Italy the throne of the new Cæsars; it is perfectly certain that he wished to reign over Italy without control and without partition. This is the secret spring of all his quarrels with the popes; he employed by turns force and fraud; and the Holy See fought him with his own weapons. The Guelphs, those partisans of the popes, and still more of liberty, were a counterpoise to the Ghibelins, the partisans of the empire. Religion was never the cause of the divisions between Frederick and the Holy See."<sup>5</sup>

<sup>1</sup> See the authors cited above, n. 138, ch. xi.

<sup>2</sup> De Maistre, *Du Pape*, book ii. ch. vii. art. iii.

<sup>3</sup> Voltaire, *Essai sur l'Hist. Gén.* vol. i. ch. xlvi.

<sup>4</sup> De Maistre, *ubi supra*, p. 298.

<sup>5</sup> Voltaire, *Essai sur l'Hist. Gén.* vol. ii. ch. lii. p. 98.

305. *It was perfectly justifiable.*

From these most important admissions let us conclude, that, while labouring with all their might to maintain the liberty of Rome and of Italy, the popes not only deserved no censure, but simply discharged their duty, both as temporal sovereigns and as heads of the Church. Does not every one know that the first duty of a temporal sovereign is to maintain his independence against the unjust pretensions of foreign powers? "The greatest misfortune for a politician (and much more for the chief of any state)," Count de Maistre observes, "is to be subject to a foreign power; no humiliation, no agony of heart is comparable to that."<sup>1</sup> Let the conduct of the popes of the middle ages be judged by those principles. "*Every pope*," observes a severe censor of the Holy See, "*every pope* ought to fear the aggrandizement of the emperors in Italy. Old claims will hold good, the moment they are enforced with effect."<sup>2</sup> *Every pope*, therefore," resumes Count de Maistre, "was bound to oppose them. What map had ever given Italy to the emperors of Germany? Where have people learned that the pope ought not to act as a temporal prince? that he should be purely passive, allow himself to be beaten and robbed, &c.? Never can they prove that."<sup>3</sup>

306. *And highly praiseworthy.*

What more is necessary to justify the conduct of the popes of the middle ages to the emperors, nay more, to entitle those spirited pontiffs to rank among sovereigns most justly dear to the country which they governed? "All nations," observes Count de Maistre, "with one voice assign the first place among great men to those fortunate citizens who had the honour of rescuing their country from the yoke of the stranger. Heroes if they succeed, or martyrs if they fall, their names shall live for ever. Modern stupidity would except the popes alone from this universal apotheosis, and deprive them of the immortal glory

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<sup>1</sup> De Maistre, ubi supra, p. 307.

<sup>2</sup> Ferrand, *Esprit de l'Histoire*, vol. iii. letter 62, p. 230.

<sup>3</sup> De Maistre, ubi supra, p. 305.

which is due to them as temporal princes, for having laboured incessantly for the freedom of their country.”<sup>1</sup>

If we consider the popes as heads of the Church, their zealous solicitude in maintaining the liberty of Rome and of Italy can be still more easily justified. Every one sees that the maintenance of that liberty is important, and even essential to the good of religion. Authors the most hostile to the maxims of the middle ages on the temporal power of the pope and of the Church, admit generally, that the temporal sovereignty of the Holy See was useful, and even necessary, for the good government of the Church.<sup>2</sup> Now, it is manifest, that the same causes which made it necessary from the commencement, also required that it should be upheld, especially during the disorders and anarchy of the middle ages. It is equally evident, that the maintenance of this sovereignty, so essential to the good of religion, was incompatible with the subjugation of Rome and of Italy, and that religion would have been reduced to a mere name under the yoke of the emperors of Germany, or of any other sovereign. We may judge of what would happen by the disorders which afflicted the Church in the tenth century, and which were evidently caused principally by the domination of the emperors in Italy. “In these deplorable times,” says Voltaire, “the popedom was put up to auction, and almost all the bishoprics; had this authority of the emperors lasted, the popes would have dwindled into their chaplains, and Italy would have been enslaved.”<sup>3</sup>

307. *Vain Declamations on this Subject.*

What argument can be produced against those conclusive reflections? Nothing but mere assertion; founded mainly on a few facts which malignity or prejudice has misrepresented.

“The delirium of the temporal omnipotence of the popes,” according to a famous magistrate of our days, “inundated Europe with fanaticism and blood during three or four cen-

<sup>1</sup> De Maistre, *ibid.* p. 308.

<sup>2</sup> See the testimonies of Bossuet and Fleury, cited on this subject (*supra*, part i. n. 97). We may also add Ferrand, *Esprit de l'Histoire*, vol. ii. letter 28, p. 221, note.

<sup>3</sup> Voltaire, *Essai sur l'Hist. Gén.* vol. i. ch. xxxviii, pp. 529-531.

turies.”<sup>1</sup> We shall soon see who were the real authors of the wars and calamities occasioned during the middle ages by the contest of the two powers ; and whether they ought not to be imputed rather to the scandalous conduct of princes than to the just severity of the popes. But, to confine ourselves to the immediate subject of this paragraph, when did the popes ever pretend to temporal omnipotence, or urge their temporal claims to a degree of delirium? The popes never pretended to any other dominion or any other territory but that of their own states ; they never pretended to increase their temporal dominions to the prejudice of foreign princes, nor to impede the latter in the lawful exercise of their authority ; in a word, they never pretended to anything more than the right of judging sovereigns, according to the principles of a universally received constitutional law. A most extensive power this certainly was ; but yet it was not *temporal omnipotence* urged even to *delirium* ; it was no more than the power of judging according to existing laws ; in truth, it was rather a spiritual than a temporal power, for it consisted in excommunicating princes guilty of certain notorious and scandalous crimes, and in enforcing the principles of existing constitutional law on the temporal effects of excommunication. That the exercise of this power was, in some circumstances, attended with painful consequences ; that its application was sometimes difficult, and even dangerous, cannot be denied ; but how few incontestable principles are exempt in practice from the same inconveniences, especially in matters of constitutional law, though no one, therefore, dreams of disputing their legality !

## § 2. *On the pretended degrading of the Authority of Sovereigns in the eyes of the People.*

### 308. *Prejudices propagated on this Subject.*

Most of the authors who regard the prodigious power of the popes of the middle ages as the growth of ambition and

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<sup>1</sup> Ferrand, *Esprit de l'Histoire*, represents these fatal contests of the priesthood and the empire to last “four or five centuries,” in one place, and in another “near four centuries” (vol. ii. letter 28, pp. 221, 222, note ; letter 41, p. 413, &c.). See the refutation of these assertions in Count de Maistre's work, *Du Pape*, *ibid.* ch. viii. pp. 310, 315.

of extravagant pretensions, naturally regard it also as a degradation of the authority of sovereigns in the opinion of their subjects. Judging from the manner in which they speak, one would think that the pope was, at that time, a universal monarch, before whom all others disappeared, or, at least, *existed only by sufferance*, and possessed only a precarious authority, of which they might at any moment be deprived by a sentence of the pope. Hence, these authors cannot refer without a lively sense of compassion, and almost of indignation, *to the humiliation of sovereigns anathematized* by the Holy See, and the *baseness* with which they submitted to the yoke that was forced on them.<sup>1</sup>

To dissipate prejudices so injurious to the Holy See, we need only examine the political theory of the middle ages on the authority of princes, and the manner in which it was applied by popes in their relations to sovereigns.<sup>2</sup>

309. *Political Theory of the Middle Ages compared with Modern Theories.*

According to the principles then generally admitted, the authority of princes comes from God himself, who intrusts it to them to be employed for the good of religion. They have no other superior but God, who alone can call them to account for their actions, through the ministry of the pope and of the bishops, his ministers and vicars. The people, therefore, have no right of judging, much less of deposing the sovereign; but he incurs the forfeiture of his rights by rebellion against God and the Church; and it belongs to the pope, as vicar of Jesus Christ on earth, or to a general council representing the whole Church, to pronounce against him sentence of deposition.<sup>2</sup>

If this theory be fairly compared with all those that have ever been invented on this matter, it will perhaps be admitted, that it would be difficult to find one so calculated both to maintain the authority of princes, and to restrain it as much as possible within its just limits. That, as every one knows, is the great political problem, whose solution has taxed the inge-

<sup>1</sup> See the authors cited above, n. 299, note 1, ch. iv. especially Hallam, *Europe, &c.* vol. ii. pp. 183, 193.

<sup>2</sup> De Maistre, *Du Pape*, book ii. ch. ii.—vi. and ch. xi.

<sup>3</sup> See above, n. 26, 120, 131, 244, 285, &c.; De Maistre, *ubi supra*, ch. iii.

nunity of all legislators, ancient and modern, "how to guard against the despotism of the sovereign, without, at the same time, depriving him of the authority necessary for government ;" or, in other words, "how to restrain the sovereign power within just limits, without destroying it." To solve this great problem recourse has been had, especially in those latter times, to constitutions or fundamental laws, defining the respective rights of the sovereigns and of the principal orders of the state. But the inefficacy of these means for the end proposed can be easily demonstrated. "It was soon said," as Count de Maistre judiciously remarks, "*we must have fundamental laws, we must have a constitution ;* but who is to make these fundamental laws, and who will enforce them? The man or body of men having strength to do so, would be sovereign, because he would be stronger than the sovereign, and would, by the very act of establishing these laws, dethrone him. If the constitutional law is a free concession of the sovereign, the whole question returns again ; Who can prevent one of his successors from violating it? The right of resistance must be vested in some man or body of men ; otherwise it could not be exercised except by revolt, a dreadful remedy, worse than any evil.<sup>1</sup> Moreover, it does not appear that the numerous attempts to restrain

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<sup>1</sup> [Somewhere in his Reflections on the Revolution in France, Edmund Burke exclaims, in his own characteristic style, "Let political metaphysics be the amusement of the schools, but let them not break prison to burst like a Levanter to sweep the earth with their hurricane, &c., and to break up the fountains of the great deep to overwhelm us." These observations, which were directed against the wild and impracticable theories of French liberty, may with equal justice be applied to political metaphysics, such as those in the text, against constitutional government. Such a government exists in England ; and that fact sufficiently refutes the metaphysics. The theory of the English constitution, and the checks which it opposes to the excesses of popular power, may be learned more correctly from Burke, and such writers, than from those cited by our author in the next page. At the same time it can hardly be denied that there is much reason in the reflections of Count de Maistre, and of our author, if they are understood to apply to the miserable abortions, called constitutions, which arose and disappeared during the last half-century on the continent, and which absorbed so great a portion of English sympathy, that had much better been expended in curing evils at home, especially in Ireland. It must not be forgotten, also, that though our author appears in this place to prefer absolute power to constitutional government, he has proved elsewhere (p. 31), that the Catholic governments of the middle ages were not absolute. To those ages we owe the boasted constitution of England. England has retained the free constitution of the middle ages, and also the civil effects of excommunication (in theory at least), and made the possession of the crown dependent on the profession of a particular creed.]

sovereign power have ever succeeded in such a manner as to inspire a wish to repeat them.”<sup>1</sup>

310. *System of the Sovereignty of the People.*

Convinced of the inefficacy of constitutions, or fundamental laws, as preventives of the abuses of autocratical sovereignties, some politicians invented the theory of the sovereignty of the people. All power, they maintain, is derived essentially from the people; the prince exercising his authority is, in reality, no more than the delegate of the people; the people can call the sovereign to an account for his actions, openly resist him, and even depose him in cases of manifest tyranny. This is the doctrine of Jurieu and of many other Protestant writers, whose principles on this point have been loudly proclaimed by modern philosophy. “In whatever manner the prince may be invested with authority,” observes a famous partisan of this system, “he always holds it from the people alone; nor can the people be ever dependent on any mortal man, but by their own consent.”<sup>2</sup> On the people depend the well-being, the security, and the stability of all legitimate government. In the people the essence of all power must necessarily reside; and all those whom their knowledge or capacity may have induced the people to honour with a confidence, sometimes prudent, and sometimes imprudent, are responsible to the people for the use which they have made of the power that was intrusted to them *for a time*.<sup>3</sup> On these principles, a partisan of the new theories denounces the Catholic system of non-resistance, as a detestable<sup>4</sup> doctrine. He asserts, that whenever there is question of resisting the sovereign power, man should be guided by the interior impulse of a certain moral instinct of which he is conscious in himself, and which it is wrong to confound with the heat

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<sup>1</sup> De Maistre, *ibid.* p. 216.

<sup>2</sup> Noodt, *Sur le Pouvoir des Souverains*, in the *Recueil de Discours sur Divers Sujets*, translated or written by Barbeyrac, vol. i. p. 41.

<sup>3</sup> Opinion of Sir William Jones, in the work entitled *Memoirs of the Life of Sir William Jones*. London, 1806, 4to, pp. 200. This and the preceding work are cited by the author from the Count de Maistre, *ubi supra*, p. 239.

<sup>4</sup> [Whatever may be thought of this doctrine, it cannot be called a “Catholic doctrine.” See Balmez, ch. lvi.]

of the blood, and the vital spirits.<sup>1</sup> He reproaches his famous countryman, Dr. Barkeley, with having denied this interior power, and with asserting "that man, as a rational being, ought to be governed by the precepts of a wise and impartial reason."<sup>2</sup>

311. *Great Inconveniences of this System.*

This system, under the pretence of guarding against the abuses of sovereign power, manifestly destroys it, and opens the gate to all the disorders of anarchy. "I admire very much," observes Count de Maistre, "these fine maxims; but they have one defect; they give no light to guide the mind in those critical conjunctures in which theories are utterly useless. Suppose it decided (I grant the supposition for a moment) that the sovereign power can be rightfully resisted, and compelled not to exceed its due limits, nothing has yet been done, for we have still to learn *when* we can use that right, and what men can use it. The most ardent advocates of the right of resistance admit (for who could deny it?) that it is not lawful except against tyranny? But what is tyranny? Does a single act of atrocity deserve that name? If one be not enough, how many are required, and of what kind? what power in the state has the right of deciding that the case for resistance has come? If that tribunal existed before, therefore it was part of the sovereign power; and by acting on the other destroys it; if it did not exist before, by what authority would this tribunal be established? Moreover, can any one exercise even a just and incontestable right without calculating the evils that may result from it? All history unanimously proclaims that revolutions commenced, even by the wisest men, are always finished by fools; that their originators are always their victims; and that the efforts of the people to create or increase their liberty, almost always end by riveting their fetters. On every side abysses yawn for us. But you will say, Will I then unmuzzle the tiger, and reduce you to passive obedience? I never said that absolute power does not involve great inconveniences, under whatever form it exists in the world. On the contrary, I expressly admit them, nor have I any inten-

<sup>1</sup> Beattie on Truth, part ii. ch. xii. p. 408, cited by the Count de Maistre, *ibid.* p. 219.

<sup>2</sup> *Ibid.*

tion of extenuating them ; I merely say, that we are placed between two abysses.”<sup>1</sup>

312. *All the Modern Theories useless or dangerous.*

From these observations we must conclude, that the theories invented in those latter times to solve the great political problem, are either useless for the end proposed, or most perilous in practice. Judge then, whether the theory of the middle ages is so absurd as has been often asserted, or rather, whether it is possible to imagine one better adapted to solve the great problem in question, and to repress, as much as possible, the abuses of sovereign power, without diminishing the respect due to it. On the one hand, this theory imprints, so to speak, on the foreheads of kings a sacred character ; by proclaiming it as an incontestable principle, that they hold their authority from God, whose representatives and vicars they are on this earth. On the other hand, it makes sovereigns responsible for their conduct to the most venerable and august tribunal that ever appeared on the earth—the tribunal of the Church and of the popes, established by the authority of God himself ; to whom princes, as well as other men,

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<sup>1</sup> De Maistre, *ibid.* pp. 219, 221. Consult on this subject, for more ample details, Bossuet, *Cinquième Avertissement*, n. 31, &c. 55, &c. ; Pey, *De l'Autorité des Deux Puissances*, vol. i. part ii. ch. iv. ; Duvoisin, *Défense de l'Ordre Social*, ch. iv. ; Boyer, *Défense de l'Ordre Social*, vol. ii.

We are not speaking here of another theory of government, which concentrates all spiritual and temporal power in the hands of the prince, and makes him head of the state both in spirituals and temporal. This theory, which is the basis of the constitution in Russia and England, and many other Protestant states, is itself founded, according to its principal advocates, on the system of the sovereignty of the people ; that is, on the system which derives from the people all the authority exercised in society. (See, on this subject, Abbé Pey's work, *De l'Autorité des Deux Puissances*, vol. ii. p. 2, &c.) This theory, it is manifest, is liable to all the inconveniences which we have pointed out in the others ; and especially it favours more than any other the despotism of the prince, and the oppression of the people. M. Hurter appreciates it accurately in a short note at the conclusion of his *History of Innocent III.*, in which he refutes the charges made against that pope by the anonymous author of a pamphlet entitled, *Origine, Progrès, et Limites de la Puissance des Papes*, Paris, 1821, 8vo.) “The pontificate of Innocent III.,” said that pamphleteer (p. 96), “ought to be studied by princes and statesmen, to learn how dangerous it is to combine civil power with religious functions, and how the heads of religion, *being men*, are tempted to extend those powers, and to pervert them, in circumstances which to any degree favour their ambition.” The answer of M. Hurter to this observation is as crushing as it is curt. “We must ask the writer of this pamphlet, whether it is not dangerous to combine ecclesiastical functions with civil functions ; and whether kings are angels ?” (*Hist. d'Innocent III.* vol. ii. p. 847, note 3.)

must render an account of their actions. As a necessary consequence of these principles, it obliges the people to regard the person of the sovereign as inviolable, and ever to pay to princes, even the most odious and the most criminal, the obedience and the respect due to their sacred character, until they are judged and deposed by the supreme authority of the Church and of the pope.

313. *Theory of the Middle Ages much more rational.*

May it not be, that of all the theories devised to limit the sovereign power, the theory of the middle ages is not only the most rational, but also the least exposed to inconveniences? Leibnitz, we have already seen, was firmly of that opinion, and regretted the abolition of the custom and practice of the middle ages.<sup>1</sup> Bossuet, though not adopting all the views of Leibnitz on this point, confirms them, at least partially, in his *Defence of the History of the Variations*, in which he unhesitatingly asserts, that “were he compelled to choose between the two opinions, that which subjects the temporalities of sovereigns to the pope, and that which subjects them to the people, the latter alternative, in which madness, caprice, ignorance, and turbulence, ever have the ascendant, would be most to be feared.”<sup>2</sup>

Count de Maistre fully adopts this opinion, and develops it in a strain of great energy and power. “Let us renounce our hesitations, and honestly take our side on the great question of passive obedience, or of non-resistance. If the principle be insisted on, that in no possible case is it lawful to resist authority; that we must thank God for good princes, and bear patiently with bad ones, until time, the great avenger of wrongs, does justice on them; that there is always more danger in resisting than in suffering with patience, &c. I admit it, and I am willing to adopt it henceforward. But were there an absolute necessity of prescribing limits to the sovereign power, I would vote with all my heart that the interests of the human race

<sup>1</sup> *Supra*, ch. ii. n. 124.

<sup>2</sup> Bossuet, *Défense de l'Histoire des Variations*, n. 55 (vol. xxi. *Ceuvres*, p. 608). These reflections are beautifully developed in a panegyric of St. Louis, by M. Frayssinous (*Discours inédits*, p. 429); and in the work of the same author, *Les Vrais Principes de l'Eglise Gallicane*, 2nd edit. p. 68.

should be intrusted to the pope. The papal power is essentially the least subject to the caprices of politics. The person in whom it is vested is always old, unmarried, and a priest, things which exclude ninety-nine out of a hundred of those errors and passions which throw states into disorder. In fine, as he is far away, and as his power is of a different kind from that of temporal sovereigns, and as he never asks anything for himself, it may reasonably be hoped, that if all inconveniences be not obviated (a thing absolutely impossible), they will at least be as few as possibly can be expected, *human nature considered*; what better can any sensible man dream of? It would appear, therefore, that to restrain the power of sovereigns within its just limits, that is, to prevent them from violating the fundamental laws of the state, including religion, as the principal, the intervention, more or less powerful, more or less active, of the spiritual supremacy, would be a means as plausible as any other, at least. We might go farther, and assert with equal confidence, that this expedient would be the most agreeable, or rather, the least disagreeable, to sovereigns. If the prince is free to accept or to refuse limitations of his power, most certainly he will refuse them; for neither power nor liberty has ever yet said, 'Enough.' But supposing that sovereign power was inevitably forced to admit some limitation, and that the choice depended on itself, I should not be surprised if it preferred the pope to a co-legislative senate, or a national assembly, &c.; for the popes are not very exacting on princes, and would not call them to account except for enormities."<sup>1</sup>

314. *It is not adapted to all Times nor to all States of Society.*

However just and well-founded these reflections appear to us, we are very far from concluding that the political theory of the middle ages is equally applicable to all times and to all states of society. On the contrary, we are convinced that, however useful in an age of simplicity and faith, when religion is generally respected by princes and people, this theory would be useless

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<sup>1</sup> De Maistre, *Du Pape*, book ii. ch. iv. The fear of multiplying quotations obliges us to refer the reader to the work itself, for other developments of these important reflections by the Count de Maistre himself. See especially book ii. ch. v. xi.; book iii. ch. iv. pp. 115-118, et alibi passim.

and impracticable in an age when religion has generally lost its ascendancy over the greater part of society. Nevertheless, the preceding observations have at least this force: they prove that this theory, which to the prejudices and altered state of society at present appears so utterly extravagant, is not so unreasonable as it has been sometimes supposed; and that, considering the state of society in the middle ages, it was less subject to inconveniences than the most lauded modern theories.

315. *Application of this Theory by the Popes.*

After having examined the political theory of the middle ages in itself, if we now consider how it was applied by the popes, we shall see still more clearly how much its inconveniences have been exaggerated by herds of modern authors. To listen to these, one would imagine that the popes never did anything but judge and depose kings, and often for the most frivolous pretexts.<sup>1</sup> History proves, on the contrary, that the popes had very seldom recourse to severity against princes; never except for the manifest interest of religion and of society. "In our reflections on this subject," observes Count de Maistre, "we are exposed to a great illusion. Deceived by the screeching of philosophers, we imagine that the popes spent all their time in deposing kings; and because facts of that kind stand close in the page of the duodecimo pamphlet, we imagine that they followed each other closely in the course of ages. But how many *hereditary* sovereigns were effectively deposed by the popes? These affairs never went beyond threats and a compromise. With regard to elective princes, they were the creations of man, whom he could unmake as he had made them; and yet their whole number was not more than two or three monster princes, who, happily for the human race, found at least some check (however feeble and inefficient) in the spiritual power of the popes. With these exceptions, the political world took its ordinary course. No king suffered any molestation in his own affairs from the Church; the popes never dreamed of meddling with his government; if he did not take it into his head to rob the Church, or to turn away his wife, or to keep a couple of

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<sup>1</sup> See the authors cited above, ch. iv. n. 299, note 1.

wives, he had nothing to fear." "Have people remarked," says the same writer in another place, "that the collision of the two powers, so improperly designated the war between the priesthood and the empire, was never felt beyond the boundaries of Italy and Germany, at least in its greater results, I mean, the subversion and the change of sovereignties? Many princes were excommunicated, no doubt, in former times; but what were generally the results of those great judgments? The prince listened to reason, or pretended to listen to it; he desisted for the moment from a criminal war; he dismissed his ministers for form's sake; the wife, moreover, sometimes recovered her rights. Friendly powers, men of eminence and moderation, interposed their mediation; and in his turn the pope, if he had been too severe or too hasty, listened to the remonstrances of wisdom. What kings of France, of Spain, of England, of Sweden, of Denmark, were effectually deposed by the pope? All ended in menaces and treaties; and instances could be easily cited in which the popes were the dupes of their own condescension. The real battle was always fought in Italy and Germany. Why? because political objects were the main cause, and religion had but little to do with them."<sup>1</sup>

316. *Character of the deposed Princes.*

We shall be more struck with the justice of these reflections, if we examine more clearly the character and conduct of the sovereigns against whom the Holy See used that extraordinary power vested in it by the maxims of the middle ages. They were princes guilty of excesses the most notorious, and most baneful to the interests of religion and of nations; they were adulterous, simoniacal, perjured princes, abettors of schism, or of heresy, oppressors of their subjects, and persisting obstinately in their disorders, notwithstanding the reiterated advice and remonstrances of the pope. This is the character unanimously given by all historians of the emperor Henry IV., deposed by Gregory VII.; of the emperor Frederick II., deposed by Innocent IV.; and of most of the other sovereigns who were the objects of similar sentences.

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<sup>1</sup> De Maistre, *Du Pape*, book ii. ch. ii. v. xi. pp. 218, 238-240, 353.

317. *Character of the Emperor Henry IV.*

Consider, in particular, the character of the emperor Henry IV., such as it has been drawn from the pages of contemporary authors, by modern writers least liable to the suspicion of partiality to the Holy See. Fleury states that “the king of Germany was, even in his eighteenth year, one of the most profligate characters. He had two or three concubines at the same time; and whenever he heard of any beautiful young woman, unmarried or married, if he could not seduce her, he had her carried off by violence. Sometimes he went in person to find them by night; and he exposed his life on those occasions. These crimes involved him in many murders, to make away with the husbands of the women whom he coveted. He became cruel even to his most trusted associates. He became suspicious of the accomplices of his crimes; and one word or gesture in disapproval of his schemes sealed their ruin. He gave bishoprics to those who gave him most money, or who knew best how to flatter his vices; and after having thus sold a bishopric, if another person offered him more money, or was more lavish in flattering his crimes, he ordered the former bishop to be deposed for simony, and appointed the second in his place; whence it happened that many cities had two bishops at the same time, and both unworthy.”<sup>1</sup> Is it a wonder that such excesses enkindled the zeal of Gregory VII., and that he armed himself with just severity against Henry, after having first tried, without effect, all gentle means to reclaim him from his disorders? And far from deserving the injurious reproaches so often levelled against him on this subject, is it not manifest, that in proceeding as he did against the emperor, he merely discharged a conscientious duty?

318. *How Gregory VII. vindicated himself in this Matter.*

That was the plea on which he justified himself in many of his letters, and especially in that which he wrote to the archbishop of Mayence, who had represented to him the danger which he incurred by too great severity. “You assign,” he

<sup>1</sup> Fleury, *Hist. Eccl.* vol. xiii. book lxi. n. 31. See also authors cited above, n. 35, last note, ch. i.

states, "many reasons, which may have not a little weight in the judgment of men, and which would appear not unworthy of consideration to myself, if they could excuse me in the judgment of God; but if we consider how different the judgments of men are from those of God, we can find hardly anything that can excuse us for neglecting the salvation of souls, on the pretence of dangers which may threaten us. For in this does the hireling differ from the shepherd; that at the approach of the wolf, the former fears more for himself than for his sheep; and, giving himself no concern for the scattering and slaughter of his flock, abandons them and flies; whilst the shepherd, who loves his sheep, does not abandon them at the approach of danger, and does not hesitate to expose his life for them. If we remain silent while we see our brethren sinning, and if, seeing them wander, we do not bring them back by our counsels into the good way, do we not sin ourselves, and do we not imitate their wanderings? Are we not guilty of the faults which we neglect to correct?"<sup>1</sup>

319. *The Successors of Gregory VII. defended as easily.*

The details which we shall give in the following paragraph, on the conduct of the successors of Gregory VII., who imitated his firmness with regard to sovereigns, will demonstrate that the censures passed on them in this matter are equally unjust. Here we shall only remark, that in the opinion of an eminent Protestant juriconsult of the last century, all the popes can be vindicated by the same arguments. "Good reason is there for asserting," observes Senckenberg, "that there is not in history a single example of a pope acting against sovereigns who were content with their own rights, and did not think of exceeding them."<sup>2</sup> Can the popes be justly censured for having rigorously

<sup>1</sup> Greg. VII. Epistol. lib. iii. epist. 4.

<sup>2</sup> "Jure affirmari poterit, *ne exemplum quidem esse*, in omni rerum memoriâ, ubi pontifex processerit adversus eos qui, juribus suis intenti, ultra limites vagari in animum non induxerunt suum."—Senckenberg, *Methodus Jurisprud. Additione 4, de Libert. Ecclesiæ German. § 3.* See, in support of these reflections, De Montalembert, *Hist. de Sainte Elisabeth de Hongrie*, Introd. p. xxxvi. &c. See also the details which we have given on the conduct of Philip I., king of France, of Frederick Barbarossa, emperor of Germany, and of some other sovereigns; *supra*, ch. i. n. 35; ch. ii. n. 108. We shall return to this subject in the following paragraph.

attacked such disorders, and for having used to that end the power attributed to them by the maxims and constitutional law of their time? Should we not rather admire their courage, and their immovable firmness in this contest, which they sustained so long for the interests of religion and of society?

§ 3. *On the Wars said to have been caused by the Collision of the Two Powers.*<sup>1</sup>

320. *Palpable Exaggeration on this Subject.*

All the most envenomed calumnies against the temporal power of the popes during the middle ages, and against the use which they made of it, have been compressed into a few lines, from the pen of a French magistrate, under the unconscious influence of the ruling prejudices of the magistracy during the last century: "The delusion of the temporal omnipotence of the popes inundated Europe during four or five centuries with fanaticism and blood."<sup>2</sup>

Now, the popes, we have already shown, never claimed this *temporal omnipotence*;<sup>3</sup> and the power which they did claim was not the effect of delusion, but the application of an existing constitutional law, and the result of a political theory much more wise and more useful to society than all our modern theories.<sup>4</sup> It remains now for us to examine whether the temporal power of the popes did really inundate Europe during four or five centuries with fanaticism and blood.

This power, we have no difficulty in admitting, however legitimate and useful in itself, may have given occasion to painful collisions between the two powers. The most useful institutions, the wisest laws, the best established rights, may, and in fact do, occasion every day similar inconvenient results, as inevitable consequences of the malice and passions of men. And so with regard to the temporal power of the popes during the middle ages, it should inevitably disturb at times the peace and the harmony of the two powers. Amazing, it certainly would be, if

<sup>1</sup> De Maistre, Du Pape, book ii. ch. xii.

<sup>2</sup> Ferrand, Esprit de l'Histoire, vol. ii. letters 28, 41, pp. 221, 222, 413.

<sup>3</sup> Supra, § 1.

<sup>4</sup> Ibid. § 2.

sovereigns, excommunicated and deposed by the pope, had not made a struggle to defend their rights and their pretensions. The resistance of a criminal to the sentence that condemns him is naturally accounted for by the motive of self-interest which dictates it ; but it is no evidence either against the wisdom of the laws, or against the prudence of the judge who enforces it.

But though the temporal power of the popes during the middle ages may have occasioned painful contests between the two powers, can it be said with truth, or even the least probability, that "it inundated Europe with fanaticism and blood during four or five centuries?" Nothing can be more palpably exaggerated than such an assertion ; an attentive perusal of history clearly demonstrates that the wars supposed to have been occasioned by the collision of the two powers neither arose from that cause, nor were so protracted and universal as it has been supposed.

321. *Real Causes of the Contest between the Two Powers.*

It is assumed that the wars in question were *caused* by the temporal power of the popes, and by the use which they made of it against the emperors. On the contrary, it is certain that most of these wars arose from totally different causes. Sometimes it was the exorbitant pretensions of the emperors ; sometimes their notorious disorders ; sometimes their obstinacy in sustaining an antipope ; sometimes political dissensions between princes, and especially between the electors of the empire. Our limits do not permit us to go over in detail all the causes here assigned ; we shall only notice some of the most remarkable, chiefly those relating to the reigns of the emperors Henry IV. and Frederick II., which supply, it is supposed, the strongest grounds for the objection which we are at present discussing.<sup>1</sup>

322. *Excesses of Henry IV.—Moderation of Gregory VII.*

If we trace back to their source the troubles of the empire under Henry IV., we shall find that the original cause of these troubles was the unprecedented conduct and sacrilege of that prince, who, notwithstanding the repeated admonitions of Gre-

<sup>1</sup> De Maistre, ubi supra, ch. xii. xiii. Maimbourg, *Hist. de la Décadence de l'Empire de Charlemagne.*

gory VII., persisted obstinately in the most scandalous disorders, and shamelessly trampled on the rights of humanity, as well as of the Church.<sup>1</sup> Far from listening to the advice and exhortations of the pope, Henry every day multiplied his excesses, and was guilty of fresh outrages on religion and morality; he made himself sovereign arbiter of ecclesiastical dignities within his dominions, conferring them according to his interests and caprice on the most unworthy subjects. Threatened with excommunication in punishment of his excesses, he contemned the censures of the Church; and spurning all moderation, he addressed to the pope the most insulting letters; he even presumed to depose him in a mock council held at Worms.<sup>2</sup> It was not till then that Gregory VII., exercising that power which the constitutional law of the time conferred on him over sovereigns rebelling against the Church, and especially over the king of Germany, published against this incorrigible prince a sentence of excommunication and deposition, and declared his subjects thereby absolved from their oaths of allegiance to him. Still, he does not at first pronounce this sentence against him as definitive; for in a letter written on the subject to the German lords, he advises them to elect another emperor, only in case that Henry should persist in his wicked career.<sup>3</sup> The obstinacy of that prince, and the grounds of dissatisfaction which he had been long giving to the German lords, led them, in fact, to elect Rodolph, duke of Suabia, whose election was the signal for war between the two claimants.

323. *Henry IV. the real Cause of this War.*

In this case, what was the real cause of the war? It would be as unjust to attribute it to Gregory VII. as to make a judge responsible for the excesses of a criminal whom he had justly condemned. The king manifestly provoked the severity of the pope; the pope employed nothing but spiritual arms against him; it was only as a last resource that he had recourse to

<sup>1</sup> Fleury, *Hist. Eccl.* vol. xiii. book lxii. n. 11, 25, 28. Voigt, *Hist. de Grégoire VII.* books vii. viii. See also Jager's Introduction to that History, p. xxiii.; Maimbourg, *ubi supra*, ann. 1075, &c.

<sup>2</sup> Voigt, *ubi supra*, p. 364, &c.

<sup>3</sup> Fleury, *ibid.* n. 33. Voigt, *ibid.* book ix. p. 406.

deposition ; even then he only threatened it, and showed a disposition to revoke the sentence in case Henry should amend. Still more, he left the judgment on Henry's dispositions to the electors, who, by the constitution of the empire could, conjointly with himself, judge the emperor. Speaking of this matter, Count de Maistre observes, "there can be no doubt of the truth of this proposition (that is, on the right which the electors had of deposing the emperor). We must not confound the modern electors, mere titulars without authority, going through the form of nominating a prince who is in fact hereditary ; we must not, I say, confound them with the ancient electors, real electors, in the strict sense of the term, who had an incontestable right of calling their own creature to an account for his political conduct. The pope, moreover, in all that we have seen him do, never disturbed the constitutional law of the empire ; he ordered the electors to deliberate and to elect ; he ordered them to take suitable measures to extinguish dissensions. That was no more than he was bound to do ; the terms, to *make* and *unmake* emperors, were current ; but nothing could be more incorrect ; for the excommunicated prince had it in his own power to be reconciled." <sup>1</sup>

324. *Crimes equally notorious of the Princes deposed after Henry IV.*

The history of succeeding ages proves that the contests of the popes with the emperors, and the wars resulting from them, were occasioned, in the commencement, by the unjust, and often schismatical pretensions of the emperor. The cause of these wars, under Frederick Barbarossa, was the obstinacy of that prince in protecting an antipope ;<sup>2</sup> under Otho IV., his usurpation of the pope's territories, and of those of the king of Sicily, the ally and vassal of the Holy See ;<sup>3</sup> under Frederick II., the perjury and impiety of that prince, who, after having bound himself by oath, and under penalty of excommunication, to lead an army to the Holy Land, instead of fulfilling

<sup>1</sup> De Maistre, *Du Pape*, book ii. ch. xii. p. 357. See also, in the same work, note 2, p. 372, and note 1, p. 376.

<sup>2</sup> Fleury, *Hist. Eccl.* vol. xv. book lxx. n. 39, &c. Pffeffel, *Abrégé de l'Hist. d'Allemagne*, ann. 1162. Maimbourg, *ubi supra*, ann. 1159.

<sup>3</sup> Fleury, *ibid.* vol. xvi. book lxxvi. n. 51 ; book lxxvii. n. 4. Pffeffel, *ibid.* ann. 1210. Maimbourg, *ubi supra*, ann. 1209, &c.

his engagement, thought only of increasing his treasury at the expense of the Church, and for the oppression of Lombardy.<sup>1</sup> "Gregory IX. has been accused," says Count de Maistre,<sup>2</sup> "of having allowed himself to be carried away by anger, and of exceeding precipitancy in his conduct towards Frederick. Muratori has given one account, Rome has given another; this discussion, which would require too much time and trouble, may be dispensed with in a work which does not by any means discuss the question whether a pope had never done wrong. Let us suppose, if you wish, that Gregory IX. had been too inflexible; what shall we say of Innocent IV., who, before he became pope, had been the friend of Frederick, and who tried every means to restore peace? He was not more fortunate than Gregory, and ended by solemnly deposing the emperor in the general Council of Lyons, in 1245, for the crimes of perjury, sacrilege, heresy, and felony, juridically proved and admitted in the said council."<sup>3</sup>

325. *Purely Political Origin of the Guelph and Ghibelline Factions.*

It was from the contests between Frederick II. and popes Gregory IX. and Innocent IV. that arose in Italy the two famous parties, the Guelphs and the Ghibellines, who caused so much trouble and disorder in that country, during more than two centuries; one party (the Ghibellines) ardently sustaining the cause of the emperors, the other (the Guelphs) that of the popes.<sup>4</sup> Religion, however, had nothing to do with these contests, which, in reality, arose solely from the sentiments of hatred, jealousy, and ambition, which then divided nearly all the cities of Italy. "It must not be supposed," observes Maimbourg, "that these two factions, one of which sided with the pope, and the other with the emperor, made war for religion's sake; both professed to be Catholics; it was hatred and

<sup>1</sup> Fleury, *Hist. Ecclés.* vol. xvi. book lxxviii. n. 41, 58, &c.; book lxxix. n. 37, &c. Michaud, *Hist. des Croisades*, vol. iv. p. 2, &c. Michelet, *Hist. de France*, vol. ii. p. 555, &c.

<sup>2</sup> De Maistre, *ibid.* p. 366.

<sup>3</sup> See, for the development of these facts, the authors cited above, ch. ii. n. 149.

<sup>4</sup> On the origin and history of the Guelphs and Ghibellines, see Maimbourg, *ubi supra*, pp. 434, 494, 511, 546, &c.; Pfeffel, *Abrégé de l'Hist. d'Allemagne*, ann. 1139, 1310; De Maistre, *ibid.* ch. vii. p. 304.

ambition that armed them against each other to their mutual destruction, and to establish their power in those provinces from which they might expel their antagonists. There was this difference only between them, that the Ghibellines acknowledged the emperor as their sovereign, and held their possessions under the empire; the Guelphs, on the contrary, detached from the empire which they would never acknowledge, always sided with the popes against the emperors.”<sup>1</sup> Voltaire himself, as we have already seen, was forced to admit the truth of these reflections.<sup>2</sup>

326. *It was not, properly speaking, a War between the Two Powers, but one between Italy and Germany.*

We shall proceed no farther in the discussion of the facts objected to us; we have said enough to prove for any judicious reader the truth of the observations of Count de Maistre. “It is false, that there was (in those unhappy times) a war, properly speaking, between the empire and the priesthood. It is repeatedly asserted, with the view of making the priesthood responsible for all the blood shed during that great struggle; but, in reality, it was a war between Italy and Germany, between usurpation and liberty, between the master who brings chains and the slave who spurns them; a war in which the popes did their duty as Italian princes, and as prudent politicians, by taking part with Italy; for they could neither favour the emperor without degrading themselves, nor attempt neutrality without being ruined. It would be exceedingly difficult, if not impossible, to assign in the history of those unhappy times a single war caused directly and solely by an excommunication. This evil was more frequently the consequence of some other, as when in the heat of a war already enkindled by political causes, the popes believed it their duty, for various reasons, to use severity. Henry IV. and Frederick II. are the two instances in which it could be said with much truth, that excommunication was the cause of a war; and yet even in these, how many attenuating circumstances, arising either from the inevitable current of events, or

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<sup>1</sup> Maimbourg, ubi supra, p. 546. Pfeffel, *ibid.* ann. 1310. De Maistre, pp. 373-375.

<sup>2</sup> See supra, n. 304.

from the most intolerable provocations, or from the necessity of defending the Church, or from the precautions taken by the popes to diminish the evil.”<sup>1</sup>

327. *Exaggerations on the Duration of the War.—Its pretended Universality.*

To the palpable exaggerations which we have just exposed, must be added others regarding the duration and the universality of the pretended wars occasioned by the collision of the two powers. These wars, as we have seen, so far from extending to all Europe, most certainly were almost confined to Italy and Germany. Equally certain is it, that the origin of these great contests between the priesthood and the empire, cannot be dated earlier than the year 1076, when the emperor Henry IV. was excommunicated, and that their termination cannot be placed later than the date of the golden bull, published by the emperor Charles IV., in 1356;<sup>2</sup> which thus reduces the duration of these fatal divisions to less than three, instead of the four or five centuries, at which they are sometimes computed.<sup>3</sup> “From this period subtract, moreover, the intervals during which the popes and emperors were on amicable terms; those in which their quarrels never became more than quarrels; those in which the empire had no head, during the interregnums neither brief nor rare at the time; those in which excommunications were attended with no political results; those in which the spiritual power was in no manner involved in the wars caused solely by the discord of the electors amongst themselves; those, in fine, in which the popes, being obliged to act, were not responsible for the consequences, no power being liable for the evil results of a legitimate act; and we shall see to what a compass are reduced those ‘four centuries of fanaticism and blood’ so imperturbably charged against the memory of the popes.”<sup>4</sup>

<sup>1</sup> De Maistre, *ibid.* pp. 303, 375.

<sup>2</sup> On this bull, see Maimbourg, *ubi supra*, ann. 1356; Pfeffel, *ibid.*; Lenglet-Dufresnoy, *Méthode pour étudier l’Histoire*, 12mo. edit. vol. vi. p. 329; *Diction. de Moréri*, art. *Bulle d’Or*.

<sup>3</sup> See note 1, n. 307, ch. iv. *supra*.

<sup>4</sup> De Maistre, *ubi supra*, pp. 376, 377.

## ARTICLE II.

## Real Advantages of this Power.

328. *These Advantages reduced principally to Three.*

The preceding discussion on the pretended inconveniences of this power, demonstrates sufficiently to any attentive reader the great advantages which it conferred on religion and on society. Nevertheless, it may not be useless to give a brief recapitulation here, enabling the reader to compare these great advantages with the supposed inconveniences so often set off against them. A glance at the history of the middle ages is, in fact, enough to convince any person, that the power of the pope and of councils over sovereigns was the chief means used by providence for preserving religion, and morals, and the public peace.

§ 1. *Efficiency of this Power in Preserving Religion.*329. *Nature of Investitures.*

The first good effect of this power appeared in the controversy regarding investitures, which was the chief cause of the severity of popes and councils against sovereigns.

To understand this first point, it is necessary to give some notion here of investitures in general, and of ecclesiastical investitures especially.<sup>1</sup>

Investiture, in general, according to the use of the term by mediæval writers, is “the conferring, or the giving of possession of a fief or a property by a suzerain lord to his vassal.” This transfer was usually made by some symbolical action, expressing the cession of the fief or property to the new proprietor; for instance, by the presentation of a stone, of a branch of a tree, of a sod of grass, or of any other object the use of which had been sanctioned by the caprice of local custom.

When princes had endowed bishoprics and abbeys by assigning to them fiefs and properties, they naturally claimed the right of investing prelates with the temporalities of their sees or abbeys, as they had before invested the lay proprietors of their pro-

<sup>1</sup>Ducange, *Glossarium Mediæ et Infimæ Latinit. verbo Investitura.*

perties. Ecclesiastical fiefs were, in this respect, subject to the laws of temporal fiefs; so that bishops and abbots, no more than temporal lords, could not enter on possession of their fiefs until they had received investiture from the prince. This investiture was given to prelates by conferring the ring and cross, the natural emblems of episcopal jurisdiction. For this purpose, as soon as a church or abbey became vacant, the ring and cross were carried to the prince by a deputation of the chapter, or of the abbey; and the prince gave them to the successor whom he elected, with a letter ordering the lay officers to maintain him in possession of the lands belonging to the church or abbey.

330. *Origin of the Controversy of the Investitures.*

This ceremony, so far as it implied solely the collection of the temporalities attached to ecclesiastical dignities, was not in itself unlawful; but it might become the occasion of great abuses, and really did become so very speedily in Germany. The ring and cross being the natural symbols of spiritual authority, princes abused the right of investiture, claiming by it the right of conferring spiritual jurisdiction; they assumed to dispose, with sovereign control, of bishoprics and abbeys, as of secular dignities, and of selling them for money, to the great detriment of the rights and discipline of the Church. This was the origin of the great controversy about investitures. The Church had tolerated them, so long as they did not interfere with the liberty of election; but she protested energetically, first by the voice of popes, and afterwards of general councils, as soon as they were made the pretext for a manifest usurpation of the rights which she had received from Jesus Christ, of freely electing her own ministers.<sup>1</sup>

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<sup>1</sup> See M. Jager's Introduction to the History of Gregory VII. p. vi. &c.; Pey, *De l'Autorité des Deux Puissances*, vol. iii. p. 136; Montagne, *Appendix de Concil. ad calcem Prælect. Theol. de Opere Sex Dierum*, p. 279, &c.; De la Hogue, *De Ecclesiâ*, p. 455; Nat. Alexander, *Dissert. iv. in Hist. Eccles. sæc. xi. xii.* A perusal of these authors may correct a great number of others who have treated this matter not less incorrectly than superficially. M. Nettement, in his otherwise correct and interesting *Life of Suger*, has not been sufficiently on his guard against the false notions of these latter authors (pp. 25, 47, &c.). See a review of this work in the *Ami de la Religion*, vol. cxiv. p. 513, &c.

331. *The Ceremony of Investiture different from that of Homage, and of the Oath of Fidelity.*

To explain this matter more clearly, we must point out here the difference between the ceremony of investiture and those of homage and of the oath of fidelity.<sup>1</sup> “Investiture, we have seen, was the conferring, or the giving possession of a fief or property by the lord to his vassal.” Homage, which ordinarily preceded investiture, was an external profession of the subjection and devotion of the vassal to his lord. The vassal made this profession, kneeling and bareheaded, with his hands placed between those of his lord, to whom he promised faithful and loyal service, in consideration of the fief which he held of him. Homage was ordinarily followed by the oath of fealty; but this latter ceremony was not necessarily performed in person, like that of homage; homage should be done in person—the oath of fidelity could be taken by proxy.

332. *Subject of the Contest about the Investitures.—Importance of this Question.*

After these preliminary notices, it is important to remark, that the controversy relating to ecclesiastical investitures was altogether different from that regarding homage, and the oath of fidelity. From the time of Gregory VII. there were, it is true, very warm controversies between the two powers on the two latter ceremonies, as well as on the former; but the chief contest was, at all times, about the investitures, which were invariably condemned, even by those popes and councils that believed themselves bound to tolerate, by a prudent condescension, the ceremony of homage, and of the oath of fealty.<sup>2</sup>

Hence we see the great importance of the investitures, which were so long contested by the two powers, with a degree of ardour of which, at the present day, we can hardly form a notion. The subject of that contest was not a mere ceremony, as Voltaire and many heedless and superficial authors have asserted.<sup>3</sup> Such an idea could not have originated except in the most profound ignorance of the history of this controversy.<sup>4</sup> From all the

<sup>1</sup> Ducange, Glossar. Inf. Latin. verbis Hominium and Juramentum.

<sup>2</sup> Nat. Alexander, Hist. Eccles. sæc. xi. xii. cap. vii. art. v. n. 6. See notes of Nat. Alexander and of Mansi, at the end of that chapter.

<sup>3</sup> Voltaire, Essai sur l'Hist. Gén. vol. i. ch. xlvi.

<sup>4</sup> The warmest contests on this subject were between the emperor Henry V.

details of that history it follows, on the contrary, that never was there a controversy of more vital interest to religion. "The emperors," as Bossuet observes, "abused the custom of investitures to sell bishoprics, and to reduce the Church of Christ to eternal slavery."<sup>1</sup> The real question at issue, therefore, was nothing less than the essential liberty of the Church in her own government, and especially in the choice of her ministers; the thing at stake was religion itself, whose fate depends principally on that choice; whence it follows, that the popes, by saving the rights of the Church in this contest about investitures, saved religion; as they would infallibly have ruined it had they yielded on so essential a point. "No light quarrel, assuredly," observes Count de Maistre, "was this about the investitures. The temporal power openly threatened to destroy the ecclesiastical supremacy. The feudal spirit, which was then dominant, would soon have converted the Church, in Italy and Germany, into one vast fief, dependent on the emperor. That monarch publicly sold ecclesiastical benefices; priests carried arms; scandalous concubinage defiled the priestly order; one bold innovator might have annihilated the priesthood by proposing marriage as a remedy for greater evils. The Holy See alone battled against the torrent, and at least enabled the Church to attain, without a total subversion, the reform which was to be effective in after-ages. The popes never disputed the emperor's right to investiture by the sceptre: but only the investiture by cross and ring. A matter of no consequence, do you say? on the contrary, a matter of every consequence. How could both parties have been so highly excited, had the matter been one of no consequence? The popes did not quarrel even about the elections, as Maimbourg proves by the example of Suger.<sup>2</sup> They, moreover, consented to the investiture by the sceptre; that is, they had no objection that the prelates, considered as vassals, should receive from their suzerain lord, by feudal invest-

and Popes Pascal II. and Calixtus II.; an account of which may be seen in Fleury's, Bercastel's, and Maimbourg's histories. See especially the definitive arrangement concluded in 1122, between the emperor Henry V. and Pope Calixtus II., which put an end to all these disputes. The text alone of this agreement sufficiently shows at once the object and the importance of this contest. This text is given in Labbe's Councils, vol. x. p. 901.

<sup>1</sup> Bossuet, *Defens. Declar. lib. iii. cap. xii. initio.*

<sup>2</sup> Maimbourg, *Hist. de la Décad. de l'Empire, ann. 1121.*

ture, that "simple and mixed dominion"<sup>1</sup> (to speak the feudal language), the very essence of a fief, implying on the part of the feudal baron, a participation in the sovereignty, in consideration of political subjection and military service to the suzerain lord, from which the sovereignty is derived. But they would not tolerate investiture by cross and ring, lest the temporal sovereign, by using these two religious symbols in the ceremony of investiture, should seem to confer the spiritual jurisdiction and title, by thus changing a benefice into a fief; and on this point the emperor found himself at length compelled to yield.<sup>2</sup> In a word, the Church was ruined, humanly speaking; she would have neither form nor government, and, in a short time, not even a name, but for the extraordinary intervention of the popes, who ousted corrupt or misguided governments, and personally seized the helm for the restoration of order.<sup>3</sup>

333. *This Importance acknowledged, even by Protestant Authors.*

This is the opinion formed of the investiture question, not only by Catholic writers, but also by Protestants, whose profound studies have led them to judge the popes of the middle ages with a moderation, unfortunately not always found in certain Catholic authors. We have already cited the testimony of Voigt, in his *History of Gregory VII.*; <sup>4</sup> and Hurter's, in his *History of Innocent III.*, is not less remarkable. "It was in these first struggles of the popes," he observes, "to defend their independence in all things pertaining to the government of the Church, that Christianity found its preservation from the tyranny of the temporal power, and its rescue from becoming a mere state function, like religion among the pagans."<sup>5</sup>

<sup>1</sup> Merum et mixtum imperium. In feudal language these words commonly signify complete "seignorial jurisdiction," including the full administration of justice in cases civil and criminal. See Ducange, *Glossar. Infimæ Latin. verbo Imperium.*

<sup>2</sup> Maimbourg, *ubi supra.*

<sup>3</sup> De Maistre, *Du Pape*, book ii. ch. vii. p. 285-297, *passim.*

<sup>4</sup> Voigt, *Hist. de Grég. VII.* books iv. v. p. 133, &c. 177, &c. Conclusion, p. 605, &c.

<sup>5</sup> Hurter, *Hist. d'Innocent III.* vol. i. p. 123.

§ 2. *Influence of this Power in preserving Morality.*

334. *This Power used principally in repressing the Licentiousness of Princes.*

It was not merely in maintaining the independence of the Church against the usurpations of the temporal power, that the temporal power of the popes conferred the most important services on religion ; it was still more in labouring for the preservation of public morals, and especially of the marriage contract, so frequently and so outrageously violated by the incontinence of sovereigns.<sup>1</sup> A great enemy of the popes, who never omits an opportunity of weeping over the supposed scandal of an excommunication, observes that it was invariably the breaking or the making of marriage vows that added the second scandal to the first.<sup>2</sup> It is, in fact, true, that the chief use made by popes of excommunication and its terrible effects, was in repressing the immorality of princes. The merited severity of the Holy See in this matter towards Lothaire the Young, king of Lorraine, against the kings of France, Robert, Philip I., Philip II., and many other sovereigns, is well known. Now the least reflection must convince us of the inestimable service conferred on religion and society by the inflexible firmness of the pope on this point. "Never," observes Count de Maistre, "did the popes and the Church in general confer a more signal service on the world than that of repressing among princes, by ecclesiastical censures, the excesses of a passion terrible even in gentle natures, but defying description in violent ones, and which would always break through the most holy laws of marriage, wherever it was unchecked. Love when not tamed down to a certain degree by extreme civilization is a ferocious animal, capable of the most horrid excesses. To prevent it from devouring everything, it must be chained ; which it cannot be except by terror. But what can be feared by a person that fears nothing on earth ? The holiness of the married state, the sacred basis of public happiness, is especially of the highest

<sup>1</sup> De Maistre, *Du Pape*, book ii. ch. vii. art. i.

<sup>2</sup> Ferrand, *L'Esprit de l'Histoire*, vol. ii. letter 47, p. 485. Count de Maistre justly observes, that M. Ferrand jumbles the most incoherent notions in this passage. According to him, "a public adultery is a *scandal* ; and the act designed to prevent it is a *scandal*." Never were two things so different called by the same name.—De Maistre, *ubi supra*, art. i. p. 270.

importance in royal families, in which disorders of a certain kind have incalculable consequences, which people are very far from having an idea of. If in the youth of the northern nations, the popes had not been able to terrify royal passions, princes plunging from caprice to caprice, and from abuse to abuse, would have ended by establishing the law of divorce, and perhaps polygamy; and this disorder propagating itself, as always happens, through the lower orders of society, no eye can see the limits to which such a deluge would have broken.”<sup>1</sup>

335. *Admissions of M. Hurter on this Point.*

In support of these reflections we shall cite those of M. Hurter, in his History of Innocent III. “The levity with which the great lords married, ought to teach us duly to revere an authority which, if unable to prevent the libertine from violating a sacred tie, was at all events able, when complaint was made, to extend an energetic protection to the victims, and to remind princes that they owed good example to their subjects.”<sup>2</sup> It is on this principle that the same author justifies the firmness of Innocent III. in maintaining the sacred laws of marriage against the incontinence of Philip Augustus. Hurter’s reflections on this subject are the more worthy of attention, as they apply generally to all the popes who, on similar occasions, evinced the same firmness. “The point at issue here,” he observes, “was not of possessions, nor of disputed rights of the Holy See, but of this great question—Is the sovereign subject to the laws of Christianity, which are to regulate relations between man and man? We saw here, in the first place, that if these laws were enforced in ancient times, perhaps more rigorously than in our days, that circumstance cannot be made the ground of any accusation against the popes. The pope had to deal in those cases, not with the prince, but with the Christian. He combated, not as a temporal prince, but as chief guardian of the precepts which God had given to man. The point at issue was, which should prevail, the will of the prince or the power reputed (then, at least) as the centre of Christian unity; or whether before the latter

<sup>1</sup> De Maistre, ubi supra, p. 270.

<sup>2</sup> Hurter, Hist. d’Innocent III. vol. ii. p. 802.

the temporal power should succumb and disappear? Innocent's conduct in the affairs of divorce proves that he was guided solely by the just appreciation of his own duties, and of those of princes; and that, inspired solely by apostolic zeal, he allowed himself to be influenced by no human considerations. He never would sacrifice the moral importance of his dignity, to purchase a powerful support during the troubles in Italy, or an ally in the dissensions of Germany, or to obtain from the king, by silence and condescension, assistance for the Crusades. He was not afraid of the increased number of enemies, and of embarrassing difficulties, which his firmness would create for the Holy See. By doing less, or by acting with more indulgence, he would have done violence to his moral nature, and have mixed for himself the bitterest cup that can be tasted by a man impressed with a profound conviction, yet acting contrary to his principles. To censure him in those circumstances, would be hazardous at any time, because it would efface the distinction between might and right, and emancipate man from every moral obligation. What woes would have been spared to France and to Europe, had an Innocent been seated on the papal throne during the reign of Louis XV. It was his duty to be the pastor of kings, and thereby the saviour of nations."<sup>1</sup>

### § 3. *Influence of this Power in maintaining Public Tranquillity.*

336. *This Effect admitted by unexceptionable Testimony.—Admissions of Voltaire.*

This last effect is sufficiently demonstrated by the details given in the preceding article, on the beneficial influence of the power in question, in reconciling, as much as possible, the authority of the sovereign with the liberty of the people, and preventing alike the disorders of anarchy, and those of despotism. We shall merely add here, that this excellent result, which of itself justifies fully the theory of the middle ages, is generally admitted in our time, even by authors least suspected of partiality in favour of the Church or of the Holy See.

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<sup>1</sup> Hurter, *Hist. d'Innocent III.* vol. i. ann. 1198, p. 199. See also, in the Introduction to the same work (p. xxxv.), M. Dutheil's reflections on that subject.

“The interests of the human race,” says Voltaire, “required some check on sovereigns, and some protection for the life of the subject; this religious check could, by universal consent, be placed in the hands of the popes. This chief pontiff, by never meddling in temporal quarrels except to appease them, by admonishing kings and nations of their duties, by reproofing crimes, by inflicting excommunications on great offences only, would have been regarded as the image of God on earth.”<sup>1</sup> “Never, in my opinion,” says Count de Maistre, “was there more cogent reasoning in vindication of the popes. This check so indispensable for the people was found, and could not be found except in the power of the popes. It was there, not by any express convention on the subject, which is impossible, but by a tacit and universal convention, admitted by kings as well as by subjects, and which has produced incalculable benefits.”<sup>2</sup>

337. *Admissions of M. Ferrand.*

These great benefits have been expressly acknowledged by a modern writer, who has most bitterly censured the conduct of the popes of the middle ages towards sovereigns. “During the period of the Crusades,” according to M. Ferrand, “the power of the popes was great; and, at that time, their anathemas, their interdicts, were respected, were dreaded. A person who, perhaps, was inclined to disturb the states of any sovereign engaged in the Crusades, knew that he would thereby expose himself to an excommunication, which might entail the forfeiture of his own. This impression was generally diffused and adopted; nor could he find co-operators even amongst those who, at another time, might have seconded his projects.”<sup>3</sup>

338. *Admissions of Protestant Authors.*

A Protestant author of the last century expresses himself still more decisively on this question, in a work which has secured for him a distinguished rank among historians and authors. “During the middle ages,” observes M. Ancillon,

<sup>1</sup> Voltaire, *Essai sur l'Histoire Général*, vol. ii. ch. lx.

<sup>2</sup> De Maistre, *Du Pape*, book ii. ch. ix. p. 323.

<sup>3</sup> Ferrand, *Esprit de l'Hist.* vol. ii. letter 47, p. 494.

“when there was no social order, the papacy alone perhaps saved Europe from utter barbarism. It created bonds of connection between the most distant nations; it was a common centre, a rallying point for isolated states. It was a supreme tribunal, established in the midst of universal anarchy, and its decrees were sometimes as respectable as they were respected; it prevented and arrested the despotism of the emperors, and diminished the inconveniences of the feudal system.”<sup>1</sup>

339. *M. Coquerel.*

A more recent Protestant writer observes, “that the papal power, by disposing of crowns, prevented the atrocities of despotism; hence, in those dark ages, we see no instance of a tyrant, like Domitian, in ancient Rome; a Tiberius could not exist; Rome would have crushed him. Great despotisms develop themselves when kings believe they have no power above them; then it is that the intoxication of unlimited power engenders the most atrocious enormities.”<sup>2</sup>

340. *Inconveniences of this Power abundantly compensated for by its Advantages.*

The indisputable advantages of the temporal power of the popes during the middle ages, certainly justify the conclusion that, in a political point of view, the evils which may have resulted from that power were amply counterbalanced by its good effects; and that, consequently, it has been more beneficial than injurious to society. M. Raoul Rochette, one of the most distinguished members of the Academy of Inscriptions and Belles Lettres, has come to the same conclusion, after a serious and impartial history of the middle ages. The tone of wisdom and moderation in which he gives his opinion on the subject, ought certainly to recommend similar delicacy to so many writers who, with far less information and erudition on those ages, hazard opinions so confident and dogmatic on the conduct of the

<sup>1</sup> Ancillon, *Tableau des Révolutions du Système Politique de l'Europe*, vol. i. Introd. pp. 133, 157.

<sup>2</sup> Coquerel, *Essai sur l'Hist. du Christianisme*, p. 75. Not to multiply quotations unnecessarily—a work of no difficulty,—we shall merely refer to a remarkable article in the *Quarterly Review*, one of the most respectable and influential Protestant periodicals in England. It is cited in Nisard's *Vie de la Reine Blanche*, p. 276.

popes and councils of the middle ages. "There is a fact," he says, "which will appear from my researches, and which, I believe, I may now announce confidently, that during the long course of the middle ages, the influence of the popes was generally rather useful than pernicious to Europe, and that, every thing weighed in the exact balance, society owed more virtues and benefits to the papal power, than it suffered from the same power vices and misfortunes. But, in order to make the probability of this assertion obvious, even to the most prejudiced minds, I must add immediately, that a state of civilization, or if you will, of barbarism, precisely similar to that of the middle ages, was required, in order to enable the papal authority to produce consequences so beneficial."<sup>1</sup>

341. *Services conferred on Society by the Popes.*

We shall not enter into a more lengthened detail of the immense services which the temporal power of the Church and the pope conferred on religion and society during the whole course of the middle ages.<sup>2</sup> The developments already given are more than sufficient to enable the judicious and impartial reader to form his opinion on the question, and to convince him of the justness of the reflections with which Count de Maistre closes the third part of the interesting work on which we have so copiously drawn. "The faults of the popes, exaggerated beyond measure, or misrepresented, and in general beneficial to mankind, are, moreover, but the human alloy inseparable from all temporal *mixture*; and when all has been well examined and

<sup>1</sup> Raoul Rochette, *Discours sur les Heureux Effets de la Puissance Pontificale au Moyen Age*, Paris, 1818, 8vo. p. 10. See also pp. 15, 28-30. See the review of this Discourse, in the *Ami de la Religion*, vol. xv. p. 273.

<sup>2</sup> We could easily multiply quotations on this point. Besides those already given in the course of this work (n. 17, 49, 124, &c.), we may name also the following authors:—*Entretiens sur la Réunion des Différentes Communions Chrétiennes*, by Baron de Starck, p. 296, &c.; *Feller, Catéchisme Philos.* n. 510; *Pluquet, Diction. des Hérésies, Discours Prélim.* xi. et xii. Siècles, pp. 232, 241, &c.; *Bernardi, De l'Origine et des Progrès de la Législation Française*, book v. ch. iii.; *Frayssinous, Les Vrais Principes de l'Eglise Gallicane*, 2nd edit. p. 64, &c.; *Jondot, Tableau Historique des Nations*, vol. iii. p. 396, &c.; *De Saint-Victor, Tableau Hist. et Pittoresque de Paris*, 8vo. edit. vol. ii. pp. 593-597; *Châteaubriand, Génie du Christianisme*, part iv. ch. xi.; *Jager, Introd. à l'Hist. de Grégoire VII.* p. xxxviii. &c.; *Lefranc, Hist. du Moyen Age*, book iv. ch. vi. § 1, ad finem; *De Montalembert, Hist. de Sainte Elisabeth de Hongrie, Introduction*, pp. xix.-xxxv.; *De Falloux, Vie du Pape S. Pie V. Préface.*

weighed in the balance of the most frigid and most impartial philosophy, it will be demonstrated, that the popes were the instructors, the guardians, the saviours, and the real ruling soul of Europe.<sup>1</sup> The question is not, were the popes men, and were they never in error; but whether, all accounts balanced, there was not more wisdom, more knowledge, and more virtue on their throne, than on any other? Now, on that point, no one can so much as doubt."<sup>2</sup>

### CONCLUSION,

#### AND SUMMARY OF THE SECOND PART.

342. *Injustice of the Declamations against the Popes and Councils of the Middle Ages.*

We may now estimate at their proper worth the declamations so common with modern authors, against popes and councils, regarding the power formerly claimed over princes in the temporal order. Most of these invectives assume either that popes and councils had no right, at that time, to judge sovereigns in temporal matters; or that the right had not been originally based on any legitimate title; or that the use of that right was pernicious to society. On the contrary, it is certain, and demonstrated conclusively from history, that the right of judging sovereigns in temporal matters was then vested in the Church and the pope, by the principles of a universally received constitutional law; that this right was based, from the commencement, on the most legitimate titles; finally, that the use of this right, notwithstanding the evil results which it may have sometimes occasioned, was generally beneficial to society.

The question here is, not what were the causes which invariably weakened, and even totally destroyed, the prodigious power with which the Church and her visible head were so long invested; much less is there question of applying to the present state of society that ancient system of law, which has long since fallen into disuse, and which is now more than ever rejected by the spirit of the age. The sole question is, how are we to view the severity with which the conduct of popes and

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<sup>1</sup> De Maistre, *Du Pape*, book iii. Conclusion, p. 154, &c.

<sup>2</sup> De Maistre, *ibid.* book ii. ch. ix. p. 332.

councils to sovereigns in the middle ages has been so often censured in modern times ; and whether that conduct can be accounted for, and even justified, by the principles of then existing constitutional law. From our inquiry it follows clearly, that this explanation, which has been already adopted by learned authors, is solidly proved from history ; and must, therefore, be regarded as established, both by cogent arguments and imposing authorities. It is true, that were it proved even to evidence, it does not sanction the opinion of those theologians who imagined that they could explain and justify, by the opinion of the divine right alone, the conduct of popes and councils in formerly deposing temporal princes ; but, on the other hand, it is true, that supposing it established only by plausible and probable arguments, and still more if these arguments be conclusive, it supplies a crushing reply to a mass of odious declamations, a thousand times uttered against the popes and councils of the middle ages.

343. *Why these Invectives have been so easily admitted by Catholic Writers.*

Our development of this subject may also serve to explain how invectives so unjust and so unfounded could be so easily listened to, not only by the declared enemies of the Church and of the Holy See, but also by a considerable number of religious writers sincerely attached to the Catholic Church and to the pope. The power exercised by the popes and councils over sovereigns in the middle ages, though generally regarded as legitimate by contemporaries, could not fail to be censured with more or less asperity by a small number of persons interested in supporting the cause of those princes who had incurred the anathemas of the Church. These reclamations, not numerous at first, and almost stifled by the general opinion, were afterwards republished, at different times, by hot-tempered men, who had a manifest interest in opposing the Holy See, and in defaming the memory of the most illustrious popes. Hence the virulent invectives of a host of Protestant and of infidel writers against the popes and councils of the middle ages ; invectives taken up with more or less heedlessness by ignorant Catholics, and sometimes even by respectable writers, on occasions when even the best men are dragged against their will by the spirit of their times,

or by fatal prejudices. This was exemplified in France, especially during the protracted and heated contests that arose at the close of the thirteenth century, between Boniface VIII. and Philip the Fair, and at the close of the seventeenth century, between Louis XIV. and Innocent XI. Even authors most partial to France admit that the government in those times was extremely embittered against Rome; that many prelates of the highest order were tainted with the general feeling; and that the authority of those prelates, combining with the ascendancy of the king and his ministers, propagated in all quarters against the Holy See a spirit of opposition, and even of exasperation, whose consequences prudent and thoughtful men could not contemplate without terror.<sup>1</sup> Manifest evidence of this general spirit and dangerous tendency are visible in the works of many authors, equally distinguished for the solidity of their intellect and their attachment to the Church and the Holy See. We may mention in particular Bossuet's Defence of the Declaration of 1682, and Fleury's Discourses and Ecclesiastical History.<sup>2</sup> The severity with which those eminent authors, whose example so many others have followed, censure the popes of the middle ages, and especially Gregory VII. and his successors, is but too notorious; but the very circumstances in which they composed those works, warn us sufficiently, that in following guides otherwise so respectable and enlightened, we should be on our guard against the pernicious bias which those circumstances must naturally have imparted to their judgment and opinions.

<sup>1</sup> See our observations on the contests of Boniface VIII. and Philip the Fair (supra, n. 220). On the contests relating to the *régale* in the reign of Louis XIV., see Histoire de Bossuet, vol. ii. book vi. n. 6, p. 124, &c.; Nouveaux Opuscules de Fleury, 2nd edit. p. 208, etc.; L'Ami de la Religion, vol. xxvi. p. 33, &c.; D'Avrigny, Mémoires Chronol. et Dogm. vol. iii. ann. 1681, 1682.

<sup>2</sup> Hist. de Bossuet, Pièces Justificatives in book vi. n. 1. Remark, especially, pp. 393, 394, 418, 419, &c.; also, Défense de la Déclaration, lib. i. sect. i. cap. vii.; lib. iii. cap. ii. ix. x. et alibi passim. On the Discours et l'Histoire Ecclésiastique de Fleury, see L'Ami de la Religion, vol. xxii. pp. 241, 353, &c.; Marchetti, Critique de l'Histoire Ecclésiastique de Fleury, 2 vols. 8vo.; Muzzarelli, Remarques sur l'Histoire Ecclésiastique de Fleury.

## CONFIRMATORY EVIDENCE.

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VIII.—Pages 2, 117, 179, 199.

*Origin, progress, and modifications of the opinion which attributes to the Church and to the pope a divine right, direct or indirect, of temporal jurisdiction.*

It has, we believe, been clearly demonstrated in the second part of this work, that the opinion which attributes to the Church and the pope a direct or indirect power of jurisdiction over temporals, by divine right, 1st, either was unknown or had but few advocates before the pontificate of Gregory VII.; 2ndly, that it did not begin to be received until a much later period; 3rdly, and finally, that it was never either taught or implied by councils or by popes, even in those decrees which seem to extend to its greatest limits their authority over temporals.<sup>1</sup>

The development of these three points was sufficient for the principal object of our work, which was to prove that the power exercised by popes and councils over sovereigns during the middle ages, was not grounded on the theological opinion of the divine right, but on the constitutional law then received in Catholic Europe.

Nevertheless, to elucidate the matter still more, it may not be useless to state here the origin, progress, and changes of the opinion which attributes to the Church and to the pope a direct or indirect jurisdiction over temporals, by virtue of the right divine.

Some of the advocates of this opinion attribute to the Church and the pope a power of direct jurisdiction, others, a power of only indirect jurisdiction over temporals.<sup>2</sup>

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<sup>1</sup> For the development of these three points, see ch. iii. part ii. art. i. We have observed, in the same place, that the historical truth of these three points in no manner affects the controversy regarding the opinion in question.

<sup>2</sup> See the authors cited above, p. 2, especially Cardinal Bellarmine.

1. The advocates of the first opinion maintain, that the Church and the pope have received *immediately from God*, full power to govern the world, both in spirituals and temporals; but in such a way that while they themselves must exercise the spiritual power, they must entrust the temporal to secular princes; whence it follows, in the system of these authors, that the temporal prince is but an official of the Church, from whom he directly receives his power; and that the Church, which entrusted it to him, to be used in conformity with the order of God, can also take it from him, should it be used against that order.

We know no writer of any eminence that defended or supposed this opinion before the twelfth century; but its origin may, we think, be traced to that period. The first that, to our knowledge, advocated it was John of Salisbury, chancellor of the archbishop of Canterbury, and afterwards bishop of Chartres, and author of a work entitled *Polycraticus, sive de Nugis Curialium*.<sup>1</sup> This work, which was addressed in 1159 to Thomas Becket, then Chancellor of England, and afterwards archbishop of Canterbury, is divided into eight books, which, in very interesting and varied forms, contain a valuable series of philosophical and moral reflections on the duties of the great. In the fourth book, the author explains and openly advocates the theological opinion of the divine right, in the sense already explained.<sup>2</sup>

<sup>1</sup> This work, which was often printed by itself, was reprinted in vol. xxiii. *Bibliotheca Patrum*, Lyons, 1677. There is an analysis of it in Fleury, *Hist. Eccl.* vol. xv. book lxx. n. 35. D. Ceillier, *Hist. des Auteurs Ecclés.* vol. xxiii. p. 272. *Hist. Litt. de la France*, vol. xiv. p. 98, &c. *Hist. de l'Eglise Gall.* vol. x. p. 46. See also a sketch of this work, supra, n. 145, ch. ii. note 1.

<sup>2</sup> “Est ergo, ut eum plerique definiunt, princeps potestas publica, et in terris quædam divinæ majestatis imago. Omnis enim potestas à Domino Deo est, et cum illo fuit semper, et est ante ævum. Quod igitur princeps potest, ita à Deo est, ut potestas à Domino non recedat; sed eâ utitur per suppositam manum, in omnibus doctrinam faciens clementiæ, aut justitiæ suæ. *Qui ergo resistit potestati, Dei ordinationi resistit*, penes quem est auctoritas conferendi eam, et cum vult, auferendi eam. . . . *Hunc ergo gladium de manu Ecclesiæ accipit princeps*, cum ipsa tamen gladium sanguinis omnino non habeat. *Habet tamen et istum; sed eo utitur per principis manum*, cui coerendorum corporum contulit potestatem, spiritualium sibi in pontificibus auctoritate reservatâ. *Est ego princeps sacerdoti quidem minister*, et qui sacrorum officiorum illam partem exercet, quæ sacerdotii manibus videtur indigna. . . . Profectò, ut Doctoris gentium testimonio utar, *major est qui benedicit, quàm qui benedicitur*; et penes quem est conferendæ dignitatis auctoritas, eum cui dignitas ipsa conferitur, honoris privilegio antecedit. Porrò de ratione juris, ejus est nolle, cujus est velle; et ejus est auferre, qui de jure conferre potest. Nonne Samuël in Saulem, ex causâ inobedientiæ, depositionis sententiam tulit, et ei, in regni apicem, humilem filium Isai subrogavit?”—*Polycraticus*, lib. iv. cap. i. iii. (*Biblioth. Patrum*. tom. xxiii. p. 294, &c.)

Many modern writers have also attributed to John of Salisbury the doctrine

It seems that this opinion had not at first many advocates, at least among the writers of the twelfth and thirteenth centuries. The most eminent authors of those times attribute to the Church a directive power alone over temporals; that is, the power of enlightening and directing the conscience of the faithful on the obligations arising from the oath of allegiance to sovereigns;<sup>1</sup> to this power, some merely add a power of temporal jurisdiction over the Catholic princes of the West, in virtue of Constantine's donation.<sup>2</sup> It is certain, nevertheless, that John of Salisbury's opinion, though almost unnoticed in his own day, afterwards found a certain number of advocates. St. Thomas of Canterbury, an intimate friend of the author's, and to whom the work was dedicated, appears to adopt his opinion on the temporal power of the Church.<sup>3</sup> The compiler of the Laws of Suabia, in the twelfth

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of tyrannicide, which allows any private person, by his own private authority, to kill a tyrant. (See the authors cited in the last note.) The author of the *Hist. Littéraire de la France* attributes, and with severe reprehension, this doctrine to John of Salisbury; but the imputation is, we believe, unfounded. He holds, certainly, that it is lawful to kill a *public tyrant*; that is, a notorious usurper of the supreme power; but he manifestly supposes that even such a one cannot be killed except in the name of the *public authority*. "Aliter cum amico," says he, "aliter vivendum est cum tyranno. Amico utique adulari non licet; sed aures tyranni mulcere licitum est. Ei namque licet adulari, quem licet occidere; porro tyrannum occidere, non modò licitum est, sed æquum et justum; qui enim gladium accipit, gladio dignus est interire. Sed accipere intelligitur, qui eum propriâ temeritate usurpat, non qui utendi eo, à Domino accipit potestatem. Utique qui à Deo potestatem accipit, legibus servit, et justitiæ et juris famulus est. Qui verò eam usurpat, jura deprimit, et voluntati suæ leges submittit. In eum ergo meritò armantur jura, qui leges exarmat; et *publica potestas* sævit in eum, qui evacuare nititur publicam manum."—*Ibid.* lib. iii. cap. xy.

This explanation at once solves all the objections that might be raised from several passages on the same subject in the course of his work (lib. viii. ch. xviii. &c.), and especially in ch. xx. of book viii, where the following passage occurs: "Auctoritate divinæ paginæ, licitum et gloriosum est, publicos tyrannos occidere; si tamen fidelitate non sit tyranno obnoxius interfecto, aut honestatem non amittat. . . . Hoc tamen cavendum docent historiæ (sacræ), ne quis illius moliatu interitum, cui fidei aut sacramenti religione tenetur astrictus. . . . Sed nec veni, licet videam ad infidelibus aliquando usurpatum, *ullo unquam jure indultam lego licentiam*. Non quòd tyrannos de medio tollendos non esse credam; sed sine religionis, honestatisque dispendio." Observe that in this last passage, as well as in that cited before, the author does not allow private persons to kill a tyrant, except *in cases permitted by law*. For if he prohibits the use of poison against a tyrant, it is solely because that means is *not sanctioned by any law*.

<sup>1</sup> For an explanation of the most eminent authors of the twelfth and thirteenth centuries on this subject, see ch. iii. part ii. art. i. n. 190, &c.

<sup>2</sup> This opinion was adopted by Gervais of Tilbury, who appears to have borrowed it from more ancient authors. *Supra*, ch. ii. art. iv. n. 144, ch. iii. n. 168, 169, text and note.

<sup>3</sup> "Ecclesia Dei in duobus constat ordinibus, clero et populo. In clero

century, teaches the same opinion much more clearly.<sup>1</sup> Cardinal Belarmine attributes it also to some more recent writers, especially to Cardinal d'Ostia, Henry de Suza. This latter author goes so far as to assert, that "since the coming of Jesus Christ all the dominion of infidel princes was transferred to the Church, and is vested in the pope, as the vicar of Jesus Christ, the King of kings; whence he infers, that the pope can, by his own authority, grant the kingdoms of infidel princes to any of the faithful whom he may think proper to select."<sup>2</sup>

sunt apostoli, apostolici viri, episcopi, et cæteri doctores Ecclesiæ, quibus commissa est cura et regnum ipsius Ecclesiæ; qui tractare habent negotia ecclesiastica, ut totum reducatur ad salutem animarum. Unde et Petro dictum est, et in Petro aliis Ecclesiæ Dei rectoribus, non regibus, non principibus: *Tu es Petrus, et super hanc petram ædificabo Ecclesiam meam, et portæ inferi non prævalerunt adversus eam.* In populo sunt reges, principes, duces, comites, et aliæ potestates, qui sæcularia habent tractare negotia, ut totum reducant ad pacem et unitatem Ecclesiæ. Et quia *certum est, reges potestatem suam accipere ab Ecclesiâ, non ipsam ab illis, sed à Christo*; ut salvâ pace vestâ loquar, non habetis episcopis præcipere, absolvere aliquem, vel excommunicare, trahere clericos ad sæcularia examina, judicare de Ecclesiis vel decimis, interdiciere episcopis ne tractent causas de transgressionem fidei vel juramenti, et multa in hunc modum, quæ scripta sunt inter *Consuetudines vestras, quas dicitis avitas.*—S. Thomæ Cantuar. Epis. lib. i. epist. 64, ad regem Henry II. (4to edit. Brussels, vol. i. p. 94).

"Ad sacerdotes suos voluit Deus quæ Ecclesiæ suæ sunt disponenda pertinere, non ad potestates sæculi; quas, si fideles, sint, Ecclesiæ suæ sacerdotibus voluit esse subjectas. Non vobis igitur vindicetis jus alienum, et ministerium quod alteri deputatum est; neque contra eum contendatis, à quo omnia sunt constituta; nec contra illius beneficia pugnare videamini, à quo vestram consecuti estis potestatem."—Ibid. epis. 65, ad eundem, p. 99. See also letter 108, addressed to Gilbert, bishop of London. (Ibid. p. 169.)—D. Ceillier, Hist. des Auteurs Ecclés. vol. xxiii. p. 262.

<sup>1</sup> See ch. iii. of this second part, art. ii. n. 268.

<sup>2</sup> "Credimus tamen, imò scimus, quod Papa est generalis vicarius Jesu Christi salvatoris, et ideo potestatem habet, non solum super Christianos, sed et super omnes infideles, cum Christus plenariam receperit potestatem.

"... Quando autem Papa illis qui vadunt ad defendendam, et recuperandam terram sanctam, dat indulgentias, et infidelibus terram possidentibus bellum indicit; licitè facit Papa, et justam causam habet; cum illa (terra) consecrata sit nativitate, conversatione et morte Jesu Christi, et in quâ (terra) non colitur Christus sed Machometus. Unde et quamvis infideles ipsam possideant, justè tamen exinde expelluntur, ut incolatur à Christianis, et ad ipsorum dominium revocetur; nam et prædicatione apostolorum, et justo bello victa fuit, et acquisita ab imperatore Romano, post mortem Christi; et ideo Papa, ratione imperii Romani quod obtinet, potest et debet ipsam ad suam jurisdictionem revocare; quia injustè ab illis qui de jure hoc non poterant facere, noscitur spoliatus; et hæc ratio sufficit in omnibus aliis terris, in quibus nunquam imperatores Romani jurisdictionem habuerunt. . . . Mihi tamen videtur, quòd in adventu Christi, omnis honor, et omnes principatus, et omne dominium et jurisdictione de jure et ex causâ justâ, et per illum qui supremam manum habet, nec errare potest, omni infideli substracta fuerit, et ad fideles translata."—Hostiensis, Commentaria in libros Decret. lib. iii. tit. xxxiv. De Voto et voti Redemptione, cap. viii. n. 26, 27. (Edit. de Venise, 1581,

It appears amazing at the present day, how an opinion so dangerous, and so subversive of the rights of sovereigns, should have hardly excited in the beginning the least reclamations, either from doctors or from princes themselves, who should feel such an interest in denouncing it.<sup>1</sup> Our astonishment, however, subsides when we reflect that, for a very considerable time, this opinion found but a very small number of advocates; and that, when it was first broached, the authority of the Church and the pope over sovereigns had been long since recognized, and based on the constitutional law of the principal states of Catholic Europe. In such circumstances, we see that the theological opinion of the direct power was regarded as a mere speculation, having no more practical influence than that which accounted for the temporal power of the pope by the pretended donation of Constantine. But when sovereigns, after having so long recognized and favoured the temporal power of the clergy, gave unequivocal proofs of their resolve to restrict it (which happened after the thirteenth century in most of the principal states of Europe<sup>2</sup>), the opinion which attributed to the Church and the pope a direct jurisdiction over temporals, by virtue of divine institution, acquired new importance, and should naturally excite warm controversy. Hence the efforts of the most eminent theologians to modify or correct whatever was excessive in the theological opinion of the direct power; and hence, apparently, the real origin of the opinion of the indirect power, which we now proceed to explain.

2. In this second opinion, the Church and the pope have received from God, directly and immediately, no power over temporals, but over spirituals solely. The power, nevertheless, which they have of regulating spirituals, includes, indirectly and inferentially, the power of governing temporals also, when the

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vol. iii. p. 128, verso.) Mamachi (*ubi supra*, p. 175, note), cites this passage as taken from the Summary of the Decretals, by the same author; this is a mistake.

<sup>1</sup> The author of the *Hist. de l'Eglise Gallicane* especially expresses great astonishment on this point (*ubi supra*, p. 48).

<sup>2</sup> The history of the principal states of Europe since the thirteenth century, supplies manifest proofs of the general tendency of modern governments to restrict the temporal power of the clergy. This is observable especially in England in the reign of Henry II., in France in the reign of St. Louis, and still more of Philip the Fair, and of Philip of Valois. In proportion as we advance to more modern times this tendency becomes every day more powerful, and excites the most heated controversies between the two powers; so that henceforward peace seems impossible between them, except on the basis of an exact demarcation of their respective rights.

greater good of religion requires it. By virtue of this indirect power, the pope, as vicar of Jesus Christ, cannot "ordinarily," that is, as ordinary judge, either depose princes, or make any law on temporal matters; but in certain extraordinary cases he can do so, when it is necessary for the salvation of souls with which he is immediately charged.<sup>1</sup>

Cardinal Bellarmine, who may be considered as the principal advocate,<sup>2</sup> if not the author of this theory, cites in its support a great number of writers more ancient, such as Hugo de Sancto Victore, St. Bernard, Alexander Alensis, St. Bonaventure, St. Thomas Aquinas, &c.<sup>3</sup> These authors, however, are very far from being so favourable to the indirect power as may appear at first sight, and as Bellarmine supposes. Some of them maintain no more than the directive power of the Church and of the pope in the sense already explained by Fenelon; that is the opinion especially of Hugo de Sancto Victore, and of St. Bernard,<sup>4</sup> to whom may be added also Alexander Alensis, St. Bonaventure, John of Paris, Gerson, &c.<sup>5</sup> The others maintain the direct

<sup>1</sup> On the development of this opinion in the second part of this work, n. 4, p. 3, vol. ii.

<sup>2</sup> Cardinal Bellarmine appears to be the real author of this opinion, which since his time has supplanted the opinion of the direct power, generally admitted previously by scholastic theologians. (Tournely, *De Ecclesiâ*, vol. ii. p. 320. *De la Hogue, De Ecclesiâ*, p. 246. Feiler, *Dict. Hist.* article Bellarmine.) The opinion of the learned Cardinal appeared at first so singular to many theologians, and especially to Pope Sixtus V., that, notwithstanding his great esteem for the author, he believed it his duty to place on the Index the work in which it was advocated. The new edition of the Index in which this work was proscribed, was on the point of being published when Sixtus V. died; but his successor, Urban VII., did not think it expedient to ban a work otherwise so useful, and an author who had rendered such eminent services to religion; the work was accordingly erased from the Index. See on this subject Sacchini, *Hist. Societatis Jesu*, part v. vol. i. p. 499. *Vita Roberti Bellarmini*, auct. Fuligato, lib. ii. cap. 7, pp. 7, 8. *Vie du Card. Bellarmine*, by P. Frizon, book ii. p. 116. *D'Avrigny, Mém. pour servir à l'Hist. Ecclés. xvii<sup>e</sup> Siècle*, Nov. 1610.

<sup>3</sup> The texts of these authors are cited at great length by P. Roncaglia, *Animadversiones in Nat. Alex. Dissert. ii. ad Hist. Ecclés. Sæculi, xi. § 4.*

<sup>4</sup> See ch. iii. of this second part, n. 196, &c.

<sup>5</sup> See the works of these authors cited by Bellarmine, *ubi supra*, cap. i. v. Alexander Alensis expressly adopts on this point the doctrine of Hugo de Sancto Victore, whose very words he cites. (Alexander Alensis *Summa Theol. tertia parte, quæst. 40, membro 5.* Fleury, *Hist. Ecclés. vol. xvii. book lxxxii. n. 15.*) St. Bonaventure's opinion can be easily explained in the sense of a power purely directive. (S. Bonav. *De Hierarchiâ Ecclés. lib. i. cap. ult. in fine; lib. ii. cap. 1, in fine.*) The same may be said of John of Paris, a famous Dominican, who in his treatise *De Potestate Regiâ et Papali*, defended Philip the Fair against Boniface VIII. See the passages from this author

power, nor can they without the greatest difficulty be explained in any other sense; this appears to be the opinion of St. Thomas, of Augustine Trionfe, of Alvarez Pelagius, &c.<sup>1</sup> These latter authors, it is true, to soften down whatever appeared extreme in the opinion of the direct power, sometimes seem to reduce it to an indirect power, but all of them lay down, as the fundamental principle, that the pope received immediately from God, temporal as well as spiritual power; which is the very essence of the opinion of the direct power.<sup>2</sup> Accordingly the very difficulty of reconciling the different explanations of these authors, has occasioned this result, that some of them are cited by Cardinal Bellarmine himself, at one time as advocates of the direct, at another of the indirect power only.<sup>3</sup>

Whatever may have been the opinion of these ancient authors, it is certain that Cardinal Bellarmine's explanation was thenceforward generally adopted by Ultramontane theologians.<sup>4</sup> Nevertheless, the objections proposed to them compelled many of them to modify their opinion still more, so as seemingly to restrict the power of the Church and of the pope, in temporals, within much narrower limits; reducing it, in fact, to the simple decision of a case of conscience on the effect of the oath of allegiance which binds subjects to their sovereign. In this latter explanation, the pope or the Church cannot, properly speaking, either depose a

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cited by Mamachi, *ubi supra*, pp. 155, 173, 183. Gerson is explained in the same sense by Fenelon. (*De Auct. S. Pont.* cap. 27; (*Euvres de Fénelon*, tom. ii.)

<sup>1</sup> See the works of these authors cited by Bellarmine, *ubi supra*, cap. i. v.

<sup>2</sup> See the doctrine of St. Thomas, especially in his Commentary on the Book of Sentences, in which he expressly teaches, "that according to the institution of God himself, the King of kings, the pope possesses the highest degree of both powers, the spiritual and the temporal. "*Potestati spirituali etiam sæcularis potestas conjungitur in Papâ, qui utriusque potestatis apicem tenet, scilicet spiritualis et sæcularis; et hoc, illo disponente qui est sacerdos et rex in æternum, Rex regum et Dominus dominantium.*"—S. Thomas, *Comment in sec. librum, Sentent. Dist. 44, quæst. ii. art. iii. in fine. Nat. Alexander* (*Dissert. ii. in Hist. Ecclés. Sæculi xi. art. x. n. 12*) attempts, but we think in vain, to explain these passages in any other sense.

<sup>3</sup> Bellar. *ubi supra*, cap. i. v. In ch. i. he expressly attributes the opinion of the direct power to Augustine Trionfe, and to Alvarez Pelagius; while in ch. v. he explains it in the sense of the indirect. It is obvious that the learned Cardinal felt the same difficulty with regard to the doctrine of St. Thomas of Aquinas, and of many other ancient theologians.

<sup>4</sup> See the authors cited in the second part of our Inquiry, n. 4, note 1. But observe, that the Abbé de la Mennais, in those works which we have cited there, is not satisfied with the indirect power, but expressly revives the opinion of the direct power. See the passages of this writer which we have cited in the *Hist. Litt. de Fénelon*, part iv. n. 74.

sovereign or absolve his subjects from their oath of allegiance; but they can, at least, declare or decide the case in which he forfeits his throne for some crime contrary to religion, and in which his subjects are consequently freed from their oath of allegiance to him. The advocates of this opinion insist, that the oath of allegiance is not by its nature irrevocable, that a case may arise in which it ought to be renounced or declared null; and that, even supposing it were irrevocable, cases may happen in which fair doubts may arise about its validity, and in which it may be necessary to have a decision which could tranquillize consciences. They add, that it belongs to the Church and the pope, by virtue of their spiritual authority, to decide these cases of conscience, that is to say, to dissolve the oath of allegiance, or at least to declare it dissolved. This they contend is the meaning of the indirect power advocated by Bellarmine, and by many other theologians.<sup>1</sup>

This explanation, it must be admitted, comes very near that of Fenelon, who reduces the power of the Church and of the pope in the temporal order to a merely directive power.<sup>2</sup> Still the developments of these two opinions by their principal advocates prove that they cannot be the same. For, first, most of the advocates of the first opinion seem most unwilling to abandon the opinion of Cardinal Bellarmine and of the authors who have followed him; they not only cite him confidently as the great advocate of sound principles in this matter, but in the development of their opinion, they manifestly attribute to the Church and the pope a real power of jurisdiction in the temporal order; so that they in reality reassert the opinion which at times they appeared willing to abandon.<sup>3</sup> Secondly, the defenders of the

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<sup>1</sup> This is the sense in which Cardinal du Perron maintains the indirect power in the famous discourse which he pronounced in the chambers of the Tiers Etat, during the States-General of 1614. (*Cœuvres du Card. du Perron*, p. 593, &c.) See, regarding this harangue, the *Collection des Procès-verbaux des Assemblées du Clergé*, vol. ii. p. 173, &c. D'Avrigny, *Mémoires pour l'Hist. Ecclés. du xvii. siècle*, vol. i. 27th Oct. 1614. For a fuller exposition of the opinion of Card. du Perron, may also be consulted the works of Roncaglia, of Bianchi, and of Mamachi, cited above, p. 1, vol. ii. *Lettres sur les Quatre Articles de 1682* (by Card. Litta), letter ix. Muzzarelli, *Il buon uso della Logica*. Opuscul. 21, Greg. VII. part ii. p. 48 of the French translation. Rohrbacher, *Des Rapports directs entre les deux Puissances*, Paris, 1838; 2 vols. 8vo.

<sup>2</sup> See an exposition of this latter opinion, part ii. n. 8, &c.

<sup>3</sup> See the authors cited in the first note of this page; and especially Mamachi, pp. 181, 185, 202.

first opinion commonly maintain, that in a Catholic nation, the profession and maintenance of the Catholic religion are, by the natural law, an essential condition in the election of the sovereign, and in the oath of allegiance taken to him by his subjects; whence they infer, that the deposition of an heretical prince or of an abettor of heresy, and *à fortiori*, of an infidel prince, follows from the natural law itself; and that the Church or the pope can, in that case, declare subjects absolved from the oath of allegiance. Agreeably to these principles, they maintain with St. Thomas, and with Cardinal Bellarmine,<sup>1</sup> that the Church and the pope could have declared the pagan emperors of Rome, and especially Julian, deposed from the empire, and their subjects absolved from all obligation towards them, if such a declaration had been consistent with prudence; by the same principle they explain the conduct of Popes Gregory III., Stephen II., and Leo III. in detaching from the empire of the East many provinces of Italy, after the emperors of Constantinople had become heretics or abettors of heresy.<sup>2</sup> Fenelon and the advocates of the directive power are very far from admitting these consequences, or the principles from which they follow. They regard the stipulation of professing Catholicity, made in the election of the sovereigns of the middle ages, not as a point of natural law, but of human positive law, forming part of the constitution of the Catholic states of Europe. This is manifestly Fenelon's opinion in his "Dissertation on the authority of the Pope."<sup>3</sup> His doctrine is still more expressly developed in the "Essay on Civil Government," composed by the Chevalier de Ramsay, according to the principles of the archbishop of Cambray. In that work, nothing is more earnestly and frequently inculcated, than the obligation of loyalty even to the most wicked princes, and of respecting in them the authority of God. The author goes so far as to stigmatize as false devotees, those who dare to make religion the pretext of revolt. "Our object is not,"<sup>4</sup> he says, "to justify the inhuman and barbarous conduct of sovereigns who trample on

<sup>1</sup> S. Thomas, 2. 2. quæst. 12, art. ii. ad primum. Bellarmine, ubi supra, cap. vii. tertia ratio.

<sup>2</sup> Bianchi, Della Potestà e della Politia della Chiesa, tom. i. lib. iii. § 8. Mamachi, Origines et Antiquit. Christ. tom. iv. p. 202. Muzzarelli, Grég. VII. p. 61, &c. Rohrbacher, Des Rapports entre les deux Puissances, tom. i. ch. xi. xii. xvii. xix. xxi. &c.

<sup>3</sup> See the exposition already given of Fenelon's opinion (part ii. n. 8, &c.).

<sup>4</sup> Essai sur le Gouv. Civil, ch. x. p. 376.

the people, and crush them with exorbitant taxes. I only assert that, if their excesses cannot be checked by legitimate means, compatible with order and subordination, they must be borne in patience. Nothing is more hideous than tyranny, when one thinks of the tyrant only; but this deformity disappears, when we regard that supreme providence which uses passing disorders as a means of accomplishing its eternal order. It would be, therefore, revolting against God himself, to revolt against the powers which He has established, even when they abuse their authority. This reflection naturally brings us to consider whether religion can be a ground for revolt. The false devotees of all religions and of all sects unanimously cry out, 'religio sancta, summum jus' (the true religion, the supreme law). This opinion is founded on a false notion of religion." In another passage, the author labours to prove, that even in the case in which the prince would order anything against the divine or the natural law, he never can be opposed by active resistance, by revolting against him; but only by passive resistance, which consists simply in not doing what he orders. "These," he adds, "are the sentiments of all the great men of the old and of the new law; this is the doctrine of the prophets and apostles; this, in fine, was the conduct of all the heroes of Christianity during the first centuries. For seven hundred years after Jesus Christ, we do not find a single instance of revolt against the emperors on the grounds of religion."<sup>1</sup>

These explanations show the essential difference that exists between the directive power, admitted by Fenelon, and the indirect power, in the sense explained by the Ultramontane theologians in modern times.<sup>2</sup> Still we are inclined to believe, that many of them would have willingly adopted Fenelon's opinion had they known it;<sup>3</sup> that there is a marked tendency among foreign theologians to admit it;<sup>4</sup> finally, that the defenders of the direct or indirect power, were mainly drawn to that opinion by the difficulty of otherwise accounting for or vindicating the conduct of the popes of the middle ages to sovereigns.<sup>5</sup> If our

<sup>1</sup> *Essai sur le Gouv. Civil*, ch. xviii. p. 464.

<sup>2</sup> This may serve to explain all that we have said on the same subject in *l'Hist. Litt. de Fénelon*, part iv. n. 79, &c.

<sup>3</sup> Card. Litta especially, seems to lean to that opinion in his letter already cited.

<sup>4</sup> The reception given to the first edition of this Inquiry in foreign countries, and even in Rome, as well as in France, seems to justify this conjecture.

<sup>5</sup> Cardinal Bellarmine in particular appears to have been driven to the theory

conjectures on this subject are well grounded, may we not very fairly hope, that in proportion as Fenelon's opinion becomes known, it will supplant altogether the old theory of the direct or indirect power?

The conduct and language of the Holy See in later times seem to give some countenance to those conjectures. Many official documents of unquestionable authenticity show clearly how far the Holy See at present is from maintaining this direct or indirect power. Moreover, on the distinction between the two powers, and on the independence of princes in the temporal order, the Holy See openly professes principles which it is exceedingly difficult to reconcile with the theological theory of the direct or indirect power. In confirmation of this assertion, the reader is referred especially to several Briefs of Pius VI. relating to the French Revolution; <sup>1</sup> the letter of Cardinal Antonelli, prefect of the Propaganda, to the archbishops of Ireland, June 23rd, 1791; <sup>2</sup> Encyclical Letter of Pope Gregory XVI. to all the patriarchs, primates, archbishops, and bishops, August 15th, 1832; <sup>3</sup> Statement of law and of fact in answer to the Declaration of the Prussian Government, December 31st, 1838; <sup>4</sup> in fine, Allocution of Pope Gregory XVI. pronounced in a recent consistory, July 8th, 1839. <sup>5</sup> An attentive perusal of these documents must, we think, satisfy the reader that the Holy See, far from favouring, at the present day, the theological opinion of the direct or indirect power, embraces readily such opportunities as present themselves of showing the slight importance it attaches to that opinion, and of openly professing principles which subvert, or at least, are not easily reconciled with it. Hence many judicious writers have thought themselves justified in inferring from the different documents just cited, that the theological theory of the direct or

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of the indirect power, by the desire of vindicating the popes and clergy of the middle ages against the attacks of Protestants, and of the more ancient heretics, who went so far as to pretend that the pope had no authority, by divine right, over secular princes, and that neither the pope nor the bishops could lawfully acquire any temporal dominion. By advocating the indirect power, the learned cardinal believed that he struck the middle and proper course, between the excesses of heresy and the opinion of the direct power, which he considered to be manifestly extravagant. See Bellarmine, *ubi supra*, ch. 1.

<sup>1</sup> Brefs de Pie VI. ; Paris edit. 1798; 8vo. vol. ii. pp. 121, 131, 271, &c.

<sup>2</sup> This letter is published in the *Ami de la Religion*, vol. xviii. p. 198, &c.

<sup>3</sup> *Ibid.* vol. lxxiii. pp. 209, 241, &c.

<sup>4</sup> *Ibid.* vol. ci. p. 193, &c.

<sup>5</sup> *Ibid.* vol. cii. p. 145, &c.

indirect power is, at present, "obsolete even among the Ultramon-  
tanes."<sup>1</sup>

It is true, a writer of our own times has charged the court of Rome, and especially Pius VII., with a secret attachment to that opinion, so as even to make it the basis of the secret instructions, given in the years 1804 and 1805, to Della Genga (afterwards Leo XII.), who was then sent as nuncio extraordinary to the Diet at Ratisbon, to negotiate an arrangement between Austria and the Holy See.<sup>2</sup>

But independently of the fact that the testimony of this author is manifestly liable to suspicion, in consequence of the violent and embittered hatred which he evinces against the Holy See in the whole course of his work,<sup>3</sup> we must also observe that he cites not a single document nor testimony worthy of credit to substantiate his charge. He neither names the author of the documents which he cites, nor tells where they can be found, that their authenticity may be tested. They have accordingly been rejected by judicious critics, and especially by M. Picot, who has repeatedly given his opinion of them in the *Ami de la Religion*.<sup>4</sup> All these objections are confirmed by a brief of August 30, 1806, addressed to Cardinal Caprara, in which the pope expressly disavows "certain letters which Napoleon asserted had been sent to him from

<sup>1</sup> See the authors cited above, vol. ii. p. 4, note 2. Also the *Pièces Justificatives* of M. Affré's (afterwards archbishop of Paris) work, *Essai Hist. sur la Suprématie Temporelle de l'Eglise et du Pape*, p. 504, &c.

<sup>2</sup> Daunou, *Essai Hist. sur la Puiss. Temp. des Papes*, edit. of 1818, vol. ii. pp. 318-321. This charge has since been repeated confidently on the sole authority of Daunou, by some writers whose notorious prejudices against the Holy See naturally inclined them to adopt and publish any stories, however injurious to its authority (see *Ami de la Religion*, vol. xviii. p. 200). Gregory, Tabaraud, Silery, and other writers of the same party, seized with avidity so fine a text for declamation. It also appears in an anonymous work, published in 1821, with the title, *Origine, Progrès, et Limites de la Puissance des Papes* (8vo. p. 229). This work, like that of Daunou's, bears the stamp of a violent hatred of the Holy See; and the similarity between the two works affords grounds for suspecting that they came from the same pen. However that may be, Daunou's diatribes have lately been re-echoed by the Protestant consistory of the Walloon Church, at Leewarden in Holland. (See the *Ami de la Religion* on this subject, vol. cx. pp. 251, 298, 426.)

For the object and history of Della Genga's mission to the Diet of Ratisbon, in 1804, see *Mém. pour servir à l'Hist. Ecclés. du xviii. Siècle*, by M. Picot, vol. iii. p. 441, &c.; Henrion, *Hist. de l'Eglise*, vol. xii. pp. 296, 315; Artaud, *Hist. de Pie VII.* vol. i. ch. xxxi.; vol. ii. ch. v. p. 53, 8vo. edit.; *Hist. de Léon XII.* vol. i. ch. i. p. 8, &c.; *L'Ami de la Religion*, vol. v. p. 254, &c.

<sup>3</sup> See the review of this work in the *Ami de la Religion*, vol. xxviii. pp. 1, 193, 369. See also a notice on the author, vol. cv. p. 602, and vol. cx. p. 33.

<sup>4</sup> *L'Ami de la Religion*, vol. xviii. p. 196; xix. p. 357; xxi. p. 116.

Vienna, and in which his imperial majesty had been treated with no great respect. We repeat," the pope writes, "that we had already ordered our secretary of state to inform you, the moment we heard the matter spoken of, that the whole statement is false; we tell you so sincerely, and without the least fear of being belied. As his majesty has the originals in his possession, he can convict us whenever he pleases. That any person of any rank whatsoever should have written things so imprudent, so false, and so reprehensible, is a matter we absolutely know nothing of, and for which we cannot be responsible. This we do assert confidently, that these letters came neither from us, nor from our ministry; if such were the fact, it would be the only charge that could be made against us."<sup>1</sup>

Though these observations are more than sufficient to show how little credit those clandestine documents are entitled to, we could still cite in support of our observations the testimony of M. Artaud de Montor, than whom none was better qualified to judge the credit due to these pieces.<sup>2</sup> He unhesitatingly pronounces them unworthy of any credit, and as having been fabricated, or at least falsified, by private persons without any authority. He adds, that the well-known character of Pope Pius VII., of Cardinal Consalvi, of Della Genga, and of all the agents of the pontifical government at that period, excludes the possibility of attributing to them the *secret instructions* cited by M. Daunou. Supposing that these pretended instructions were not fabricated by some enemy of the Holy See, they are probably the work of some enthusiast, who may have been in correspondence with Della Genga, but for whose opinions or pretensions neither the pope nor the principal agents of his government can be accountable. M. Artaud, who was intimately acquainted with the state of things, asserts that there was at Rome a rather numerous party of these over-confident persons, as

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<sup>1</sup> L'Ami de la Religion, vol. xxi. p. 116.

<sup>2</sup> M. Artaud de Montor was sent to Rome by the French government as secretary of legation, at first in 1801, during the negotiations about the Concordat, and again in 1804, after the death of M. Gandolphe, who had succeeded Châteaubriand in that place only a few months before. In the History of Pius VII. (vol. i. ch. xxxi., vol. ii. ch. v.), and in that of Leo XII. (vol. i. ch. i.), may be seen the details given by M. Artaud, on the deplorable state of the churches in Germany in the commencement of the nineteenth century, and on the extraordinary mission given by Pius VII. to Della Genga (afterwards Leo XII.) to effect an arrangement on that subject with the Court of Austria.

there always are in times of crisis, to the no slight embarrassment of governments. Indignant at the ambitious pretensions of Bonaparte, and the vexations which he was beginning to cause to the Holy See, these ardent men wished that Pius VII. should use against this new persecutor of the Church measures similar to those which popes Gregory VII., Innocent IV., and some other popes, had formerly used against princes guilty of similar excesses. It is manifest that Della Genga might be in correspondence with some individuals of this class, without in any manner approving their extravagant opinions.

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IX.—Pages 7, 251, 309, 313.

*Works to be consulted on the Controversies relating to the Rights of Elizabeth to the crown of England, and of the king of Navarre (afterwards Henry IV.) to the crown of France.*

1. On the first of these subjects the following are the principal works to be consulted:—

Allen, *Ad Persecutores Anglos pro Catholicis, vera, sincera et modesta Responsio*, 1584, 8vo. cap. iv. v. pp. 112, 143, &c., of the Latin edition. The same, *Exhortatio ad nobiles et populum Angliæ*, 1588. Doleman, *Conference on the next succession to the crown of England*, 1593, 8vo. part ii. cap. vii. p. 116. On those works consult Lingard, *History of England*, vol. vi. p. 571.

2. On the controversy relating to the rights of the king of Navarre (Henry IV.) to the crown of France, see the following works:—

*De justa Reipublicæ Christianæ in reges impios et hæreticos auctoritate*. Parisiis, 1590, 8vo. cap. ii. vii. viii. The first edition of this work is anonymous; the second, published at Antwerp, 1592, is in the name of William Rose, bishop of Senlis, to whom the work is commonly attributed. Jean Boucher, *De justa Henrici III. abdicatione e Francorum regno*, Parisiis, 1589, 8vo.; Lugduni, 1591, 8vo. lib. i. cap. xxiii.; lib. ii. cap. xv. &c. *Réponse des vrais Catholiques Français à l'avertissement des Catholiques Anglais, pour l'exclusion du roi de Navarre de la couronne de France* (by Louis d'Orleans, advocate of the parliament of Paris), 1588, 8vo. part iv. p. 147, &c., 528, &c.

These works, the object and occasion of which we have already explained (*supra*, cap. iii. n. 289, 292), are the most important that appeared at the time against the rights of Elizabeth to the

crown of England, and against those of the king of Navarre (Henry IV.) to the crown of France. All of them cite against these sovereigns the old legislation of the Catholic states of Europe, especially of France and England, which excluded heretics from the throne. There is in other respects a great difference of principles in these two works. Besides human positive law, the English authors also appeal to the divine right, but only in the sense of those theologians who attribute to the pope an indirect jurisdiction over temporalities. The French authors, especially William Rose and John Boucher, go much farther, adding to that theological opinion the most dangerous principles on the pretended right which society, they said, essentially possessed of deposing and even killing tyrants. It is amazing with what confidence and audacity these two authors, and especially the second, advocate so terrible a doctrine, and what conclusions they deduce from it, so as to justify even a private person to slay a notoriously heretical or excommunicated prince. Anquetil, in his *Esprit de la Ligue* (vol. ii. p. 30), comments, no doubt, on these very grave errors; still he seems to pass too high a compliment to Rose's work, by representing it as being, in the polemical order, the work of a man of genius. He ought, at least, to have added, of a turbulent and revolutionary genius, a character always censurable in the eyes of wise men, but especially unbecoming a bishop, who is bound by his state to resist and to moderate those violent passions which tend to the subversion of society. Nevertheless, how dangerous soever may seem the principles advocated at this period by this author, and by many other Catholics, our astonishment must subside considerably when we remember that the Protestants, against whom these books were principally written, admitted on this matter principles still more dangerous, by abandoning to the caprice of the people the judgment on the case of deposition, which Catholic authors reserved to the Church and the pope. William Rose (*ubi supra*, cap. x.) carefully notes this essential difference between his principles and those of his adversaries. The doctrine of Protestants on this subject is carefully stated and discussed by Bossuet. See *Cinquième Avertissement aux Protestants*, and *La Défense de l'Histoire des Variations* (*Œuvres de Bossuet*, vol. xxi.).

IN his explanation of the bull by which Adrian IV. granted Ireland to Henry II., our author assumes that Peter pence were paid by Ireland before the English invasion, and that they were the sole title specified in that bull to the temporal power of the pope over Ireland.

Peter pence were not paid by Ireland before the invasion, nor, though they were expressly promised by the invaders, does it appear that they were ever paid after it.

The title which the pope does assign in the bull to his temporal power over Ireland, was one which Henry II. himself admitted, and which is clearly no other than the supposed donation of Constantine. That donation was believed to be authentic by many writers of the day, and especially by the ambassador who obtained from the pope the grant of Ireland for Henry II.

It is very difficult to explain satisfactorily Adrian's bull by any of the principles developed by our author in this work. Some information on the subject may be seen in the notes to the second volume of *Cambrensis Eversus*, printed for the Celtic Society. One thing is certain, that Adrian's bull had much less influence on the first settlement of the English in Ireland than is commonly supposed.

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