Debating the Constance Decrees

Perhaps no aspect of Johannes de Turrecremata's ecclesiology has impinged upon more ancient and modern controversy than have his views about the general council. As usual, however, we shall find that his ideas were first formed amid the conflicts of his own era, then gradually shaped by him into a coherent doctrine. This development began with his changing positions on the Constance decrees, primarily *Haec sancta* and also *Frequens*—decrees which have been the subject of debate from his time till our own.

In Turrecremata's troubled age, the Basel conciliarists used many arguments to prove council superior to pope. But it was on the precedent set at the Council of Constance—which ended the Schism, condemned Wycliff, executed Hus, and tried to reform the Church—that their case rested solidly. In the decree *Haec sancta*, Constance had claimed a common responsibility for the welfare of the Church and made a council superior to a pope in matters of heresy, schism, and reform. Although the decree was originally drafted to meet the emergency created by the flight John XXIII, it was widely understood to be the definitive statement of conciliar supremacy in ecclesiastical government. Its claim was implemented in the decree *Frequens*, which provided for a regular series of councils to watch over the Church. Throughout its troubled history,
the Council of Basel acted with these decrees in mind; and Cesarini and his colleagues, when they cited them, in open debate to defy Eugenius IV, reaffirmed the Constance decrees as binding upon the whole Church. Even at Florence, Cesarini's statement of the conciliarist case made extensive use of *Haec sancta.* It was the failure of Basel to reform the Church—producing a schism instead—that seriously diminished the prestige the decrees enjoyed more than did Turrecremata's answer to Cesarini, which we shall examine in due course.

But the demand for a reforming council never entirely died out. Louis XII of France used that demand as a weapon against Julius II in the so-called conciliabulum of Pisa. Even the papacy, which held conciliar agitation in suspicion, twice resorted to the convocation of general councils, the Fifth Lateran Council and the great Council of Trent. After Trent, however, the desire for a general council became identified with Galhcanism, which caused the First Vatican Council's condemnation of appeals from pope to council. After that condemnation, Catholic historians, who always had some qualms about the proceedings of the Council of Constance, tended to dismiss *Haec sancta* and *Frequens* as short-lived mistakes produced by the passions and uncertainties of the Schism.

When the Second Vatican Council reawakened interest in the conciliar crisis, *Haec sancta* became once more the subject of much controversy. Paul de Vooght has claimed that the decree had been defined as dogma by a general council and accepted as such by the popes of the times; his contention has aroused much passion and stimulated no less research. Hans Künig has argued that, as a conciliar decree, *Haec sancta* was valid on its own merits and without papal approval. Joseph Gill replied by calling it the invalid decree of one obedience of the Schism. Between these extremes, noted scholars like Hubert Jedin, August Franzen, and Brian Tierney have sought to place the decree in its temporal context, as a preliminary of determining its place in ecclesiology and political theory. But there is still no consensus.

A side effect of this controversy has been that of drawing Turrecremata into the argument. Vooght has charged that Turrecremata (from whom Gill drew his argument) initi-
ated a deviation from sound doctrine—a claim copied zealously by generations of Catholic historians—when he attacked *Haec sancta* in his debate with Cesarini, even though he had accepted it at the beginning of his career. Turrecremata's change of opinion was part of a gradual, pragmatic development. He at first readily accepted the *decree*, which had, after all, a key place in the reestablishment of ecclesiastical unity. In his early days at Basel, Turrecremata admitted the council's ability to overrule the pope in matters of heresy, schism, and reform (perhaps, as we have noted, he understood "reform" as referring to the *status ecclesiae*). But Turrecremata reproved those who thought reform included meddling with papal prerogative. As he fought a losing fight at Basel, he began to question the validity of *Haec sancta*. After leaving Basel, he decided that conciliarism had to be rooted out of the Church, and especially by refuting *Haec sancta*’s explicit claim that Christ gave the council power apart from papal power. Thus, in his debate with Cesarini Turrecremata made the first explicit, effective attack on the degree, an assault which set a precedent for later Catholic interpretations of it.

Because *Haec sancta* commanded the respect of many churchmen, as it once had his own, Turrecremata avoided terming it heretical. Instead, with papal encouragement, he developed the line of argument first adumbrated at Basel: a description of *Haec sancta* as the act of one obedience of the Schism. Thereafter, Turrecremata always described the decree as issued by the followers of John XXIII in the absence of the other obediences and, consequently, not the act of a true general council." This denial required a reinterpretation of the Council of Constance. Despite that he once suggested that convocation by Gregory XII legitimized the assembly, Turrecremata's doctrine emphasized the importance of the gathering of all three obediences. The council became valid only after the former followers of Benedict XIII arrived and remained valid long enough to depose the Avignon claimant, enact *Frequens*, and arrange for the election of a new pope. According to Turrecremata, the Council of Constance did not depose a true pope; it disposed of two unworthy claimants to the Roman see, John XXIII and Benedict XIII. Although John
was removed from office before the three obediences were assembled, he, like his opponent, was suspect of heresy and thus readily removable. Turrecremata defended on similar grounds the condemnation of Wycliff and Hus of the same period. Moreover, Martin V had confirmed these sentences in the bull Inter cunctas, which also reaffirmed the status of belief in papal supremacy as an article of faith. Perhaps Turrecremata's strongest secondary argument against the conciliarist use of Haec sancta was his contention that the Council of Constance had rejected it by placing the reform of the curia in the pope's hands. Turrecremata's attack on Haec sancta left only one key question unanswered, that of the legal right of one obedience to try John XXIII, Wycliff, and Hus in the absence of the other two.

In addition to refuting Haec sancta, Turrecremata found it necessary to attack Frequens. Not only did that decree provide for a regular series of councils to supervise the governance of the Church, but it stipulated that these assemblies could not be transferred or dissolved without the consent of their participants. Frequens thus remained a latent threat to papal power throughout the fifteen century: the French based their demand for a third, neutral council on the contention that Eugenius IV had violated Frequens when he transferred the Council of Basel to Ferrara without the consent of its members; whenever the King of Bohemia or the German princes conflicted with the curia, they appealed to a future council. These appeals overshadowed suggestions by responsible churchmen like Cusa and Henricus de Campo to call a reforming council. And papalists like Gabriel Biel, Theodoro Lelli, and Rodrigo Sanchez de Arévalo answered the more political appeals by questioning the value of a general council. Finally Pius II, while at Manuta, issued the decree Execrabilis that actually forbade appeals from pope to council.

It is small wonder in this context that Turrecremata attacked Frequens, particularly when he refuted Charles VII's arguments in favor of a council on a third, neutral site. Turrecremata argued that Frequens lacked legal status. Neither had the papacy accepted it, nor had the fathers at Constance given it their unanimous consent. Even if they had, the pope would not be bound by Frequens, since it
concerned only positive law, which did not bind Christ's vicar. Once the conciliar crisis had died down, Turrecremata rescinded the first of his arguments. *Frequens* had, after all, been issued by the three obediences, and Martin V had convoked the councils it mandated. So Turrecremata simply maintained that the pope was not bound by the decree, since it was not concerned with dogma.

Even as a member of the Council of Basel, Turrecremata rejected certain of its decrees as perversions of ecclesiastical law. He later argued that the more radical decrees had never received papal approval. (Eugenius IV reinforced this position when he told Turrecremata that his bull *Dudum* [1433], which sanctioned the proceedings at Basel, was worthless because his approbation had been obtained by coercion. Eugenius maintained, moreover, that he had always reserved his rights from any infringement by conciliar legislation.) But his harshest words were those directed against the decrees the Council of Basel issued after breaking with the pope: these were the illegal acts of a headless assembly abandoned by its more responsible members, and at least one of them, which approved the doctrine of the Immaculate Conception, was a deviation from sound doctrine.

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**The Desirability of a Council**

Turrecremata nevertheless did not deny the desirability of a general council, even though the papal apologists, like Arévalo, tended to question the value of any such assembly on the grounds that reform was the pope's business in which a council would be useless. Yet, one modern scholar, John Hine Mundy, has interpreted Turrecremata's attack on conciliarism as an attempt to discourage convocation of future councils. Nor is this an idle question, for, as already noted, the late fifteenth and early sixteenth centuries heard much talk of reform and saw abortive attempts to implement such schemes; there was also a less fervid continuation of the ecclesiological debates of the Conciliar Crisis. Turrecremata's ecclesiology, as we shall see, had an important place in these debates, especially in the writings of Cajetan. Mundy's question about Turrecremata's
attitude toward a general council is thus of no small importance.

The bitterness of Turrecremata's anticonciliar polemics is evident in such diatribes as his contention that the electors of Felix V had followed the antipapal errors of the Waldensians. The Dominican cardinal never entirely despaired of the value of a general council, however. While denying that an assembly should settle all problems, he admitted that it was an excellent place for resolving the most serious ones. Although a general council could not create a new, nonpapal power to deal with emergencies, its uses were manifold. Among the reasons for calling a council Turrecremata listed condemnation of false doctrine, inquiry into the pope's orthodoxy, termination of a schism, reform, enforcement of another council's decisions, and deep deliberations concerning the welfare of the Church. The value of a council in such circumstances rested on its prestige and on the aggregate wisdom of assembled prelates and doctors. Even papal decrees were more readily received by the Church when formulated in a council. Thus, unlike some younger papalists, Turrecremata thought a council useful to the Church—if it acted like Constance or Florence, not like Basel. Mundy, therefore, has overstated the Dominican cardinal's anticonciliar position. Turrecremata was warning against abuses, as in his contention that a council called in a vacancy should limit itself to the urgent business at hand and not meddle in other matters. What he did do, as we shall see, was describe the ideal general council in terms compatible with papal supremacy in ecclesiastical government.

The Nature of the Council

Since he thought a council was useful to the Church, Turrecremata had to define both the true nature of a council and its proper procedures. He portrayed an assembly that would aid the pope in governing the Church rather than one interested in claiming the highest possible position. This is obvious from Turrecremata's definition of a universal council:

A universal council is an assembly of the greater prelates of the Church, specifically called by the authority of the Roman
pontiff, to do something for a common purpose concerning the Christian religion, under the pope's presidency or with another [a legate] in his place.\textsuperscript{31}

The Dominican cardinal believed that only this definition was wide enough to include all legitimate councils, from those held by Peter in Jerusalem to the Council of Florence. Moreover, it left no room for conciliarist definitions that made the council the Church's representative and consequently the pope's potential rival. The chief elements he emphasized were the welfare of the Church, the authorization given by the pope, and the presence of the greater prelates.\textsuperscript{32}

Representation of the Church was not simply an abstract idea mentioned in \textit{Haec sancta} or conciliarist polemics; princes could make practical use of the concept to put pressure on the papacy. In support of the demand for a third, neutral site for a council, the French ambassadors told Eugenius IV that neither Florence nor Basel was the unquestionable supreme authority in the Church, since neither represented the whole Church; a third council that absorbed the rival assemblies would have that virtue. In his reply to the French ambassadors, Turrecremata had to explain how a council could be universal in authority though not in membership. He argued that the presence of the true pope, supported by the cardinals and leading prelates of both Latin and Greek Churches, proved the universal validity of the Council of Florence. All other prelates were welcome, but their adherence would give the council no additional powers.\textsuperscript{33} In his later works, Turrecremata expanded this argument into a distinction between two types of general councils—a plenary council of all prelates and a universal council: the former had greater prestige because it had greater numbers; the latter, though not attended by all prelates, was granted full governmental authority by the pope.\textsuperscript{34} But there was no real difference between the two types of assembly in jurisdiction. Both received broad powers from the Roman see, an authorization which distinguished any form of general council from a local ecclesiastical assembly.\textsuperscript{35}

According to Turrecremata, the council had no source of power other than the pope. Contradicting \textit{Haec sancta} and writers like John of Segovia, he denied that it had
power directly from God. Peter, not Christ, had called the first council. Panormitanus and others had claimed that the councils described in the Acts were authorized by all or the Apostles; as successors of the Twelve, the episcopate could bestow on a council the power the Apostles had received from Christ. Turrecremata replied that the Apostles were Peter's subordinates, not his equals, in the power of jurisdiction. Likewise their successors, the bishops, were inferior to the pope. Neither the Apostles nor their successors were able to confer on a council a power superior to that of the pope, since they themselves possessed no such power.

Many other conciliarists, including John of Segovia and Panormitanus, believed that the Church possessed the plenitude of power. This power could be exercised through the Church's representative, the council, and was superior to that held by the pope. Conciliarists usually failed to explain in what manner the council did represent the Church. Only Nicholas of Cusa, who thought that the council represented the Church imperfectly, suggested that delegates be selected from every province of Christendom.

Turrecremata, as we have seen, challenged the corporate concept of the Church that was so fundamental to these doctrines. While he was a papal diplomat, he openly denied that the Council of Basel represented the Church when it tried to depose Eugenius IV. In the Summa de ecclesia, Turrecremata carried this attack through to its logical conclusion, arguing that no close connection existed between the universal Church and the council separated from the pope. True representation would require the presence of all the faithful to exercise their share of the power of jurisdiction; and, under such a "nominalist" concept, any representation of the whole, virtually or by delegation, was impossible. Even granted that the Church could be represented by a council, the fathers would still represent the flock of Christ subordinate to its visible shepherd, the pope. Representation of the Church by a general council could be meaningful, according to Turrecremata, only when the fathers acted in consort with the pope, the font of all jurisdiction. While they did not constitute the whole Church or its representatives in any legal sense, the fathers
would nevertheless share in the exercise of the supreme power of ecclesiastical government and thus represent the Church.\footnote{14}

Under this limited idea of representation, Turrecremata could restrict the number of those who were true members of a council. Since the essential element in a council's authority was its convocation by the pope, there was no need to assemble lesser clergy, let alone laymen, to sanction the proceedings. The only necessary participants in a council were bishops and other prelates, the chief holders of jurisdiction in partem sollicitudinis.\footnote{45} Here Turrecremata touched a sore spot of the conciliar movement, the latent tension between its corporate and episcopalist strands. Between them was no real agreement whether the Church was represented by prelates alone or whether the rest of the clergy and the laity were also vitally important. Representatives of the lesser clergy often dominated the Council of Basel and twice overruled the prelates on the key issues of the site of a council with the Greeks and the deposition of Eugenius IV. In the latter case, Panormitanus, as ambassador of the house of Aragon, claimed that only prelates had the right to vote; Cardinal d'Aleman replied that that right belonged to all ecclesiastical orders. When the final vote was taken, d'Aleman packed with the relics of saints the seats of those prelates who absented themselves before the majority of lesser clerics voted to depose Eugenius from his see.\footnote{46}

For his part Turrecremata claimed that in the strictest sense only bishops had the right to participate in a council; they were the leaders of the Church and charged with promoting its welfare through their share in the power of jurisdiction.\footnote{17} Other prelates, such as abbots, might receive a special invitation from the pope; however, their presence could be dispensed with if they imitated the follies of the Council of Basel.\footnote{48} Lesser clerics could only attend a council as theologians, canonists, minor functionaries, proctors, or participants in suits.\footnote{49} Turrecremata discouraged the attendance of laymen without cases to plead, but princes both represented their interests and had their own duty of protecting the Church by force of arms. The idea of the universal consent of the laity to ecclesiastical enactments, controversial even in conciliarist circles, had no place in
Turrecremata’s ecclesiology.50

As we have seen, *Haec sancta* described conciliar power as superior to papal in any crucial juncture, and this was also the burden of diverse streams of conciliarist thought.51 In the course of his career, Turrecremata inclined increasingly to the opposite tack: the council depended on the pope, font of jurisdiction, in all ordinary functions.52 Accordingly, he restated the canonistic doctrine that only the pope could call a council except when the pontiff fell into error or the Roman see was vacant. Any assembly called in defiance of the law and without such unusual circumstances to justify it was clearly schismatic.53 Papal convocation gave a council a mandate to deal with certain specific problems, and the fathers could not pass the bounds of that mandate without being guilty of attempted usurpation of papal prerogative.54 If the council tried (like Basel) to tie the hands of the papal legates or, worse still, to act without them, then it was headless and unable to act legally for the welfare of the Church.55 The pope’s presidential powers allowed him to move or dissolve a council and to punish any participants who promoted illegal courses of action.56 In the exercise of this presidential power, the pope was not hampered by *Frequens* unless his acts were harmful to the Church’s welfare within the strict bounds of Turrecremata’s doctrine of the limits of papal power. Thus, the pope could not, if justly suspect of heresy, terminate a council’s inquiry into his orthodoxy. Once again the Dominican cardinal showed that the welfare of the Church meant more to him than any puristic idea about untrammeled papal power.57

All writers of the conciliar period preferred that an assembly agree unanimously upon the canons it promulgated;58 however, they could not agree on the procedures to be followed when agreement was impossible. Many conciliarists, including John of Segovia, believed in majority rule, a principle previously elaborated in order to deal with disputes in cathedral chapters and monasteries. But that belief existed side by side with the one that the *sanior pars*, the wiser element, should prevail however small its numbers.59 Turrecremata rejected the idea of majority rule, arguing that papal plenitude of power included the authority to promulgate conciliar canons; the rest of the as-
The General Council

assembly merely advised the pope what actions would best serve the welfare of the Church. If there were open disagreement on a matter of positive law, the pope's will was to prevail. This did not, of course, include actions injurious to the status ecclesiae, for which the pope could lose his see. Since the pope's office gave him no special gift of knowledge, other participants in a council might be wiser than he in matters of faith and their prestige and learning prevail over his opinion if he stood alone against them. Like Alanus, Turrecremata thought that the fathers had to be both in complete agreement among themselves and supported by Scripture and Tradition. As for Huguccio's idea that the pope's opinions should prevail unless in conflict with defined doctrine, Turrecremata restricted this to a case where neither pope nor council was obviously right. Any pope who persistently ignored sound advice on theological matters was in danger of falling from his see and being punished as a heretic.

It is important that we not read too much into his doctrine. Turrecremata did not, as we have seen, teach the First Vatican Council's doctrine of infallibility; however, he did not intend to set up the council as the pope's superior in matters of faith. Rather, he was asserting the supreme authority of the Catholic truth. Alongside his statements about a council's ability to overrule the pope in matters of faith, he placed cases in which popes overruled erring councils. Turrecremata often mentioned the Second Council of Ephesus and the Council of Rimini. If the pope had reason and revelation on his side, he could overrule a council and resist implementation of its decisions. Though the assembly might surpass the pope in knowledge and prestige, it never could possess a power of jurisdiction greater than his plenitudo potestatis.

Turrecremata expected that a council end with a display of this papal preeminence in jurisdiction, a confirmation of its canons by the Vicar of Christ. This was particularly important for a council, like that at Basel, that the pope was unable to attend or one, like Constance, held in an emergency. The canons did not bind all believers until they had been confirmed, and this was an illustration of the council's dependence on the pope; after all, confirmation would be needless if the assembly received its authority
directly from Christ or the Church. The applicability of this rule to a council held during a vacancy tied up a loose end in Turrecremata’s discussion of the Council of Constance. Confirmation of the council’s canons by Martin V ratified the condemnation of Wycliff and the death sentence imposed on Hus.

Since the pope was the supreme authority in matters of positive law, he could alter the disciplinary decrees of councils and grant dispensations from their provisions. This did not imply an ability to tamper with dogmatic definitions made by general councils. At Basel Turrecremata had defended the right of litigants to appeal from council to pope, particularly in the case of an unconfirmed canon someone thought was unjustly formulated. The pope could hear such an appeal even if he had sat in the assembly as a mere bishop, just as a bishop could sit with his chapter as a mere canon. But no one could appeal from pope to council, since the council received its power of jurisdiction from the pope.

Turrecremata’s ideas about the proper conduct of a general council were designed to prevent future councils from imitating the follies of the Basel assembly. In most cases the pope could call or dismiss an assembly at will, direct its actions, and ratify its canons. Unless he erred in faith or committed some enormous crime, the Roman pontiff had no need to fear that such a council would turn on him. This concept of the general council was a large part of Turrecremata’s contribution to Roman Catholic ecclesiology. Through Robert Bellarmine it became the standard Roman doctrine and endured as such down to the time of the Second Vatican Council.