

eISSN 2587-8719

# ФИЛОСОФИЯ

ЖУРНАЛ ВЫСШЕЙ ШКОЛЫ ЭКОНОМИКИ

2022 — Т. 6, № 4

# PHILOSOPHY

JOURNAL OF THE HIGHER SCHOOL OF ECONOMICS

2022 · VOLUME 6 · № 4

# PHILOSOPHY

2022 6 (4)

## POWER AND AUTHORITY IN MEDIEVAL AND EARLY MODERN EUROPEAN POLITICAL CULTURE

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eISSN: 2587-8719 · REGISTRATION: ЭЛ № ФС 77-68963

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# ФИЛОСОФИЯ

2022 — Т. 6, № 4

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eISSN: 2587-8719 · РЕГИСТРАЦИЯ: ЭЛ № ФС 77-68963

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## CONTENTS

[From the Executive Editors of the Issue] 9

### STUDIES

NIKOLAY ANTONOV

The Ἀρχή of the Priest in the “Apology for His Flight” (or. 2) of Gregory of Nazianzus  
[Ἀρχή svyashchennika v “Apologii” (or. 2) Grigoriya Bogoslova] 13

ELGA KANAIEVA

Shepherd, Physician and Intercessor : The Specialization of Different Types of Authority  
in the Church in the Context of Practices of Confession in Byzantium (III–X centuries)  
[Pastukh, vrach i khodatay : spetsializatsiya razlichnykh vidov avtoriteta  
v ispovedal’nykh praktikakh v Vizantii (III–X vv.)] 36

SEBASTIÁN PROVVIDENTE

The Causa of Johannes Falkenberg and Synodal Praxis at the Council of Constance  
(1414–1418) : Between Council and Pope  
[Delo Ioanna Fal’kenberga i sobornaya praktika na Konstantsskom sobore  
(1414–1418) : mezhdu soborom i papoy] 61

ARINA ZAYTSEVA

Flesh and Blood vs Rigor of Justice : The Concepts of Justitia and Aequitas in “Proces-  
sus Satanae contra genus humanum”  
[Plot’ i krov’ protiv strogosti zakona : ponyatiya justitia i aequitas v traktate  
“Processus Satanae contra genus humanum”] 99

JOSEPH F. O’CALLAGHAN

Fray Juan Gil de Zamora, Infante Sancho, and Alfonso el Sabio  
[Khuan Khil’ de Samora, infant Sancho i Al’fonso X Mudryy] 127

### BOOK REVIEWS

NIKITA FEDONNIKOV

The Concepts of Tyrant and Tyranny in Medieval Political Discourse : Reflections on  
a New Book Devoted to the Problem of the Tyrant and Tyranny in the Middle Ages  
[Ponyatiya “tiran” i “tiraniya” v srednevekovom politicheskom diskurse :  
razmyshleniya nad novoy knigoy o probleme tirana i tiranii v Sredniye  
veka] 155

FEDOR NEKHAENKO

Alain de Libera’s Subjectivity between Man and Christ : Reflections on the Book  
by A. de Libera  
[Sub’yektivnost’ mezhdu chelovekom i Khristom Alena de Libera : razmyshleniye  
nad knigoy A. de Libera] 163

## ACADEMICAL LIFE

- [Juridical Monuments of 5–17th cc.: Authoritative Texts : October 12, 2022  
(Moscow, Russia)] 181
- [Sixth All-Russian Interdisciplinary Conference “Republicanism: Theory,  
History, Modern Practices”. Conference Chronicles : December 16, 2022  
(St. Petersburg, Russia)] 189
- [The Review of the Workshop “Phenomenology in USSR” : September 20–21,  
2022 (Moscow, Russia)] 193

## СОДЕРЖАНИЕ

От выпускающих редакторов 9

### ТЕОЛОГИЯ И ПРАВО ИССЛЕДОВАНИЯ

- НИКОЛАЙ АНТОНОВ  
[Архї священника в «Апологии» (ог. 2) Григория Богослова] 13
- ЭЛЬГА КАНАЕВА  
[Пастух, врач и ходатай : специализация различных видов авторитета  
в исповедальных практиках в Византии (III–X вв.)] 36
- СЕБАСТЬЯНО ПРОВВИДЕНТЕ  
[Дело Иоанна Фалькенберга и соборная практика на Констанцском соборе  
(1414–1418) : между собором и папой] 61
- АРИНА ЗАЙЦЕВА  
[Плоть и кровь против строгости закона : понятия *justitia* и *aequitas*  
в трактате «Processus Satanae contra genus humanum»] 99
- ДЖОЗЕФ О'КЭЛЛЭГЕН  
[Хуан Хиль де Самора, инфант Санчо и Альфонсо X Мудрый] 127

### ФИЛОСОФСКАЯ КРИТИКА РЕЦЕНЗИИ

- НИКИТА ФЕДОННИКОВ  
[Понятия «тиран» и «тирания» в средневековом политическом дискурсе :  
размышления над новой книгой о проблеме тирана и тирании в Средние  
века] 155
- ФЕДОР НЕХАЕНКО  
[Субъективность между человеком и Христом Алена де Либера : раз-  
мышление над книгой А. де Либера] 163

### АКАДЕМИЧЕСКАЯ ЖИЗНЬ КОНФЕРЕНЦИИ, КОНГРЕССЫ, СИМПОЗИУМЫ

- Юридические памятники V–XVII вв.: авторитетные тексты : 12 октябрь  
2022 (Москва) 181
- Шестая общероссийская научная конференция «Республиканизм: теория,  
история, современные практики». Хроника : 16 декабрь 2022 (Санкт-  
Петербург) 189
- Обзор круглого стола «Феноменология в СССР» : 20–21 сентябрь 2022  
(Москва) 193

## FROM THE EXECUTIVE EDITORS OF THE ISSUE

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Medieval culture elaborated a notion of power from the classical Roman and Christian heritage of the Early Middle Ages. That is the reason why medieval authors were not fully aware of the concept of “the Political”; and when they had to speak about political matters, they generally used one of two principal discursive modes: juridical or theological<sup>1</sup>. Roman thought provided the concept of power with a terminological apparatus (words such as *potestas*, *auctoritas*, *dominium*, *imperium*, and *iurisdictio*)<sup>2</sup>, and comprehension of power as a property of one or another social position. Such interpretation of power made possible the appearance of the medieval conception of emperor’s *potestas*—it is well known that during the whole Middle Ages the emperor was an elective leader, who, officially, received his power from the people according to *lex regia*. Those who decided the next emperor’s candidature were not the people but prince-electors and the Holy See. However, the juridical fiction of the *electio populi* conserved its importance all the time.

Christian theology added to the Roman “republican” interpretation of power the sacral or “vertical” dimension. According to Paul’s Epistle to Romans, “there is no power but that of God”<sup>3</sup> and, as a consequence, each person who “resisted the power, resisted the ordinance of God” (Rom. 13:1–2). In contrast to the Roman practices, where power could be reached by completing some well-known procedures (an electoral campaign, e. g.) and hence it could be interpreted as the desired result, as a prize for a victory, in Christian thought the situation was different. According to theologians, the power

<sup>1</sup>Focused on the medieval notion of political power see the classical books: Pennington, K. 1993. *The Prince and the Law, 1200–1600: Sovereignty and Rights in the Western Legal Tradition*. Berkeley, Los Angeles: University of California Press.

<sup>2</sup>On the “potestas-auctoritas” pair in Roman Law and on the relations between these notions see, among others: Clemente Fernandez, A. I. 2009. “El Significado Unitario Del Termino Auctoritas En Sus Orígenes” [in Spanish]. PhD diss., University of Castilla—La Mancha; Kamptz, V. von. 1982. “Potestas” [in Latin]. In *Thesaurus Linguae Latinae*, vol. 10, bk. 2, 300–321. Leipzig: Teubner; Magdelain, A. 1990. *Ius. Imperium. Auctoritas. Etudes Du Droit Romain* [in French]. Roma: École Française de Rome; Münscher, K. 1907. “Auctoritas” [in Latin]. In *Thesaurus Linguae Latinae*, 7:1213–12341. Leipzig: Teubner; Passerin d’Entreves, A. 1969. *La Notion de l’Etat* [in French]. Paris: Sirey Editions.

<sup>3</sup>It depends very much from the Bible’s edition you use, which word for “potestas” would figure out in the text: power (as, for example, in King James’ Bible) or authority (as in newest versions, such as a Michael Scott’s translation of 2011).

of Christian monarchs, the “God’s ministers” (Rom. 13:4), was more like a burden than a reward for their virtues. The great responsibility that power imposed upon the shoulders of rulers required them to sacrifice their time, strength, and even lives for the sake of their subjects’ souls.

Thus, a good king was, in fact, a sort of martyr. Isidor of Seville stressed this in his *Sententiae* stating that the kings who rule piously, after their death would remain kings in eternity<sup>4</sup>. Isidor’s favourite disciple and closest friend, Braulio of Saragossa, wrote in one of the laws of *Liber iudiciorum* that

a good prince ruling well his kingdom, and making foreign conquests, maintaining peace at home, and overwhelming his foreign dversaries, is famed both as the ruler of his state and a victor over his enemies, and shall have for the future eternal renown, after terrestrial wealth, a celestial kingdom after the diadem and the purple, a crown of glory, nor shall he then cease to be king; for when he relinquished his earthly kingdom, and conquered a celestial one, he did not diminish, but rather increased his glory.<sup>5</sup>

Later, the same metaphorical line was used by authors of the Carolingian conception of the royal unction. They interpreted the sign of the cross, which the King received during the unction procedure upon his right shoulder, as a metaphor for Jesus’ cross burden. The King, as a result, became a *Deus per gratiam* or *Christus per unctionem* and his rule was explained as an analogy of the final Christ’s road, the *Via Crucis*.<sup>6</sup>

Based on the above, we have compiled several works in this issue that deals with the theme of power in medieval thought, interpreted from various positions. NIKOLAY ANTONOV and ELGA KANAYEVA study the Byzantine aspect of the theory of power. Their articles describe the confessor’s hypostasis (shepherd, physician, and intercessor) from one side, and analyze the *arche* of the priest from another. They both deal with the concept of *charisma* introduced by st. Paul, later developed in Byzantine thought.

<sup>4</sup>Sent.III.48.6: “Qui intra saeculum bene temporaliter imperat, sine fine in perpetuum regnat, et de gloria saeculi huius ad aeternam transmeat gloriam”.

<sup>5</sup>Scott, S.P., ed. 1910. *The Visigothic Code (Forum Iudicum)*. Boston: Boston Book Company. P. 7.

<sup>6</sup>Kantorowicz, E.H. 1952. “Deus Per Naturam, Deus Per Gratiam: A Note on Mediaeval Political Theology.” *The Harvard Theological Review* 45 (4): 253–77, Kantorowicz, E.H. 1997. *The King’s Two Bodies: A Study in Medieval Political Theology*. Princeton: Princeton University Press; Ullmann, W. 2011. *Principles of Government and Politics in the Middle Ages*. London: Methuen and Co., Ullmann, W. 1962. *The Growth of Papal Government in the Middle Ages: A Study in the Ideological Relation of Clerical to Lay Power*. London: Methuen and Co.



The issue continues with three other articles, where the *European Latin* position is exposed. Firstly, the text of SEBASTIÁN PROVVIDENTE deals with the struggle between conciliarists and papists during the famous Council of Constance. Secondly, ARINA ZAYTSEVA'S article stays within the Canon law field and analyzes the correlation between the concept of justice and that of *ius strictum* in the "Processus Sathanae contra genus humanum", a treatise which is ascribed to Bartolo da Sassoferrato. Finally, the brilliant study of JOSEPH O'CALLAGHAN that closes this issue, deals with the famous Castilian theologian Juan Gil de Zamora and the instructions that he gave to Sancho IV, king of Castile, while he was an infant.

The book review section opens with a text by NIKITA FEDONNIKOV, who reviewed a collective monograph dedicated to the image of tyranny in European medieval thought. FEDOR NEKHAENKO makes an excellent review on the recently published course read by Alan de Libera at College de France.

We hope that the reader will find a coherent path that both denotes and explains some of the central points that occupied medieval thought concerning power and its use.

*Daniel A. Panateri and Alexander Marey*



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THEOLOGY AND LAW

STUDIES

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ИССЛЕДОВАНИЯ

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NIKOLAY ANTONOV\*

## THE APXH OF THE PRIEST IN THE "APOLOGY FOR HIS FLIGHT" (OR. 2) OF GREGORY OF NAZIANZUS\*\*

Submitted: Sept. 10, 2022. Reviewed: Nov. 20, 2022. Accepted: Nov. 28, 2022.

**Abstract:** This article reconstructs the categorical apparatus used by Gregory of Nazianzus to form notions of the ἀρχή of the priest. It has been shown that logic of religious leadership, developed by Gregory, is deeply rooted in paradigms of Late Antiquity. He connects the idea of the divine origin of the institution of the clergy with the notion of a world hierarchy (ἀρχή καὶ τάξις). In this context, oppositions between ministry/absolute authority (λειτουργία/ἡγεμονία) and force/persuasion (βία/πειθοῖ) are analyzed, showing that the priest is defined by his position between God and the laity, which is often described using the pastoral metaphor: Chief Shepherd Christ—shepherd—flock. At the same time, the category of "mediation" itself (μεσσιτεία Θεοῦ καὶ ἀνθρώπων) refers in his text exclusively to the cultic function of the priest, i. e. bringing people to God through the sacraments. Another way of achieving this goal is to help people through "spiritual guidance," i. e. different practices of communication (conversation, sermon, instruction, etc.). This path is described by Gregory in Neoplatonic categories and implies that only someone who is close to God can lead others to Him. These two methods of influencing lay people have a different theological-ontological basis, however both of them constitute the ἀρχή of the priest. The performance of the sacraments is considered as that which places a priest closer to God, that is to say what includes him in ἀρχή καὶ τάξις on a level distinct from ordinary people. Moreover, the priest is thought of as a person who occupies in the New Israel—the Church—the place of the rulers of ancient Israel, and for this reason his position is described as authoritative, although this authority has to do with the government of souls (ἡγεμονία ψυχῶν), accomplished in this case exclusively through persuasion.

**Keywords:** Priesthood, Religious Leadership, Gregory of Nazianzus, Power/Authority, Mediation, Spiritual Guidance.

DOI: 10.17323/2587-8719-2022-4-13-35.

\*Nikolay Antonov, MA, Visiting Fellow of the Ecclesiastical Institutions Research Laboratory St. Tikhon's Orthodox University for the Humanities (Moscow, Russia), nickforgo@gmail.com, ORCID: 0000-0002-6588-1633.

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Acknowledgements: This work was supported by the Russian Science Foundation under grant № 19-78-10143 (<https://rscf.ru/en/project/19-78-10143/>). The project was organized by St. Tikhon's Orthodox University.

The word describing the action and position of the priest<sup>1</sup> which occurs most frequently in the *Apology for his Flight* (further — *Apology*) of Gregory of Nazianzus (St. Gregory the Theologian) is ἄρχω, with various derivations, which leads us inevitably to the conclusion that Gregory thinks of the priest as an instance of authority. Nonetheless, because the text speaks a great deal about the *duties* of the priest and the *demands* placed on him, and almost nothing is said about the *possibilities* which his position gives him, the question of the source, boundaries, and character of this ἄρχή require clarification.

Gregory's *Apology* is the first text in the Christian tradition dedicated to the image of the priest. As it has not been sufficiently studied itself (Antonov, 2021a), references to it in major monographs concerning church discourse on authority are rather superficial (Sterk, 2004: 122–125; Rapp, 2005: 42–44; Demacopoulos, 2006: 51–82; Hornung, 2020: 38–46). An exception to this rule is a monograph by Elm, where the author proposes a thoroughly detailed, though often controversial analysis of the image of the priest in the context of the Platonic image of the philosopher (Elm, 2012: 147–268).<sup>2</sup> In the *Apology* we encounter all the fundamental categories and oppositions which characterize the conceptions of authority in Late An-

<sup>1</sup>Attention to word choice in the context of this research paper leads me immediately to make the qualification that I use the word “priest” exclusively to refer to the object of description of this text. Gregory makes a clear distinction between the presbyterial and episcopal ranks, of course. Nevertheless, this text, as testified to by the phrase “Nor [...] was I ashamed of the rank of this grade from my desire for a higher” (Greg. Naz. Or. 2. 5), describes his acceptance of the rank of presbyter, while in some of his other texts the episcopacy is described using the same lexicon as in the *Apology*; the connotations of the word ἱερεὺς in Gregory's writings will be considered below. The Greek text of Gregory's orations is taken from the digital library of Greek literature TLG, the English translation from NPNF 2 (with minor alterations), unless otherwise stated. Greek quotations from other texts are also taken from TLG, unless otherwise stated.

<sup>2</sup>This approach is important to us, because it is in this context that the authoritative position of the priest is most clearly described for the first time. Nevertheless, ignoring the question of how the theological basis of the nature of this authority — in the first instance sacramental — leads to the authority of the priest (for some reason interpreted almost as a directly political activity, compare: “priestly office as leadership of the *oikoumene*” (Elm, 2012: 156)) being perceived as no more than the result of personal deification. This allows a Platonic scheme of the interpretation of authority to be discerned in Gregory's work, which is indeed adopted by him, but prevents us from seeing its development and transformation through the prism of Christian kerygma.

tiquity and the Middle Ages.<sup>3</sup> What is more, Gregory’s particular authority as “the Theologian” in the Christian tradition has guaranteed the reception of this text in the Byzantine<sup>4</sup> and Latin traditions,<sup>5</sup> and in European thought in general. Characteristically, we regularly meet with references to this text in the formation of Modern discourse about the priesthood: for example, in the XIX century in most Russian textbooks on pastoral theology, as well as in the German language space<sup>6</sup>, etc. It is of great interest what role play the elements of Fathers of Church’ thought in the construction of Modern logic (or rather different logics) of religious leadership. The answer to this question must be preceded by a structural study of the position of the priest in the worldview of Late Antiquity.

It is no accident that the Greek word in the title of this article is left untranslated. When defining the nature of the ἀρχή of the priest, it would be entirely inadequate to assert that in this case is meant, let us say, not “power,” but “authority,” or “office,” or “leadership.” The opposition μὴ βίβη κατάρξειν, ἀλλὰ πειθοῖ προσάξεισθαι “not by the rule of force, but by means of persuasion”<sup>7</sup> (Greg. Naz. Or. 2. 15), which defines the principle of priestly action in the text, allows a parallel to be drawn, for example, with the classical (and later) division of power into *auctoritas* and *potestas*, and on this basis to choose one or another English equivalent. It is evident, however, that ἀρχή in Gregory’s thought is incorporated into quite a voluminous categorical network denoting by no means one single opposition, and as a result there is no single word in the modern vocabulary of any language which communicates the whole spectrum of meaning touched on by Gregory.

<sup>3</sup>A practical/contemplative life, the role of ascetic practices and education, worthiness/unworthiness, performance of the sacraments/guardianship of souls, power by force/persuasion, the power of office/personal holiness etc.

<sup>4</sup>This theme has rarely been explored at all: not even an exhaustive comparison with the *De sacerdotio* of John Chrysostom has been made (the best examples are Lochbrunner, 1993; Hofer, 2011). However, the toolkit of the TLG database shows that quotations from the *Apology* are given in Isidore of Pelusium’s letters (ep. 1641, 3. 127), in the *Novellae* of Justinian (Novellae. 696), in the section on episcopacy of the Florilegium *Sacra Paralella*, compiled most probably by John Damascene (PG 95. 1541. 30), and also in Theodore the Studite’s *Magna Catachesis* (1. 1–2; 10. 63).

<sup>5</sup>Aside from the fact that the *Apology* was read by St. Gregory the Great, reflected in its being quoted in the *Liber Regulae Pastoralis* (Holder, 2009: 77), separate research is required into the reception of the Latin translation of the *Apology* made by Ruthenus of Aquila around 400 CE together with eight other *works* by the Theologian (CSEL 46).

<sup>6</sup>Beginning with the first major monograph about Gregory, we see an appeal to the topic of priesthood in a clearly practical way (Ullmann, 1825: 509–527).

<sup>7</sup>Here the translation is taken from a dissertation (Sparacio, 1997).

Accordingly, the aim of this article is the rough definition of the categorical apparatus which Gregory uses to think about the figure of the priest in the complex Late Antique, but at the same time Christian, cosmos.

#### THE POSITION OF THE PRIEST

As stated, of primary importance for Nazianzus is the emphasis on the special position, juxtaposed with or set apart from that of a “subordinate,” occupied by the priest, and not based on his authority to perform any particular sort of action. This is evidenced, for example, by the regular parallel use of verbs in the active and passive voices to present this opposition,<sup>8</sup> and also by the prevalence of pastoral imagery, necessarily implying the different statuses of pastor and flock. Characteristically, the text does not even mention “the power to bind and to loose”—a thought which had currency in Gregory’s time<sup>9</sup>—most likely due to the rhetorical situation of the text.<sup>10</sup>

Although the word “hierarchy” itself would not be used in Christian literature until later, the notion of a hierarchy of entities is clearly present in Gregory’s thought, whose order reflects closeness to God (Greg. Naz. Or. 2. 3–4):

καθάπερ ἐν σώματι τὸ μὲν τι ἄρχον ἐστὶ καὶ οἷον προκαθεζόμενον, τὸ δὲ ἀρχόμενον καὶ ἀγόμενον· οὕτω κἀν ταῖς Ἐκκλησίαις διέταξεν ὁ Θεὸς [...] τοὺς μὲν ποιμαίνεσθαι τε καὶ ἄρχεσθαι [...] τὴν πρὸς τὸν Θεὸν οἰκειῶσιν τοὺς δὲ εἶναι ποιμένας καὶ διδασκάλους, λόγον ψυχῆς πρὸς σῶμα, ἢ νοῦ πρὸς ψυχὴν ἐπέχοντας [...].

Οὔτε οὖν τοῖς ἄλλοις ἀναρχίαν καὶ ἀταξίαν λυσιτελεστέραν οἶδα τάξεως καὶ ἀρχῆς, οὔτε ἀνθρώποις[...].

as in the body there is one member which rules and, so to say, presides, while another is ruled over and subject; so too in the churches, God has ordained, that those [...] should be subject to pastoral care and rule, while others *should be pastors and teachers*, those who surpass the majority in [...] nearness to God, performing the functions of the soul in the body, and of the intellect in the soul. [...]

I am aware then that anarchy and disorder cannot be more advantageous than order and rule, either to other creatures or to men [...]. (emphasis added).

<sup>8</sup>See, for example: Greg. Naz. Or. 2. 3: τοὺς μὲν ποιμαίνεσθαι τε καὶ ἄρχεσθαι, τοὺς δὲ εἶναι ποιμένας καὶ διδασκάλους.

<sup>9</sup>See, for example: Gregorius Nyssenus. *Adversus eos qui castigationes aegre ferunt* (PG 46. 312).

<sup>10</sup>First of all, Gregory of Nyssa’s topic is the authority of the bishop, but in the *Apology* the subject includes that of the rank of presbyter. Secondly, Gregory of Nazianzus mentions the authority of the pastor in order to point out the difficulty of this ministry, and for this reason, perhaps, he somewhat exaggerates the absence of any “leverage” over lay people; see, for example, Greg. Naz. Or. 2. 19–20.



This quote from the Epistle to the Ephesians (4:11), while retaining its central intuitions—the existence of particular ministries in the Church as the Body of Christ—becomes the basis for a wider thought in Gregory’s work: it is not simply the New Testament priesthood which has been established by God (not for nothing does the author conserve only the last two of the types of ministries: apostles, prophets, evangelists, pastors, and teachers), but above all the division into pastors and flock; moreover the existence of ἀρχὴ καὶ τάξις is of critical structural importance for the Church, as for all levels of the cosmos.<sup>11</sup>

The fact that in Gregory’s thought the clergy does not replace Christ in the Church may also be considered of primary importance. God has not simply ordained priests to direct lay people towards “that which is needful and right,” but in order that both become “worthy of Christ Himself, *our Head*” (Greg. Naz. Or. 2. 4) (emphasis added). That is, Christ retains his position of the Head, while in the Church there are relations between two levels, just as “the soul” is “in relation to the body, or the mind in relation to the soul” (Greg. Naz. Or. 2. 4). In another place in the *Apology*, we see Gregory praying to God that He as “Chief Shepherd” be Shepherd to the shepherds and “Himself present to Himself His flock radiant” (Greg. Naz. Or. 2. 117), i. e., that God should directly conduct the life of the Church.<sup>12</sup>

The assertion of the divine origin of the authority of the clergy in the Church is confirmed by Gregory’s historico-theological intuition that the priest is the heir of all those whose office (προστασία) was the governance (οἰκονομία) of Israel (see Greg. Naz. Or. 2. 52, 57–68). This allows abundant use of Old Testament lexis and examples to describe different aspects of the authority of the priest, both on the mystical (through the image of the Levitical priesthood (see “ἱερεῖς καὶ ἄρχοντες” in Greg. Naz. Or. 2. 57, 67) and the topic of the temple) and the socio-political levels, as the local

<sup>11</sup>For an analysis of the hierarchical structure of the cosmos in Gregory in comparison to Plotinus and Origen, see (Richard, 2003: 313–440). For a more detailed description of the synthesis of quotes from Eph. 4 with ideas from Antiquity, see (Antonov, 2021b).

<sup>12</sup>It is interesting to compare this intuition, which for a Christian worldview is obvious, with Plato’s *Politicus*. This dialogue develops the description of the politician as the shepherd of a rational flock. It cannot be claimed that Gregory is writing in direct response to exactly this text (in contrast to the *Republic*, on which see below), however an important thought for our question may be seen here: in the Myth of Er it is said that people were ruled by “divine shepherds”, that is ruling gods, while a supreme god ruled over the whole cosmos (271d). In the current age, a politician, replacing the gods, leads a flock of people, and not tyrannically but through persuasion. Gregory’s priest finds himself in a more complex system of relationships, adopting a series of isomorphic traits.

Church is described in terms of a people (the metaphor of Israel), led by a pastor (see the vocabulary for the description of rulers and people in Greg. Naz. Or. 2. 56–68).

Hence, the main characteristics of the position of the pastor are his mutual relations with the Archpastor-Christ and his flock. Let us describe some of the categories which define this position.

#### TRANSFORMATIONS OF CATEGORIES

In the previous section we have seen how the intuition of the divine origin of particular ministries in the Church was placed in the context of general classical *topoi* describing the hierarchical structure of the world.<sup>13</sup> In the text of the *Apology* there is much material from both biblical and classical sources,<sup>14</sup> which of course leads to their interpenetration and consequently to the transformation of the categories which inform them. Let us examine from this point of view an important categorical opposition which, to a significant degree, defines the position of the priest.

The first is *λειτουργία/ἡγεμονία* (Greg. Naz. Or. 2. 4), which is developed a little further on in the text as *λειτουργία ὑπεύθυνος/ἀρχὴ ἀνεξέταστος* (Greg. Naz. Or. 2. 8): a ministry for which we must give account/an absolute authority. At first glance, we see here four common classical terms describing the realities of politics and retaining their original meaning. Such a juxtaposition is entirely typical of political thought in Antiquity, as shown by the articles on each of these works in LSJ. In Demosthenes (*Adversus Leptinem*, 18) and other authors, for example, *λειτουργία* means a public service performed at one's own expense and not that of the city; *ὑπεύθυνος* means accountability to the city; and, beginning with Herodotus, *ὑπεύθυνος ἀρχή* (*Histories*. 3. 80) is juxtaposed to monarchy. In Aeschines, we encounter the following phrase: “*Ἄνυπεύθυνον δὲ καὶ ἀζήτητον καὶ ἀνεξέταστον οὐδὲν ἔστι τῶν ἐν τῇ πόλει*” (*In Ctesiphontem*, 22: “There is nothing in all the state that is exempt from audit, investigation, and examination” (Aeschines, Adams, 1919)).

<sup>13</sup>The priest may be discussed in the context of an Antique “style of thought” using the terminology of L. Fleck, see: Vorontsov, 2020.

<sup>14</sup>As Matz writes, the *Apology* contains 508 citations from Scripture in 117 paragraphs (Matz, 2016: 54). Apart from this, it is worth mentioning the paraphrase of a fragment from the *Republic* (See Greg. Naz. Or. 2. 9 c Plato. *Republic*. 343b–c, 345d–e. (Antonov, 2021b: 196–200)), and also the fairly obvious Platonic intuitions in Greg. Naz. Or. 2. 3–5 (see: Portmann, 1954: 28–36), in order to appreciate the scope of the synthesis achieved by Gregory in his construction of the image of a pastor.

Nonetheless, having posed the question to whom the priest should be accountable, we see that the suggestion that the priest should be subordinate to the “citizens” of the Church would contradict the rest of the text. The biblical contexts corresponding to this question in other parts of the *Apology* will inevitably reconstitute the *polis* “ruler — city” scheme of relations by introducing God into them.

It should be noted that in the opposition in question, in the examples from biblical history, and in the autobiographical fragments, a number of words indicating specific offices are employed when discussing the assumption of this office. The relationship of these situations, regardless of the difference in the offices of a church priest, or of the Prophet Jonah and the High Priest Aaron, is conditioned precisely by the identical structure of their position, namely that of service to human beings with accountability before God.

Let us analyze these contexts, beginning with another fragment where the phrase ζυγόν τῆς λειτουργίας occurs. It indicates the priestly ministry, in parallel with the position of prophet, (προφητεία) of Jonah, whose story of the acceptance of his ministry is seen as being relevant to the case of Gregory.<sup>15</sup> Jonah’s ministry (Greg. Naz. Or. 2. 106), and the ministry of other offices (προστασία, see: Greg. Naz. Or. 2. 52) in the Old Testament is called διακονία (Greg. Naz. Or. 2. 114) in the *Apology*, among other things.

Characteristically, this word does not occur in the Old Testament, but it frequently does in the epistles of the Apostle Paul and the book of Acts, where it refers to the ministry of the apostles (e. g., Acts 1:17, 25). In these texts it appears in several meanings, a comparison of which easily permits the identification of the following general scheme: it is a ministry appointed by and received from God (e. g., Acts 20:24), consisting in ministry to people (e. g., 1 Cor. 16:15), which at the same time constitutes service to God. Here it should be emphasized that such an understanding implies that the person who performs διακονία is not subordinate in status to the people whom he is serving, but on the contrary is their “ruler”, although his authority is of a particular nature.

In Gregory, we see the exact same usage of this word. From his reflections on the principle of the reception of διακονία (Greg. Naz. Or. 2. 114), based on the examples of Aaron and Isaiah (as those who accepted it straight away), and Jonah, Moses, and Jeremiah (as those who initially refused

<sup>15</sup>Or. 2. 110: “although he [Jonah] might possibly meet with some indulgence, if reluctant to prophesy [...] what defense could be made, if I longer [...] rejected the yoke of ministry”.

it), we see that the ministry of a particular leader proceeds from God, is directed towards people, and is performed for God.

The following method of describing a church leader, borrowed from the Apostle Paul, testifies to the same logic: πιστευθῆναι ἰατρεύειν, φωτίζειν, παιδεύειν, ἐπανορθοῦν, διευθύνειν, ποιμνῆς ἐπιστατεῖν.<sup>16</sup> It seems unlikely that the passive voice of the verb indicates that all of these ministries have been “entrusted” to the priest by the community and not by God (especially that the guidance of the pastorate could be entrusted to the shepherd by the self-same pastorate).

Aside from this, it should be mentioned that the category of obedience/disobedience pervades the whole text of the *Apology*, correlating, one might suppose, with the idea of “accountability” from the opposition in question (ὑπεύθυνος). It appears both in personal fragments where Gregory describes his return to his ministry as εὐπειθεία (ready obedience, Greg. Naz. Or. 2. 113) and in descriptions of the priestly position in general (for example in the quote from Is. 1, 23: ἄρχοντες ἀπειθοῦντες (Greg. Naz. Or. 2. 56)). Here it is clear that what is being discussed is the relationship of the bearer of ἀρχή to God.

In conclusion, the following maxim may be mentioned, taken from the description of the ministry of the Apostle Paul (Greg. Naz. Or. 2. 54), where the same intuition is formulated using classical language:

Ὁὗτος ὁρος πάσης πνευματικῆς προστασίας, πανταχοῦ τὸ καθ’ ἑαυτὸν παρορᾶν πρὸς τὸ τῶν ἄλλων συμφέρον.

This is the aim of all spiritual authority, in everything it serves the interests of others.

To the idea in the *Republic*, for example (for the significance of this text to Gregory in the *Apology*, see footnote 13), in which power is described as benefiting not the ruler, but their subjects (*Republic*, 346–347), is added the necessity of a conscious sacrifice of the ruler’s own interest.

Finally, for an accurate understanding of the opposition in question, let us analyze how lay people are presented in the *Apology*. Almost always they are described as a group of people. The most frequently used term is λαός (15). However, this group is almost always the object, not subject,

<sup>16</sup>In the Apostle Paul — οικονομίαν πεπίστευμαι (1 Cor. 9. 17), τὸ εὐαγγέλιον (Gal. 2. 7). Interestingly, in the context of the previous paragraph is the verse Col. 1. 25: ἐγενόμην ἐγὼ διάκονος κατὰ τὴν οικονομίαν τοῦ θεοῦ τὴν δοθεῖσάν μοι εἰς ὑμᾶς πληρῶσαι τὸν λόγον τοῦ θεοῦ (emphasis added).

of the action. Another name which occurs often in the text testifies to this: “flock”—ποιμνη (3), ποιμνιος (7), πρόβατα (9)—and the frequent use in passive constructions or as an object: ἀρχόμενοι, ἀγόμενοι, οἱ ὑπὸ χεῖρα, οἰκονομία τοῦ λαοῦ, ποιμαίνοντας τὸν λαόν etc. The most striking example here is the image from Greg. Naz. Or. 2. 44:

If anyone were to undertake to tame and train an animal of many forms and shapes, compounded of many animals of various sizes and degrees of tameness and wildness. [...] And what must the master (ἐπιστάτην) of such an animal do [...] so as successfully to lead and preserve the beast? And since the common body of the church is composed of many different characters and minds [...] it is absolutely necessary that its ruler (προστάτην)...

The totality of the passages examined here enables the opposition λειτουργία ὑπεύθυνος/ἀρχή ἀνεξέταστος to be interpreted as follows: bearing in mind that ἀρχή in and of itself regularly signifies the position of priest, this opposition points not to the absence of any authority (ἀρχή) possessed by the priest, but to the source of this authority and the fact that the priest must “give an account” for the way it is used is not to himself (in Gregory’s opinion, it is precisely this mistaken understanding on the part of many clerics which has led to the crisis in the Church (Greg. Naz. Or. 2. 8)), but to God.

Hence, in my opinion it would be possible to sum up Gregory’s ideas on the position of the priest using the expression ἀρχή ὑπεύθυνος — “accountable authority” — where ὑπεύθυνος would denote the relationship between the priest and God, and ἀρχή that between the priest and his flock. It should be emphasized that ἀρχή is thought of here precisely as a certain type of authority (if not power), as evidenced by a whole series of images and associations: the master of an animal composed of different animals; the concealed comparison with the ruler from Plato’s *Republic*; a set of figures of authority from Scripture perceived as role models (παράδειγμα) for the priest (Greg. Naz. Or. 2. 52), and the lexis taken from the Old Testament: ποιμένες, ἱερεῖς καὶ ἄρχοντες, πράκτορες, κυριεύοντες, προστάται, ἡγούμενοι, κατορθοῦντες, πρεσβυτέραι, κριταὶ (from Greg. Naz. Or. 2. 56–68). The definition of the office (προστασία) of the priesthood as the “guiding of man” (ἄνθρωπον ἄγειν — Greg. Naz. Or. 2. 16).

The principle of the realization of this ἀρχή is given by another opposition:

μη βία κατάρξεν, ἀλλὰ πειθοῖ προσάξῃσθα

not by the rule of force, but by means of persuasion (Greg. Naz. Or. 2. 15).

This common maxim in classical literature acquires a universal character in Gregory (and in the Christian tradition generally) as a result of the fact that it is affirmed as the principle of God's action in relation to mankind—*Ikonomia* (or. 31.25).<sup>17</sup> As the priest is called the collaborator *συνεργός* of this *Ikonomia* (Greg. Naz. Or. 2. 26), it is not surprising that this principle is also used to describe the action of a pastor towards his flock.

In summary, on the basis of an examination of several key categories describing the position of the priest, the position may be characterized as a mediatory one between God and the priest's flock, which has its source in God and is directed in terms of the bearer's action towards people. This aspect is manifested in the service of the priest to God and his authority over people.<sup>18</sup> This interaction must be performed on all levels by all the subjects voluntarily and by means of persuasion,<sup>19</sup> but is nonetheless without any doubt thought of by Gregory as a relationship of authority over subordinates.

Before moving on to examine the ways the ἀρχή of the priest is achieved in practice, it is essential to look at the category of “mediation”, which has already appeared several times in our paper.

#### MEDIATION

Gregory directly defines the position of the priest as μεσιτεία Θεοῦ καὶ ἀνθρώπων (Greg. Naz. Or. 2. 91). This expression is an allusion to 1 Tim. 2: 5 (“one God, one mediator between God and men, the man Jesus Christ”), whereas in other places in Scripture, and also in most of the monuments of early Christian literature,<sup>20</sup> the idea of mediation pertains to Christ. The same usage can be seen in Gregory's own texts.<sup>21</sup> This fragment, on the other hand, must be considered in a wider context.

Gregory writes that he considers it not without danger “to be entrusted with the rule over souls, or the office of mediator (for such, I take it, a priest is) between God and man” ἢ ψυχῶν προστασίαν δέξασθαι, ἢ μεσιτείαν Θεοῦ καὶ ἀνθρώπων (τοῦτο γὰρ ἴσως ὁ ἱερεὺς) (Greg. Naz. Or. 2. 91). The double

<sup>17</sup>Also as a principle of theological polemic, including for the emperor (Gregor von Nazianz, 1919: 1280–1305).

<sup>18</sup>Compare the definition of the priesthood from *carm.* 1. 2. 34. 227–228: ἱερωσύνη δὲ ἀγνισμὸς φρενῶν, Θεῶ φέρων ἀνθρώπων, ἀνθρώπων Θεόν.

<sup>19</sup>ἐκ προαιρέσεως. Or. 2. 15.

<sup>20</sup>See, for example: Irenaeus, *Adversus haereses*. 3. 26; Origenes, *Fragmenta ex commentariis in epistolam ad Ephesios* (in *catenis*). 29. 21; Eusebius, *Contra Marcellum*. 1. 1. 29.

<sup>21</sup>Including in the *Apology*, where His adoption of human nature through the mediation of the soul is referred to (Greg. Naz. Or. 2. 23). For typical Christological usage, see or. 30. 14, among others.

conjunction (ἦ ... ἦ) here may be regarded as not being accidental: with these two expressions, Gregory points to two different principles of the “influence” of the priest on his flock: through the word and through the sacraments. Let us consider the second expression, given as a definition of the position of the “ἱερεὺς” (priest).

The word ἱερεὺς in the Christian literature in the 4th century was not a technical term denoting a church leader but contained cultic connotations with the Old Testament. The logic described by Stewart on the basis of 3rd century texts can also be seen plainly in texts of the 4th century (Stewart, 2015). He showed that this word began to be employed to denote a church leader in the 3rd century as part of a rationale of describing church realia using Old Testament language, made possible by the perception of the Church as the New Israel. This allowed the Church to be described as a new culture/polity/people. Consequently, it is unsurprising that we discover the majority of occurrences of the word ἱερεὺς in the corpus of Greek texts of the 3rd–4th centuries in exegetical contexts, or in quotations from the Old Testament.<sup>22</sup> It is fairly obvious that a competing image with pagan priests (ἱερεὺς) was constructed in this way, with maximum emphasis placed on the distinct nature of the Church’s priesthood, but claiming to occupy the same place for it within the empire. The exact stages of this polemic, notwithstanding, require separate study.

These intuitions can also be seen in the *Apology*. Of the 23 occurrences of this word, 15 pertain to the fragment Greg. Naz. Or. 2. 56–68, comprised of quotations from the books of prophecy, which clearly represent an example of the description of the church clergy with the help of quotations and paraphrases from the Old Testament. Of the remaining eight, three instances from Greg. Naz. Or. 2. 81–82 acquire Old Testament connotations as a result of the fact that one of them forms part of a quote from Hos. 4:9; another two refer to the children of Aaron (Greg. Naz. Or. 2. 92) and to the priest Eli from 1 Sam. 4 (Greg. Naz. Or. 2. 93); and one to the description of laws from Lev. (Greg. Naz. Or. 2. 94). With this typological subtext, the other occurrences become much clearer, that is, besides the above, the following phrase which Gregory uses to help describe his entry into the clergy: “clothe myself with the garb and name of priest” ἱερέως σχῆμα καὶ ὄνομα ὑποδέσθαι (Greg. Naz. Or. 2. 95).

The same is true in relation to the expression μεστρεῖα Θεοῦ καὶ ἀνθρώπων. Two instances which I have discovered prior to Gregory of the attribution

<sup>22</sup>Which becomes obvious when exploring the history of the word in the corpus of the TLG.

of a mediatory position to a religious leader speak explicitly of mediation in the priesthood: according to Athanasius the Great, Aaron “ἐμεσίτευε τῇ ὀπτασίᾳ τοῦ θεοῦ καὶ ταῖς τῶν ἀνθρώπων θυσίαις” (*Orationes tres contra Arianos*, II. 7. 5–6). In the *Constitutiones Apostolorum* fragments (*circa* 380, Antioch), taken from the earlier monument *Didascalia Apostolorum* (3rd century), we find the following definition of a bishop: “You [bishops] are to the laity prophets, rulers, governors, and kings; the mediators between God and His faithful people” (II. 4. 25), and below this: the bishop is “the mediator between God and you in the several parts of your divine worship” (μεσίτης Θεοῦ καὶ ὑμῶν ἐν ταῖς πρὸς αὐτὸν λατρείαις) (II. 4. 26; Schaff, 1885: 409–410).

A contextualization of the passage in question enables us to argue that the category of “mediation,” through the metaphorical transfer of the connotations of an Old Testament priest to a cleric of the Church, relates exclusively to his sacramental ministry. Nevertheless, as stated, even in this passage we see that the ministry of a pastor is not limited to the performance of the sacraments, as another of his tasks is the προστασία ψυχῶν, which is illustrated in a variety of different ways throughout the text: through medical metaphor (ἰατρεία/θεραπεία ψυχῶν), pedagogical lexis (παιδεύειν πρὸς ἀρετὴν, διδασκαλία), and the affirmation of the authority of the priest over souls and his duty of care for them (ψυχῶν προστασία/ἡγεμονία/ἐπιμέλεια); all of this, as is clear from the contexts, concerns precisely the influence of the word and sphere of communication.<sup>23</sup> We now identify how these two modes of influencing the flock — the care of souls and the performance of the sacraments — are combined in Gregory’s thought.

#### SPIRITUAL GUIDANCE AND PRIESTHOOD

While large fragments in the text of the *Apology* are devoted to descriptions of principles of healing and instruction of souls, we encounter only a handful of mentions of the sacramental ministry of the clergy. These are crucial for an understanding of the ontology of the priestly position.

The first fragment was to some degree examined at the beginning of this article (Greg. Naz. Or. 2. 4). It affirms that order and authority (in this case the presence of the clergy) are more important for people “than for

<sup>23</sup>Compare: “its [the common body of the church] ruler (τὸν προστάτην [τῆς Ἐκκλησίας σώματος]) should be [...] as far as possible manifold and varied in his treatment of individuals (τὴν πρὸς ἕκαστον οἰκείωσιν), and in dealing with all (τῆς ὁμολίας πρὸς πάντας) in an appropriate and suitable manner” (Greg. Naz. Or. 2. 44).



all the others" (τοῖς ἄλλοις),<sup>24</sup> because people need "the ability to pick themselves up after sin"—that is they need the sacraments.<sup>25</sup> Later in the same paragraph, Gregory says that without priests, "the fair fulness of the Church would be halting in the highest degree, and in fact cease to be fair," because the "mysteries which lead us heavenward" would not be performed. It is typical that preceding this passage, the subject of the text is the establishment in the Church by God and the influence of "pastors and teachers" over those who are "subject to pastoral care and rule" (Greg. Naz. Or. 2. 3) and following the general principles of authority with obvious Platonic implications (or. 2. 5), as discussed at the beginning of the article. However, the connection between sacred ritual and a position of authority is not spelled out here.

The second passage which is of interest to us contains criticism of unworthy priests.

I was ashamed of all those others, who, without being better than ordinary people, nay, it is a great thing if they be not worse, with unwashed hands, as the saying runs, and uninitiated (ἄμύητος) souls, intrude into the most sacred offices; and, before becoming worthy to approach the temples, they lay claim to the sanctuary, and they push and thrust around the holy table (Greg. Naz. Or. 2. 8).

The use of cultic vocabulary here is of significant interest; ἄμύητος means a person who has not yet undergone initiation. Gregory denotes with this word "souls" which cannot truly be called uninitiated in a literal sense, since not only have they been baptized but also ordained as priests; thus, his criticism is of an ethical nature. In this way, personal morality is postulated as an essential element of a priestly position (although, of course, what is being talked about is not the non-recognition of the validity of the holy orders of those being criticized or of the sacraments performed by them).<sup>26</sup> Later on, this is stated directly: "they thought this office (τὴν τάξιν ταύτην) to be a means of livelihood, instead of a pattern of virtue" (ἀρετῆς τύπον)

<sup>24</sup>By which, presumably, are meant other earthly beings and angels.

<sup>25</sup>Judging from the context, what is meant here is Baptism, though one might also suppose it could be Repentance, as for Gregory these sacraments are intrinsically linked to one another; see or. 39. 17, where Gregory talks about five baptisms: 1. Transformative in the Old Testament; 2. The Baptism of John; 3. The Perfect Baptism of Christ, through the participation the Holy Spirit; 4. Martyrdom as a baptism of blood; 5. Baptism through tears, i. e. Repentance.

<sup>26</sup>See or. 40. 26: "Do not say, 'a Bishop shall baptize me, and he a Metropolitan ... and he of noble birth...' Do not say, 'I do not mind a mere Priest, if he is a celibate, and religious, and of angelic life...' Do not ask for the credentials of the preacher or the baptizer... But to thee let each be trustworthy for purification, as long as he is one of those who have been approved, not of those who are openly condemned, and not a stranger to the Church."

(Greg. Naz. Or. 2. 8), after which the topic changes to that of authority (λειτουργία υπεύθυνος vs ἀρχὴ ἀνεξέταστος).

In another place Gregory says that when serving the Liturgy, the priest “is to take his stand with Angels and give glory with Archangels [...] and share the priesthood of Christ” (Greg. Naz. Or. 2. 73). One should remember that in Gregory’s theology, angels are represented as being as close to God as it is possible for created beings to be.<sup>27</sup> This passage continues with words which, in all probability, should be seen as a reference to Baptism: the priest should “renew the creature, and set forth the image”;<sup>28</sup> and to the Eucharist: “cause the sacrifice to ascend to the altar on high”; and it concludes “be God, and make others to be God” (Θεὸν ἐξόμενον, καὶ θεοποιήσοντα) (Greg. Naz. Or. 2. 73). Without discussing the content of the latter words from the point of view of the question of a combination of mystical and contemplative ascension to God,<sup>29</sup> we may point out that the position of a performer of sacraments becomes the basis for what is, in essence, the *de facto* deification of the priest.<sup>30</sup>

We see that in Gregory’s thought, the reception of holy orders brings a person nearer to God,<sup>31</sup> and the ability to perform the sacraments places the priest in a position which distinguishes him from “ordinary people”, as evidenced by the very idea of mediation between God and man. The subject of authority and the care of souls appears constantly alongside the discussion of the sacraments, though we never see an explicit link between them, and the ability to exercise the care of souls does not follow directly from the ability to perform sacred rituals. The basis of this influence on lay people should not to be called objective — mystical — the nearness of the priest to God, but

<sup>27</sup>Or. 40. 5: “God is Light: the highest, the unapproachable, the ineffable... That Light, I mean, which is contemplated in the Father and the Son and the Holy Ghost... A second Light is the Angel, a kind of outflow or communication of that first Light... A third Light is man”.

<sup>28</sup>τὸν ἀναπλάσσοντα τὸ πλάσμα καὶ παραστήσοντα τὴν εἰκόνα. Saint Gregory follows the biblical description of man as “πλάσμα καὶ εἰκὼν Θεοῦ” (car. 2. 1. 34. 20).

<sup>29</sup>Which, I might remark, also leads to “roaming about with the angels” συμπεριπολεῖν ἀγγέλοις (Greg. Naz. Or. 2. 7).

<sup>30</sup>The fragment continues: “And who, that is as yet still surrounded by the darkness here below and by the dullness of the flesh, shall be able to clearly contemplate or gaze upon the Whole Mind with his whole mind?” (Sparacio, 1997; Greg. Naz. Or. 2. 74).

<sup>31</sup>Gregory says that he is not ashamed to accept the office of presbyter, and not that of bishop, as he “was not so ignorant of the greatness of God nor unacquainted with the low estate of man as to consider it no great thing for any created nature, in whatever manner, to approach God (πλησιάζειν Θεῶ)” (Greg. Naz. Or. 2. 5).

subjective, that is, individual holiness, which is described by Gregory in entirely Platonic (perhaps Neoplatonic (Pinault, 1925: 196–197)) terms, and which on the whole can be characterized as philosophical contemplation.<sup>32</sup> Of key importance here are the purification of the mind and the subjection of the soul and body to it through a series of practices.<sup>33</sup> It is precisely the arrival at the end of this path, or at least significant progress along it which, in Gregory’s opinion,<sup>34</sup> endows a person with the capability of “arbitrating fairly between soul and body” (Greg. Naz. Or. 2. 18)<sup>35</sup> where others are concerned, that is to say, what we have termed here the care of souls.

In the first instance, it is these practices which are described in the text using the vocabulary and imagery of authority. On the other hand, they are only tangentially connected with the idea of mediation, that is to say, although they do have God as their foundation, this is different from through the sacraments. Descriptions of the priest as pastor or physician of souls are to be found in the text alongside descriptions of God as physician and shepherd of people (e. g., Greg. Naz. Or. 2. 25–26, 34). Notwithstanding, in the case in question an analogy is made between the position of the priest vis-à-vis the community, and God vis-à-vis all people.<sup>36</sup> Convincing, instructing, and exhorting people are the actions of the priest on his own,<sup>37</sup> while

<sup>32</sup>See: “to live superior to visible things, ever preserving in myself the divine impressions pure and unmixed with the erring tokens of this lower world, and both being, and constantly growing more and more to be, a real unspotted mirror of God and divine things” (Greg. Naz. Or. 2. 7).

<sup>33</sup>See, for example: ἡσυχία καὶ ἀναχώρησις (or. 2. 6). Compare: or. 12. 4: τὸν νοῦν εἰς ἑαυτὸν ἀναχωρῆσαι. On this term, see: Festugière, 1954: 53–59. Below Gregory continues: μύσαντα τὰς αἰσθησεις, ἕξω σαρκὸς καὶ κόσμου γενόμενον, εἰς ἑαυτὸν συστραφέντα... (Greg. Naz. Or. 2. 7).

<sup>34</sup>Or. 2. 72: “A man must himself be cleansed, before cleansing others: himself become wise, that he may make others wise; become light, and then give light: draw near to God, and so bring others near; be hallowed, then hallow them; be possessed of hands to lead others by the hand, of wisdom to give advice (συμβουλευῆσαι μετὰ συνέσεως).”

<sup>35</sup>Also more than just a metaphor is the assertion that, for lay people, the priest should be “performing the functions of the soul in the body, and of the intellect in the soul” (Greg. Naz. Or. 2. 3).

<sup>36</sup>See: Greg. Naz. Or. 2. 34: τοσοῦτον ἐνταῦθα τὸ ἔργον τῷ ἀγαθῷ ποιμένι, τῷ γνωστῶς γνωσομένῳ ψυχᾷ ποιμνίου, καὶ ἀφηγησομένῳ κατὰ λόγον ποιμαντικῆς, τῆς γε ὀρθῆς καὶ δικαίας, καὶ τοῦ ἀληθινοῦ ποιμένος ἡμῶν ἀξίας. The English translations are not very accurate in this instance. The expression “ποιμαντικῆς ἀξίας” refers to God: He is the true Shepherd. In the meantime, the expression “κατὰ λόγον” indicates that the position of pastor is analogous to Him (see the article on “λόγος” in LSJ: §II. 1), and precisely because of the necessity of corresponding to this ἀξία it is so difficult for the good shepherd (in this case the priest) to guide his flock (Antonov, 2021b: 202–205).

<sup>37</sup>See several examples of the description of the care of souls: Greg. Naz. Or. 2. 18: more difficult than the healing of bodies is “the diagnosis and cure of our habits, passions, lives,

in the sacraments God Himself acts through the mediation of the priest. Meanwhile, as stated above, the direct action of God in the world is highlighted several times in the text. Hence, the care of souls and the performance of the sacraments are found to be two priestly functions of a fairly distinct nature, as it is possible here to speak of two paths approaching God: through contemplative practices and through the sacraments, where the role of the priest is different in each.<sup>38</sup> In this, and other texts by Gregory, we do not find an explicit description of their combination in the ministry of the priest. In spite of this, Gregory clearly thinks of the pastor as someone who has himself progressed and leads his flock along both paths.

#### CONCLUSION: THE APXH OF THE PRIEST

To conclude, I describe Gregory's ideas on the ἀρχή of the priest, summing up the analysis conducted here of the key categories and placing them in a broader context. The categorial network described by Gregory, it would seem, allows someone to be thought of as both a cleric whose activity is confined exclusively to the performance of the sacraments — a pure “ἱερεὺς” — and someone who is a spiritual guide carrying out θεραπεία and ἡγεμονία ψυχῶν as a result of their closeness to God, even if they do not actually have a priestly ordination. The prior Neoplatonic contexts, in part adopted by Gregory,<sup>39</sup> at the very beginning form an ontology within the framework of which deification is thought of as ascension of the soul to God;<sup>40</sup> the figure of the *philosopher-spiritual guide* is formed in the same place. The notion

wills, and whatever else is within us, by banishing from our compound nature everything brutal and fierce, and introducing and establishing in their stead what is gentle and dear to God, and arbitrating fairly between soul and body”. 30: “Some are led by doctrine, others trained by example; some need the spur, others the curb”. 31: “Some are benefited by praise, others by blame, both being applied in season; while if out of season, or unreasonable, they are injurious; some are set right by encouragement, others by rebuke; some, when taken to task in public, others, when privately corrected”.

<sup>38</sup>It is typical that in research into deification in the theology of St. Gregory, the role of the priest is either not mentioned at all, or is only outlined in general terms. For example, Russel (Russel, 2004: 213–224) limits himself to just a short mention of the mediatory position of the priest in the sacraments, while (Maslov, 2012) analyzes this theme exclusively through the prism of a comparison with antique philosophy, ignoring the sacraments.

<sup>39</sup>On hierarchical ontology, see Richard, 2003. On the use of mystical lexis when describing the sacraments using the example of Baptism, see McGuckin, 2001: 65–71.

<sup>40</sup>What is being referred to is the ontology and anthropology of Plotinus, for example *The Enneads*. v. 9.

of theurgy is also developed in this tradition,<sup>41</sup> which then coexists with philosophy, seemingly without any particular reflection on their connection.<sup>42</sup>

In the Christian tradition after St. Gregory, we meet the same parting of the ways, as within it there is the notion that confession, by which was understood not just the sacrament of the absolution of sins but also instruction in spiritual life, that is to say authority over the soul itself,<sup>43</sup> should be given by people of pure life, i. e., above all monks, even those not in priestly orders.<sup>44</sup>

For Gregory, nonetheless, the figure of a pastor leading the church by his word and in the sacraments, and who is the bearer of a certain ἀρχή, is axiomatic. In order to describe him, Gregory introduces an opposition of two sorts of ἀρχή. The first is self-contained: it is its own source and is directed towards its own benefit (ἡγεμονία; ἀρχή ἀνεξέταστος, see also

<sup>41</sup>For its definition, see: Iamblichus. *De Mysteriis*. 1. 11. In his work we see the difference between these two paths. See *De Mysteriis*. 2. 11: "it is not pure thought (ἐννοία) that unites theurgists (θεουργούς) to the gods. Indeed what, then, would hinder those who are theoretical philosophers (θεωρητικῶς φιλοσοφούντας) from enjoying a theurgic union with the gods? But the situation is not so: it is the accomplishment of acts not to be divulged and beyond all conception, and the power of the unutterable symbols, understood solely by the gods, which establishes theurgic union" (Iamblichus, Clarke et al., 2003: 114).

<sup>42</sup>Or this link requires separate research. In the oeuvre of the Emperor Julian we encounter descriptions of theurgic and philosophical ascensions almost ubiquitously in different works (the theurgical theme in hymns (or. 4–5) and partially in the "Fragment of a letter to a priest," the philosophical in texts against the Cynics (or. 6–7)). In Proclus we see how they are built into one whole system but are also apparently described as different paths, the link between which is not obvious. See: Proclus. *Theologia platonica*. 1. 113: συνάπτεται ταῖς πρωτουργοῖς αἰτίαις, τὰ μὲν διὰ τῆς ἐρωτικῆς μανίας, τὰ δὲ διὰ τῆς θείας φιλοσοφίας, τὰ δὲ διὰ τῆς θεουργικῆς δυνάμεως.

<sup>43</sup>It is characteristic that the notion of mediation is already in the first instance connected with purity of life and not with ordination. A historico-theological basis for such a vision was put forward several centuries later by Saint Symeon (IX v.). See: Symeon the New Theologian. Ep. 1: "search for a mediator, physician, and good counsellor, so that he may as a good counsellor suggest to you, conformably with good counsel, ways of repentance; that as physician he may give you appropriate medicine for each wound; and that as mediator, by means of prayer and petitioning God, as he stands face to face in his very presence, he may propitiate the Deity on your behalf" (Turner, 2009: 41).

<sup>44</sup>"The possibility of making our confession to a monk who has not received the order of priesthood, ever since the vesture and clothing which is the mark of repentance was given by God to his inheritance and they were called 'monks,' this you will find to have been open to everybody, as is written in the divinely inspired writings of the fathers. If you study them you will find that what I am saying is true. Before there were monks, bishops alone used to receive the authority to bind and loose, by right of succession, as coming from the divine apostles. But with the passing of time and with the bishops becoming good for nothing... priests and bishops together becoming like the rest of the people [...] then this function was transferred, as I said, to the elect people of Christ, I mean the monks" (ibid.: 49).

the allusion to Plato's *Republic* in Greg. Naz. Or. 2. 9); the second consists in the position of a mediator between God and people. God is the source and "instance of accountability" for the priest (and it is precisely in relation to God that the priesthood constitutes λειτουργία ὑπεύθυνος), while his activity is directed towards the good of people. The latter are most frequently thought of as a single, though composite subject (a people, flock, "an animal compounded of many animals") which voluntarily submits itself to the priest. This relationship is described as one of authority towards subordinates. Thus, the collocation ἀρχή ὑπεύθυνος may be suggested as reflecting the bidirectional position of the priest. This ἀρχή is realized with regard to the flock in verbal instruction and in the sacraments.

The two modes of action of the priest in terms of his flock pose a problem when reconstructing Gregory's thought. As shown, the sacraments coexist with, but are not structurally connected to, the fact that the priest "governs souls" (ἡγεμονία ψυχῶν — Greg. Naz. Or. 2. 78). The vocabulary and imagery of authority, besides the description of the general position of the priest, relate in the main to practices of the care of souls and not to the sacraments. Notwithstanding, it is precisely the necessity of the sacraments for people which Gregory is talking about when he points to the presence of "ἀρχή καὶ τάξις" in the Church, as in the rest of the cosmos.<sup>45</sup> In this way, the performance of the sacraments and the care of souls provide a basis for the construction of the authoritative image of the priest, although on different levels.

Let us recall that the category of mediation (μεσσιτεία) is used by Gregory to refer precisely to performance of the sacraments. On receiving the possibility to perform the sacraments, according to Gregory, a person occupies a higher position than others in the hierarchy, which is not understood in the narrow sense of offices in the Church, but as a cosmic hierarchy defined by nearness to God. The priest, as we have seen, in the performance of the sacraments inevitably takes his place at very least among the ranks of the angels (as we have seen above "to take his stand with Angels, and give glory with Archangels [...] and share the priesthood of Christ"), thus becoming set

<sup>45</sup>See Or. 2.4: I am aware then that anarchy and disorder cannot be more advantageous than order and rule (ἀρχή καὶ τάξις), either to other creatures or to men [...] if they fail of their highest purpose — to be free from sin — to attain at least to that which is second best, restoration from sin (τὸ ἀμαρτάνοντας ἐπανάγεισθαι) [...] if all men were to shirk this office [priesthood...] by whom would God be worshipped among us in those mystic and elevating rites (θηρησκεύοιτο ἡμῖν ὁ Θεὸς τὰ μυστικά καὶ ἄνω φέροντα).

apart from “ordinary people.” The enactment of the authority of the priest in the community is described in terms of practices of the care of souls.

It may be supposed that the union of these two lines in a single ἀρχή of the priest, implied by the author axiomatically, is also conditioned by the insistent demands for the “virtue” (ἀρετή) of the priest. Since this position presupposes “objective” closeness to God, ideally only people who have also “subjectively”—that is, by means of purification of the mind—come close to God (πρὸς τὸν Θεὸν οἰκειώσις, πλησιάζειν Θεῷ) should attain this office. It is this state which endows someone with the capacity for “arbitrating between soul and body” (βραβεῦσαι ψυχῇ τε καὶ σώματι, Greg. Naz. Or. 2. 18) in other people, and the figure of the priest is judged to be the most suitable for the combination of both functions.

Notwithstanding, Gregory views as inadequate the demands placed on the priest for ritual purity (which is supposedly adequate for the performance of the sacraments)<sup>46</sup>—inadequate precisely for the guidance of others. Demands for his “subjective” closeness to God are thus postulated to be higher than those essential for “objective” nearness to Him:

Or. 2. 14: although a man has kept himself pure from sin, even in a very high degree; I do not know that even this is sufficient for one who is to instruct others in virtue (παιδεύειν πρὸς ἀρετήν). For he who has received this charge [...] must not only wipe out the traces of vice from his soul, but also inscribe better ones, so as to outstrip men further in virtue (κατ’ ἀρετήν προέχειν) than he is superior to them in dignity [of office] (ἀξιώματι).

The unity of these functions in the priestly ministry is ensured by the historico-theological conception adopted by Gregory, according to which priests are the heirs of the rulers of Israel in the Church in the latter’s quality as the new Israel (see, Greg. Naz. Or. 2. 52).<sup>47</sup> The analogous position of the Church leader to the leaders of Israel (judges, kings, generals etc.) is described by Gregory as ἀρχή over the local Church. This leadership has clear political connotations, though it is not thought of as something political in modern sense—it refers more to politics in the Aristotelian sense, i. e.,

<sup>46</sup>In the subsequent history of priestly asceticism, it is these which play the most important role; see (Hornung, 2020: 109–111), where the author emphasizes the three most important coordinates in this history: mediation in the Eucharist, the consequent demands for purity, and the sacralization of the clergy which proceeds from this.

<sup>47</sup>Without speaking about the development of church organization in the Constantinian era, let us point out that in early Christian literature, a church leader was never thought of simply as a sort of priest, i. e., a sacrificer, which is plainly demonstrated, for example, by an analysis of an early phase of the use of the word ἱερεύς/sacerdos (Stewart, 2015).

the organization of community (κοινωνία) for its supreme good (κυριωτάτη ἀγαθή) (Aristotel. *Politics*. 1.1). A priest is a leader of the sacral-social space of the local Church, who leads it to the Supreme Good. Therefore he is the one who leads this community in worship, preaching, and through the spiritual guidance of its members.

Because of the inevitable gap between what ought to be and what actually is, a problem in the ethics of becoming a priest arises: how, in the context of Christian ethics, can someone voluntarily accept this position, considering that he corresponds to the demands which have been made. It is to this question that the *Apology* seeks to find an answer.

#### ABBREVIATIONS

- CSEL 46 Grégoire de Nazianze. 1910. *Tyrannii Rufini opera: Orationum Gregorii Nazianzeni novem interpretatio. Pars I* [in Latin]. Ed. by A. Engelbrecht. Corpus Scriptorum Ecclesiasticorum Latinorum 46. Vienna: F. Tempsky.
- Greg. Naz. Or. 2 ———. 1978. *Discours II* [in French]. Ed. by J. Bernardi. Sources chrétiennes 247. Paris: Éditions du Cerf.
- LSJ Liddell, H. G., R. Scott, H. S. Jones, et al. 1996. *A Greek-English Lexicon*. Oxford and New York: Oxford University Press.
- NPNF 2, 7 Cyril of Jerusalem and Gregory Nazianzen. 1893. *Cyril of Jerusalem, Gregory Nazianzen. Select Texts*. Vol. 7 of *Nicene and Post-Nicene Fathers*, ed. by P.D.D. Schaff. 14 vols. Edinburgh and Grand Rapids, Michigan: T & T Clark / Eerdmans.
- PG 46 Gregorius Nyssenus. 1863. *S. P. N. Gregorii episcopi Nyssensis opera omnia quae exstant* [in Greek]. Ed. by J.-P. Migne. Patrologia Graeca 46. Paris: Garnier Fratres.
- TLG “Thesaurus Linguae Graecae” [in Ancient Greek and English]. 1971–. Thesaurus Linguae Graeca Project, Irvine, California. Accessed Nov. 18, 2022. <http://stephanus.tlg.uci.edu/index.php>.

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- . 2021b. “Pastyrskaya obraznost’ v ‘Apologii’ svt. Grigoriya Bogoslova [Pastoral Imagery in the *Apology* for His Flight by Gregory of Nazianzus]” [in Russian]. *Shagi [Steps]* 7 (2): 193–211.
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НИКОЛАЙ АНТОНОВ

МАГИСТР ФИЛОЛОГИИ, ПРИГЛАШЕННЫЙ СОТРУДНИК  
 ЛАБОРАТОРИЯ ИССЛЕДОВАНИЙ ЦЕРКОВНЫХ ИНСТИТУЦИЙ  
 ПРАВОСЛАВНЫЙ СВЯТО-ТИХОНОВСКИЙ ГУМАНИТАРНЫЙ УНИВЕРСИТЕТ (МОСКВА);  
 ORCID: 0000-0002-6588-1633

## АРХН СВЯЩЕННИКА В «АПОЛОГИИ» (ОР. 2) ГРИГОРИЯ БОГОСЛОВА

Получено: 10.09.2022. Рецензировано: 20.11.2022. Принято: 28.11.2022.

**Аннотация:** В статье реконструируется категориальный аппарат Григория Назианзина, формирующий представления об ἀρχή (власть / авторитет) священника. Показано, что идею о богоустановленности клира в Церкви Григорий соединяет с представлением о мировой иерархии (ἀρχή καὶ τάξις). В этом контексте проанализированы оппозиции служение/правление (leitourgia/hēgemonia) и сила/убеждение (βία/πειθοί), показывающие, что священник определяется его положением между Богом и мирянами, которое часто описывается через пастырскую образность: Архипастырь Христос — пастырь — паства. При этом сама категория «посредничества» (μεσότης Θεοῦ καὶ ἀνθρώπων) относится в этом тексте исключительно к литургической функции священника, т. е. к приведению людей к Богу через таинства. Также эта цель достигается через помощь людям посредством духовного руководства, т. е. разных коммуникативных практик (общение, проповедь, наставление и т. д.). Этот путь описывается в неоплатонических категориях и подразумевает, что лишь тот, кто близок к Богу, может вести к Нему других. Эти два образа

воздействия на мирян имеют разное богословско-онтологическое основание, однако оба формируют ἀρχή священника. Совершение таинств осмысляется как то, что ставит священника в объективно более близкое положение к Богу, т. е. включает его в ἀρχή καὶ τάξις на отличном от обычных людей уровне. Вместе с тем священник мыслится как тот, кто занимает в Новом Израиле — Церкви — место правителей древнего Израиля, и потому его положение описывается как властное, однако подразумевается именно власть над душами (ἡγεμονία ψυχῶν), причем реализуемая исключительно убеждением.

**Ключевые слова:** священство, Григорий Богослов, власть/авторитет, посредничество, духовное руководство.

DOI: 10.17323/2587-8719-2022-4-13-35.

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Kanaeva, E. Yu. 2022. "Shepherd, Physician and Intercessor : The Specialization of Different Types of Authority in the Church in the Context of Practices of Confession in Byzantium (III–X centuries)" [in English]. *Filosofiya. Zhurnal Vyshey shkoly ekonomiki [Philosophy. Journal of the Higher School of Economics]* 6 (4), 36–60.

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ELGA KANAeva\*

## SHEPHERD, PHYSICIAN AND INTERCESSOR\*\*

THE SPECIALIZATION OF DIFFERENT TYPES OF AUTHORITY  
IN THE CHURCH IN THE CONTEXT OF PRACTICES  
OF CONFESSION IN BYZANTIUM (III–X CENTURIES)

Submitted: Feb. 02, 2022. Reviewed: Oct. 05, 2022. Accepted: Dec. 02, 2022.

**Abstract:** The article deals with the problem of the proper language to describe the processes of evolution of penitential practices in Byzantium in the III–X centuries. The currently existing categorical apparatus describes these processes using the logic of power relations between one who says and one who hears confession, and appeals to the terms "charisma" and "office." These tools give a specific perspective on a set of facts, seeing them as a testimony of a deep and irreconcilable conflict between actors in this field, and fails to describe the situation when no conflict may be discerned in the sources. In this article, we first show that "power-oriented" language is not typical for the authors of the period in question. We then propose our own model for describing the role-play relationship, centering around practices of repentance. Following C. Rapp, we suggest the concept of "authority" as the basis of this model, which we identify in three types: pastoral, therapeutic and intercessory. These types differ both in the type of interaction between the parties participating in confession and in their functionality within the framework of the phenomenon of repentance. This typology is accompanied by a description. The most notable personalities and examples of penitential interaction in the III–X century are classified according to these types.

**Keywords:** Confession, Penitence, Authority, Ecclesiology, Church Institutions, Church History, Sacramentology.

DOI: 10.17323/2587-8719-2022-4-36-60.

### DEFINITION, PROBLEM, AND THE HISTORY OF APPROACHES

The question of who has the right to hear confession in the history of the Church may be posed not only from the perspective of sacramentology

\*Elga Kanaeva, PhD in Theology, Senior Lecturer at the St. Tikhon's Orthodox University for the Humanities (Moscow, Russia); Fellow Assistant at the Ecclesiastical Institutions Research Laboratory (Moscow, Russia), kanaeva.elga@gmail.com, ORCID: 0000-0001-8909-8371.

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Acknowledgements: Article is prepared within the "Bearers of spiritual power in Byzantine texts: historical and conceptual aspect" project with assistance of St. Tikhon's Orthodox University and Fund "The live Tradition".

but also from that of ecclesiology. Hence, it becomes a question of the bases of power lie and the nature of authority in the Church. In this article, we address the following questions: Were categories of “power” typical for Byzantine discourse on repentance and confession before the 10th century? How can different views of the nature and source of authority of a person hearing confession be classified?

First of all, we define what is understood by penitential discipline in the Ancient Church. In this article, confession is examined as the interaction of two subjects: subject S(inner), considered to have sinned; and subject A(ssistant), who is held to be competent, in one way or another, to remove the consequences of this sin. This approach simultaneously limits and broadens the topic being researched. On the one hand, we do not examine the processes of repentance taking place in the soul of the penitent but focus on the interaction between members of the Church, that is, we look at the phenomenon of repentance from a sociological, rather than from a psychological perspective. On the other hand, this definition allows us to analyze the very different historical practices of confession as a single phenomenon: public confession, secret confession, the revelation of thoughts, the imposition of *epitimia*, and different types of liturgical and ritual practice.

The initiative in this interaction may belong both to S, when he chooses to approach A, or to A, when he uses instruments of exhortation (*νουθεσία*) and rebuke (*ἐλεγχος*) in order to influence S. The question of who plays the leading role in this interaction is not entirely simple. Repentance may be successfully accomplished both with an active S and a passive A (a situation with an unworthy priest and a sincerely penitent sinner is usually resolved in favor of the sinner in patristics), and with a passive S and an active A (sin may be effaced from the soul of an impenitent sinner through the active intercession of a saint). However, the second type of situation is much more marginal and problematic for analysis, so that the priority of the activity of S over the activity of A for the accomplishment of penance may be considered as mainstream in the Eastern Church. Both S and A may be collective subjects, if for example, what is being discussed is public confession (collective A), or the admonition of a group of sinners (collective S). Christian penance involves several aspects, and the requirement of the penitent may be highlighted in each of them: reconciliation with the Church, the healing of the soul, and the forgiveness of guilt.

The relationship and interaction between S and A may be regarded as a power relationship and power relations give rise to conflicts and competition.

Relations of penance have been analyzed from this standpoint in polemic between Protestant and Catholic theologians. At the turn of the 20th century, the question of confession was posed in categories of “charisma” and “duty.” In 1898, the author of a work which continues to exert an influence on contemporary discourse, *Enthusiasm and confession in Greek monasticism* (Holl, 1898), Holl, asserts that, as a result of the growth of his charismatic authority following the end of the era of persecution, “the monk became the opponent of the priest on the territory of pastoral care” (ibid.: 311) and gradually monopolized this area (a process which reached its conclusion in the era of iconoclasm, when the hierarchy recognized the right of monastics to exercise the power to bind and to loosen).<sup>1</sup> This situation, from the point of view of the researcher, persisted right up until the middle of the 13th century, and in spite of the protests of Byzantine canonists in the 7th century,<sup>2</sup> only changed when Byzantine theology adopted Western developments in sacramentology.

Although Holl’s study provoked a flurry of publications both supporting and criticizing his thesis, the first step towards formulating a coherent answer to it was undertaken only in 1979 by the Catholic researcher Rev. Robert J. Barringer, CSB (at the time the General Superior of the Order of Saint Basil the Great). In his dissertation *Ecclesiastical Penance in Hagiography to 983*, on the basis of more than 900 hagiographical sources in Greek (saints’ lives, homilies, eulogies, apocryphal acts, and travel notes), Barringer attempts to construct an alternative history of confession. In contrast to Holl, he postulates the following theses: in the hagiographical corpus, there is no evidence of any conflict between the church hierarchy and monastics in the question of confession up until the beginning of the 10th century; church penance coexisted with monastic penance during the entire history of Byzantium; monastic penance did not have a sacramental character, and at least until the 9th century was not connected with the power to bind and to loose (Barringer, 1979: 199–201). Barringer’s theses have been subjected to criticism (Parrinello, 2004: 349). However, the more recent *New History of Penance*, with the exception of one article by Claudia Rapp,

<sup>1</sup>Holl, 1898: 319–321. This conclusion is based on an incorrect attribution to Patr. Nicephorus the Confessor (806–815) of one *eratapokrisis* which was actually the work of Theodore the Studite.

<sup>2</sup>Ibid.: 324–328. This conclusion is also largely based on an incorrect attribution: the *eratapokriseis* involved are not the work of Patriarch Nikephoros II (1260–1261), but of Chartophylax Nikephoros, who wrote them at the end of the 11th century.

is wholly devoted to the history of penance in the West, and Holl's ideas are not discussed in it.<sup>3</sup>

If Holl depicts the entire history of confession as the history of a struggle for power, then Barringer, who did not discover any sort of conflict in his sources, attributes all power to the hierarchy. Nonetheless, a description of these processes in categories of power enables him not to explain, but only to state the absence of any tension between hierarchy and monasticism. Did Christian authors truly see the situation in this way though?

“POWER” RHETORIC SURROUNDING CONFESSION  
AND THE FORGIVENESS OF SINS

In New Testament Scripture, the term ἐξουσία “power” is used only in a few contexts (in order of number of occurrences): 1) the power to cast out evil spirits and heal illnesses (Mt. 10:1, Mk. 3:15, Lk. 9:1, among others), referring to Christ and to the disciples; 2) in connection with the remission of sins (Mt. 9:6, Mk. 2:10, Lk. 5:24), where this power refers to Christ only, and not to the disciples; 3) Christ's authority as a teacher (Mt. 7:29, Lk. 4:32); 4) the right to become sons of God (Jn. 1:12); and 5) the power of the apostles to edify (οικοδομέω) (2 Cor 13:10).

We have analyzed the digitized corpus of Greek texts (the TLG database) for the frequency of occurrence of the term ἐξουσία “power” in the context of different methods of expressing the idea of confession and absolution (“λύω + δέομαι”, “ἀφίημι + κρατέω”, “λογισμούς δέχομαι (ἀναδέχομαι) διδόναι”, “συγχορέσις”, “ἔξομολογέομαι/ὁμολογέομαι/ἔξομολόγησις/ὁμολόγησις”, “ἔξαγορευῶ/ἔξαγόρευσις”) throughout the whole Byzantine period of the history of the Church. We have refrained from an analysis of the occurrence of the term “ἀρχή” in these contexts because it is not connected with repentance in the New Testament.

Our analysis showed that, apart from a few isolated occurrences, discourse on confession centering around concepts of “power” is a feature of the Greek literature of the Antiochian tradition in the 3rd to 5th centuries (especially in the last quarter of the 4th century), and a common Byzantine way of expressing thought in the 10th to 15th centuries. There are also some

<sup>3</sup>A New History of Penance, 2008. Discussion of these issues in the Russian-speaking community took its own course. The researchers of Church history and canon law N. S. Suvorov, N. A. Zaozersky, P. V. Gidulyanov, S. I. Smirnov and A. I. Almazov, studying the same material, reached opposite conclusions; see Yachmenik, 2021.

occurrences in the 6th and 9th centuries, but only in the work of individual authors: St. Barsanuphius the Great and St. Theodore the Studite.

The expression “the power to bind and to loose” (ἐξουσία τοῦ δεσμεύειν καὶ λύειν) occurs for the first time in *Pseudo-Clementines*, a Syriac literary monument (Irmscher et al., 1969); of interest to us is a section of the *Letter to Jacob* most likely composed in the 3rd century by a Judeo-Christian author of unorthodox views. This document relates that Peter, when ordaining Clement as Bishop of Rome, passed on to him the power bestowed on him by Christ to bind and to loose, which, however, refers more to the inviolability of his decisions than to the field of penance.<sup>4</sup>

At the end of the 4th century, the conceptualisation of a bishop’s position with regard to absolution was also localized in Antioch and found its expression in three texts written in the same short period: the third homily on the priesthood of St. John Chrysostom (374), the *Apostolic Constitutions* (c. 380), and the homily of Severian of Gabala (a Pseudo-Chrysostom) on the Ascension (402).

The most “power-oriented” formulation belongs to St. John Chrysostom (St. Chrysostom, 1886; trans. Stephens, 1889 with corrections):

They who rule on earth have indeed power to bind, but only the body: whereas this binding lays hold of the soul and penetrates the heavens; and what priests do here below God ratifies above, and the Master confirms the sentence of his servants. For indeed what is it but all manner of heavenly power which He has given them when He says, Whose sins ye remit they are remitted, and whose sins ye retain they are retained? (John 20:23) What power could be greater than this? The Father has committed all judgment to the Son? (John 5:22) But I see it all put into the hands of these men by the Son. For they have been conducted to this dignity as if they were already translated to Heaven, and had transcended human nature, and were released from the passions to which we are liable.

Severian of Gabala places the power to bind and to loose in a broader context, adding to Chrysostom’s “all heavenly power” also all earthly power (Bishop & Rambault, 2017: 196):

the Lord gave all power to the apostles in order that they should truly have power over the whole *oecumene* (because rulers should have the power of life and death).

In the *Apostolic Constitutions*, the bishop’s power to judge, remit sins, his power to bind and to loose, and what that implies are also mentioned

<sup>4</sup>Ch.2.p.4: διὸ αὐτῷ μεταδίδωμι τὴν ἐξουσίαν τοῦ δεσμεύειν καὶ λύειν, ἵνα περὶ παντὸς οὗ ἂν χειροτονήσῃ ἐπὶ γῆς ἔσται δεδογματισμένον ἐν οὐρανοῖς. δῆσει γάρ ὁ δεῖ δεθῆναι καὶ λύσει ὁ δεῖ λυθῆναι, ὡς τὸν τῆς ἐκκλησίας εἰδῶς κανόνα.



a number of times.<sup>5</sup> For example 2. 11: “so sit in the Church when thou speakest, as having authority to judge offenders. For to you, O bishops, it is said: ‘Whatsoever ye shall bind on earth shall be bound in heaven; and whatsoever ye shall loose on earth shall be loosed in heaven’ (Wallis, 1886: Book 2, Ch. 11).” The expression “the power to bind and to loose” may also be found in another Antiochian author: Evagrius Scholasticus. However, in his work it means the power of a priest to release someone from a vow (Bidez & Parmentier, 1898: 6.13).

Outside the Antiochian tradition, there is also the more general statement by St. Basil the Great that every Christian has the power to remit sins against himself, but it is conditioned by the penitence of the sinner (PG 31. 1092B). St. Gregory of Nyssa (PG 46. 308–316) in *Against Those who do not Tolerate Punishments* deals with this topic indirectly and using terms of “obedience” and the “keys of the Kingdom”. St. Isidore of Pelusium of the 5th century, like St. Basil, talks of the limitations of this power (this case is examined below in more detail).

In the 6th century only a single author — Saint Barsanufius the Great — uses categories of power while speaking on the absolution of sins. He calls the power to remit sin the most perfect of gifts (Barsanuphe & Jean de Gaza, I.1, 1997: Ep. 10), and from the point of view of his disciples, he himself possesses this authority (he does not reject, but indirectly affirms this thesis. Barsanuphius was not ordained) (Barsanuphe & Jean de Gaza, II.1, 2000a: Ep. 353; Barsanuphe & Jean de Gaza, II.2, 2000b: Ep. 569). He also agrees with St. Basil that apostolic authority, conditioned by the attitude of the sinner, differs from Christ’s unconditional power to absolve sins (Barsanuphe & Jean de Gaza, II.1, 2000a: Ep. 388).

After St. Barsanuphius, discourse on power practically disappears from the available sources up until the second half of the 10th century, when it reappears in connection with a series of events in the theological, political, and social life of the Church and the Empire, and persists until the end of the Byzantine period in the History of the Church.

#### THE ABSENCE OF CONFLICT SURROUNDING CONFESSION

How may this uneven distribution of sources and the almost complete disappearance of categories of power with regard to confession for more than half a millennium be interpreted? It seems promising to view this situation from the perspective of critical discourse analysis (by Fairclough’s method).

<sup>5</sup>Metzger, 1985: 2. 11, 2. 18, 8. 5 et al.

According to this approach, discourse is situated in dialectic interaction with social practices, simultaneously constituting and being constituted by them (Jorgensen & Phillips, 2002: 61–62). Our assumption is that, having been formulated in Antioch as a theological concept, the idea that hearing confession was connected with a position of “power” was not considered at the level of the social reality of the Church across the whole Empire. If, as Foucault asserts, pastoral authority arises in discourse in a situation of conflict, antagonism, or behavioral rebellion (Foucault, 2004: 198–201), then the absence of this category must also signify the absence of any deep conflict. The fact that both the production and consumption of theological, historical, and hagiographical literature devoted to saintly bishops and monks did not require the constant articulation, discussion, and replication of a power-oriented model of interaction must bear witness to the absence of any tension surrounding the practices of confession in the Byzantine Church. Here, our observations confirm the conclusions of Barringer that the conflict between “charisma” and “duty,” which Holl considers pivotal for the history of penance, does not find any real expression in the discourse of the first millennium (Barringer, 1979: 199–201; Holl, 1898: 311–312). We are not affirming here a complete absence of any tension between the episcopacy and monasticism in the theological or social realms, but only as regards the practices of confession.

Nevertheless, Barringer connects the absence of conflict he discovered with the fact that the non-hierarchical charismatic element in the Church, represented by monasticism, had no part in “the power to bind and to loose”, whereas the episcopate possessed an undivided monopoly on it. This contradicts numerous examples given by Barringer himself, but once again attempts to answer the main question about the categories of power which, it seems, were foreign to the authors of the period. Let us consider a few examples.

In the *History of the Monks in Egypt* (end of the 4th century?), monastic penance already existed in an established ritual form, including prostration before an *abba* “holy father,” a request for forgiveness, and the naming of the sin. In a story of which Saint John of Likopolis is the hero, this form is even parodied by demons, demonstrating its sustainability (see Barringer, 1979: 44–45). It is clear from a series of stories from the same text that serious sins could be freely pardoned within the monastic community. One of the practices which developed at this time was also a ritual of *anadoche* in confession, when a spiritual father takes upon himself both the guilt for a sin and the struggle with a passion, and the penitent is completely liberated

from them. Such practices are described in the *Ancient Paterikon* (PG 65. 256 BC) and in letters of Saint Barsanuphius the Great (Barsanuphe & Jean de Gaza I.2, 1998: Epp 72, 73),<sup>6</sup> while the theory is investigated by Saint Mark the Ascetic (6th century) (Durand, 2000: 78–88) and Saint John of the Ladder (7th century) (PG 28. 1189). This ritual also finds expression in the *Canons of John the Faster*. Incidences of lay people approaching monastics for the forgiveness of sins are less frequent, but they do occur in sources before the 7th century: *The Spiritual Meadow*, *The Lausiac History*, and *The Religious History*.<sup>7</sup>

In order to make sense of this tangled knot, Barringer (though himself inconsistent) proposes a productive approach: abstaining from judgment on the issue of the “sacramentality” of penitential practices (Barringer, 1979: 12). The first Eastern lists of the Church Sacraments, conveyed through the table of contents of the *Ecclesiastical Hierarchy* within the Areopagite corpus (5th century), and that of Saint Theodore the Studite (PG 99. 1524. Ep. 2. 165) do not include the Sacrament of Penance, and it is found for the first time in the work of Job the Sinner, a Greek author of the 8th century from latinized Cyprus, though the wording is still ambiguous.<sup>8</sup>

The monastic practices of confession, carried out inside and outside monastic communities, could offer those who needed it prayerful intercession (“προσ-τάσις”), assurance of forgiveness (“πληροφορία”), and guidance on subsequent purification of the soul. Without any question, the effect of these practices was regarded as different from the effect of confession to a priest or bishop, although the introduction of a theory from sacramental theology here only confuses the issue: if confession is a Sacrament, then any performance of it by persons not in holy orders ought to be considered as the usurpation of a position of power, an attitude which we do not observe in sources up until the middle of the 10th century. On the other hand, the objective nature of the Church Sacraments ought to presuppose a greater reality of effect from confession performed by a cleric than from confession performed by a monastic. Both priestly and monastic prayers for penitents have an equally intercessory character, while saintly monks can directly guarantee divine forgiveness of a sinner (see footnote 8, the last

<sup>6</sup>The whole process is traced in Parrinello, 2004

<sup>7</sup>Examples: *The Spiritual Meadow*, 78 (PG 87.3. 2933); *The Lausiac History*, 18.19 (Bartelink, 1974: 88–90); *The Religious History*, 26.11–18 (Canivet & Leroy-Molinghen, 1979: 180–199).

<sup>8</sup>“anointing of the sick, or penance” (εύχέλαιον [...] ἤτοι μετάνοια). The process is traced in Avvakumov, 2005.

two examples). In Barberini's *Euchologion* (no later than the beginning of 9th century), there are only two prayers connected with penance, and in both the power to remit sins is attributed to Christ alone, which is entirely in agreement with New Testament teaching.<sup>9</sup>

This, of course, does not signify that forgiveness of sins through grace did not take place in the Ancient Church, but that confession in the thought of the key authors of the era may have been considered in the same category not as the Eucharist and Baptism, but as other church gifts (for example, power over impure spirits and the healing of bodily infirmities) or practices (for example, almsgiving, weeping, the forgiveness of offences).

Examples collected by Smirnov (Smirnov, 1906: 8–10, 23–28) and Suvorov also testify to this. Saint Isidore of Pelusium, when admonishing the priest Zosima, who out of avarice had absolved the sin of perjury in return for a certain sum, formulates the following theory. He points out that the ability to remit sins is given by Christ through the breath of the Spirit (Jn. 20:22–23) and can be accomplished only in Him and through Him. Consequently, an unworthy priest, who has alienated the Spirit, is deprived of this possibility:

[The Lord] said with his own lips: “Receive the Holy Spirit. If you forgive the sins of any, they are forgiven them; if you retain the sins of any, they are retained.” (Jn. 20:23). Thus, if through the Spirit of God they have received this power, then those who alienate the Spirit from themselves do not, of course, possess this power; only those possess it who know through the Holy Spirit who is worthy of absolution and who of condemnation.<sup>10</sup>

<sup>9</sup>*Evkhologiy Barberini* gr. 336, 2011: Prayer 168: “ῥξη΄ Κύριε ὁ θεὸς ἡμῶν, ὁ πῶ Πέτρῳ καὶ τῇ πόρῃ διὰ δακρῶν ἄφεισιν ἀμαρτιῶν δωρησάμενος, καὶ τὸν τελῶνην τὰ οἰκεῖα ἐπιγινόντα πταισματα δικαιοῦσας, πρόσδεξαι καὶ τὴν ἐξομολόγησιν τοῦ δούλου σου τοῦδε, καὶ εἴ τι πεπλημμέληται αὐτῷ ἐκούσιον ἢ ἀκούσιον ἀμάρτημα, ἐν λόγῳ ἢ ἔργῳ ἢ κατὰ διάνοιαν, ὡς ἀγαθὸς πάριδε· σὺ γὰρ μόνος ἔχεις ἐξουσίαν ἀφιέναι ἀμαρτίας”.

<sup>10</sup>Isidore of Pelusium book 3, ep. 260 (PG 78. 944A): “διὰ δὲ ἑαυτοῦ· “Λάβετε Πνεῦμα ἁγιον· ἂν τιῶν ἀφῆτε τὰς ἀμαρτίας, ἀφέωνται· καὶ ὧν ἂν κρατῆτε, κεκράτηνται.” Εἰ τοίνυν διὰ τὸ θεῖον Πνεῦμα ταύτην εἰλήφασι τὴν ἐξουσίαν, οἱ δι’ ὧν ἀμαρτάνουσι, τοῦτο ἀπελαύνοντες, ταύτην δηλονότι τὴν ἐξουσίαν οὐκ ἔχουσιν, ἀλλ’ ἐκεῖνοι οἱ διὰ τοῦ ἁγίου Πνεύματος εἰδότες, τίνες μὲν εἰσιν ἀφέσεως, τίνες δὲ κατακρίσεως ἄξιοι”. Same epistle (941 C): “Λειτουργοὶ γὰρ εἰσιν, οὐ κοιωνοὶ· πρέσβεις, οὐ κριταί· μεσίται, οὐ βασιλεῖς. Οἱ γὰρ καὶ περὶ οἰκεῖων ἀμαρτημάτων, ὡς ἔφη ὁ Ἀπόστολος, θυσίας προσφέροντες, οὐκ ἂν δήπου ἐξ αὐθεντίας καὶ τοῖς ἀμετανοήτοις, εἰ καὶ πλούσιοι εἴεν, δύνανται ἀφεῖναι ἀμαρτίας.” See also Dionisius the Areopagite on the Church hierarchy 7–3–7: “Thus, the Hierarchs have discriminating powers, as interpreters of the Divine Awards, not as though the All-Wise Deity, to put it mildly, were slavishly following their irrational impulses, but, as though they, as expounders of God, were separating, by the motion of the Divine Spirit, those who have already been judged by God, according to due. For ‘receive,’ he says, ‘the Holy Spirit, whose faults ye

Nonetheless, the ability of the same presbyter Zosima (whose vice is denounced in many epistles of St. Isidore, in which he is even called “unholyly ordained to the priesthood”)<sup>11</sup> to perform Baptism and the Eucharist is not only not refuted, but even positively affirmed:

One who receives is not harmed, though the one who performs might seem unworthy. The most pure Sacraments do not suffer any pollution, although the priest surpass all people in depravity.<sup>12</sup>

Suvorov has collected a number of examples of how, right up until the 10th century, church authors see in confession only one of many methods of achieving the forgiveness of sins, placing it on the same level as these others (Suvorov, 1903). Origen in *On Leviticus 2* lists seven such methods: baptism, martyrdom, almsgiving, the forgiveness of offences, the conversion of a sinner from error, the superabundance of love for God, repentance with tears, and confession before a priest (PG 12. 417–418). Chrysostom in *On Penitence* names five: confession of sin before God, weeping for sin, humility, almsgiving, and prayer (PG 49. 285). St. Maximus the Confessor gives four, and the author of the manuscript cod. bibl. reg. Monac. № 498 of the 10th century, published by Suvorov himself, has ten (non-judgment, forgiveness, humility, weeping combined with cessation of a sin, prayer— with others and with members of the clergy, almsgiving and acts of mercy, illnesses and trials, instruction of someone in error, boldness before God, bearing witness to Christ before a tyrant).

The above analysis presents the following picture. Up until the 10th century power-oriented language for describing penance, although it evolved in the Antiochian tradition, was not significant in general Eastern discourse. This is confirmed by our analysis of lexis in the sources of this period and by Barringer’s observations on the absence of any conflict between the mediators of confession (hierarchs and monks) on this territory. Notwithstanding, Barringer’s hypothesis that this absence of conflict may be explained by the undivided monopoly of the clergy in questions of penance

may have remitted, they are remitted; whose ye may have retained, they are retained.’ And to him who was illuminated with the Divine revelations of the most Holy Father, the Oracles say, ‘Whatsoever thou shalt have bound upon the earth, shall be bound in the heavens; and whatsoever thou shalt have loosed on earth, shall be loosed in the heavens,’ inasmuch as he, and every Hierarch like him, according to the revelations of the Father’s awards through him, receives those dear to God, and rejects those without God, as announcing and interpreting the Divine Will.” (Heil & Ritter, 1991: 128–129; Dionysius the Areopagite, Parker, 1897: 157).

<sup>11</sup>Book 1, ep. 111 (PG 78. 257). “Ἐλαβεῖς ἱερωσύνην ἀνιέρως, ἀνιέρῃ”.

<sup>12</sup>Baptism: book 1 ep. 579 (PG 78. 1645). Eucharist: book 2 ep. 340 (PG 78. 1000).

appears flawed to us for two reasons: a) the presence of developed institutions of monastic confession which were also used by the laity; b) the absence of a fixed sacramental status for many forms of penance and confession in this period.

Since the power model cannot sufficiently adequately describe the interaction arising around confession, the constructions used to build our explanatory model are in need of elaboration. We propose employing the concept of authority as a more complex building block. To use Marey's definition, by authority we understand "socially acknowledged knowledge," as different from power as "socially acknowledge force." (Marey, 2017: 14) The Greek *ἐξουσία* corresponds well to the notion of "force," because most often it is used precisely in a context of action (with infinitives and other verb forms),<sup>13</sup> while authority (there is no direct analogue in Greek) to a large degree denotes competencies belonging to its bearer.

A model on the basis of authority for describing the structure of the position of bishop as the head of a community was constructed by Rapp in her 2005 work *Holy Bishops in Late Antiquity*. She distinguishes three types of authority: "spiritual," "ascetic," and "pragmatic" (Rapp, 2005: 16–22). She avoids the terms "charisma" and "duty," which have acquired strong confessional connotations and lead to confusing associations with the theory of Max Weber. As far as penance is concerned, this model yields the following results: Christian martyrs and confessors already possessed the spiritual authority to participate in the power to bind and to loose in the pre-Constantine era; this then created serious tension when it came into conflict with the pragmatic authority of bishops; the ascetic authority of monastics could coexist alongside the spiritual authority possessed by bishops owing to their apostolic succession (ibid.: 86–98).

While retaining the concept of "authority" as a building block for our model, we must nonetheless reclassify its types. Rapp's model was created to describe the figure of a bishop, while for confession, the circle of bearers of this authority widens. What is more, we are tracing the development of our subject in a different chronological framework, going beyond the limits of Late Antiquity. As a working model for this, we propose a typology of "shepherdly" and "therapeutic" types of authority, together with the additional, though to a degree separate, category of "intercessory" authority. In this model, we see an opportunity to balance the somewhat confessionally skewed conclusions of Holl and Barringer.

<sup>13</sup>See LSJ: 599; A Patristic Greek Lexicon, 1961: 501–502.

A resolution of Patriarch Nektarius of Constantinople (381–397) to abolish the office of “presbyter over the penitent,” to which, as Sozomen relates, “almost all the bishops” gave their support,<sup>14</sup> and to allow

everyone, in accordance with the voice of their conscience and guided by their own boldness, to partake of the Holy Mysteries,

officially placed the initiative for participating in practices of confession with ordinary Christians. The choice of one of the many paths of penance thus became a spiritual need on the part of a lay person or monk, and not a demand from above. At least until the end of the 10th century, the confession even of serious transgressions was not obligatory for lay people (Barringer, 1979: 193–195). Obligations of a penitential nature connected with Communion were not borne by the Christians of Constantinople until at least the 12th century, when the existence of practices of confession before communion in the Alexandrian Church provoked discussions in Constantinople (see Treyger, 2021) Only in the 14th century, does St. Gregory Palamas explicitly recommend lay people to confess before Communion (Chrestou, 1986: Or. 56).

A situation of a choice by lay people for their own practices of penance, without any systematic control from “above,” provoked not a struggle for power between ascetic and hierarchical elements in the Church, but an ever-greater specialization of the three types of authority addressed to resolve certain issues.

#### EXPLANATORY MODEL

By “shepherdly”, we term the type of authority which is connected with the relationship of a leader to a group of people, with the tasks pertaining to him of managing and looking after this group. A leader of this type recognizes his otherness (shepherd — flock). Such a type of authority is possessed in a pure form by a bishop and an abbot. On a theological level, legitimation from God through the apostles is often ascribed to it.

We refrain here from directly using the term “pastor” In the New Testament, the pastoral metaphor acquires a more complicated character, because a shepherd may leave his whole flock in order to search for one lost sheep. The paradoxicality inherent in pastorship of the “sacrifice of one for all and all for one” (Foucault, 2004: 132–133) is a problem which goes beyond

<sup>14</sup>Sozomen 7.16 (Bidez & Hansen, 1960: 322–323); Socrates of Constantinople 5.19 (Maraval & Périchon, 2006: 206–208).

the scope of this article,<sup>15</sup> therefore at this stage of analysis it is temporarily excluded in order to be able to return to it at the stage of synthesis. Rapp finds herself in a similar situation when trying to delimit spiritual and ascetic authority, which in Orthodox ascetics cannot exist in one without the other.

“Therapeutic” authority is connected with the personal relationship between a leader and his referent. Such a leader may stand in principle on the same level as the penitent; they are identical in nature—their relationship is those of partners—or in which one party surpasses the other in terms of experience or knowledge but is open to the possibility of a reversal of their roles. This type of authority is accompanied by vocabulary connected with humility and feelings of brotherhood. In its purest form it finds expression in the monk-anchorite, and on a theological level in many cases it may be attributed to God through the prophets.

“Intercessory” authority may be exercised outside direct communication between a leader and their referent (or group). A clear case of an intercessor is a saint who does not perform pastoral action: he prays, interceding for the penitent.

Returning to the different aspects of penitence mentioned at the beginning, we may identify connections between these and types of authority. Shepherdly authority, as we show below, is connected to the aspect of reconciliation, and therapeutical authority with healing. The forgiveness of guilt, as shown above, according to Byzantine tradition is accomplished by God alone. Nonetheless, participation in this power can be possessed by recognized saints: people who have in the highest degree achieved a likeness to God.

#### SHEPHERDLY AUTHORITY

An appeal for the forgiveness of guilt and reconciliation with the Church in a pure form, without any appeal for the healing of the soul, may be seen in a complicated situation which arose in Carthage around the question of the reconciliation of the lapsed in the middle of the 3rd century. In the absence of their bishop, those who had lapsed from the Church, “not seeking for healing in patience and true therapy in satisfaction” (*De Lapsi*, Hartel, 1992: 247–248) began to try to achieve reconciliation by means of written testimonies given out by martyrs, “such that daily, without any verification or testing of each one, thousands of testimonies were given out, contrary to Gospel law” (*Ep. 20*, *ibid.*: 528). The Carthage martyrs were not the only

<sup>15</sup>In another article in this review, Nikolai Antonov shows some approaches to this paradox of St. Gregory of Nazianzus.



ones who claimed to be able to free whole groups of people from guilt: the martyrs of Lyon and Vienne also “released all and bound none” (*Ecclesiastical History* by Eusebius 5.2.5, Bardy, 1955: 25). Their imitation of Christ in sufferings made them participants in His power, which the Hieromartyr Cyprian not only does not refute, but even confirms (*De Lapsi*, Hartel, 1992: 249–250). But this power is effective only in the heavenly Church. Tensions arose at the moment when those of the lapsed who had received testimonies from martyrs tried to enter the earthly Church, bypassing Her bishop. As a shepherd of the earthly Church, St. Cyprian considers the admission of lapsed members inadvisable until a series of conditions have been met (public penance, the end of persecutions and a unification of the Church with those in chains, and the decision of a council on this matter) (*Ep. 16*, *ibid.*: 518–520). In refusing reconciliation with the Church to all the lapsed, even those who had made sincere penance (*Ep. 33*, *ibid.*: 567), he was concerned for the Church as a whole, it would appear, while disregarding the interests of individuals in order to avoid temptation.<sup>16</sup>

However, Cyprian would not be a great saint of the Orthodox Church if, even in the absence of an appeal for healing of the soul, he had not attempted to act as a physician. First of all, he rejects the mass approach to the remission of guilt which had been employed by the martyrs, and on his own initiative tried to exercise individual care for those who asked him for help (*Ep. 33*, *ibid.*: 567–568):

work out your desires, and, whomever you may be who have today sent me this letter, write your names on a scroll and send the scroll with all the names to me separately. For I must first of all know to whom to write a reply.<sup>17</sup>

<sup>16</sup>Already on the occasion of those returning from schism he says (*Letter to Cornelius on Fortunatus and Felicissimus, or against Heretics*) “while we, meanwhile, by whom account is to be given to the Lord, are anxiously weighing and carefully examining who ought to be received and admitted into the Church. For some are either hindered by their crimes to such a degree, or they are so obstinately and firmly opposed by their brethren, that they cannot be received at all except with offense and risk to a great many. For neither must some putridities be so collected and brought together, that the parts which are sound and whole should be injured; nor is that pastor serviceable or wise who so mingles the diseased and affected sheep with his flock as to contaminate the whole flock with the infection of the clinging evil” (*Ep. 59*, Hartel, 1992: 684–685; transl. Wallis, 1886: Ep. 54).

<sup>17</sup>And also to the confessors: “But you ought also to bring back and amend that matter according to your diligence, in such a way as to designate those by name to whom you desire that peace should be granted. For I hear that certificates are so given to some as that it is said, Let such a one be received to communion along with his friends, which was never in any case done by the martyrs so that a vague and blind petition should by and by heap reproach upon us. For it opens a wide door to say, Such a one with his friends; and twenty or thirty or

Secondly, he considers excommunication from the Church itself as medicine for the lapsed, which will lead to their slow, but certain recovery, while a hasty reconciliation will only destroy them.<sup>18</sup> By acting in this way, he claims to possess therapeutic authority too, even if it is not demanded by his flock.

The function of a supervisor (σκοπός) over the flock is also performed by Saint Theodore the Sanctified, a disciple of and successor as abbot to St. Pachomius the Great (see Barringer, 1979: 42–43). The penitential discipline of which Theodore was the leader in his own monastery included three key elements traditional to episcopal practice with sinners: rebuke, instruction, and prayer. Theodore's authority for the administration of confession in his community is also recognized by the ruling bishop of the region, who refers a monk seeking a just judgment from him to the judgment of his abbot.

Saint Sabbas the Sanctified (6th century *vita* written by Cyril of Scythopolis) manifests his shepherdly authority in an episode with the monk Jacob, who had mutilated himself in a fit of excessive zeal (Schwartz, 1939: 131–132). Initially banishing the latter from the monastery, Sabbas, following the intercession of St. Theodosius, permits him to live in the monastery under the conditions of *epitimia*: he should not meet or have any contact with any of the other monastics. Only after a revelation to Sabbas in a vision that Jacob's sin is forgiven does the abbot admit him to the community of the brethren.

Another St. Theodore, this time the abbot of the Studion Monastery, enforced his shepherdly authority by obliging all the monks to confess to him personally or, as a necessity arising from the growth in numbers under

more, may be presented to us, who may be asserted to be neighbours and connections, and freedmen and servants, of the man who receives the certificate. And for this reason I beg you that you will designate by name in the certificate those whom you yourselves see, whom you have known, whose penitence you see to be very near to full satisfaction, and so direct to us letters in conformity with faith and discipline" (*Ep.* 15, Hartel, 1992: 516; transl. Wallis, 1886: Ep. 10).

<sup>18</sup>“Far be it from the Roman Church to slacken her vigour with so profane a facility, and to loosen the nerves of her severity by overthrowing the majesty of faith; so that, when the wrecks of your ruined brethren are still not only lying, but are falling around, remedies of a too hasty kind, and certainly not likely to avail, should be afforded for communion; and by a false mercy, new wounds should be impressed on the old wounds of their transgression; so that even repentance should be snatched from these wretched beings, to their greater overthrow. For where can the medicine of indulgence profit, if even the physician himself, by intercepting repentance, makes easy way for new dangers, if he only hides the wound, and does not suffer the necessary remedy of time to close the scar? This is not to cure, but, if we wish to speak the truth, to slay” (*Ep.* 30, Hartel, 1992: 551; transl. Wallis, 1886: Ep. 30).

his care, to specially appointed confessors. In St. Theodore's view, those who sought other confessors for themselves placed themselves outside his flock, and such a phenomenon was strictly forbidden by the abbot (see PG 99. 956–957). This resolution spread both to monastic rules derived from the Studite rule (those of Evergetis, St. Athanasius, for example),<sup>19</sup> and appeared in monastic rules not in any way directly related to it. For example, the *Typikon* of St. Nilus of Cyprus (13th century) refuses admission to his monastery to all those who wish to confess to someone other than to the abbot (Tsiknopoulos, 1969: Ch. 54). Confession thus becomes a tool for maintaining the integrity of the community.

#### Therapeutic Authority

Therapeutic authority is to a large degree a property of hermit monks, who only attain the ability to heal others through personal struggle with the passions. St. Anthony the Great is already, to the mind of the author of his *Vita* St. Athanasius, “like a physician given by God to Egypt” (Ch. 87, Bartelink, 2004: 358). From the 3rd to the 6th centuries, this therapy was understood mostly as the healing of physical wounds or the casting out of demons, but from the 6th century the therapeutic metaphor is already applied to spiritual advice, the confession of sins, and the imposing of *epitimias*. In one of his *Vitae*, Cyril of Scythopolis characterizes his hero in the following way (Schwartz, 1939: 17):

the great Euthymius was a physician who looked after souls and comforted all, and nobody from among the brethren eschewed to confess his thoughts to him.

John Moschos tells of an *epitimia* imposed by a monk on a lay petitioner for therapeutic purposes (PG 87.3. 2933).

In the *History of the Monks in Egypt* (4th century), the figure of St. John of Likopolis deserves special attention. He is repeatedly called a prophet in the text — in the sense of foreknowledge of the secret workings of the human conscience. In another place, it is said that he practiced the healing of souls. John never exalts himself above his interlocutor or separates himself from him. Addressing a female petitioner, he says: “Why have you desired to see me? Am I a prophet or a righteous man? I am a sinful man and just like you.”

A clear parallel with the therapeutic authority of St. Anthony the Great is drawn around 446 by Callinicus, the author of the *Vita of St. Hypatius of Constantinople*. Borrowing from his source lexically and compositionally,

<sup>19</sup>For a very detailed review of this process see Krausmüller, 2016.

the author demonstrates his hero to be doctor of souls and bodies for all those who came to him possessed by passions, demons, and sins (Ch. 44, Bartelink, 1971: 262–270).

The theme of the healing of sins becomes an established element of the *Vitae* of ascetics and can be encountered in a fully developed form, for example, in the 8th–9th century *Vita* of St. Stephen the Sabaite and St. Nicetas of Medikion (Barringer, 1979: 129–147).

The same theme may also be found in the *vitae* of monks of cenobitic monasteries and saintly bishops (for example in the *vita* of St. Gregory of Agrigento (8th century)).

A connection between “shepherdly” and “therapeutic” authority is given in the works of St. Theodore the Studite. As abbot, he considers himself a shepherd and even co-shepherd with the patriarch,<sup>20</sup> though remaining subordinate to him, and he takes on the role of physician. This role already extends not just to his flock but to everyone who approaches him with an appeal for spiritual healing. From his correspondence with the monk Theodore, we learn that the Holy Patriarch Nikephoros, on hearing

that heresy is on the ascendent, and circumstances press in on us from all sides, delegated to all those who so desired to cure whatever illnesses might occur, each according to their ability (*Ep.* 477, Fatouros, 1992b: 689).

Polemicalizing with the monk Theodore, who condemned this action, the Studite abbot provides the following basis for his position (*Ep.* 477, *ibid.*: 690):

And what exactly would you like, o most honorable one? Not that in these times of the rule of heresy and the destruction of the divine creation there should nowhere be seen a physician, no therapeutic measures should be taken, no guidance offered to the blind, no healing to the ill, that the injuries of the wounded should not be bound, the crippled not be put right, the weak not fortified, the errant not turned back, and that none of those who desire to do so should resist any illness, as far as they are able? In physical doctors we see great diligence and many means of therapy: one undertakes to heal this one, another to treat another, *and even those in the status of servants are not forbidden from practicing this to the degree of their acquisition of medical knowledge, higher or lower.* There are people who examine

<sup>20</sup>Here, for example, is how he responds to the Holy Patriarch Nicephorus’s accusation of creating a schism: “Truly, what evil is greater than separation from the Church, and depriving a sheep of its arch-shepherd or co-shepherd? For to us too, sinners and unworthy though we are, belongs anointing from God and the name of Shepherd” (*Ep.* 25, Fatouros, 1992a: 68; see also *Ep.* 453, Fatouros, 1992b: 642).

patients every day, and the houses where they are received are sometimes full to the brim, and nobody condemns this diligence nor accuses those conscientiously practicing the medical arts, but both senior and chief physicians, and those of middle rank, and those of lower status perform this philanthropic work.

In the context of a pandemic of heresy, when a large section of the episcopate had fallen away from Orthodoxy, duties of spiritual therapy pass over to those who, even with a lower church rank, have the ability to perform them. St. Theodore imposed on those who came to him for healing *epitimia* which could include complete abdication from the priesthood, or temporary excommunication until the *epitimia* was completed (*Ep.* 446, Fatouros, 1992b: 629–630). Although St. Theodore held priestly office, he considered that it was “not unusual even for a simple monk to impose *epitimia*” (*Ep.* 549, *ibid.*: 838).

The therapeutic metaphor also dominates in one of the last sources to be written in the period in question: the *Exhortation to Confession* of Anthony the Studite, a future Patriarch of Constantinople (974–983). In this text, the practice of the monastic revelation of thoughts (ἐξαγόρευσις) is justified based on gospel texts connected with the apostolic gift “to bind and to loose”, and it is shown that confession is an effective remedy for spiritual infirmities (Delouis & Leroy, 2004: 35–37). Nevertheless Anthony, as the abbot of the monastery, does not see any significant difference between himself and his brethren, painting the image of a hospital, in which all are at once both patients and healers: “after all doctors, when they fall ill, have recourse to other doctors” (*ibid.*: 37). He calls on the brotherhood to rebuke each other fraternally, and he repents before them that he has himself not yet mastered the lessons of penitence (*ibid.*: 47–49).

#### INTERCESSORY AUTHORITY

According to church teaching, all Christians to some degree participate in holiness and are also called to pray for one another. However, the prayer and intercession before God of people with outstanding spiritual gifts is obviously regarded as possessing greater force (“The prayer of a righteous man availeth much” James 5:16).

The path of holiness is open to any member of the Church independent of their hierarchical position, however people who have chosen repentance and purification as their way of life have greater opportunity to achieve this. Monasticism, as the “*paideia* of repentance” (Torrance, 2012: 178–179) nourished athletes of spiritual endeavors. The *Lausiac History*, the *History*

of the *Monks in Egypt*, and particularly the *Religious History* of Theodoret of Cyrus are full of incidences of the effective prayerful intercession of monastics for the penitent. That notwithstanding, prayerful intercession in the case of truly extraordinary holiness, from the point of view of the authors, does not act simply as very strong prayer. If an “ordinary” righteous man in his mediation between God and man is situated closer to man and constantly draws attention to this, then a great saint has acquired a likeness to Christ to the maximum possible degree. Through this likeness, he obtains a genuine, and for others unattainable, right to remit sins according to the image of Christ.

St. Barsanuphius the Great, answering a request to pray for a world in chaos, states that there are a multitude of intercessors, but none of them achieve their aim due to the world’s many sins.

There are three men perfect before God, who have surpassed the measure of mankind and received the power to loose and to bind, to remit sins and to retain them. They stand between destruction and the world, so that God does not suddenly annihilate the whole world, and by their prayers He commutes punishment into mercy; to them it has been said that this wrath will abide for a short time (Barsanuphe & Jean de Gaza, 11.2, 2000b: Ep. 569).

“The binding and loosing” of such people is perceived as undeniably effective. Such power to completely remove guilt was enjoyed by martyrs and confessors, as we have seen above. Within the same logic are the exploits of Abba Jeremiah, whose stone is preserved in the Sahara with an inscription in Coptic:

here is the place where our lord and father Abba Jeremiah made prostrations, until he had purged the sins of the people of the whole world. May his blessing be upon us. Amen. Amen. Amen.

The inscription supposedly dates from the period from 500 to 850 CE (Rapp, 2005: 82).

Those most worried precisely by condemnation for their sins at the Last Judgment were the people most likely to seek confession from precisely this sort of person, as is evidenced by instances from the literature. For example, is an incident which took place between a baptized Arab who had broken his vows and St. Simeon Stylites, described by Theodoret of Cyrus around 444 in the *Religious History* (Canivet & Leroy-Molinghen, 1979: 199):

The Barbarian [...] hastily set off to see the saint, revealed to him his secret guilt, confessed his breach of vows in the presence of all and, calling on God for

mercy, asked the holy elder to grant him release from the bonds of the sin he had committed through his intercession.

In this case, it is not so much the state of his soul or the possibility of being part of a church community which concerns the sinner, as the effacement of the guilt for the transgression itself.

#### DISCUSSION

The proposed model of three types of authority (the shepherd, the physician, and the intercessor) in the question of the person hearing confession is not without flaw. Firstly, not many sources survive enabling us to fill out the details of this model. Secondly, the image of an ideal Christian pastor is unquestionably situated at the intersection of all three types of authority. In hagiographical sources, they are regularly encountered superimposed upon one another, complicating the analysis.

The main task of this schematic model was to provide an apparatus for describing the notions of Byzantine authors of the 3rd to 10th centuries on the authority of the person hearing confession. In putting forward this model, we have attempted to avoid, on the one hand, imposing on authors of the period categories of power, charisma, and duty which were, to our mind, alien to them, and on the other the categories of “spiritual,” “ascetic,” and “pragmatic” authority which have proved themselves so ineffective when applied to material of this period. We are unable to think of a concrete example (or even imagine one) of a representative of purely “ascetic” authority. Without possessing spiritual authority, such a figure would inevitably turn out to be a false prophet. Purely spiritual authority, perhaps, could be represented by an unworthy clergyman, though in relation to confession (in contrast, for example, to that of the Eucharist), such a personage would not be authoritative.<sup>21</sup>

Although it is also not easy to give concrete examples of a “pure physician,” a “pure shepherd,” and a “pure intercessor,” such examples are at least imaginable. The physician as a pure type is the figure of the anchorite who has not acquired extraordinary spiritual gifts and deals only with the sinner who comes to him for help, and not with the Church as a whole. The shepherd as a pure type is the bishop/church administrator or abbot who places the spiritual interests of his flock above the spiritual interests

<sup>21</sup>Rapp calls the authority of the martyr “purely spiritual”, which does not appear to correspond to the whole rhetoric of competition which has developed around the exploits of the martyrs and confessors (Rapp, 2005: 85).

of individuals. Finally, the saint is the hermit or confessor who intercedes for the whole of humanity, without engaging closely in pastoral work.

#### CONCLUSION

The suggested model permits us to discuss the evolution of the views of the Byzantines on confession without having recourse to the rhetoric of conflict or struggle for power. It shows how different ministries in the Church were thought of as complementing, and not excluding one another. With the help of the model, the gradual growth in the significance of the role of monastics in the matter of the hearing of confession from the 3rd to 10th centuries may be explained. With the cessation of persecutions and the reform of penitential discipline under Patriarch Nektarius, the need for reconciliation with the Church sharply declined, while the monastic ideals of unceasing repentance simultaneously developed.<sup>22</sup> Since the practices of confession in the Church developed from a demand for authority from below, reconciliatory, in the main episcopal penance, although it never disappeared completely, made room for therapeutic confession, which was in mainly, though not exclusively, monastic.

The proposed schema also provides the opportunity to see the complexity of the position of abbot, who, where confession is concerned, finds himself in the same position with regard to monks as a bishop with regard to lay people. We believe that this model can also be applied to the period from the 10th to the 15th century, where the ambiguity of the positions of some authors on confession leads to a genuine conflict in the Church.

#### ABBREVIATIONS

- LSJ           Liddell, H. G., R. Scott, H. S. Jones, et al. 1996. *A Greek-English Lexicon*. Oxford and New York: Oxford University Press.
- PG 12        Origenes. 1862. *Ex Origene selecta in Psalmos* [in Greek]. In *Origenis opera omnia*, ed. by J.-P. Migne, 1031–1686. Patrologia Graeca 12. Paris: Garnier Fratres.
- PG 28        Athanasius of Alexandria. 1887. *S. P. N. Athanasii opera omnia quae exstant* [in Greek]. Ed. by J.-P. Migne. Patrologia Graeca 28. Paris: Garnier Fratres.
- PG 31        Basilus Magnus. 1857. *S. P. N. Basilii opera omnia quae exstant* [in Greek]. Ed. by J.-P. Migne. Bk. 3. Patrologia Graeca 31. Paris: Garnier Fratres.

<sup>22</sup>Compare St. Mark the Ascetic: “Neither for the lowly, nor for the great is there an end to repentance before death itself” (Durand, 1999: 248).



- PG 46 Gregorius Nyssenus. 1863. *S. P. N. Gregorii episcopi Nyssensis opera omnia quae exstant* [in Greek]. Ed. by J.-P. Migne. Patrologia Graeca 46. Paris: Garnier Fratres.
- PG 49 Johannes Chrysostomus. 1862. *S. P. N. Joannis Chrysostomi opera omnia quae exstant* [in Greek]. Ed. by J.-P. Migne. Patrologia Graeca 49. Paris: Garnier Fratres.
- PG 65 Migne, J.-P., ed. 1864. *S. Proclus, S. Atticus, S. Flavianus CP, Severianus Gabalitanus, Theophilus Alexandrinus; Alii* [in Greek]. Patrologia Graeca 65. Paris: Garnier Fratres.
- PG 78 Isidorus Pelusiota. 1864. *S. Isidori, Pelusiotae, epistolarum libri quinque* [in Greek]. Ed. by J.-P. Migne. Patrologia Graeca 78. Paris: Garnier Fratres.
- PG 87.3 Oecumenius. 1863. *Procopii Gazaei, opera quae reperiri potuerunt omnia, S. Sophronii Hierosolymitani, Joannis Moschi, Alexandri Monachi scripte vel scriptorum fragmenta quae supersunt* [in Ancient Greek]. Ed. by J.-P. Migne. Bk. 3. Patrologia Graeca 87. Paris: Garnier Fratres.
- PG 99 Saint Theodore (Studites). 1860. *S. P. N. Theodori Studitae opera omnia* [in Greek]. Ed. by J.-P. Migne. Patrologia Graeca 99. Paris: Garnier Fratres.

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Kanaeva E. Yu. [Канаева Э. Ю.] Shepherd, Physician and Intercessor [Пастух, врач и ходатай] : The Specialization of Different Types of Authority in the Church in the Context of Practices of Confession in Byzantium (III–X centuries) [специализация различных видов авторитета в исповедальных практиках в Византии (III–X вв.)] // *Философия. Журнал Высшей школы экономики*. — 2022. — Т. 6, № 4. — С. 36–60.

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ЭЛЬГА КАНАЕВА

К. ТЕОЛОГИИ, СТАРШИЙ ПРЕПОДАВАТЕЛЬ

ПРАВОСЛАВНЫЙ СВЯТО-ТИХОНОВСКИЙ ГУМАНИТАРНЫЙ УНИВЕРСИТЕТ (МОСКВА)

ЛАБОРАНТ ЛАБОРАТОРИИ ИССЛЕДОВАНИЙ ЦЕРКОВНЫХ ИНСТИТУЦИЙ (МОСКВА);

ORCID: 0000-0001-8909-8371

## ПАСТУХ, ВРАЧ И ХОДАТАЙ

### СПЕЦИАЛИЗАЦИЯ РАЗЛИЧНЫХ ВИДОВ АВТОРИТЕТА В ИСПОВЕДАЛЬНЫХ ПРАКТИКАХ В ВИЗАНТИИ (III–X ВВ.)

Получено: 02.02.2022. Рецензировано: 05.10.2022. Принято: 02.12.2022.

**Аннотация:** В статье рассматривается проблема выбора языка для описания эволюции исповедальных практик в Византии в III–X веках. Существующий на данный момент категориальный аппарат представляет эти процессы в логике отношений власти между принимающим и приносящим исповедь, использует язык харизмы и должности. Эти инструменты дают определенную перспективу рассмотрения набора фактов, оценивают их как свидетельство глубокого и непримиримого конфликта между субъектами в этой области и не описывают ситуацию, когда конфликт не зафиксирован в источниках. В статье мы показываем сначала, что властный язык описания не свойственен самим авторам изучаемой эпохи, а затем предлагаем свою модель, описывающую ролевое взаимоотношение вокруг практик покаяния. Вслед за К. Рапп мы предлагаем использовать понятие «авторитет» как базовое. Мы выделяем три его вида: пастушеский, врачебный и ходатайствующий. Они различаются как по типу взаимодействия в покаянных практиках, так и по своей функциональности в рамках феномена покаяния. Типологию сопровождает описание. Наиболее яркие персоналии и ситуации покаянных практик за III–X век, насколько это возможно, распределяются по этим видам.

**Ключевые слова:** исповедь, покаяние, авторитет, экклезиология, церковные институты, церковная история, сакраментология.

DOI: 10.17323/2587-8719-2022-4-36-60.

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Provvidente, S. 2022. "The Causa of Johannes Falkenberg and Synodal Praxis at the Council of Constance (1414–1418) : Between Council and Pope" [in English]. *Filosofiya. Zhurnal Vysshey shkoly ekonomiki [Philosophy. Journal of the Higher School of Economics]* 6 (4), 61–98.

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SEBASTIÁN PROVVIDENTE\*

THE CAUSA OF JOHANNES FALKENBERG  
AND SYNODAL PRAXIS  
AT THE COUNCIL OF CONSTANCE (1414–1418)\*\*  
BETWEEN COUNCIL AND POPE

Submitted: Sept. 26, 2022. Reviewed: Oct. 27, 2022. Accepted: Nov. 30, 2022.

**Abstract:** While the council fathers at the Council of Constance (1414–1418) managed to achieve a specific condemnation of the theses of Wyclif, Hus, and Jerome of Prague, in the case of Jean Petit, the council only made a very general judgement of tyrannicide through the decree *Quilibet tyrannus*. Something similar occurred with some of the theses of Johannes Falkenberg as, even though its author was imprisoned and his theses were condemned as seditious, they were not expressly condemned as heretical by the council, giving rise to strenuous complaints from representatives of the Polish crown to Pope Martin V, who made a protest at the last session of the council claiming that the case had not been properly decided and presenting an *appellatio ad futurum concilium*. This article analyzes the dispute over the theses of Johannes Falkenberg at the Council of Constance, focusing on the debates that took place within the *natio gallicana*. It also attempts to explain the correlation between the consolidation of conciliar authority and the course of the Falkenberg case.

**Keywords:** Heresy, Tyranny, Procedure, Conciliarism, Inquisition, Falkenberg.

DOI: 10.17323/2587-8719-2022-4-61-98.

THE CONFLICT: THE TEUTONIC KNIGHTS AND THE POLISH CROWN

After the Council of Pisa (1409), which was summoned to solve the Schism that arose following the election of two Popes in 1378, the crisis in the Church continued to be extremely serious. Instead of two lines of Popes, one in Rome and one in Avignon, the election of another Pope in Pisa added a third. In an attempt to resolve the situation, John XXIII, Pope of the Pisan line, with the support of Sigismund, *Rex Romanorum* and future Holy Roman Emperor, summoned a council on All Saints Day in 1414 in the city

\*Sebastián Provvidente, PhD in History and Civilizations, PhD in European Law on Historical-Comparative Basis, Professor at the Universidad Pedagógica Nacional (Buenos Aires, Argentina); Research Fellow at the Instituto Multidisciplinario de Historia y Ciencias Humanas (Buenos Aires, Argentina), [sprovvidente@hotmail.com](mailto:sprovvidente@hotmail.com).

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of Constance. When John XXIII realized that he would not be able to control the council based on the numerical majority of Italian members and given the fact that the council fathers organized themselves into nations, he decided to leave Constance, causing great uncertainty among the attendees. In these circumstances, the council fathers realized that they needed to legitimize their authority without a papal head so they approved the decree *Haec sancta synodus*.<sup>1</sup> Even though opinions differ over how the text should be interpreted, there is no doubt that the decree demanded obedience to the council over matters of union, faith, and reform *in capite et membris*. For this reason, I believe that the inquisitorial processes of the *causa fidei* sought the temporary consolidation of the council as the highest power within the *ordo iudiciarius* of the Church (Provvidente, 2013). In the context of these arguments over its legitimacy, the Council of Constance (1414–1418) decided to concentrate on the *causa fidei*. The attention of the council was thus focused on condemning the theses of John Wyclif, Jan Hus, and Jerome of Prague. But the question remains: what happened with the other *causae fidei*? While the council fathers managed to achieve a specific condemnation of the theses of Wyclif, Hus, and Jerome of Prague, in the case of Jean Petit, the council only made a very general judgement of tyrannicide through the decree *Quilibet tyrannus* (Traxler, 2019: 76; Rollo-Koster, 2018: 193–211). Something similar occurred with some of the theses of Johannes Falkenberg as, even though its author was imprisoned and his theses were condemned as seditious, they were not expressly condemned as heretical by the council, giving rise to strenuous complaints from representatives of the Polish crown to Pope Martin V, who made a protest at the last session of the council claiming that the case had not been properly decided and presenting an *appellatio ad futurum concilium*.<sup>2</sup> This article analyzes the dispute over the theses of Johannes Falkenberg at the Council of Constance, focusing on the debates that took place within the *natio gallicana*. It also attempts to explain the correlation between the consolidation of conciliar authority and the course of the Falkenberg case.

<sup>1</sup>For the text of *Haec sancta*: Decaluwé, 1973. The author points out that there was no critical edition of the council decree, giving rise to so much debate and discussion. For this reason he proposes a new critical edition. Regarding the previous editions of the main sources of the Crowder, 1962; Stump, 1990. Regarding the interpretations of the Decaluwé, 2008.

<sup>2</sup>Falkenberg was sentenced to perpetual imprisonment by the General Chapter of the German Province of the Order on June 6, 1417. He was later incarcerated in Engelsburg until he was released in the mid-1420s after a recantation (Boockmann, 1975: 292–293; 300–302).

The debates over Johannes Falkenberg's theses can only be fully understood within the wider context of the conflict between the Polish crown and the Order of the Teutonic Knights. Although the latter was founded, like the Knights Hospitaller, to support crusades in the Holy Land, following the end of the Crusades, it evolved into a military order that gradually accumulated power thanks to the privileges it was granted by the Emperor and the Pope (Boockmann, 1975 and *ibid.*: 50–129; Gouguenheim, 2007; Paravicini, 1989; Christiansen, 1980; Brennan, 2006: 27–116; Urban, 2000: 96–97). The Order's area of influence began to concentrate especially in the Baltic region and, soon after their expulsion from Hungary, they received a request from Conrad I, one of the Dukes of Mazovia, to join the military campaign to Christianize Prussia, which was still pagan at the time. Successive military victories and imperial and papal privileges quickly made the Order a major power in the region (Frost, 2015: 6).

In 1385, following the accord of Krewo, the Polish nobility decided to offer the crown to Jadwiga, one of the daughters of Louis of Anjou, and arranged her betrothal to Jogaila, the Grand Duke of Lithuania, thus paving the way for a union between the Polish crown and the Grand Duchy of Lithuania (*ibid.*: 47–60). The marriage required the conversion of Jogaila, who was still pagan and who, after his baptism, would receive the name of Władysław II Jagiełło. The conversion of Jogaila also meant that his people and the Lithuanian nobility would adopt the Christian faith, which they did quickly and peacefully through the bestowal of gifts and privileges.<sup>3</sup> In order to provide theological support for the conversion, the University of Krakow started to play a fundamental role in the kingdom (Knoll, 2016).

In Lithuania power was assumed by Witold, Jogaila's cousin, who in 1401 became a Grand Duke of this territory. There is no doubt that the peaceful conversion of Lithuania seriously questioned the legitimacy of the presence of the Teutonic Knights, who had concentrated their efforts on a series of military campaigns that would result in the Christianization of Lithuanians (Boockmann, 1975: 124). In 1409, a dispute between the Teutonic Knights, the Polish crown, and the Duchy of Lithuania would arise following the rebellion of Samogitia, a region that was still pagan but had been previously ceded by Lithuania to the Order. The Teutonic Order, claiming that the rebellion had been encouraged and supported by Witold, was finally defeated on 15 July, 1410, at the famous battle

<sup>3</sup>Regarding the Christianization of Lithuania: Urban, 1989b; Kłoczowski, 1989: 105–135; 137–157.

of Tannenberg (Grunwald in the Polish tradition) and was never able to fully recover (Urban, 1999: 133–168; Gouguenheim, 2012; Paravicini, Petrauskas, Vercamer, 2012; on Samogitia: Urban, 1989a). While the Poles and Lithuanians concentrated on the peaceful conversion of Samogitia, the Teutonic Knights began a campaign to undermine King Jagiełło and Witold, accusing them of receiving support from schismatics (orthodox Christians) and heathens in their military campaigns against the Order (Urban, 1999: 169–2006). The Treaty of Thorn (Toruń) signed after the war did not solve the conflict, and between 1412 and 1414, Sigismund, the King of Hungary and *Rex Romanorum* who aspired to become emperor, mediated on several occasions without ever finding a definitive solution. This is why both sides in the dispute decided to bring the matter before the Council of Constance whose main objective was to unify the Church after successive splits since 1378, to address important doctrinal issues, and to start a reform of the Church *in capite et membris*.<sup>4</sup>

This ongoing dispute explains why both the Order and the Polish-Lithuanian crown were particularly well-represented at the council. In the case of the Order, the head of their delegation was the Archbishop of Riga Johannes von Wallenrode, who was supported by the *Obertrappier*, Friedrich von Welden; the *Deutschmeister*, Konrad von Egloffstein; Johann Abeczier, *Doctor Decretorum*; the Knight Johann von Orsichau (Orzechów); and the Burgermeister of Chelmno, Konrad von Kesselhut. The Order's emissary Peter von Wormditt also came to Constance with the court of John XXIII (Brennan, 2006: 119–121; Brandmüller, 1998: 151).

Nicholas Tromba (Mikołaj Trąba), Archbishop of Gniezno; Jacobus Kurdwanowski, Bishop of Płock; the designated Bishop of Poznan, Andreas Laskari; and the Bishop of Włocławek, Jan Kropidło represented the Polish crown. The *rector* of the University of Krakow, Paweł Włodkowic (Paulus Vladimiri), *doctor in utroque iure* and the true head of the delegation spoke for the institution in Constance and presented the main arguments against the Order (Brennan, 2006: 121–122; Brandmüller, 1998: 151–152).

Sigismund attempted to force both parties to accept his mediation and ordered a delay in the debate until his return from Narbonne and the creation of a commission under the leadership of Cardinal Zabarella charged

<sup>4</sup>Regarding the Council of Constance and the conflict between the Order of Teutonic Knights and the Polish crown: Brandmüller, 1998: 150–175 and specifically on historiography Frenken, 1993: 207–243; *Das Konstanzer Konzil*, Frenken, 2015: 225–227. Regarding the idea of reform: Stump, 1994.



with analyzing the affair on May 11, 1415. However, arguments quickly began to be presented to the council.<sup>5</sup>

Taking advantage of the absence of the Polish delegation during the first months of the council, Peter von Wordmitt and Johannes von Wallenrode began a campaign of defamation against the Crown, accusing King Jagiełło and his cousin the Grand Duke of Lithuania of violating the peace of Thorn and receiving military assistance from heathens in their war against the Order. They also urged the council to defend the Order (Brennan, 2006: 122–126).

On behalf of the Polish crown, on July 5 and 6, 1415, Paweł Włodkowic drafted his opinions in the treatise *De potestate pape et imperatoris respectu infidelium* which began with the incipit *Saevientibus olim Pruthenis* and a series of *Conclusiones* that began with the incipit *Opinio ostiensis (Hostiensis)* which would be read to the German nation at the Council of Constance (Vladimiri, 1965c: 792–844 and *Pisma wybrane Pawła Włodkowica* 1966: 2–212; Vladimiri, 1965b: 864–884 and *Pisma wybrane Pawła Włodkowica* 1966: 113–137). Although there were differences between the texts, their objective was the same given that the main argument focused on the interpretation of the decretal *Quod super his*.<sup>6</sup> Włodkowic made reference to the interpretation of Pope Innocent IV's opposition to the interpretation of Cardinal Hostiensis, which denied the legitimacy of *dominium* among heathens (Brennan, 2006: 145–229). Drawing on Pope Innocent IV's arguments, Włodkowic suggested that *dominium* and *iurisdictio* existed among heathens by virtue of *ius gentium* and so they could hold their properties and governments legitimately.<sup>7</sup> Although he admitted that the heathens who

<sup>5</sup>Regarding the commission: Brandmüller, 1998: 152–153. According to the author it was not an official council body but an advisory commission created by Sigismund. Led by Cardinal Zabarella, there were two members from each nation: Bernarde de la Planche and John Stokes for the *natio anglicana*, Jean de Mâcon and Adam de Cameraco for the *natio gallicana*, Lamberto de Stipite and Conrad Seglauer for the *natio germanica* and Antonio de Ponte and Gaspar de Perugia for the *natio italica*. See also: Frenken, 1993: 210 and *Acta Concilii Constanciensis*, 1928: 241.

<sup>6</sup>Gorski, 1971: 162–166; Woś, 1979; Muldoon, 1979: 105–131; P. Russell, 1980: 237–254. On Pope Innocent IV: Miethke, 2008. On the conflict from a theological perspective: Kwiatkowski, 2000; Brennan, 2006: 1–26.

<sup>7</sup>*Paulus Vladimiri and his Doctrine Concerning International Law and Politics* 1965a: 750–761; Wielgus, 1998; Brennan, 2006: 309–310; Dufour, 2014. In this article the author mentions that in the historiography of international law, emphasis has always been placed on the rupture in which Hugo Grotius' work played a key role in establishing the foundations of modern *ius gentium*. However, in recent years other authors have also noted the influence of the *magni hispani* as Francisco de Vitoria and Domingo de Soto on the origins of modern

had occupied the Holy Land must be fought by the Church, the peoples who remained outside of the Church peacefully and who allowed Christians to live freely must be tolerated and their conversion sought peacefully through the sending of preachers (Brennan, 2006: 206; Vladimiri, 1965b: 124). If they did not accept their presence, this could be considered a valid reason to take military action. This also opened the door to a reassessment of the concept of a just war modifying some of the traditional conditions for it.<sup>8</sup> Although Włodkowic focused on engaging on a *processus doctrinalis* that questioned the legitimacy of the presence of the Order and military action in the region, he also denounced the numerous abuses of the Order to the point of accusing it of heresy in his treatise *Causa inter Reges Poloniae et Cruciferos* (published under the title of its incipit *Ad Aperiendam*) and the *Articuli contra Cruciferos de Prussia*.<sup>9</sup> The ultimate objective of his complaints was, without a doubt, to achieve the dissolution of the Order since it was considered a heretical body.

Bishop Giacomo Arrigoni de Lodi; the consistorial lawyer, Dominicus de Ponte; the Canon of Augsburg, Rudolf Arzt; the Bishop of Ciudad Rodrigo,

international law. The objective of his article is to show that the origins of *ius gentium* can even be traced back to debates between the Order of Teutonic Knights and representatives of the Polish crown at the Council of Constance. Textual evidence has not been found that Spanish theologians and legal scholars of the 16th century were aware of the arguments of this dispute. Perhaps the similarities can be explained by the fact that most of these authors drew on prior canonical tradition in debates over the decree *Quod super his*. However, to rule out a direct influence one would have to study the circulation of manuscripts by the authors involved in the disputes between the Order and the Polish crown. Although figures such as André Diaz de Escobar were deeply involved in these debates and he wrote a treatise defending the order, thus far the reception of these debates on the Iberian peninsula cannot be established. More recently Knoll, 2016: 238–244.

<sup>8</sup>Changes in the concept of a crusade can be perceived at the Council of Constance. With the Christianization of Lithuania, the Order of Teutonic Knights would lose a large part of their justification for operating in the Baltic region. The main problem was justifying a war that was not waged against aggressive pagan peoples or to recover the Holy Land. At the beginning of the century, changes in the idea of a crusade emerged. The two major threats from then on would be the expansion of Ottoman Turks into the Balkans and, from the 1420s onward, the Hussites in Bohemia. Regarding the issues surrounding the crusades in the early 15th century see especially: Soukup, 2017b; Housley, 2017; Soukup, 2017a and Sarnowsky, 2017: 11–44; 45–84; 85–122; 123–160.

<sup>9</sup>Vladimiri, 1966: 144–271; *Pisma wybrane Pawła Włodkowica* 1966: 2–168; Vladimiri, 1965a: 916–988; Chollet, 2014 and the book based on his thesis Chollet, 2019. The author also notes the importance of understanding legal debates within a wider context, including chronicles, diplomatic documents, and literary sources related to the dispute. It is interesting to see that Paulus Vladimiri begins by attacking the legal basis for the Order and only later on at Constance starts a campaign to have it condemned as heretical.

André Dias de Escobar; and Doctor Johannes Urbach of Bamberg responded to these serious charges for the Teutonic Knights.<sup>10</sup>

#### JOHANNES FALKENBERG ENTERS THE PROCEEDINGS

Another figure very close to the Order taking part in the dispute with representatives of the Polish crown was the Dominican monk Johannes Falkenberg who, after studying *artes* in 1380 in Prague and moving on to study law, in 1384 continued his *peregrinatio academica* at the Faculty of Theology of the University of Vienna, remaining there at least until 1387 only to appear between 1405 and 1406 in Krakow where he acted as *lector* at the Dominican monastery. In 1411, we find him again as an *inquisitor* in Magdeburg where he demonstrated great zeal in the persecution of heretics. A year later, in Prussia, he made contact with the Order of the Teutonic Knights.<sup>11</sup> Between 1415 and 1416, although he was not a major figure at the council, he actively debated with Pierre D'Ailly, Gerson, and Pierre de Versailles, assuming views similar to those of the Burgundians during the debates over the nine assertions of Jean Petit taken from his *Justification* of the tyrannicide of the Duke of Orléans.<sup>12</sup> In spite of the campaign to discredit the Polish-Lithuanian monarchy and the accusations levied against it, most of the council fathers continued to regard it positively due to its efforts to achieve a union with the Orthodox Church and especially the peaceful conversion of Samogitia. At the end of 1415, the arrival of a delegation of 60 baptized Samogitians made a very favorable impression on the council (Brandmüller, 1998: 157).

However, Falkenberg captured the attention of the council when between the end of 1416 and the beginning of 1417, his text *Satira contra hereses cetera nefanda Polonorum et eorum regis Jaghel* arrived in Constance from Paris. Proceedings soon began against him given that some statements of his work were considered heretical.<sup>13</sup> The Dominican monk claimed that King Władysław II Jagiełło was idolatrous and a heretic and even a pagan

<sup>10</sup>Regarding the Bishop of Lodi, Dominicus de Ponte and Rudolf Arzt: Boockmann, 1975: 236, 237. On André Dias de Escobar: Sturgeon, 2017. Regarding Johannes Urbach of Bamberg: Boockmann, 1975: 246; and for his text: Weise, 1970. The text has been translated into English by Brennan, 2006: 422–532.

<sup>11</sup>For a biography see: Boockmann, 1975: 130–196; 297–305; Frenken, 1993: 227–229.

<sup>12</sup>Regarding the treatises of Johannes Falkenberg on the *Justification* by Jean Petit at Constance: Prochaska, 1996: 49; Gerson, 1706a: Col. 1014, 1020 & 1030; Acta Concilii Constantiensis, 1928: 352–352.

<sup>13</sup>For an edition of the text: Boockmann, 1975: 312–354 and Włodek, 1973.

who had faked his conversion and baptism in order to destroy the Church and thus he had to be eliminated. He argued that the Church could not defend itself against hypocrisy because it could not see what went on in people's hearts. In addition, in his conflict with the Order, the king had allied with pagans, committed numerous atrocities, and had rebaptized (orthodox) Ruthenians. The accusation of heresy and the need to have it rooted out was expanded to all Poles as they had not rebelled against their king but many of them had been members of his armies. For that reason, it was the Christian princes' obligation to rise against Władysław and the Poles and punish them with death; otherwise they would deserve eternal damnation and all those who fought against them would on the contrary obtain salvation.<sup>14</sup>

In February 1417, the council rapidly created a commission to judge the theses of Falkenberg. It soon identified a list of eleven articles called the *Satira* that were considered heretical and suggested a text for a *sententia diffinitiva* to be approved by the nations as the first step to its passing in a plenary session.<sup>15</sup> The results of the deliberations over these events in

<sup>14</sup>For recent commentary of the text see Housley, 2020: 183–198.

<sup>15</sup>Regarding the proposed *sententia*, there are two texts, one by Pierre D'Ailly and another by Francesco Zabarella, both published by *Acta Concilii Constantiensis*, 1896: 410–413. In these texts, one can find the 11 articles considered by the commission to be heretical in their proposed *sententia*: (1) Quod rex Polonorum, cum sit malus presidens, est ydolum et omnes Poloni sunt idolatre et serviunt ydolo suo Jaghel. (2) Item dicit, quod Poloni et eorum rex sunt Deo odibiles heretici et impudici canes, reversi ad vomitum sue infidelitatis. Et ergo securissime omnes, non solum principes seculi, verum etiam inferiores qui ad Polonorum et eorum regis exterminium se ex caritate accinxerint, vitam merentur eternam. (3) Item dicit, quod indubie Polonos et eorum regem propter periculum, quod ab eis timetur ecclesie futurum, etiam antequam dissidium faciant, ceteris paribus magis meritorium est occidere quam paganos. (4) Item dicit, quod omni submoto dubio [per] belli certamen, quo pro defensione christianorum ex caritate suscepto principes seculi Polonos et eorum regem occidunt, regna merentur celestia. (5) Item dicit, quod pestifera universitas Polonorum, cuius Jaghel caput, est tota obnoxia, quia peccatum hereseos totam invasit, ab ecclesia resecurit et omnes ex ea facit vehementer contra ecclesiam colla subrigere, quatenus, si valuerint, sanguinem christianorum effundant et hereseos sue venena ad tabefacienda membra ecclesie transfundant. Et ergo principes seculi ultionis gladio tenetur absque omni dissimulatione Polonos omnes cum eorum rege vel maiorem partem extinguere aut principes eorum et nobiles omnes in patibulis contra solem suspendere. (6) Item, dicit, quod ex principibus seculis, qui sunt ydonei et ratione et potestate Polonos et eorum regem Jahel reprimere et dimittunt in christianos decabari, supplicio merentur iehanne cum eius mancipio in eternum vapulari. (7) Item dicit, quod principes seculi sceleri, unde Poloni et eorum rex Jaghel digni sunt morte eterna, consenserint, quia tacerunt, cum potuerunt id impedire aut redarguere, et ergo proinde sunt digni morte eterna. (8) Item dicit, quod principes seculi [qui] crimina Polonorum et eorum regis Jaghel possunt corrigere et emendare et negligunt et ideo eorum procul dubio culpam habent criminaque committunt et

the *natio gallicana* are relatively well-documented while for the rest of the nations the sources are sketchier.<sup>16</sup> Precisely for this reason, there has been a major debate within the historiography about the link between the *causae* of Jean Petit and that of Falkenberg at the heart of the French nation.

According to Heinrich Finke, one of the most important editors of sources about the Council of Constance, both cases were closely linked in terms of content as the core of the debate revolved around the concept of tyrannicide. There was also a link regarding the political alliances within the nation. While the Burgundians seemed to take on the defense of Falkenberg, questioning the heretical character of his articles, the Gersonists and Armagnacs argued that they were.<sup>17</sup> However, Schoenstedt had already

in eternum iehenne mancipio merentur vapulari. (9) Item dicit, quod manifestum est, quod qui in bellis Polonis et eorum regi Jaghel contra christianos ingravato auxilium prebuerunt et sunt occisi, descenderunt ad amaritudinem eterne damnationis. Et qui superstites vivunt et non sunt conversi per penitentiam, omnes laborant in statu damnationis et extra mortis periculum non possunt absolutionis beneficium sine speciali indulto pape obtinere. (10) Item dicit, quod iniuriam, quam Poloni et eorum rex ecclesie irrogarunt, non possunt sine offensa Dei dissimulare inultam. Ergo absque omni relatratus calumnia in Polonis et eorum rege tenetur indispensabiliter iniuriam Dei morte vindicare. (11) Item dicit, quod principes seculi tenentur exercitibus sacrilegos homines Polonos et eorum de terra perdere. On the *facultas theologica* Frenken, 2003 and reprinted in Grohe, Leal, Reale, 2006: 365–383.

<sup>16</sup>The historiography of the Council of Constance has studied the importance of its organization by *nationes*. On 7 February, 1415, the council quickly organized itself by nations in the same manner as for example universities (German, French, Italian, English and, later, Spanish) in order to counter the numerical majority of Italian members at the council. Regarding the nations: Acta Concilii Constanciensis, 1928: 211 and Finke, 1937 reprinted in Das Konstanzer Konzil, 1977: 347–368. For the rest of the classical bibliography on the issue: Frenken, 1993: 352–357. At Constance the main debates and arguments took place within the nations. Once the nations had come to a decision, it had to be approved by the chosen delegates to the general congregation. Once consensus between all nations had been reached, the decisions would be officially announced at a general session. In the case of the *causa fidei* the council created *ad hoc* commissions in order to analyze each of the *causae*. Once the commission came to a decision, it had to be approved by each of the nations and the general congregation and then publicly announced at a general session. Regarding the *natio gallicana*: Vallery-Radot, 2016. On the more recent discussion, see Frenken, 2017.

<sup>17</sup>Regarding the similarities Finke, 1896: 250: “Ihr Inhalt [el de la *Satira*] gleich in etwa der Petitschen *Justificatio*, indem auch sie den Tyrannenmord predigt, allerdings die Tötung eines bestimmten Tyrannen. Der Falkenberg-Prozeß löst in gewissem Sinne den Petit-Prozeß ab. Die innere Verwandtschaft beider Prozesse zeigt sich darin, daß die führenden Persönlichkeiten der Gersonianer und Burgunder auch als Gegner und Verteidiger Falkenbergs erschienen.” It is interesting to note that many of the sources published by Finke come from the manuscripts BNF 1485 I and II (FL) of the National Library of France. Although Finke has published numerous texts from these manuscripts, he also admitted that there were many still to be published. Acta Concilii Constanciensis, 1896: 241: “Beide Bände sind das Handexemplar des Hauptes der Burgundischen Gesandtschaft, des Bischofs von Arras, Matin Porée. Die Originalität ergibt

stated in his study of tyrannicide the differences between the two *causae*. In the case of Falkenberg, his tyrant reflected the traditional notion of a bad governor who because of his heretical nature became a tyrant and must thus be fought and eliminated by a crusade. In contrast, Jean Petit's notion of a tyrant was rooted in the notion of *crimen maiestatis*, making reference to the political reality in which the French monarch was consolidating its power. According to Schoenstedt, while Jean Petit's notion was the result of a medieval outlook that recognized the existence of "states", Falkenberg's approach was grounded in the traditional medieval order, which denied their existence. On this point it is worth emphasizing that the originality of Jean Petit's thesis resided in identifying a tyrant as someone who plotted against the royal majesty seeking to seize power: in that case in particular, there was a clear reference to the Duke of Orléans.<sup>18</sup>

The differences between the two concepts of tyranny would become much clearer with the critical editions of the *Satira* which until then was only known from the eleven articles extracted from the text. With access to a critical edition, Hartmut Bookmann cast aside the idea that the two concepts could be similar (Boockmann, 1975: 240). Apart from these major conceptual differences, there were other issues that allow us to distinguish between the two cases.

Firstly, while the nine assertions from the *Justification* of Jean Petit were part of a text written *post factum* which to a certain degree justified the actions taken by the Duke of Burgundy, Falkenberg's theses suggested action which should be taken in the future with regard to the King of Poland and his subjects. Secondly, while discussions of Jean Petit's theses were

sich schon aus manchen Randglossen wie (propia [cedula]), (propia motiva anno xv) [...] Viele Anträge und Gutachten sind daraus gedruckt, aber lange nicht alles, manches unten gebrachte Stück gewährt einen tiefen Einblick in die oft stürmischen Verhandlungen." These manuscripts apparently belonged to Martin Porée, who played a fundamental role in the Petit case on the Burgundian side and who was a firm opponent of Jean Gerson at Constance. He would also become the visible face of the opposition within the French nation regarding the proposed sentence of the commission of faith to condemn Falkenberg's theses. This would contribute to understand the assumption that the two proceedings were connected. There appears to be a clear intention to link the two *causae* within the compilation of the texts in spite of their differences.

<sup>18</sup>Schoenstedt, 1938: 109–110; Boockmann, 1975: 290. Regarding concepts of tyranny and *crimen maiestatis*: Cuttler, 1981; Miethke, 1999: 24–48; more recently on the debates about Jean Petit's *Justification*: Turchetti, 2013: 218–334. About the *crimen maiestatis*: Chiffolleau, 1993; Krynen, 1993; Boudet and Chiffolleau, 2017.

a fundamental issue in the disputes between the Armagnacs and the Burgundians, the dispute over the Falkenberg theses was just one more element within a much more complex conflict between the Polish crown and the Order of Teutonic Knights. In fact, the Order sought to distance itself from Falkenberg and his theses in order to avoid any potential negative repercussions.<sup>19</sup> In personal terms, while Jean Petit enjoyed the protection of the Duke of Burgundy and so did not suffer any major consequences in his lifetime, Falkenberg would be arrested and imprisoned for several years after the Council of Constance ended in 1418. Finally, it is important to take into account the different contexts in which the issues were addressed by the council. The case of Jean Petit occupied the council fathers from the start and seemed to be headed for a rapid resolution with the decree *Quilibet tyrannus*.<sup>20</sup> However, this decree did not satisfy the Burgundians or the Gersonists who continued to demand an explicit condemnation of the nine assertions as heretical. The Burgundian strategy, as led by Martin Porée, consisted of avoiding having the nine assertions considered as *materia fidei* and simultaneously to have the case addressed in a *stylus iuridicus*. In fact, the commission of cardinals, given the task of considering the Petit case on January 14, 1416, used the bishop and the Paris inquisitor's failure to appear in court as legal justification to declare the prior condemnation of 1413 as invalid.<sup>21</sup> In addition, the nine assertions had already been submitted for study by a group of theologians and judges designated by the council who, at the end of 1415, presented their opinions saying that the majority believed that they should not be condemned as heretical. In contrast, the text by Johannes Falkenberg got to Constance later (between the end of 1416 and beginning of 1417) and so the proceedings began late, when the council was occupied with other issues and well after the Gersonists had suffered a major setback.<sup>22</sup>

<sup>19</sup>Acta Concilii Constanciensis, 1896: 250. Regarding historiographic discussions of both cases see Frenken, 1993: 230–236.

<sup>20</sup>Gerson, 1973: 531: “Et credatis quod adversarii crediderunt habere conclusionem et condemnationem dictarum novem assertionum in una hebdomada, attentis favoribus quos habebant per Regem Romanorum, qui multa protulit enormia de D. Duce, quem visus est habere pro capitali nemico, et hoc ad suggestionem dicti Ludovici de Bavaria, qui dictum Regem regebat, pro tunc, cum uxore sua, ut fertur hic communiter.” A fundamental text on this topic is still Coville, 1932; on the affair in Constance, Brandmüller, 1998: 95–115.

<sup>21</sup>On the Burgundian strategy: Provvidente, 2019. On the *stylus theologicus* in Gerson's thought Iribarren, 2017.

<sup>22</sup>Frenken, 1993: 236. Although it is true that when the Falkenberg case began, the Gersonists had been defeated and could not get Jean Petit's thesis condemned as heretical,

Apart from these significant differences, it is undeniable that in general the discussions of the *Satira* within the *natio gallicana* found the Burgundians trying to prevent the condemnation of the Dominican's thesis and the Gersonists pressuring for them to be declared heretical.<sup>23</sup> Without denying these major differences, within the manuscript tradition, both *causae* were linked, and this might be a compelling reason to reevaluate how and in what sense they were related.<sup>24</sup> On this point, I would suggest that discussions of the Falkenberg theses within the *natio gallicana* and the different positions taken on the debates were related to the fact that the case was seen as an opportunity to reopen the debates on the *Justification*. While the Gersonists saw a condemnation of the Falkenberg thesis as an important precedent for a reconsideration of the *Justification*, the Burgundians opposed condemnation as a means of sealing the defeat of the Gersonists definitively. In that context, moved by the heat of the dispute, both the Gersonists and Burgundians insisted on the similarities and analogies between the two *causae*. For this reason, the arguments were centered on two issues that had been crucial in the Jean Petit case: the interpretation of the commandment *Non occides* and the necessity for a public process to determine a king's status as a tyrant or heretical prior to his elimination (Provvidente, 2019: 145–150). Seen from this angle, the similarities between both *causae* would appear to have been exaggerated leading to a distorted vision of the affair

they still held out hope that the council would reopen the case. The Gersonists continued to claim for a condemnation even after the election of Martin v. Pierre D'Ailly appealed to the Pope as late as January 8, 1418 cf. *Acta Concilii Constanciensis*, 1896: 351: "Dignetur ergo sanctitas vestra, beatissime pater, ad honorem huius sacri concilii, ad fidei conservationem, ad correctionem errantium et pro pastoralis vestre sollicitudinis debito primo et precipuo taliter et ordine tali etiam personaliter seu in presencia vestre sanctitatis provisionem apponere, quod huiusmodi doctrine pestifere possit celeriter, summarie et de plano ac sine strepitu et figura iudicii audiri, examinari...".

<sup>23</sup>It is difficult to make general statements about these alliances. Apart from the political issues, personal ties appear to have played an important role as well. The fact that Falkenberg was Dominican may have influenced the defense of Martin Porée and Jean de Rocha within the *natio gallicana*. However, the sources are not forthcoming on the issue Frenken, 1993: 234.

<sup>24</sup>See supra note 32. It should be remembered that many of the sources published by Finke come from the manuscripts of the Bibliothèque Nationale de France (FL) 1485 I and II which may have belonged to Martin Porée. Most of the sources for the Jean Petit and Falkenberg case were published in that first volume. Although this seems to have led Finke to exaggerate the similarities between both *causae*, the compilation of the texts does not appear to have happened by chance. Something similar is true of the manuscript *Fürstlich Waldburg-Zeilischen Gesamtarchivs in Zeil Nr. 9 (prov.)*, fol. 128r and 168r which contains both a text of the *Satira* by Falkenberg and an anonymous Burgundian text: Boockmann, 1975: 272–279.



by many historians. To prove this hypothesis, the following addresses the debate of the Falkenberg case within the *natio gallicana*.

#### THE NATIO GALLICANA DISCUSSES THE CASE

A notarial protocol describing the events between April 30 and July 9, 1417 is one of the main sources for the debates within the French nation (*Acta Concilii Constanciensis*, 1896: 356–362). On the first date, during a meeting of the French nation under the presidency of Jacques de Gélou of Tours in the Dominican refectory, Nicholas Tromba (Mikołaj Trąba), Archbishop of Gniezno and Jacobus Kurdwanowski, Bishop of Płock, appeared to request that the nation, or delegates, discuss the document containing the text of the *sententia* of the commission that had analyzed the eleven articles of Falkenberg's *Satira*.<sup>25</sup> One of the judges assigned by the French nation, the Bishop of Saint Pol de Léon, presented the document to the notaries with the corresponding seals and the Bishop of Arras, Martin Porée, apparently in order to dissent and prolong the discussion, asked that it be read in public, drawing a protest from Fillastre, De Chalant, Simon of Cramaud, Jean of Rochetaillée, Jean Mauroux, the Archbishops of Vienne and Besançon, and the Bishops of Le Puy, Oloron, Dol, Toulon, Saint Pol de Léon, Bangor, Aosta, and Lavaur, who were joined by Gerson and envoys from the king.<sup>26</sup> This marked the formal beginning of the debate within the French nation. Representatives of the Polish crown certainly intended for the *sententia* to be approved by the different nations of the council (the English, German, Italian and, by that time, the Spanish) so as to facilitate the approval of the corresponding decree once consent had been obtained by each of them.<sup>27</sup> However, the council was occupied with other issues such as the case against Benedict XIII and the procedure for the election of the new Pope. There is not much evidence for how the issue was discussed among the other nations (Brandmüller, 1998: 174).

On May 14, a Polish delegation once again appeared before the *natio gallicana* led by Paweł Włodkowic which also included the *licentiatus in*

<sup>25</sup>*Acta Concilii Constanciensis*, 1896: 356–357: "...pater d. Nycholaus archiepiscopus Gnez-nensis ...suplicavit suo et aliorum dominorum de Polonia ibidem existentium, quod dicta nacio Gallicana vellet dictam cedulam examinare aut ad hoc deputatos dare, qui eam videant et examinent ad finem, quod causa citius terminetur."

<sup>26</sup>*Ibid.*: 357: "Et reverendus in Christo pater d. Martinus episcopus Attrebatensis petit, quod dicta cedula publicaretur. Sed protunc non fuit publicata petentibus in premissis et in dicta congregatione."

<sup>27</sup>Regarding the internal functions of the French nation, see: Vallery-Radot, 2016: 55–60.

*decretis* Peter Wolfram and the consistorial lawyer Simon of Teramo. Paweł Włodkowic read the text from a document with the *sententia* and urged the nation to rule on the issue in order to have the sentence approved during a plenary session of the council (Acta Concilii Constanciensis, 1896: 358). Cardinal de Chalant spoke next, and it was decided that a commission of delegates from the nation would consider the issue. This commission consisted of the Bishops of Oloron, Arras, and Toulon, the Abbots of Cluny and Cormery, and the masters Jourdain Morin and Guillaume Beauneveu who, as secretary of the commission, received a copy of the *cedula sigillata* on which they were to deliberate (*ibid.*). On June 21, the issue was debated once more in the French nation. The commission secretary, Beauneveu, presented the work of the delegates who had discussed the *cedula*, followed by Martín Porée who stated that although he did not want to say anything against the King of Poland, he believed that the matter should continue to be discussed more extensively by theologians and jurists. The Bishop of Digne answered that the matter had already been sufficiently discussed by the commission and that experts had been already consulted. Next, the document was handed to the notary and the text was read out as the members of the commission believed that there were no objections to it being approved by the nation.<sup>28</sup> Martín Porée requested that words be removed alluding to Falkenberg's belonging to the Dominican order — Porée was also a Dominican and seemed to be seeking to ensure that the Order's prestige was not tarnished by the issue.<sup>29</sup>

<sup>28</sup>Acta Concilii Constanciensis, 1896: 359: "In qua idem d. presidens inter cetera per ipsum proposita proposuit de dicta materia in prefata cedula contenta et super sententia ferenda et propositione per ipsum facta prefatus magister Guillelmus Pulcrinepotis commissarius sive deputatus in hac parte cum certis aliis dominis dicte nationis deputatis ad videndum et examinandum dictam cedulam et referendum in dicta natione de voluntate et assensu aliorum d. condeputatorum suorum relacionem in dicta congregacione fecit fidelem. Qua relacione facta prefatus d. Martinus episcopus Attebatensis fecit primo una protestacionem, videlicet, quod non intendit aliquid dicere in peiudicium alicuius persone et presertim serenissimi principis d. regis Polonie, sed dumtaxat in favorem fidei et post multa per eum dicta conclusit, quod deputentur aliqui d. magistri in theologia et doctores in iure canonico qui disputent istam materia. Et reverendus in Christo pater dominus...episcopus Dignensis dixit, quod materia fuit iam solemniter disputata et examinata et dixit, quod d. iudices habuerint sepe et sepius deliberacionem cum magistris et doctoribus et post multas deliberaciones cedulam, de qua supra fit mencio, conceperant, que videtur expedienda sub tenore per eos concepta, cuius tenor in dicta congregacione fuit per me notarium publicum infrascriptum de verbo ad verbum alta et intellegibili voco lectus sub hiis verbis..."

<sup>29</sup>*Ibid.*: 360: "Post cuius quidem cedule lecturam fuit procesum ad audicionem votorum et ...erat in sessione generali dicti sacri concilii ferenda et promulganda, prefato d. Attebatensi

Finally, the issue was put to a vote within the nation, but the results were not published. On July 3, the nation was visited again by the Polish delegation, this time led by the consistorial lawyer Simon of Teramo who thanked the nation for the conclusion it had reached but also stated that, following the presentation of *dubia* by some members, it had not yet been approved. Martín Porée accepted the challenge and presented himself as one of the members who had submitted a text with objections. Immediately afterward, Simon of Teramo requested that approval of the sentence by the nation not be delayed any further.<sup>30</sup> Bishop Kurdwanowski and Paweł Włodkowic spoke similarly and Beauneveu admitted that although the conclusion had been written, it had not been published due to the objections. It was stipulated that all those who were interested in the matter could receive a copy of Porée's text and the debate was postponed until July 5. Following the reading of Porée's text, the President of the nation stated that if anyone wished to change their vote this was the time to do so.<sup>31</sup> In addition to Porée's document, other figures close to the Burgundians took part in the debate and questioned the decision of the commission created by the nation. They included Jean de Rocha twice, Jean de Vincelles, the procurator of Cluny, and a Franciscan, Master Jacobus.<sup>32</sup> On July 9, the count of votes from the previous two sessions was finally read out and the sentence of the commission was approved by a majority with the recommendation that the phrase *in fide* be changed to *contra fidem* and the mention of Falkenberg's belonging to the Dominican Order be removed.<sup>33</sup>

episcopo dumtaxat excepto qui volebat plenius audiri et ulterius dixit, quod verba 'ordinis Predicatorum' tollerentur de cedula predicta..."

<sup>30</sup>Acta Concilii Constanciensis, 1896: 360: "De quo prefati d. ambassiatores conquerebantur, supplicantes, quatenus pro presenti premissa sententia concepta per dictos d. iudices, ut in cedula superius descripta continetur, nullatenus impediatur sue quovismodo retardetur. Cui pretatus d. episcopus Attrebatensis replicavit dicens, quod ipse fuit unus de deputatis et dedit quandam cedulam, in qua movit certa dubia et vult informari super dubiis per eum datis, alioquin vult facere partem cum suis sequacibus."

<sup>31</sup>Regarding the *scrutinium*, majority votes and canonical *unanimitas*: Grossi, 1958; Ruffini, 1977; Ventura, 1996; A. Russell, 2017: 85–115; A. Russell, 2018; Prügl, Grohe, 2018.

<sup>32</sup>In the case of the text by Porée, Finke dates it as being from August 4 as can be seen *in margine* of the manuscript of the BNF (Latin Found) 1485, fol. 451–454. However, it is known that on July 3, 1417, in the *natio gallicana*, a *cedula* was presented with objections to the proposal of a sentence. Finke says that this was a text with *dubium* and not a *cedula* and thus dates it according to the note in the margin. However, it might have been the text from July 3. For the texts of the interventions Acta Concilii Constanciensis, 1896: 378–387; 363–370; 370–373; 373–377; 387–395.

<sup>33</sup>Ibid.: 362: "Et dictis votis diligenter ...fuerunt et sunt oppinionis et eorum vota in hoc concurrunt quod sententia feratur in sessione publica sacri concilii, prout concepta fuit per

Although Walter Brandmüller does not analyze these arguments in detail as they appeared to him to be full of casuistical objections whose purpose was to mitigate the effects of Falkenberg's statements, I believe that it is interesting to return to his analysis because it reveals how the French approached Falkenberg's theses.<sup>34</sup>

In the case of Martin Porée's text, the emphasis was placed on the argument that on certain occasions it was necessary that heretics be punished without respecting the legal process. There were four ways to kill a man: through a legal decree respecting the *ordo iuris*, out of necessity, accidentally, and in bad faith. Only the latter case would represent a violation of the commandment *Non occides*. It had not been the *intentio Domini* to hand down the prohibition *simpliciter et universaliter*, and there were exceptions in numerous passages of scripture.<sup>35</sup> The Church must be able to defend itself and resist infidels, heretics, and apostates, otherwise it would be destroyed

prefatos d. iudices ac prout et quemadmodum in dicta cedula per eos concepta et superius descripta continetur eo salvo, quod in verbis, ubi dicitur 'in fide' loco eorum ponatur 'contra fidem' et quod tollantur verba 'ordinis Predicatorum et sic iterato d. presidens publicando vota et conclusiones suprascriptas conclusit..."

<sup>34</sup>Brandmüller, 1998: 173: "In diesem Zusammenhang war es wohl, daß auch Johannes [Jean] de Rocha Falkenberg gegen den Häresievorwurf in Schutz nahm, wobei er dessen Sätze die gefährlichen Spitzen durch dann und wann *rabulistische Distinktionen* abzubrechen sucht. Desgleichen taten der Prokurator Johannes de Vincellis von Cluny, und ein Franziskaner Fr. Jacobus." In contrast, these debates have been analyzed in detail by Lewis, 1990: 81–118; 160–197.

<sup>35</sup>Acta Concilii Constanciensis, 1896: 378–379. The concept of *intentio domini* seems to allude to a theological issue in Biblical exegesis very important for all the *causae fidei* at Constance. About this problem Zach Flanagan, 2006. In this article, the author presents a historiographical analysis of the issue. Flanagan presents the Biblical exegesis of Gerson in all its complexity. Between the two extremes of an *ad litteram* interpretation and a spiritual interpretation, Gerson sought to establish the principles of a *via media* with the category *sensus litteralis*. The difference between an *ad litteram* exegesis examining merely the grammar and an exegesis that takes into account the *sensus litteralis* laid in establishing in the latter case the *intentio* of the author. Given that in the case of the biblical text God was the author and God always speaks the truth, the literal meaning was always true. By separating a *sensus litteralis* from exegesis *ad litteram*, Gerson was able to argue for the importance of a literal explanation against the Burgundians and against the dangers of an *ad litteram* interpretation by Hus and his Czech followers. In any case, it was one thing to affirm the meaning in a literal sense and another to find that meaning in the Scriptures. For this purpose, Gerson would establish a set of rules for biblical exegesis that would facilitate this determination. In this explanation, references to Henry of Oyta and Nicholas of Lyra would appear to be fundamental. The rules can be grouped into three types: the immediate context of the passage in question, the context of the biblical *corpus* overall and finally the extra-textual rules established by the Church, guided by the Holy Spirit. For the case of Jean Petit in Constance, it is essential Froehlich, 1977.

by them. Next, Porée argued that Christ in the Garden of Gethsemane, when the apostles presented him with two swords, had answered that they were *satis* meaning their use. If he had not accepted them, he would have answered that they were *nimis*.<sup>36</sup> Similarly, as proof of the acceptance of the use of violence, he cited numerous biblical passages from the New Testament in which his interpretation was that it was allowed. In Luke 3:14, John the Baptist advised the soldiers who said that they were content with their pay not to reject military service. In a similar passage, Luke 19:27, Jesus, in the parable of the talents, called for those who did not accept his reign to be brought before him and killed in front of him. He also cited Romans 13:4, in which Paul urges princes not to wield their sword in vain as a servant of God must be an avenger to punish the evildoer. A passage in the Acts of the Apostles 5:1–11, received a similar interpretation: it describes Paul killing Ananias and Sapphira with his words (*Acta Concilii Constanciensis*, 1896: 380–381).

Next, Porée argued that it was often necessary to amputate a member to save the body and so killing was part of the political life of a community. If the principle of *Non occides* were interpreted literally it would be illegal to kill as part of a just war as it would not always be possible to respect the *ordo iudiciarius*.<sup>37</sup> Given that infidels receive the *beneficium* of life from God, by taking arms against faith they deserve to lose it. Princes are offended by those who attack the faith and thus those subjects have an obligation to protect their prince from attacks and offenses. Given that heathens are continuously damaging the faith, Christians must consider them their permanent enemies and are obliged to attack them due to the promises they made at their baptism. Porée argued that given that

<sup>36</sup>*Acta Concilii Constanciensis*, 1896: 379: “Eciam pro loco et tempore oportet resistere et se defendere, aliter enim, nisi ecclesia se defenderet ab infidelibus, hereticis et apostatis a fide, posset ab eis destrui et sic periret honor et cultus divinus ac religio christiana, unde Luce xxii (36) dicit Dominus: ‘Qui non habet gladium, vendat tunicam suam’ etc. Cui responderunt apostoli: ‘Domine, ecce duo gladii hic’; quibus dixit: ‘Satis est.’ Si igitur ecclesia non haberet gladium materiale contra infideles, hereticos et apostatas a fide eos debite puniendum, eciam debellandum, sed solummodo spiritualem ad eos excommunicandum, dicendum fuisset, ‘nimis est’ et non ‘satis est’.”

<sup>37</sup>*Ibid.*: 381: “Et tamen non semper est possibile iuriciarium ordinem, ut supra contra tales servare, qui hoc non obstante digni sunt morte nec sun de iure multorum regnum aut principum, qui eos in bello iusto aut alias debite quandoque occidunt tali ordine non servato...”

heathens were a constant threat to faith, it was an obligation for Christians to attack them.<sup>38</sup>

Meanwhile, Jean de Rocha analyzed the first of Falkenberg's propositions, which went as follows: "Rex Polonorum, cum sit malus presidens, est ydolum et omnes Poloni sunt ydolatre et serviunt ydolo suo Jaghel..." According to Jean de Rocha, the temporo-causal *cum* should be interpreted in a temporal sense and the two potential meanings of the word *ydolum* should be established. If the term was used to refer to someone who did not have true *dominium*, the statement could be considered heretical as it was similar to the statement of Wyclif. However, if it was used in the metaphorical sense of something that looks like a man but cannot see, hear, or speak, it could not be considered heretical but simply scandalous and prejudicial as a bad king has some of the characteristics of an idol. In addition, accusing the Poles of heresy was not in itself a heretical act as their orthodoxy was not an article of faith. Hence, saying that those who exterminated the Poles deserved eternal life for this act of charity was simply seditious, not heretical (Acta Concilii Constanciensis, 1896: 363–364). Commenting on Falkenberg's third article, Jean de Rocha argued that given that the commandment *Non occides* should be understood as *non occides innocentem*, there was no violation of scripture. There was no doubt that killing was allowed under certain circumstances and those who argued otherwise were Manichean.<sup>39</sup> The key to proceeding with the elimination of the Polish king rested in the notoriety of the crime and Jean de Rocha presumed that no prince would act that way unless it was such a crime. If the Polish king were as Falkenberg described, then the uprising against him was legitimate and if not, the theses were simply seditious, not heretical.<sup>40</sup>

<sup>38</sup>Acta Concilii Constanciensis, 1896: 382–383: "Item licitum est alicui se defendendo alium occidere absque iudiciaria auctoritate, intelligendo ut supra, sive pro conservatione vite proprie, rerum suarum aut etiam sociorum. Sed constat, quod conservatio fide catholice, pacis ecclesiastice et caritatis, per quas totum corpus ecclesie connectitur et vivit, est maigis licita et necessaria, quam conservatio propii corporis, rerum suarum aut etiam sociorum. Ergo pro conservatione huiusmodi licitum est, hereticos, infideles et apostatas, fidei invasores in casu isto absque iudiciaria auctoritate occidere".

<sup>39</sup>Ibid.: 366: "Ad primum principale dicitur, quod iste propositiones non repugnant illi precepto: 'Non occides', unde preceptum illud habet intellegi: 'Non occides innocentem' etiam propria auctoritate et cum determinationibus necessariis. Non enim quicumque interficit hominem, agit contra illum preceptum: 'Non occides', sicut erronee oppinatus est herethiarcha impiissimus Manicheus, et multi casus sunt, in quibus licite potest homo interfici. Sed utrum talis sit rex Polonorum, quod veniat sub huiusmodi intellectum, quo precipitur: 'Non occides', licet estimem, quod sic, tamen non michi constant ipsum esse talem vel non talem..."

<sup>40</sup>Ibid.: 367 & 370. On the *notoria*: Chiffolleau, 2006.

The position of Jean de Vincelles was analogous to the one he had adopted during the debate over the thesis of Jean Petit. He believed that the great danger was having to defend against a king who had only simulated his conversion to Christianity. In that case, he would be more dangerous than an openly pagan or heathen king. Taking care not to offend the Polish king, Jean de Vincelles postulated the hypothetical case of a Sultan of Babylonia who in his youth had fought against the Church but in order to obtain the throne of the Christian kingdom of Armenia had faked his conversion and agreed to be baptized. This Sultan would eventually have made use of pagan troops to fight against Christians. In that case, the Sultan would be an idol as their outer appearance would not correspond with the reality inside. If the threat to the Church could not be avoided in any other way, Christian princes should kill the Sultan (Acta Concilii Constanciensis, 1896: 370–373).

Another important voice in these debates was that of the Franciscan Master Jacobus who, using numerous examples from the Bible, also argued in favor of the idea that there were cases when a person could be punished without following *ordo iuris*. Although a *homicidium* was always forbidden, sometimes eliminating an evildoer without making a public accusation against him in front of a judge was licit and did not go against the *ordo iuris*.<sup>41</sup>

On August 15, 1417, after the final vote had taken place within the French nation, the Gersonists replied to the arguments of the Bishop of Arras claiming that no Christian was obliged to persecute adversaries of the Catholic faith to the death outside of the order of divine law because as Augustine stated, sin was the absence of that order. In the case in question, maintaining that order meant the possession of an *iudiciaria potestas*, a plurality of witnesses and equity in procedure which must take into account the good of the community, and the circumstances and intentions of the person accused.<sup>42</sup>

Although the *iudiciaria potestas in occidendo* originated with God, it resided by delegation, in the hands of those who exercised public power.

<sup>41</sup>Acta Concilii Constanciensis, 1896: 375: “Ex hiis sequitur, quod, licet malefactor, si commode fieri potest, antequam interficiatur, sit coram iudice vocandus et convincendus, tamen in casu non est contra iuris divini ordinem, sine tali processu hominem gravissime in Deum et Christum peccantem interficere.”

<sup>42</sup>Gerson, 1973: 280–284 and Acta Concilii Constanciensis, 1896: 395–402; *ibid.*: 395: “Et quia secundum Augustinum peccatum est ordinis privatio, hic autem ordo stat in tribus, scilicet in iudiciaria potestate, in testium pluralitate et in executionis equitate...” On the ambiguity of Augustine’s view on this topic Masolini, 2020.

Not respecting recourse to judicial jurisdiction was to repeat the error made by Jan Hus causing confusion in the ecclesiastical and secular *politia*.<sup>43</sup> In addition, the text affirmed that only negative commandments, which included *Non occides* had no exceptions whatsoever. On this point the text made a clear reference to the obligation of prelates to know the *causae fidei* that generated *scandalum* in their diocese. The reference appeared to be an allusion to an issue debated during the case of Jean Petit regarding the power of bishops to condemn heresies although they had not already been condemned by the Holy See.<sup>44</sup> This allusion also appears to show that when the Falkenberg thesis was debated in the *natio gallicana*, most of the council fathers involved had at the forefront of their minds the debates over the *Justification* of Jean Petit. The ultimate objective of the text was to show that all the biblical precedents cited to justify tyrannicide made reference to the concept of *iudiciaria potestas*. While Phineas had received orders from Moses, Mattathias had acted as *iudex*. The conclusion from what had been said before was that all doctrines that defended, ordered, or approved the death of any man under the pretext of heresy, tyranny, or any other crime that was not sufficiently based in the order of divine right (*iuris divini ordo*) or even ignored, must be considered heretical.<sup>45</sup>

<sup>43</sup>Acta Concilii Constanciensis, 1896: 396: “Prima propositio declaratur: iudiciaria potestas in occidendo originatur a solo Deo et participative tantummodo derivatur in homines, qui funguntur publica potestate; et hoc de lege communi et divina revelacione seu dispensacione speciali non interveniente [...] Oppositum vero dicere est incidere in errorem Huss de punicione stuprorum per inferiores, est insuper confusionis totius policie tam secularis quam ecclesiastice multiplicer inductivum”.

<sup>44</sup>Ibid.: 397: “Primum correlarium: Prelato cuilibet convenit cognoscere de causis fidei, presertim quando et ubi suam diocesim notorie scandalisant (sic).” On this topic: Provvidente, 2011. Jean de Rocha’s text is more explicit about it Acta Concilii Constanciensis, 1896: 408: “Nulli prelato seu episcopo preter Romanum aut deputatum per eum convenit cognoscere de causis fidei in dubiis necdum per sedem apostolicam vel concilium generale formaliter vel virtualiter evidenter, quamvis cuilibet episcopo et inquisitori conveniat inquirere et cognoscere de causis, si qui reperiantur errantes contra fidem in territoriis suis, indiscussis per sedem apostolicam vel concilium generale formaliter vel virtualiter evidenter. Et quamvis episcopis civitatum, in quibus est universitas cum theologica facultate, possit cum consilio magistrorum propositiones, que viderentur periculose et scandalose, prohibere etiam sub censuram, illas tamen nodum per sedem apostolicam vel generale concilium condemnatas non possunt ut hereticas aut erroneas contra fidem iudicialiter condemnare, sed eas tenetur referre sedi apostolice vel concilio generali.” Regarding the notion of *scandalum*: Fossier, 2009.

<sup>45</sup>Acta Concilii Constanciensis, 1896: 399: “Elicitur tandem ex predictis pertinenter et evidenter regula generalis saluberrima, quod omnis doctrina suadens, iubens vel approbens occisionem hominis cuiuscunque sub pretextu vel heresis vel tyrannidis vel alterius criminis,



The answer to the Gersonists was presented by Jean de Rocha, who made another contribution to the debates. According to his view, some Christians must persecute unto death the adversaries of the Catholic faith *iuris divini ordine non servato*. Otherwise, princes such as the Kings of Castile and Aragon would not be unable to fight against infidels in their kingdoms. In the war against the Saracens, it was not always possible to maintain the *ordo iudiciarius*. In some cases what was known as *ordo divinus* was respect for the process and in others it was an appeal to the case of *necessitas*. In these cases, killing an infidel who threatened the Church could be justified as protecting the Church and would be a greater obligation than the need to maintain *ordo iudiciarius*.<sup>46</sup> Thus, saying that one could not eliminate infidels without submitting to the *ordo iuris* would be absurd and mean that illustrious figures such as Saint Louis of France, Godfrey of Bouillon, Baldwin, the Knights of Saint John of Jerusalem, and the Teutonic Knights had been sinners (Acta Concilii Constanciensis, 1896: 409. Finally, Jean de Rocha, after discussing the notion of dispensation from the ten commandments said that arguing that it was impossible to kill a man under any circumstances was to succumb to a Manichean error and thus the commandment *Non occides* must be understood as *non homicidium facies*.<sup>47</sup>

There is little evidence regarding the debates of the other nations over the Falkenberg theses, but an important exception is the text of Nicholas of Dinkelsbühl of the German nation which recognized that although the theses could be *sapientes heresim* these were not in themselves heretical. To be heretical, a thesis had to contradict a Catholic truth. It was not enough for a statement to be scandalous to be considered heretical. Given that it was possible that the Poles could become idolatrous as they had been before their conversion, it was not heretical to say that idolaters deserved to be

non incluso sufficienter aut etiam excluso divini iuris ordine, censenda est hereticalis, implicans contradictionem et iudicio fidei reprobanda.”

<sup>46</sup>Acta Concilii Constanciensis, 1896: 403: “Quia bellans contra Sarracenos pro fide ipsos iuste persequitur, ubi tamen ordo huiusmodi non servatur, patet de iudiciaria potestate et testium pluralitate, cum non sit factus ibi processus iudiciarius nec ipse bellans sit iudex. Forte dicetur, quod quilibet princeps christianus est iudex contra Sarracenos et quilibet bellans eius subditus facit auctoritate iudiciaria aut saltem pape, quasi iudicis ordinarii et quod ibi non exigitur pluralitas testium, quia res de nota est...”

<sup>47</sup>Ibid.: 407: “Hoc preceptum: “Non occides” etiam resolutum ad illud: “Non homicidium facies”, accipiendo homicidium pro hominis occisione secundum vocabuli virtutem et significationem et derivationem, prout abstrahit a licita vel illicita occisione, est dispensabile. Probatur, quia aliter nullum hominem liceret in quocumque casu interficere, quod est error et heresis impiissimi Manichei.”

exterminated. Condemning the propositions as heretical was dangerous as it would oblige the faithful to believe the opposite of the condemned doctrine as a truth regarding faith (Acta Concilii Constanciensis, 1896: 413–428).

Within the *natio gallicana*, the Falkenberg case came to a close on July 9, 1417, when, after listening to the objections, the Archbishop of Tours proceeded to count the votes *pro et contra* on the sentence proposed by the council commission and it was decided that the whole conciliar assembly could proceed to approve it in a plenary session (ibid.: 362). Thanks to the debates analyzed, I believe that it is possible to affirm that, in spite of the significant differences between the two *causae*, both the focus on the interpretation of the biblical commandment *Non occides* and discussions over the need to undergo *ordo iuris* before proceeding to eliminate a tyrannical prince, make a specific point clear. The council fathers of the *natio gallicana*, in debating Falkenberg's eleven theses, continued to have at the forefront of their minds the debate over the *Justification* of Jean Petit. Even though they won the approval of the *natio gallicana*, the Polish representatives were not as successful with the other nations, and this would lead them to declare their frustration at the final session of the council.

#### THE APPEAL AD FUTURUM CONCILIUM AND SYNODAL PRAXIS

After more than three years and the election of Pope Martin V, the Council of Constance finally concluded on 22 April 1418 with a mass at the final public session. Once it had finished, Cardinal Brancaccio made the long-awaited proclamation: *Domini, ite in pace*.<sup>48</sup> Just as Jean Puy-de-Noix, the recently named Bishop of Catania, was heading for the pulpit to give the final sermon to close the council, the consistorial lawyer Gaspar of Perugia took advantage of the moment to speak on behalf of the Polish and Lithuanian delegation, reading a protest that demanded the condemnation of Falkenberg's *Satira* as heretical due to the fact that it had apparently been condemned by the nations but not by the whole council in a public session.<sup>49</sup> If the council did not proceed with the condemnation, they would appeal *ad futurum concilium*. In response to these statements, Jean de Rochetaillée, Archbishop of Rouen and Latin Patriarch of Constantinople; Jean Mauroux, the Latin Patriarch of Antioch; and a Spanish Dominican monk, spoke, questioning whether the theses had been condemned as heretical by all the

<sup>48</sup>About these events: Boockmann, 1975: 284–286. The primary sources could be found here: Hardt, 1700: col. 1548–1554.

<sup>49</sup>Ibid.: col. 1551–1552. About these events: Brandmüller, 1998: 410–414.

nations. Meanwhile, Simon of Teramo and Agostino Lante reacted against these statements saying that those who had questioned the condemnation of the theses spoke as private persons and not as representatives of their nations (Hardt, 1700: 1551–1552). Next, Paweł Włodkowic attempted to continue the presentation of Gaspar of Perugia outlining details of the case. However, Pope Martin v interrupted him, stating that he would maintain and approve all the decisions and decrees accepted *conciliariter* but not what had been decided without the consent of all the nations.<sup>50</sup> Given that he wanted to continue reading the protest, the Pope ordered silence once again and threatened him with excommunication. Nonetheless, Włodkowic's response was an appeal to a future council (Brandmüller, 1998: 412).

On May 1, 1418, the Polish delegation read out their appeal at the Franciscan Church, also making reference to the events of the final session. The appeal document was delivered to Pope Martin v on May 4, at the Episcopal Palace of Constance, where he lived at the time. On May 9, Martin v summoned a consistory which apparently took place a day later, though Agostino Lante of Pisa, a lawyer at the *camera apostolica* presented a complaint against the appeal.<sup>51</sup> After the representatives of the Polish Crown reiterated their desire to maintain the appeal, the Pope read out a *minuta sub forma Bullae* known by the words *Ad perpetuam rei memoriam* which prevented an appeal on questions of faith beyond the

<sup>50</sup>Hardt, 1700: col. 1557: "...imposito omnibus silentio, dixit, respondendo ad praedicta, quod omnia et singula determinata et conclusa et decreta in materiis fidei per praesens concilium conciliariter tenere et inviolabiliter observare volebat et nunquam contravenire quoquo modo. Ipsaque sic *conciliariter* facta approbat [papa] omnia gesta in concilio conciliariter circa materiam fidei et ratificat et non aliter nec alio modo." About the concept *conciliariter* in opposition to *nationaliter*: Brandmüller, 1998: 418–420. The author mentions the importance of these events for understanding the true meaning of the expression. With this statement Martín v said that he would approve everything that had been approved by the council in the plenary session and not by individual nations alone. According to Brandmüller this is important to an understanding of the theological debates of the 60s regarding the doctrinal value of the decrees *Haec sancta* and *Frequens*. The term *conciliariter* also appeared in the bull *Inter cunctas* on 22 February, 1418. Regarding this topic see the changes in Paul De Vooght's view De Vooght, 1964: 64: "Le 22 avril 1418, à la dernière session du Concile de Constance, Martin v a déclaré qu'il approuvait tout ce qui avait été décidé *conciliariter*, j'ai pris argument de la déclaration de Martin v pour affirmer qu'il avait approuvait le conciliarisme. Je ne retire rien de ce que j'ai dit là-dessus, mais je pense qu'il y a lieu de préciser le *genre* d'approbation donné par Martin v en cette circonstance." Later the same author commented on this in De Vooght, 1971: 128: "La cuestión de si Martín v aprobó o no el decreto *Haec sancta* es, de hecho, totalmente secundaria..."

<sup>51</sup>For the dates of these events as seen in the sources: Bäumer, 1964. A text of the appeal is found in Monumenta mediæ aevi..., 1874: 432–440.

Apostolic See (Bäumer, 1964: 200). It is interesting to note that although the prohibition on appeals to the council was incorporated in the tradition from that moment, the text was never published in the form of a bull. One of the main pieces of evidence related to this *minuta* comes from the pen of Jean Gerson who quickly warned of the potential ecclesiological problems that might result from such a prohibition.<sup>52</sup>

Shortly after Martin v's prohibition on appeals to the council, Gerson wrote a brief treatise on the issue under the title *An liceat in causis fidei a papa appellare* in which he asked the rhetorical question of whether the prohibition on appeals to the council was Catholic and whether it did not go against *ius divinum* and *ius humanum*.<sup>53</sup> In fact, according to Gerson, the Constance decrees contradicted the prohibition on appeals, especially the *Haec sancta* approved in the fifth session of April 6, 1415 which, in addition to union and reform, called for the need to obey the council on issues related to matters of faith.<sup>54</sup> The prohibition on appeals to the council clearly questioned the conciliar authority which had just brought an end to the Schism. This prohibition on appeals *ad futurum concilium*, would have a series of consequences. Firstly, the Pope would not be subject to the *lex divina* or *evangelica* established by Christ who had said that anyone who sinned against him must be submitted to *correctio fraterna* and if they did not see their error, they would have to appeal to the Church (Mathew 18:15).<sup>55</sup> Another significant consequence would be that Paul had violated divine and human law when he had corrected Peter (Galatians 2). In fact, his resistance to Peter had been the equivalent to an appeal to the Church.<sup>56</sup>

<sup>52</sup>Gerson, 1960–1973b: 302–303: “...cui appellationi cum respondendum esset, lecta est, ut dicitur, in consistorio generali et publico quod ultimo Constantiae celebratum est, *minuta quaedam sub forma Bullae*, destruens, ut asserunt qui legerunt eam, fundamentale penitus robur nedum Pisani sed Constantiensis Concilii et eorum omnium quae in eis, praesertim super electione Summi Pontificis et intrusorum ejectione, attentata factave sunt.”

<sup>53</sup>For an edition of the text: Gerson, 1706b: 297–290 and *ibid.*: col. 303–308; *ibid.*: 303D. About the context: Mcguire, 2005: 280–281. On the relationship between the *ius humanum* and *ius divinum*: Flanagin, 2008; Provvidente, 2018.

<sup>54</sup>In fact, the text began by citing *Haec sancta*: Gerson, 1706b: col. 303.

<sup>55</sup>*Ibid.*: 304A, col. 304: “Sequerentur enim primo, quod Papa non sujiceretur legi divinae, vel evangelicae, quae generaliter absque omni exceptione promulgata est a Christo Matth. XVIII.” Regarding these texts: Sère, 2016: 200–246.

<sup>56</sup>Gerson, 1960–1973a: 284: “Sequetur secundo quod Paulus egisset contra ius divinum et humanum dum restitit Petro in faciem, hoc est publice et coram Ecclesiae congregatione, sicut habetur ad Gal II. Haec enim resistentia non fuit minor provocatio Pauli contra Petrum quam fuisset appellatio ad Ecclesiam, immo fuit equivalenter appellatio. Unde et si Petrus desistere noluisset, fuisset ab Ecclesia condemnandus.”

Third, the Pope, who was a member of the body of the Church, could not be removed if he caused *scandalum*, and that went against evangelical doctrine and even natural law.<sup>57</sup> Fourth, Peter, the high Pontiff, would not have been obliged by the apostles to justify himself when he accepted the Gentiles of Judea into the faith (Acts of Apostles 11).<sup>58</sup> Fifth, if someone was harmed by the Pope, there would be no means of defense which went against natural law (Gerson, 1960—1973a: 285). Sixth, a Pope could not be judged and deposed by the council if he became a scandal for the Church.<sup>59</sup> Seven, Gerson argued that the council would not be the *iudex legitimus* of the Pope in contrast to what had occurred at the Council of Constance. On this last point, it is interesting to note that Gerson argued that a mere declaration of heresy would not make the Pope inferior to anyone and thus a deposition process would not be necessary. On the contrary, as the case of John XXIII showed, he had been considered a true Pope until the moment the council had judged him *tanquam suum seditum* through a definitive sentence issued after a formal process. Claiming that it was the mere heretical act of the Pope itself that made him unworthy of the office would generate uncertainty in the *politia ecclesiastica* and approve a doctrine similar to that of Wyclif which argued that someone who committed a mortal sin could not become a Pope or bishop and could not legally consecrate the sacraments. It was not just the *peccatum haeresis* that caused his deposition *eo facto* but a *humana depositio* was necessary.<sup>60</sup> Finally, Gerson said that if appeals to a council

<sup>57</sup>Gerson, 1960—1973a: 284: “Sequeretur tertio, quod Papa, que est membrum corporis Ecclesiae, sicut homines alii, si scandalizaret totum corpus, ipse non esset rescindendus, ut totum corpus sanum fieret; contra doctrinam Christi evangelicam, fundatam in similitudine iuris naturalis Matth. XVIII cum glossis et determinationibus Doctorum in materia de scandalo, se fundatum in hac lege divina et naturali”.

<sup>58</sup>Ibid.: 284—285: “Sequetur quarto quod Petrus, Summus Pontifex, non debuisset compelli reddere rationem ab Apostolis et fratribus qui erant in Judea quia visitaverat Cornelium gentilem; cuius tamen oppositum dicitur expresse Act. XI: cum adisset autem Petrus Jerosolymam, scilicet ubi erat Ecclesia, disceptabant adversus illum qui erant ex circumcisione dicentes: quare introisti ad viros praeprium habentes et manducasti cum illis?”

<sup>59</sup>Ibid.: 285: “Sequeretur sexto quod in nullo casu papa posset iudicari vel deponi per generale concilium, quantumcumque criminis esset vel scandalus Ecclesiae”.

<sup>60</sup>Ibid.: 286: “Sequeretur septimo, et magis ad hominem, quod concilium generale non esset supra papam, vel iudex papae legitimus; cujus oppositum determinavit et practicavit sacrum Constantiense concilium. Amplius non est verum quod papa eo facto quo cadit in haeresim praesertim latentem, sit depositus a papatu sicut nec est verum de aliis episcopis, quemadmodum ista materia declarata est alibi latius, reducendo hanc opinionem ad multiplex inconveniens sicut ad incertitudinem ecclesiasticae politiae et susceptionis sacramentorum, et ad favorabilitatem damnatae doctrinae Joannis Wicleffi qui principaliter innitebatur tali fundamento quod nullus existens in peccato mortali erat papa vel episcopus, nec consecrabat...”

were prohibited, John XXIII would continue to be the legitimate Pope instead of Martin V.<sup>61</sup> Additionally, Martin V would be contradicting his statement that he had approved everything decided *conciliariter* and Pedro Luna would have been unjustly accused of heresy. Next, Gerson argued that the prohibition of appeal to the council was heretical and damaged the ecclesiastical hierarchy as it contradicted a series of eight Catholic declarations, the most important of which stated that in questions of faith only the *ecclesia universalis* through its representative body, the general council, could be regarded as *iudex infallibilis* (Gerson, 1706b: col. 307B). Finally, Gerson alluded to interpretations of some theologians close to the Pope who argued that the constitution did not apply to all cases but only to those in which the Pope had done *id quod in se est* and when he deviated from the faith. Gerson also left the door open for the Pope to eliminate any suspicion against him by condemning as heretical doctrine such as that opposed by the Poles and other similar examples.<sup>62</sup>

Interpretations of Gerson's text *An liceat in causis fidei a papa appellare* have generally been influenced by the ecclesiastical context and the controversies over the Second Vatican Council. In their approaches to the affair, both Karl August Fink and Hans Küng sought to limit the scope of the declaration by Martin V saying that the Pope had only meant to forbid the specific case of appeal related to Falkenberg's theses. Thus, there was no questioning over the superiority of the council to the Pope.<sup>63</sup> Meanwhile, Paul De Vooght, who also sympathized with the spirit of the Second Vatican Council, initially believed that Martin V's prohibition was a reaction against a radical conciliarism and an attempt to limit the authority of the council.

<sup>61</sup>Gerson, 1960–1973a: 278: “Sequeretur octavo et ad hominem multiplex inconueniens in eis quae facta sunt, et quae adherentes praedictae assertioni nullatenus existimandi sunt concedere uelle. Et primo quod Johanne olim XXIII reputandus est adhuc papa sicut prius; et ita quod sanctissimus dominus noster papa Martinus non est legitime electus neque papa; quod idem dominus noster et suum collegium noluit ea quae conciliariter facta sunt per sacrum Constantiense concilium inuolabiliter observare...”

<sup>62</sup>Ibid.: 290: “Porro dominus noster tollere poterit efficaciter suspicionem sinistram quae contran Sanctitatem suam fieri posset, si dicta sua factis compenset, hoc est si sponte, nullo requirente, damnet doctrinam illam pestiferam et crudelem contra Polonos, *cum similibus aliis*, cum tali celeritate qualem materia uergens in scandalum et perniciem reipublicae postulat et requirit, procul *abjecta quamvis acceptione personarum*.” This final expression is one of the most frequent references used by Gerson to allude to the power of The Duke of Burgundy in the Jean Petit affair.

<sup>63</sup>Fink, 1962: 340; Küng, 1962: 250: “Es geht daraus klar hervor, daß es bei der Antwort Martins V. um keinen allgemeinen, grundsätzlichen Entscheid, sondern um einen singulären Entscheid gegen die Polen ging...”

However, soon afterward, he sought to moderate the scope of his statements and argued that the prohibition of Martin V had fewer consequences than he had initially imagined (De Vooght, 1964: 143–181). In fact, according to his interpretation, which twisted slightly the scope of Gerson's text, the prohibition of appeal was not general in nature and did not apply, for example, in the case of a doctrinal error by the Pope. Thus there was no contradiction with the decree *Haec sancta* from the fifth session which stated, in the words of De Vooght, the “dogma of conciliar superiority” (De Vooght, 1963). In addition, according to his perspective on events, Gerson's text demonstrated the resistance that had arisen at the council whose consequence was that the Pope eventually decided not to publish the *minuta sub forma Bullae*.<sup>64</sup> In an article on the issue, Remigius Bäumer, after correcting some errors in the chronology of the events, adopted the view of Hubert Jedin who said that a definitive answer to the question of Martin V's bull could only be pronounced through a reading of the text itself which had never been published as a bull, and that according to the account of Gerson himself as well as the partial publication of the correspondence of the representatives of the Order of Teutonic Knights, there was no doubt that the prohibition was general and not restricted to certain cases in particular (Bäumer, 1964: 209; Jedin, 1965: 16; Forstreuter, Koeppen, 1960).

Beyond the controversy over the Second Vatican Council, Hans Jürgen Becker, in his study of the appeal to the general council which also indicated that this was not an isolated event and appeals could be traced back to the first in 1245, showed that Martin V's prohibition had met with an immediate irritable reaction among some of the council fathers (Becker, 1988: 127). Recently, Tomasz Graff analyzed how the Polish appeal *ad futurum concilium* had been interpreted by Polish historiography, which generally focused on demonstrating the negative consequences of the inflexibility of the Polish delegation at the end of the council. In contrast, Graff noted that it was in fact their intransigence that earned them good long-term results as, after spending several years in prison, Falkenberg ended up recanting his theses (Graff, 2017: 143–176).

According to Paul De Vooght, Gerson reacted to the prohibition of appeal on a matter of principle as he realized that there were some important contradictions between the prohibition of appeal to the council and the synodal

<sup>64</sup>De Vooght, 1967. This hypothesis was not explicitly demonstrated by author.

praxis of the Council of Constance. It is no coincidence that Gerson began his text with a citation from the decree *Haec sancta* in which the council's superiority was affirmed on matters related to union, faith, and reform (De Vooght, 1967: 67). Although his ideas clearly cannot be projected onto all of the council fathers, he believed that the failure to condemn certain heretical theses appeared to undermine the conciliar authority that had made the solution to the Schism possible.

If the general council acted *regula a spiritu sancto directa* and could not be wrong on matters of faith, the lack of a concrete decision on the Falkenberg case, like the case of Jean Petit, seemed to expose certain contradictions in Gerson's ecclesiological view.<sup>65</sup> During his exile in Melk after the Council of Constance, Gerson wrote the *Dialogus apologeticus* which, among other things, sought to justify his actions in the Jean Petit case but also mentioned the conflict originated by Martin V's prohibition of appeal to the a council. The text was conceived as a fictitious dialogue between a master, Monicus, and his disciple Volucer and in it, Gerson stated through Volucer that he believed that Cardinal D'Ailly would have been much better placed to explain the lack of condemnation by the council of certain theses that were openly heretical. It was the *zelus habenda unionis* that had led many of the council fathers to tolerate things that in another context would not have been tolerated.<sup>66</sup> In the case of Falkenberg's theses especially, it remained to be explained why the consensus apparently obtained in the *natio gallicana* condemning them as heretical could not be replicated by the other nations. As in the case of Petit, the question was left open without a decision even though Falkenberg's fate had been sealed on June 6 when he was condemned by the general chapter of his Order to remain in prison (Brandmüller, 1998: 175). The causes of this lack of decision are multiple

<sup>65</sup>Gerson, 1960–1973b: 115–116: “Non est possibile stante lege Christi concilium generale aut universalem ecclesiam congregatam debite in determinando veritates fidei aut necessarias vel utiles pro regimime ecclesiae errare [...] ecclesia congregata vices universalis ecclesiae gerens est inobliquabilis circa fidem et mores ad determinandum pro universali ecclesiae regimine [...] Sicut ecclesia universalis congregata habet singulare privilegium in tradendo fidelibus credenda explicita aut necessaria pro ecclesiae regimine et hoc vel indicative vel obligative, ita multitudo fidelium singulariter trahitur a spiritu sancto ad assentiendum determinative aut auctoritative per ecclesiam congregatam.”

<sup>66</sup>Ibid.: 302: “Volucer-Sua fuit insuper conversatio assidue cum illo praeceptore suo quam sapientissimum et prudentissimum nemo dubitaverit, cardinalem Cameracensem dico; poterit ille multo doctius et salubrius cum auctoritatis pondere super hac re verbo vel scripto tradere qui cognovit. Hoc unum scio quod zelus habendae unionis in schismate tam desperato tantique temporis, fecit multa tolerari quae fuissent aliunde nec tolerabilia nec toleranda.”



and can only be a matter of conjecture. The council might not have wanted to make a definition on the thorny and difficult theological question related to the killing of a tyrant for which there was no definitive answer and, at the same, time the council fathers did not want to increase political tensions within the *nationes* raised by both issues, the *causa* Petit and the *causa* Falkenberg.<sup>67</sup> There is no doubt that the election of Martin V came as a relief to the Order since the recently elected Pope had always shown himself to favor it in contrast to John XXIII, the Pope of the Pisan line who had initially summoned the Council of Constance.

#### CONCLUSIONS

Debates on the Falkenberg theses within the *natio gallicana* and the positions that were taken there were the result of attempts to use the Falkenberg case as a means of reopening the discussions over Petit's *Justification*. Although the Gersonists did not achieve a condemnation of the nine assertions taken from the *Justification* of Jean Petit, they believed that a condemnation of the theses of Falkenberg could be read as a new precedent for reopening debates over the *Justification*. Meanwhile, the Burgundians sought to prevent this in order to definitively bring an end to the issue. In that context, impassioned by the dispute, both the Gersonists and the Burgundians appear to have forced similarities and analogies between the two *causae*. For that reason, the debate focused on two issues that had been very important to the Jean Petit case: the interpretation of the biblical commandment *Non occides* and the debate over the need for a public process to decide upon the nature of a tyrant or a heretical king as a necessary step prior to their elimination. Seen from that perspective, the similarities between the two *causae* were exaggerated in spite of the considerable differences in the context of the debates and the conceptions of tyranny under discussion. These facts have led a good part of the historiography to take a distorted view of the affair, emphasizing the similarities between the two cases. Although there is no doubt that the debates on the agenda of the council were very different when the theses of Falkenberg were discussed compared to the other *causae fidei* (Wyclif, Hus, Jerome of Prague), Gerson, like other council fathers, believed that the lack of condemnation as heretical of certain theses on tyrannicide undermined the authority of the council as founded in the decree *Haec sancta*. With the prohibition of appeal to the council

<sup>67</sup>On the failure to make a final decision on these two issues Franken, 2016–2017; for a different interpretation: Rollo-Koster, 2018; Rollo-Koster, 2022: 185.

by Martin v within the context of the Falkenberg *causa*, this became even clearer. In the final phase of the council, Gerson concentrated on noting that acceptance of the prohibition of appeal to the council represented a contradiction with the synodal praxis carried out in Constance until that moment. The decree *Haec sancta* would also be invoked at the end of the council as a justification for synodal praxis even when the union of the Church had been achieved.

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СЕВАСТЬЯНО ПРОВВИДЕНТЕ

PhD, PROFESSOR

НАЦИОНАЛЬНЫЙ ПЕДАГОГИЧЕСКИЙ УНИВЕРСИТЕТ (БУЭНОС-АЙРЕС, АРГЕНТИНА)

НАУЧНЫЙ СОТРУДНИК

МЕЖДИСЦИПЛИНАРНЫЙ ИНСТИТУТ ИСТОРИИ И ГУМАНИТАРНЫХ НАУК

(БУЭНОС-АЙРЕС, АРГЕНТИНА)

ДЕЛО ИОАННА ФАЛЬКЕНБЕРГА  
И СОВОРНАЯ ПРАКТИКА  
НА КОНСТАНЦСКОМ СОВОРЕ (1414–1418)  
МЕЖДУ СОВОРОМ И ПАПОЙ

Получено: 26.09.2022. Рецензировано: 27.10.2022. Принято: 30.11.2022.

**Аннотация:** На Констанцском соборе (1414–1418) епископы сумели добиться осуждения тезисов Джона Виклифа, Яна Гуса и Иеронима Пражского, однако трактат Жана Пти об оправдании тираноубийства был признан собором вздорным, но не еретическим: в декрете *Quilibet tyrannus* отрицалась безусловная легитимность тираноубийства. Нечто подобное произошло и с некоторыми тезисами Иоганна Фалькенберга, поскольку — хотя их автор был заключен в тюрьму, а его тезисы были названы мятежными — они не были прямо осуждены собором как еретические. Это стало причиной настойчивых жалоб представителей польской короны на папу Мартина V, который заявил протест на последнем заседании собора. Он объявил, что дело не было разрешено должным образом, и представил апелляцию на это решение, адресованную следующему собору. В данной статье анализируется спор вокруг тезисов Иоганна Фалькенберга на Констанцском собо-

ре с акцентом на дебаты, происходившие внутри представителей галликанской церкви. Также предпринимается попытка объяснить корреляцию между укреплением соборной власти и ходом дела Фалькенберга.

**Ключевые слова:** ересь, тирания, процесс, концилиарное движение, инквизиция, Фалькенберг.

DOI: 10.17323/2587-8719-2022-4-61-98.

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Zaytseva, A. V. 2022. "Flesh and Blood vs Rigor of Justice : The Concepts of Justitia and Aequitas in 'Processus Satanae contra genus humanum'" [in English]. *Filosofiya. Zhurnal Vysshey shkoly ekonomiki [Philosophy. Journal of the Higher School of Economics]* 6 (4), 99–126.

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ARINA ZAYTSEVA\*

## FLESH AND BLOOD VS RIGOR OF JUSTICE\*\*

THE CONCEPTS OF JUSTITIA AND AEQUITAS  
IN "PROCESSUS SATANAE CONTRA GENUS HUMANUM"

Submitted: Sept. 15, 2022. Reviewed: Oct. 05, 2022. Accepted: Nov. 02, 2022.

**Abstract:** A fifteenth-century treatise, *Processus Satanae contra genus humanum*, is a peculiar artefact of late medieval culture as it blends theological, theatrical, and juridical elements significant for the period. Intended as a manual for law students, it provided an idealized example of an ordinary court hearing. According to the plot, the Devil files a complaint against the entire humankind and demands that it returns to his possession. He sends a demonic representative to defend his interests, while the Virgin Mary assumes the role of humankind's lawyer. The trial is presided by Jesus Christ the judge. After an exhausting debate, the forces of good win the case. Underneath this entertaining and grotesque façade lies a serious discussion about different types of justice and their importance for a real-life judge, lawyer, or plaintiff. The author of *Processus Satanae* distinguishes two types of justice—*justitia* and *aequitas*. *Justitia* refers to rigorous justice of human law, while *aequitas* refers to righteousness coupled with mercy. The latter comes directly from God; without *aequitas*, *justitia* becomes rigid law that has no real power in Christian sense. Since the Devil and his servant rely exclusively on *justitia*, as they do not know misery and empathy, they ultimately lose the case. In this way, the treatise warns law students against following the letter of law blindly and without regard for individual circumstances.

**Keywords:** the Image of Satan, Civil Law, Canon Law, The Concept of Justice, Aequitas, Justitia.

DOI: 10.17323/2587-8719-2022-4-99-126.

The peculiar treatise *Satan's Process Against the Human Race* (*Processus satanae contra genus humanum*)<sup>1</sup> — part of a well-developed literary tradition — was actively reproduced in manuscript and later printed form and disseminated in large numbers throughout Central and Western Europe. *Processus Satanae* enjoyed long-lasting popularity and was read throughout Europe up until the seventeenth century (Pasciuta, 2015: 14). It even

\* Arina Zaytseva, MA in Medieval Studies; PhD Student at the Rice University (Houston, USA), arinazajtseva@gmail.com, ORCID: 0000-0002-7238-7887.

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<sup>1</sup> I am very grateful to my undergraduate advisor Professor Alexander Marey for his academic advice and continuous support. This essay is a shortened version of my undergraduate thesis written under Professor Marey's guidance.

found its way into the private library of the Swiss Reformation leader Huldrych Zwingli (Urs & Weidmann, 2019: 94). Zwingli apparently picked up his copy — also attributed to Bartolo da Sassoferrato — at the library of the Grossmünster Abbey in Zürich and seems to have read at least the beginning of it, judging by his markings.

The primary source I worked with for this research is a printed edition, dated 1495 and published in Leipzig by the publishing house of Gregor Boettiger. This edition belongs to the so-called literary tradition of *Satanprozessen* or *Satan's Processes*, which includes various texts with a similar plot. The earliest manuscripts date from the middle of the 12th century (Pasciuta, 2015), and treatises on this story then begin to be rewritten and republished more and more often. Further dating can be done according to the classification of the texts of the tradition proposed by the German researcher Carmen Cardel de Hartmann (Hartmann, 2007: 306). All publications are divided into three groups according to the author and the dates of creation. The first group consists of the *Advocacia* texts (*Advocacia-Fassung*) that were composed by the French bishop Guido de Collemedio and date back to the middle of the 13th century. The texts of the second group are named after the main antagonist — the demon *Mascaron* (*Mascaron-Fassung*). This version of the plot first appears in the work of the Dutch author Jacob van Maerlants and dates back to 1262. The third group of the *Processus Satanae* are considered to be written by the Italian jurist and professor of law Bartolo of Sassoferrato (*Bartolo-Fassung*) and date to Bartolo's lifetime (1313/4–1357).

The authorship of the treatise poses a problem. There is no certainty among scholars on whether this treatise was written by Bartolo himself or was signed with his name and wrongly attributed later. The dispute on the authenticity of Bartolo's authorship is ongoing among researchers of *Processus Satanae*. Pasciuta is skeptical of this attribution, however she notes that the debate about the authorship remains unresolved.<sup>2</sup> However, the very fact that this small work was attributed to a respectable and

<sup>2</sup>Quaglioni is of the opinion that Bartolo is the authentic author, citing the article by Robert Jacquine, in which it is shown that there are no reasons to doubt the medieval lawyer's authorship at the moment; see Diego Quaglioni, "La Vergine e il diavolo. Letteratura e diritto, letteratura come diritto," (Quaglioni, 2004: 39–55). Pasciuta, on the contrary, is inclined to believe that this treatise had an anonymous author who was identified as Bartolo several centuries later. The rewriting and reissue of it both in Latin and in vernacular languages confirms the interest of medieval readers in this treatise. See Pasciuta, 2013; Pasciuta, 2015: 13, 56–57.

well-known medieval jurist speaks of the text's popularity, as it might have been an attempt to see an authoritative personality behind this treatise. The desire to legitimize this text could have helped to promote it among readers or to explain and consolidate its already existing popularity.

The plot of *Processus Satanae* revolves around a heavenly trial which begins with the Devil filing a lawsuit against humankind and demanding that it be returned to his possession. The Virgin Mary is the advocate for humankind while the Devil and his minions elect a demonic representative. The debate takes place before the supreme judge, Jesus Christ. This curious plot arose at the intersection of three vectors of Western medieval culture—scholastic theology, jurisprudence, and popular culture. The image of the confrontation between the forces of good and evil in a grotesque trial stems back to medieval mysteries. Legal details, many references to the codes of civil and canon law are a nod to the Italian legal tradition and signify a possible purpose of this treatise. According to Pasciuta, *Processus Satanae* was intended as a study manual for legal students (Pasciuta, 2015: 14). The treatise employs legal vocabulary to explain the subtle philosophical distinction between the concepts of *aequitas* and *justitia*, both of which play an important part in jurisprudence and in the theological understanding of ethics. Lastly, the author of the treatise sees the figures of the Virgin Mary, Christ, and the Devil as major actors in the sacred history of Christianity, even though they participate in a secular lawsuit.

This plot gives these characters an opportunity to meet face to face in a heated debate. Here the Devil ceases to be an abstract monster depicted by medieval artists, he appears in court and logically argues his case. The heavenly court itself appears to be quite secular and not at all similar to the fabled and terrifying Last Judgment. The Christian functions of these figures is translated into legal roles. At the trial, Christ assumes the role of the supreme judge, the famous protectress of humankind, the Virgin Mary, becomes its legal advocate, and the Devil himself becomes a plaintiff who tries his best to win the case and possess humankind once again. Thus, the events of the heavenly trial in many ways becomes paradigmatic for the culture of the Late Middle Ages.

In this essay, I explore the legal side of the trial, especially with regards to the concepts of *aequitas* and *justitia*. What were the functions of these concepts according to the author of *Processus Satanae*? How did the theological-liturgical format correlate with the legal core of the plot? How did the characters of the treatise treat these ideas?

I should briefly mention that this work presents only a part of the findings from my BA research which I completed in 2016 under the guidance of Professor Alexander Marey. Shortly after the completion of my thesis I learnt that Pasciuta — a professor of medieval law at the university of Palermo, whose article I cite in my work — had published a book on *Processus Satanae*. I was able to get a hold of her book a year later to compare my own findings and translation with hers. However, before this research came to print, I worked with my own translation of the treatise from Latin to Russian. The present paper is based on the translation I completed during my undergraduate studies. I have also translated parts of the treatise into English for the present article.

#### THE PLOT

The treatise begins with the story of humankind’s fall and redemption through the sacrifice of Jesus Christ. After losing his control over humankind, the Devil decides to win back his “ancient right” or *ius antiquus* in court. The hearing is to be held at the heavenly court, where the Devil cannot enter since he is eternally bound to his hellish realm. Therefore *infernal malice* holds a council in Hell and elects one especially astute demon to go into Heaven and act as the Devil’s representative.

Upon reaching Heaven, the demonic representative attempts to relate his master’s woes to Christ before the trial has even begun, but Christ refuses to listen to him as He reminds the demon that according to Canon Law the judge can hear points of litigation only during the trial.<sup>3</sup> The demon then implores the judge to make the entire humankind appear in court in three days as the trial can start only after the appearance of both parties. He also shows his official mandate (*procuratorium mandatum*) which officially sets the process in motion.<sup>4</sup> Christ states that the trial will happen in three days, on Good Friday. The demon tries to dispute the date, as according to *legis Iuliae* a trial held on holiday is not legitimate, but Christ sees right through his tricks — the demon clearly wants to leave humankind no time to appear in court and thus automatically win the case. The judge powerfully

<sup>3</sup>Sassoferrato, 1495: 4: Tu scis quod merita causarum partium assertionem panduntur ut.C.Si per vim vel alio modo.l.fi.in.fi.et extra de accu.c.Qualiter et quando.l.ii.Unde a te nullatenus volumus informari.

<sup>4</sup>Ibid.: 3: Et ecce procuratorium meum vel mandatum quod coram vobis allego et produco cum alias admitti non debeo.l(ege).i.C(odici).de procu. et extra.de procu.c.i.

states: “We establish the laws and give authority to the laws, and not vice versa, so We demand that the call [to the trial] stays put...”<sup>5</sup>

The demon returns to his hellish colleagues to relate Christ’s words and to plan, while the divine judge asks archangel Gabriel to sound his trumpet to call humankind to court. When the day of the trial comes, the demon shows up on time, but the judge makes him wait the whole day for the arrival of humankind. When no one comes, the demonic representative is ready to celebrate his untimely victory, however, Christ postpones the trial for one more day “as righteousness itself advises”:<sup>6</sup> as he is able to do it and “righteousness is preferred over rigor more often”.<sup>7</sup> The demon has to return to Hell with the bad news, and the council of infernal malice says that there is nothing to do but wait for tomorrow.

Meanwhile, there is a commotion in Heaven as the saints pray to Jesus Christ to save humankind as it cannot possibly appear in court in its entirety. Luckily, the Virgin Mary hears the cries in Heaven and publicly declares that she will act as humankind’s defender in court.

The next day the demon and the Virgin Mary arrive at court. Christ tells the demon to plead his master’s case against humankind. However, the demon refuses to relate his case as he does not see the side of the defendant present in court. The Virgin Mary responds that she does not see the side of the claimant either, as the Devil is not present either. To that the demon presents a legal document — a mandate or *procuratorio* — which certifies his role as a legal representative in court. The contents of the document are as follows:

The demon responds: the part of the plaintiff is established, of course, by my mandate [*procuratorio*], already presented above, produced and written by that hand of a public notary in the year 1301, of the first indiction, in the presence of Rufinus of Maccabee and Cerbaro and many others, invited and called to [witness] the representative document.<sup>8</sup>

<sup>5</sup>Sassoferrato, 1495: 4. Respondet Hiesus: Nos iura condimus et auctoritatem damus iuribus non iura nobis quare volumus citationem valere ut Insti.de iure natu.gen.(de iure naturali et gentium et civili)et ciui.§.Sed quod principi.

<sup>6</sup>Ibid.: 6: Volumus ipsa equitate suadente presentem diem in diem crastinam prorogare quam tibi et humano generi assignamus ad comparandum legittime coram nobis.

<sup>7</sup>Ibid.: Et equitas sepius prefertur rigori placuit Codici de iudiciis.

<sup>8</sup>Ibid.: 8: Respondet demon: Fundata est pars actoris sicut ex procuratorio meo iam super allegato et producto scripto manu Notarii publici Anno domini M.CCC.L.indicti primi et cetera presente Rafino de Machabeto et Cerbaro et quampluribus aliis adhibitis rogatis et vocatis ad cartam procuratorii.

Now it is the Virgin Mary's turn to defend and establish her role in court. The demon once again states that he cannot see the defendants. When the Virgin Mary states that she represents humankind in court, the demon turns to the judge to dispute the legality of this arrangement. He states that, first, the Virgin Mary is a woman and thus is not eligible to be a lawyer according to Justinian's Digest (The Digest of Justinian, 1985: 79.), and second, she is the mother of the judge and so could make him biased.<sup>9</sup> The Virgin Mary refutes both statements, as she states that women are allowed to be in court on behalf of those worthy of misery, orphans, and widows, according to both Canon and civil law. And who is more worthy of misery than defenseless mortals? She is also part of human race and thus she sees it as her duty to defend her own kind during the trial.

After hearing both sides, Christ allows the demon and the Virgin Mary to start the trial. The demon makes the first move and announces his master's case (at this stage he begins to call himself the Devil). He argues that once he had all of humankind in his possession and was robbed of this right, clearly alluding to the Harrowing of Hell. Thus, he asks that he be reinstated as the rightful owner of sinful mortals. The Virgin Mary objects and accuses the demon (and the Devil) of lying, as his right of possession was never legitimate to begin with. He and his minions were mere wardens of Hell and did not own humankind. The true possessor of humankind is God who has created all living things; hence the Devil's case is built on a false premise and his claim must be rejected.

The demon, annoyed, takes out the Bible and reads the lines of Genesis 2:16–17:

And the Lord God commanded man, saying, Of every tree of the garden thou mayest freely eat. But of the tree of the knowledge of good and evil, thou shalt not eat of it: for in the day that thou eatest thereof thou shalt surely die.

He states that Adam and Eve willingly breached their agreement with God and thus were damned and fell into the Devil's hands. The Virgin Mary then responds that the demon has conveniently left out the part about the Devil's role in the Fall—he had deceived Adam and Eve and made them disobey their Creator. Thus, he was an accomplice in their crime and cannot benefit from this case. The demon then addresses Christ directly and states that he is lawfully present in court, despite the Virgin Mary's accusations.

<sup>9</sup>Sassoferrato, 1495: 9: *Nam si matris vestre offitium admitteretur scilicet ut advocare posset pro humano genere possit delevi mater vestra vos Hiesum filium suum ad suam partem trahere et sic ius et iustitia suis terminis totaliter deviarent.*



At this point, something peculiar happens. The Virgin Mary states that the Devil's demonic representative has been playing a foul game this entire time. Although the demon was elected at the council of infernal malice to be the sole representative of the Devil in court, he let in other demonic helpers into court in his guise.<sup>10</sup> Moreover, the Devil himself was able to appear in court under the mask of his minion.<sup>11</sup> This is a clear breach of the trial protocol, and the demon must be denied further hearing. After finishing her impassioned speech, the Virgin Mary begins to cry "following the fragile female sex, always fearing the destruction of humankind."<sup>12</sup> At this point she addresses Christ purely as a mother and a saint, reminding Him that the Devil was behind his horrendous death on the cross. She also reminds Christ that she is His mother who protected and raised Him and who cares about humankind deeply. She even asks emphatically that her name be struck out of the book of saints if Christ decides to concede to the Devil's arguments. This emotional outburst turns the course of the trial, and Christ orders the demon to leave the court. The Devil's demonic representative is enraged and makes another attempt at persuading the judge by stating that the Virgin Mary is extremely biased, and "flesh and blood" made Christ deviate from the path of true justice.<sup>13</sup> Now it is the Devil himself who speaks through the mouth of his minion. He tells Christ that his official titles include "the prince of this world" and "the prince of impious sinners." Since humankind belongs to this world and is sinful, it belongs to him, while Christ possesses only those who are virtuous and pious. This argument seems to be so persuasive that the judge turns to the Virgin Mary for reaction. However, she is unwavering and argues that the Devil has done a lot of evil and so cannot be seen as an innocent victim. The Devil then says that since he was cast out of Heaven without any notice, it would be doubly unfair to leave humankind unpunished since Adam and Eve were warned about the tree of knowledge. The Virgin Mary states that the Devil was an angel and was created without imperfections, unlike human beings, and

<sup>10</sup>Sassoferrato, 1495: 14: Sic est in proposito quod licet demoni plura competant remedia ad prosequendum id quod petit quod tamen non fateor ei competere de iure.

<sup>11</sup>Ibid.: Sic autem est in proposito et fuit quod demon auxilium ordinarium intentavit et ipsum in iudicium deduxit ut supra tetigi et in eo succubuit ergo amplius audiri non debet.

<sup>12</sup>Ibid.: ... sequens mulierum sexum fragilem semper timens subversionem humani generis...

<sup>13</sup>Ibid.: 15: Demon autem iracundia motus dixit ad iudice: Domine Hiesu Criste vos non estis iustus iudex bene video et clare cognosco quod caro et sanguis uter facit vos a iustitie tramite deviare arguit extra de prebendis caput Grave circa principem et viiii.q.i.caput Mayses ea.cau.et.q.i.

thus there is no excuse for the his sin: “Indeed, human beings did not have such knowledge of truth because of the body which burdened the soul.”<sup>14</sup>

The Virgin Mary presses her divine Son to put an end to the Devil’s lies and trickery and set humankind free. At this point, even Christ asks his mother to let her opponent speak for himself, as she talks over him and throws incessant accusations:

Then Jesus the judge said: Oh, mother, let him speak because it is rude to judge someone or respond [to them] without looking at the entire matter, as in The Digest of Justinian, 1985: 13<sup>15</sup>

The Devil states that the circumstances of humankind’s crime against God are not as important as the crime itself, which must be punished according to justice.

The Virgin Mary reminds Christ, that he is both human and God, and understands that humankind sinned due to their imperfect flesh which caused its obliviousness or madness. When the demon tries to get back at the Virgin Mary, Christ finally snaps and silences the Devil’s representative. He states that since He has already died for humankind it would be unjust to persecute human beings again for the same sin and instead, He will wait until the day of the Second Coming to pass the final judgement. The Virgin Mary adds that humans were created in God’s image and thus it cannot belong to the Devil.

The verdict is reached; the Devil’s case is dismissed. The Archangel Gabriel invites both parties to the court on Easter day, and Christ announces the freedom of humankind, “Indeed, it follows according to the most sacred legal writings of truth, which we want to follow.”<sup>16</sup> The treatise ends with the announcement of St. John the Evangelist revealing himself to be the public secretary and court scribe. He enumerates some of the saints who bore witness to the process and signs the date of the trial: “In the year of the Lord 1350, in the first indiction, on the sixth day of the month of April.”<sup>17</sup> The last sentence reveals that the author of the treatise is the great lawyer Bartolo himself.

<sup>14</sup>Sassoferrato, 1495: 18: Nam enim homo talem certitudinem non habuit propter corpus quod animam aggravabat.

<sup>15</sup>Ibid.: 20: Tunc dixit Hiesus iudex: O mater dimitte ipsem dicere quia incivile est nisi toto negotio prospecto aliquid iudicare vel respondere ut Digestorum de legibus lex Incivile

<sup>16</sup>Ibid.: 22. Humanum generis hac sententia diffinitiva absolvimus et ab impetio ne procuratoris nequitie infernalis reddimus absolutum. Cum hic consonet sanctissimis scripturis iurisce veritatis quam in hoc sequi volumus.

<sup>17</sup>Ibid.: 23: Anno domini M.CCC.L indictione i die vi mensis aprilis.

This concludes the story of the heavenly court related in the *Processus Satanae*. The plot gives rise to many questions. How are the legal and theological elements balanced in this story? Why does the Virgin Mary see it fit to cry in order to gain the judge's favor? How is it possible for the Devil to show up in court if he is bound to his hellish realm? What are the different sorts of justice that the litigating sides appeal to? Why does the Devil ultimately lose the case even if he and his minion provide sound arguments? Finally, what was the function of this amusing and bewildering text? I address these questions below.

#### THE DISTRIBUTION OF POWER

I begin my analysis by looking closely at the legal roles each side plays in the heavenly court. It seems fit to begin with the Devil, the council of infernal malice, and the demonic representative, since the treatise is named after them.

As we have seen, the interests of the Devil in the heavenly court are represented by the demon-procurator, chosen by the council of infernal malice for his inquisitiveness and ingenuity. At first glance, it may seem that we are faced with two completely different characters. Each of them plays a distinct role in the development of the plot: the Devil is the plaintiff, who must remain in his hellish domain, while one of his demons becomes his representative and goes to Heaven on his master's behalf. However, as the process progresses, the demon and the Devil seem to merge into one entity, and the Devil himself begins to speak *through* his representative. The Virgin Mary and Christ notice this and address the demon as if the lord of the underworld himself were in front of them. Not only does the demon represent his master's interests in court, but also gives him a chance to enter the court in his guise. This questions the nature of the demon and his relationship with the Devil. Since, if they are two different entities, the appearance of the Devil in the heavenly court should be considered a legal fiction (in an ordinary trial, when one addresses a representative, it is assumed that it is the plaintiff or defendant who is addressed). Conversely, if the demon is, in fact, consubstantial with the Devil, then the situation must be addressed in theological and not legal categories. Let us now turn to the relationship between the Devil and demons, as they were perceived in the culture of the European Middle Ages.

THE FALL AND RISE OF THE DEVIL:  
THE DEVIL AND HIS MINION IN THE HEAVENLY COURT

First, we should revisit the plot of *Processus Satanae*. The demon chosen by the council of infernal malice goes to Heaven to begin the lawsuit. He refers to himself as a representative or a procurator of the Devil and speaks on his behalf. In order to make his presence at the trial official, the demon provides a document or *mandatum* declaring his role as an attorney. This document was written and sealed on earth in the year 1301 in the presence of witnesses, Rufinus Maccabeus and Cerbaro.<sup>18</sup> The contents of the document are of little interest to the participants of the trial, since its mere presence is enough. According to Gurevich, the physical existence of a document was often more important than its contents for a medieval person (Gurevich, 1981: 186). The document was deemed to have legal power only if a sufficient number of—usually local—witnesses were present at the moment of signing and sealing. Their presence during the signing of a legal document served as evidence of its validity (*ibid.*: 187). Thus, the demon proves his right to represent the Devil in court in accordance with the laws of the human world. Only the demon can be present in court according to his legal documents. He must rely on purely legal norms, while the Virgin Mary ensures her right to defend humankind by theological means—she can appeal directly to her and her Son’s authority in Heaven.

The demon-representative has a distinct physical appearance which makes him more tangible than his evil master. Obviously, the demon’s appearance is described purely negatively: he appears before the judge “humble in appearance and impudent in spirit,” trying to hide his evil nature, but he fails to outwit the Virgin Mary, who immediately sees how terrible the demon looks and acts. The demon grinds his teeth and contorts his face when angered and has a pouch for storing documents hanging around his neck. He, as a fleshed-out character, has a distinctive appearance, and is able to perform physical actions, just like Christ and the Virgin Mary.

We know that the Devil cannot be present during the trial. This, however, is contradicted by the demon-representative’s self-identification. At the very beginning of the treatise, he declares: “Lord God, I am that accursed one

<sup>18</sup>These are demonic witnesses, as their names suggest: Rufinus is derived from the Latin word “rufus” or “red-haired”—a well-known feature of demonic entities, while Cerbaro seems to derive from the name Cerberus, the hound of Hades.

whose claim against the human race I will file today before you.”<sup>19</sup> Here he confirms his role as a representative while also identifying himself with the Devil. The images of the demon and the Devil become inseparable from one another.

There is also another actor on the side of evil forces — the council of infernal malice that elects the demon. According to Alexander Makhov, demons were seen as ubiquitous and part of a single evil entity, a combination of evil and vices (Makhov, 2006: 247). These ideas about the Devil and his demons stemmed from several medieval beliefs. First, there was a widespread belief in a devilish trinity, or rather, the anti-trinity, which was a perverted analogue of the Holy Trinity.<sup>20</sup> This concept appeared first in the writings of the commentators on the Book of Revelation and then found its way into the story of the Harrowing of Hell, where the anti-trinity consists of death, the Devil, and Hell personified (ibid.). In the case of *Processus Satanae* the anti-trinity consists of the Devil, the council of infernal malice as the totality of evil, and the demon-representative.

The image of the anti-trinity is influenced by another popular belief. Makhov mentions the idea of the omnipresent nature of demons — both a strength and a weakness. Paradoxically, demons and the Devil were imprisoned in Hell, but at the same time they could enter the human world tempting and attacking human beings. Many theologians have tried to solve this problem, among them Bede the Venerable. In his theory, rejection from God was considered a true hell, and therefore fallen angels who turned into demons were doomed to experience eternal punishment and suffering wherever they were (ibid.: 180). The author of *Processus Satanae* expresses the same idea as he argues that demons can potentially be everywhere, but the punishment for their sins cannot be lessened just because they are not present in Hell. Thus, this ability to leave Hell allows the Devil himself to enter the Heavenly court.

Both the Virgin Mary and Christ recognize the Devil in his guise. The angels present the demon in court in a following manner:

Oh, protectress of humankind, behold the insidious procurator of infernal malice, damned for his immense pride, which he had while he was among us.<sup>21</sup>

<sup>19</sup>Sassoferrato, 1495: 5: Domine deus, ego sum ille damnatus qui habeo hac die conqueri coram vobis contra genus humanum.

<sup>20</sup>On the concept of anti-trinity see Kaup, 2021: 221–266.

<sup>21</sup>Sassoferrato, 1495: 7: O avvocata humani generis vide versutum procuratorem nequitie infernalis damnatum ex eius immensa superbia dum inter nos residentiam fatiebat.

Thus, the image of the demon merges with the image of the Devil. When the demon tries to accuse humans of failing to appear in court, Christ reminds him of how long the path from Heaven to earth is, directly alluding to the Devil's fall. The Virgin Mary acts as if the Devil himself were in front of her, as she points out his deceitful nature, his constant deceptions, and even reminds her Son that the Devil, who caused Christ's suffering, is now in court. Both Christ and His mother understand that the demon is "a vessel" that the Devil can use. The Virgin Mary points to the demon's deception as he illegally let his master into court, even though he can only represent the Devil in court according to his official papers.

The Devil has reasons to enter the court himself, as much is at stake for him. He does not file a lawsuit against Christ, but against humankind, who must collectively answer for their "unlawful" escape from his control. The image of this trial against the totality of humankind is influenced by two important medieval concepts. First, this is a "mock trial," a preparation for the Last Judgment. The process starts in the year 1301 AD — when the witnesses sign the demon's document of representation — and the trial itself happens in 1350 when Christ makes his final decision on the case. Thus, humankind is given another chance to live a righteous life before the Second Coming and its liberation from the Devil's yoke is confirmed. Second, the participation of all humankind in this imaginary trial refers to the ideas of anonymity and equality of every human being in the face of Christ. According to Gurevich, a medieval person is not a separate unit of society, they do not have a clearly defined individuality, but always belong to a greater community. Hence the Devil attempts to lay claim to entire human race and not just individual sinners as he too perceives humankind as a single entity (Gurevich, 1981: 200).

#### THE DEVIL'S OPPONENTS: THE ROLES OF THE VIRGIN MARY AND JESUS CHRIST

The Devil's opponents play important roles in the plot of *Processus Satanae*. Just like the Devil and his servant, the Virgin Mary and Jesus Christ assume legal roles in court and take on the duties of humankind's lawyer and judge. The forces of good and evil were perceived as connected in medieval theology and popular thought, they were inseparable from one another. Their constant confrontation and struggle (at least until the Second Coming) were central for a medieval understanding of the world and united the events of Sacred history and everyday earthly life.

Those in Heaven and Hell existed in binary opposition and yet were reflections of each other. The evil nature of demons and the Devil was thought of as “not good,” “anti-good” (Cox, 2004: 6). According to Stuart Clark, medieval demonology was created dialectically from what it was not. Hell and its dwellers were perceived as distorted reflections of Paradise with its divine hierarchy. Hence, a peculiar symmetry of Heaven and Hell arises, in which the latter tries to imitate the former, since it does not enjoy an independent existence (Clark, 1997: 83).

The world of *Processus Satanae* is built on this opposition. Christ rules in Heaven and the Devil is the ruler of the underworld. The demon and the Virgin Mary represent the interests of the plaintiff and the defendant respectively. Moreover, their decisions are supported by their entourages: in the demon’s case it is the council of infernal malice, and in the Virgin Mary’s case it is the choir of angels and the army of saints that invite her to court. The terrible weeping and the gnashing of teeth of tormented sinners resound throughout Hell, while triumphal trumpets of angels and music of the divine choir bring joy to Paradise.

Such harmonious symmetry is violated by the demon-representative who is allowed to enter Heaven but only on his own as he becomes the sole representative of Hell there. He is deprived of support and forced to compete with the Virgin Mary who has the whole of Heaven to support her. In this regard, the figure of the Virgin Mary is of particular interest, as she too breaks the mirroring of Heaven and Hell and enjoys a distinct position in the divine hierarchy (Makhov, 2006: 82–83). Due to her dual status as the mother of God and a human being, she was seen as a divine intercessor on behalf of human beings.

One of the main paradoxes of the heavenly process, discussed in particular by Karl Shoemaker, lies in the attitudes and affective strategies employed by the plaintiff’s representative and the defendant’s lawyer (Shoemaker, 2012). The appearance of a female lawyer should raise many questions for a medieval reader. Unlike the well-trained demon, who uses only the laws of civil and canon law and refers to the Bible (albeit often in a facetious manner), the Virgin Mary often uses *ad hominem* arguments, humiliates the demon, refuses to listen to him, interrupts him, and even bursts into tears and emotionally manipulates her Son. Yet she wins the case, although the demon tries several times to appeal to the judge and seek justice. What is the Virgin Mary’s secret and how does she manage to win the trial?

In medieval popular culture, the Virgin Mary was seen as the main protector of believers, a source of mercy and unconditional love.<sup>22</sup> Her powers went beyond what was “permitted” by divine justice—Makhov notes that the mother of God could save even a hopeless criminal, provided that they revered her. The Virgin Mary considered every sinner as an individual with their own vices and virtues, her sympathy for sinners could even be seen as unreasonable. This distinguished her from the Devil, who mercilessly judged everyone who strayed from the righteous path (Makhov, 2006: 83). Thus, the Virgin Mary played an important role in Christian theology, taking on the function of an “irrationally” merciful helper and protector. God was the Creator of the world and established divine justice, His was fearsome and awe-inspiring. Human beings needed a mediator between them and God, someone who could placate the wrath of God.

This characteristic of the Virgin Mary allowed theologians, for example, St. Bernard of Clairvaux, to maintain God’s status of the steward of divine justice, which was in many respects cruel and punishing, while the mother of Christ provided a promise of mercy (Taylor, 2005a). In *Processus Satanae*, the Virgin Mary loves humankind and treats believers as her children, she reacts emotionally to the Devil’s attacks on them. It is in connection with the Virgin Mary that we encounter the voice of humankind itself, which calls out to her in its prayers: “Mother of mercy, protect us, that is, the human race, from the evil enemy.”<sup>23</sup> It is also worth mentioning that in the course of the trial, Christ also shows mercy, postponing the day of trial to give humankind a chance to defend itself. He motivates this by stating that justice should be preferred to the severity of the law. But it is the Virgin Mary who becomes the main conduit of mercy.

The Virgin Mary’s tears may look ridiculous in the heavenly court, but they play an important role in the development of the trial. The Mother of God falls on her knees in front of her Son and bursts into tears in fear that humankind will fall into the hands of the Devil. Her tears touch the entire heavenly army, and they too begin to cry. In the Virgin Mary’s case, such emotional behavior is not a trick, but another way of intercession and showing her mercy and her never-ending concern for the fate of God’s creation. For medieval theologians, tears appearing in the eyes of saints in

<sup>22</sup>For a solid introduction to the image of Mary as divine intercessor, see Spivey Ilington, 2001 and Pelikan, 1996.

<sup>23</sup>Sassoferrato, 1495: 7: Mater misericordie nos que sumus humanum genus ab hoste maligno protegas.



an almost ecstatic state were an attribute of holiness (Shoemaker, 2012: 274). This episode is situated in the compositional center of the plot and plays an important role for its development: with her tears, the mother of God begins to convince the judge to be merciful. The demon cannot use this technique as, together with his master, he is an enemy of humankind and shares no connections with them or with the judge and thus cannot feel affection. Moreover, the demon condemns the judge for succumbing to the exhortations of “flesh and blood” and forgetting about lawfulness. An interesting paradox arises here: the Virgin Mary indeed appeals to the arguments of “the flesh,” reminding Christ that she is His mother who nurtured and protected Him in infancy, while the demon cannot influence the judge with the help of tears. The Virgin Mary’s tears are both purifying and humane, she cries as any mother would for her children. She is ready to take the most desperate action to protect humankind, demanding that her name be stricken from “the book of Heaven’s glory” if the Devil wins the case. The Virgin Mary’s merciful image is connected to her status as the divine mother. Her tears, her emotions, and her memories of the baby Jesus create an image of a kind intercessor which informs and augments her role as a lawyer.

The demon, on the contrary, appeals only to the judge’s sense of justice, referring to his official status and legal codes. He states that Christ can send him away without even listening but in this case the legal and divine competence of the judge would be undermined. The demon attempts to blackmail Christ by pointing out His flaws as a judge and familial sympathy for His mother’s woes. He consistently proves that the Virgin Mary cannot act as an advocate since she is a woman and the mother of the judge. The demon knows well that he can lose to the mother of God, who can easily persuade her son to take her side:

The demon responds: Holy Father, let neither flesh, nor blood, nor even the love of Your mother move You, as is argued in x.3.5.29, but do only justice, because You are justice, and also love, and rightfulness, and truth, as You say [that] You are life and the path of truth in every place, [and You say] “I am grace”.<sup>24</sup>

<sup>24</sup>Sassoferrato, 1495: 7: Respondet demon: Sancte pater non moveat vos caro et sanguis utrum nec etiam amor matris vestris arguit extra de praebendis.c.Grave ibi carnalitatibus sequentes affectum et cetera sed solam iustitiam fatiatis quia vos estis iustitia vos etiam estis caritas equitas et veritas ut per vos dicitis via veritatis et vita ubique locorum (est) ego sum gratia...

Thus, it becomes clear during the trial that the demon can only use legal arguments while the Virgin Mary can appeal to divine mercy and familial ties to Jesus Christ thus going against the standard course of the legal proceedings adopted on earth. She takes the case of humankind to a new, sacred level. The Virgin Mary violates many formalities earthly laws and yet wins in court.

#### RANSOM THEORY AND THE DEVIL'S ANCIENT RIGHT

The question of who has the right to own humankind is directly related to Christ's sacrifice to atone for the Original Sin committed by Adam and Eve and his descent into Hell to save the souls trapped there since the beginning of time. According to Pasciuta, the twelfth to thirteenth centuries saw legal terminology and interpretations enter theological writings (Pasciuta, 2015: 10). This tendency undoubtedly informed the framing of the plot of *Processus Satanae*. How should we regard humankind's disobedience to its Creator from legal and theological perspectives? Did Adam and Eve sin by their own free will or were they tempted and tricked by the Devil? And what is the Devil's role in this event: was he an invincible enemy of God, or could the fall into sin have occurred without his help? These questions occupied the minds of many medieval theologians, who can be divided into two groups according to their answers to these questions.

The first group, whose ideas were based on the theological thought of St. Augustine's, interpreted the events of the Fall and Christ's sacrifice on the cross through the lens of the so-called "ransom theory," or the paying of a debt (Almond, 2014: 29). According to this theory, the devil did have the right to possess humans, and Adam and Eve's debt to him could be paid off only by Christ's innocent death. The second group, on the contrary, did not believe that the Devil had any right to humankind, as he initially served as a warden of Hell. Since Adam and Eve had disobeyed the will of their Creator, they had to atone for their sin by "serving time" in Hell. However, in both these interpretations the events of the Fall and Redemption were described in legal terms, as theologians who pondered this topic often had both a theological and a legal education.

The most famous proponent of the first interpretation was St. Augustine. In his treatise *On the Trinity*, Augustine describes Christ's descent into Hell not simply as a merciful act, but as a legal act, because Christ justly saves humankind from the yoke of the Devil. Augustine argues that human beings initially belonged to the Devil, since they are burdened with mortal and hence imperfect and sinful bodies (Augustine, Haddan, 1887: XIII.12).

God Himself says “My spirit shall not always strive with man, for that he also is flesh” [Gen. 6:3]. Human mortality is the direct result of Adam and Eve’s transgression against the will of God. By committing the Original Sin, the first human beings signed a pact with the Devil, who now owned every person born into this world until they are baptized. The Devil by his evil nature is attracted to power (Augustine, Haddan, 1887: XIII.12) and hungers for it without any regard for righteousness or justice. This reading of the Devil’s nature distinguishes Augustine’s theory from that of his follower, Thomas Aquinas. The Devil’s evil deeds are known to God who keeps the evil enemy under control. It was Augustine who first separated the concepts of justice and power, which is a key point for the ransom theory.

God is the source of both righteousness and power, but righteousness and justice take precedence over power (ibid.: XIII.13). The Devil, attracted to power, received his right of ownership by force and not by justice, since he tempted and deceived the first progenitors. In Augustine’s theory, the Devil not only had the right to human beings as his debtors, but the right to keep them by force, especially believers who revered the innocently murdered Christ (Taylor, 2005a: 64; Augustine, Haddan, 1887: XIII.14–15). Thus, Christ could strip the devil of his ancient right to possess humankind only by restoring justice. Augustine states that Christ was completely innocent and not indebted to the Devil, since, although he belonged to humanity, he was born of a virgin and thus did not bear the burden of Original Sin. Consequently, he was not bound by debt to the Devil. With His sacrifice, Christ paid what He did not owe to the Devil, thus depriving the Devil of the right to possess humankind. Only Christ had sufficient power, status, and sense of justice to pay off humankind’s immense debt to the Devil, since He was equally God and human. If he had an exclusively divine nature, there would be no act of redemption, because God himself owes nothing to either humanity or the Devil. If Jesus were fully human, he would not have been able to bypass the burden of Original Sin. The Devil appropriates the sacrifice of Christ by *conductio indebiti*, a legal action by which the paying side can return what it paid by mistake.

Thus, for Augustine the act of redemption has legal connotations. Christ does not simply atone for the sins of humankind out of mercy, but fully repays the Devil what He Himself did not owe. Now the Devil becomes indebted to Christ by mistake and must grant freedom to humankind.

This theory informs the plot of *Processus Satanae*, since the Devil believes that he has a legal right, which he was unfairly deprived of. The very fact that the Devil files a lawsuit implies that he is sure that humankind belongs

to him by law. The demon-representative makes just arguments in favor of his master, while the Virgin Mary more often use the arguments of mercy and higher righteousness and, in the end, wins the case, despite the demon's appeals to earthly law.

The second point of view was expressed by St. Anselm of Canterbury who saw the Devil as a minor participant in the events of Sacred History and not as the great enemy of God or humankind. For Anselm, the concept of free will was of great importance. From his point of view, God was not responsible for the evil present in the world. The burden of free will fell on Adam and Eve who had exercised it and thus bore full responsibility in the face of their Creator. Thus, the Fall of humankind occurred without the Devil's instigation (Russell, 1988: 219). Adam and Eve broke their covenant with God, not with the Devil, who had no right to human beings. God had promised Adam and Eve eternal life in Paradise in exchange for their obedience. As punishment for their sin and breaking the agreement with God, Adam and Eve became indebted to their Creator and were expelled from Eden. Thus, humankind had to pay its debt to God, not to the Devil. According to Anselm, Christ paid for the sin of mankind directly to His Father (ibid.: 220). From Anselm's point of view, only Christ can atone for humankind: as a human he can understand the gravity of humankind's debt, and as God he can pay His Father what is due.

Anselm's theory is also reflected in the plot of *Processus Satanae*. The Virgin Mary and Christ remind the demon, that God is the Creator of humankind and, therefore, their rightful master. He alone has the right to possess human souls. He created human beings in his own image and likeness and planned their destiny, and thus cannot allow the Devil to meddle with His creation. While the demon's arguments refer to Augustine's theory, the Virgin Mary and Christ echo Anselm's theory, according to which human beings belongs to God and their sin is fully atoned for by the sacrifice of Christ.

#### AEQUITAS VERSUS JUSTITIA

The justice of the law and the justice of a higher, divine order often clash in theological works as many thinkers have tried to clearly divide these notions in order to understand where a fair trial ends and the violation of power begins. *Processus Satanae* provides a prime example of this controversy and shows the author's attempt to understand the true nature of mercy and justice. Even if the forces of good prevail here, the treatise shows that the road to true justice is tricky and arduous.

Here, I mention again the separation of the concepts of justice and power analyzed in detail by St. Augustine in *On the Trinity*. First, Augustine states that God the Father and God the Son love humankind. Without this love, the very act of redemption would not have happened since God does not owe anything to His creation. The death of Christ and his incarnation in a human body can only be explained by the infinite mercy of God and his love for human beings. The Devil received his right to possess humankind before the coming of Christ with God's permission (Augustine, Haddan, 1887: XIII.13). According to divine hierarchy, only God can give the Devil this right and consequently deprive him of it. The Devil is simply a conduit of God's will, and in a sense, an example of how one should and should not dispose of rights granted (Pasciuta, 2013: 50–51).

But since God is good and is the source of grace and justice, He must revoke the right to possess humankind from the Devil in accordance with divine justice and righteousness. In their struggle with the Devil, humankind should model their actions on God, who justly defeated His adversary. Righteousness, in Augustine's theory, is superior to power and force — it fills power with meaning. In mortal hands, power devoid of justice and righteousness becomes an instrument of oppression, and therefore mortals must adhere to justice. Only the saints can use power without abusing it (Augustine, Haddan, 1887: XIII.13). Similarly, only those who can intelligently combine power with righteousness can function as judges.

At the moment of redemption, these concepts perform various functions: Christ defeats the Devil with the help of justice and descends into Hell and saves the souls trapped there with the help of His unlimited power (Pasciuta, 2013: 425). Augustine states that God defeated the Devil first with righteousness and only then with His power (Augustine, Haddan, 1887: XIII.13).

The author of *Processus Satanae* goes further and separates not just the concepts of justice and power, but also two types of justice itself — *justitia* and *aequitas*, or *equitas*. Here *justitia* means simply the justice of the law established by man, while *aequitas* refers to moral justice or righteousness that comes directly from God. Christ is not only the source, but also the embodiment of *aequitas* and the measure which distinguishes the righteous from the unrighteous. This type of justice correlates with natural reason or *ratio naturalis* which is given to human beings by nature and is responsible for their sense of justice. One's actions must be consistent with natural reason and with the highest justice, which often goes in conjunction with

Christian mercy. *Justitia*, on the other hand, is a form for *aequitas* without which it comes down to empty laws lacking in meaning and force.

Christ the Judge establishes justice in court and oversees the consistent execution of laws. During the trial, Christ freely changes His mind which may seem paradoxical as indicated by the irritated demon. But Christ tells him that it is He who establishes the law and is not subject to its severity, thus asserting His status as the supreme ruler of Heaven.<sup>25</sup> An ideal judge, just like Christ, must combine fairness and justice without enforcing the law for the sake of following a rigid protocol:

<p>God, who knew about the hidden [things] of the heart, responds: You know that according to laws judges use true justice, and rigor, and righteousness. [...] Hence, we have righteousness in front of [our] eyes.</p>	<p>Respondet Dominus qui novit abfondita cordis: Tu scis quod iudices quinque secundum iura utuntur mera iustitia quinque rigore quinque equitate. [...] Unde cum equitatem ante oculos habemus.</p>
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This quote allows the reader to understand that ordinary justice is associated with severity, while the highest justice or righteousness is associated with mercy and equality. Christ postpones the hearing for a day in accordance with higher justice, since humanity is at a disadvantage to the Devil due to its imperfect state, large number, and mortal nature, although it is required by law to be present in court on time.

The Devil builds his argument on the concept of justice only:

<p>The Devil exclaimed loudly: Ha-ha, Lord, where is Your justice? I see that you have already strayed away in exercising justice in the same thing. The Lord said: Get out. Have We not told you that we want to observe righteousness?</p>	<p>Exclamavit voce magna demon: Haha, Domine, ubi est iustitia Vestra? Iam enim bis pro ea que video in exercenda iustitia defecistis. Dixit Dominus: Eitias eum foras. Nonne tibi diximus quod volumus equitatem servare.</p>
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Thus, *justitia* and *aequitas* are directly opposed to each other. While the demon insists on Christ fulfilling the duties of an impartial judge, the Lord himself adheres to the highest justice, without which earthly justice has no power. It is interesting that the demon-procurator tries to insist on an equal approach to both people and the Devil-plaintiff, because if he was convicted for his act, then the people themselves who fell into sin are

<sup>25</sup>Sassoferrato, 1495: 3: Respondet Hiesus: Nos *iura* condimus et auctoritatem damus iuribus non *iura* nobis...

subject to punishment. Blind justice does not distinguish between guilty persons, the offense itself is important, but not the reasons that led to it, or who committed it.

Christ and the Virgin Mary use the power of justice only in a timely manner while the demon relies only on its force without even trying to appeal to righteousness.

The same statement can contain both types of justice, for example:

<p>We want to postpone today until tomorrow as righteousness itself advises; which We assign to you and humankind in order to lawfully appear in front of Us.</p>	<p>Volumus ipsa equitate suadente presentem diem in diem crastinam prorogare quam tibi et humano generi assignamus ad comparandum legitime coram nobis.</p>
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During one of the central moments of the trial, when the demon-representative demands that humankind must be punished for the transgression of Adam and Eve, Christ reminds him that human beings have already been condemned once and therefore:

<p>...it is not just that We should pronounce a sentence against the same sin once again, as D. 4. 9. 6 argues, where it is said that one must not complain about the same transgression of a man twice...</p>	<p>...non est iustum quod de eadem peccato bis contra genus humanum sententiam proferamus arguit Digestorum nautae caupones stebulari lex licet gratis para si in fine ubi dicitur quod non debet sepe de delicto eiusdem hominis queri...</p>
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The judge himself refers to a specific law from Justinian's Digest, intelligently combining justice and righteousness while finding a legitimate way to justify humankind's oppression by the Devil. In rare cases, demonic entities can refer to higher justice too, but only with certain reservations. When the demon returns to Hell for the first time after being forced to wait another day for the trial, his brethren tell him:

<p>To think in terms of righteousness, if Our Lord Jesus the judge had at least proceeded and fully listened to you, the representative of infernal malice, it would not have been unrighteous, as if one acts rightfully, he does not wrong anyone, as in D. 39. 3. 1.</p>	<p>Si equitate pensata Dominus Hiesus iudex noster processisset certe te procuratorem nequitie infernalis totaliter audivisset ex quo enim equo quis utitur nemini facit iniuriam ut Digestorum de aqua pluvia arcenda lex prima.</p>
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Here the demons think according to “righteousness” referring to the concept of *aequitas* that applies to all subjects of God. This example clearly shows the difference between *justitia* and *aequitas*, as the former is expressed only in consistent and strict observance of laws and prescriptions, while the latter relies on moral decisions which take the circumstances and context into account.

It is not Christ but the Virgin Mary who opposes the Devil and his minions as she is the mother of mercy. Although she uses earthly laws, quite often she relies on arguments of mercy and compassion when addressing her Son. The Virgin Mary’s affective strategy, and her tears and pleas, are associated with the popular image of the merciful defender of sinners (Makhov, 2006: 82). It is not surprising that the demon-representative actively tries to persuade Christ not to listen to arguments of flesh, blood, and love, as they bind Him to His mother and, consequently, to all humankind. Without compassion and empathy toward the fate of human beings there can be no mercy:

The demon responds: Holy Father, let neither flesh, nor blood, nor even the love of Your mother move You, as is argued in X. 3. 5. 29, but do only justice, because You are justice, and also love, and rightfulness, and truth, as You say [that] You are life and the path of truth in every place, [and You say] “I am grace”.

Respondet demon: Sancte pater non moveat vos caro et sanguis utrum nec etiam amor matris vestris arguit extra de praebendis.c.Grave ibi carnalitatis sequentes affectum et cetera sed solam iustitiam fatiatis quia vos estis iustitia vos etiam estis caritas equitas et veritas ut per vos dicitis via veritatis et vita ubique locorum (est) ego sum gratia...

The demon uses false logic and states that the power of divine justice is based on laws, and not vice versa. He loosely quotes a line from the Gospel of John: “Jesus said to him: I am the way and the truth and the life; no one comes to the Father except through Me” [John 14:6]. The Devil knows very well that the final and only decision at this trial belongs to Christ the judge. The Devil cunningly tries to make Christ play his game, constantly reminding Him of His high status as a judge and of his obligations before the law.

The Virgin Mary, on the contrary, constantly highlights the weakness and suffering of humankind, putting its interests first:



Hearing that, the advocatess responds: Listen, my Blessed Son, You are the rigor of justice but also the highest degree of righteousness and You are full of sweetness and mercy. And [the demon] is asking to first proceed by the rigor of law.

Quod audiens advocata respondet: Audite fili mi benedite vos estis rigor iustitie necnon summa equitas et plenus dulcedine et misericordie. Et primo de rigore iuris petivit procedi.

In this quote, the Virgin Mary shows that while the demon insists that only the rigor of the law should be fulfilled, God is the source of both righteousness and justice, and therefore it is in His power to show mercy in judgement. Thus, a fair and merciful judge should base their decision on an honest account of the events and their context. True justice implies understanding and compassion, a fair judge sees the whole picture and cannot be limited only by the letter of law (Taylor, 2005b: 77).

Christ's final decision completely frees the human race from the oppression of the Devil:

With this final decision, We free humankind and, of course, completely absolve [it] from the assault of the representative of infernal malice. Indeed, it follows according to the most sacred legal writings of truth, which we want to follow in this.<sup>26</sup>

Here “the sacred legal writings of truth” refer to the sum of fairness and justice reflected in laws of divine Truth. Christ the judge makes his moral and legal decision after listening to all the arguments of the parties and fully considering their implications. As Taylor writes, the truth does not consist of mere dry facts, but must go hand in hand with sincerity and compassion (ibid.). Thus, the judge's correct decision is holistic and takes human sin and suffering into account. Taylor believes that here Christ combines justice and mercy in an act of sacrament, or *mysterium*, which exceeds any rational idea. Here we move into the realm of the supersensible and should simply believe in God's grace (Taylor, 2005a: 18).

According to Pasciuta, the heavenly trial described in the treatise can be interpreted as a kind of mental exercise or experiment, a “mock trial” (Pasciuta, 2013: 83). Here, absolute good meets with absolute evil to judge humankind. The situation driving the plot is quite paradoxical — the Devil, in the guise of his representative, appears in Paradise, and if he wins the

<sup>26</sup>Sassoferrato, 1495: 22: Humanum generis hac sententia diffinitiva absolvimus et ab impetio ne procuratoris nequitie infernalis reddimus absolutum. Cum hic consonet sanctissimis scripturis iuriscie veritatis quam in hoc sequi volumus.

case, then the consequences for humankind and the whole world will be terrifying: all souls will fall into his possession. This frightening image lies at the heart of the experimental religious theatrical performance that is *Processus Satanae*; it is a powerful metaphor designed to impress the reader (Pasciuta, 2013: 433; Pasciuta, 2015: 11).

The process presented in the treatise is a collective image of all earthly lawsuits, as well as an ideal of how a trial should be conducted. If one looks beyond the grotesque elements that occur throughout the story, parts of a real trial are discernible: the gradual and ritualized development, clearly defined stages of a formulaic process, and references to various codes of laws. Taylor notes that the images of the Virgin Mary, Christ, and the Devil in this text cease to be allegorical and become more “down-to-earth.” The author of *Processus Satanae* does not imply that real lawyers, judges, and plaintiffs should act like the participants of the heavenly court, but rather uses these characters as examples of how to conduct a case (Taylor, 2005a: 138). Thus, the plot combines secular legal themes with theological ideas and literary motifs. The image of the heavenly court reflects the general attitude towards judicial processes in the Middle Ages: trials were not intended to search for abstract truth but gave the Lord an opportunity to definitively establish justice (ibid.: 184).

#### CONCLUSION

The tradition of *Processus Satanae* has undergone many changes throughout its history. Starting as a short story about a confrontation between Christ and the Devil, the text had turned into a detailed treatise with legal elements by the thirteenth century. It narrated a story about the heavenly court where the Devil appeared as the plaintiff, Christ as the judge, and the Virgin Mary as the lawyer of humankind. This treatise contained a mix of cultural, theological, and legal ideas important for the Middle Ages—here the readers could find sophisticated theological points, references to popular culture, literature, and jurisprudence. Thus, the tradition of the *Processus Satanae* was in many ways an indicative phenomenon of the European culture of the Late Middle Ages.

The roles played by the Devil and Christ at the heavenly court appear as a logical continuation of the functions attributed to these figures in Christianity. The name “Satan” is translated from Greek as “accuser,” “slanderer,” and he becomes the main antagonist of the process, the Virgin Mary becomes the lawyer of humankind, and Jesus Christ assumes the role of the stern but

merciful supreme judge. The author opens his treatise with these words:

And this process has in itself famous and widespread authorities of law, which should be elegantly applied to persons debating in court as much as to the judge.<sup>27</sup>

This quote neatly describes the function of the treatise intended by the author: it is an example of how to act in court.

As a character in the treatise, the Devil, like the Virgin Mary and Christ, served as a formal example for students of law who wanted to quickly learn how to properly conduct a lawsuit. This image also served as a negative example in terms of morality, since his arguments were not guided by justice and mercy but only followed the law harshly and dryly. The question of the correlation of justice (*justitia*) and righteousness (*aequitas*) especially in connection to redemption was important for theologians, who interpreted it differently. While some advocated the so-called “satisfaction theory”, according to which human beings became indebted directly to God after disobeying Him and had to atone to Him, and not to the Devil. Others advocated the “ransom theory,” according to which the Devil struck a bargain with humankind during the fall and became the owner of human souls. He lost this right only after the Harrowing of Hell and the sacrifice of Christ. It is the latter theory which forms the basis of *Processus Satanae*’s plot, and the Devil files a lawsuit in order to regain his lost right. The plot of the heavenly judgment, therefore, is a direct continuation of previous philosophical research on the nature of human sin and the meaning of redemption which began in the time of Augustine.

There is a complex image of the Devil and the demon built in the treatise. In previous treatises of this tradition the Devil himself or a recognizable demon (Ascaron, Mascaron, Belial) appeared in court, but the demon of *Processus Satanae* has no name or rank; he is the representative of his master only by the decision of the council of infernal malice. The Devil himself, although he should not appear in the courtroom, sometimes peeps through his assistant, as if through a mask, and all those present in the courtroom well understand this and quickly reveal his deceit. This shows another theological motif associated with a dispute about the nature of demons and their lord. The Devil and the demon merge into one whole,

<sup>27</sup>Sassoferrato, 1495: 1: Et hic processus in se quotidianas et vulgares iurium habet autoritates ad personas in iudicio contententes partier et iudicem dietim pulcre applicandas.

become part of the common infernal malice (*nequitie infernalis*), although they can also exist as separate actors, thereby perversely parodying the image of the Holy Trinity.

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Zaytseva A. V. [Зайцева А. В.] *Flesh and Blood vs Rigor of Justice [Плоть и кровь против строгости закона]* : The Concepts of *Justitia* and *Aequitas* in "Processus Satanae contra genus humanum" [понятия *justitia* и *aequitas* в трактате «Processus Satanae Contra Genus Humanum»] // *Философия. Журнал Высшей школы экономики*. — 2022. — Т. 6, № 4. — С. 99–126.

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АРИНА ЗАЙЦЕВА

МАГИСТР ИСТОРИИ, АСПИРАНТ УНИВЕРСИТЕТА РАЙСА (ХЬЮСТОН, США);

ORCID: 0000-0002-7238-7887

## ПЛОТЬ И КРОВЬ ПРОТИВ СТРОГОСТИ ЗАКОНА

### ПОНЯТИЯ JUSTITIA И AEQUITAS В ТРАКТАТЕ «PROCESSUS SATANAE CONTRA GENUS HUMANUM»

Получено: 15.09.2022. Рецензировано: 05.10.2022. Принято: 02.11.2022.

**Аннотация:** Трактат XV века «Processus Satanae Contra Genus Humanum» — замечательный артефакт позднесредневековой культуры, в котором сочетаются значимые для того периода элементы богословия, юриспруденции и народного искусства. Он был задуман как пособие для студентов-юристов и представляет собой идеализированный пример судебного заседания: по сюжету дьявол подает в суд на человечество и требует, чтобы оно вернулось в его обладание. Дьявол посылает демона-представителя в небесный суд для защиты своих интересов, в то время как Дева Мария берет на себя роль адвоката человечества. Судебное разбирательство проходит перед лицом судьи — Иисуса Христа. После долгих прений силы добра выигрывают дело. За этим гротескным сюжетом скрываются серьезные рассуждения о различных видах правосудия и их значимости для реальных судей, адвокатов и истцов. Автор трактата различает два вида правосудия: *justitia* и *aequitas*. *Justitia* отсылает к строгости сводов прав, а *aequitas* — к праведности и милосердию. Именно *aequitas* исходит непосредственно от Бога; без ее добродетели *justitia*

превращается в жесткий закон, не имеющий действительной силы в христианском понимании. Дьявол и его слуга проигрывают дело, так как они полагаются на доводы, отсылающие исключительно к *justitia* ведь им неведомы сострадание и сопереживание. Таким образом, трактат предостерегает студентов-юристов от слепого следования букве закона без проявления милосердия и без учета индивидуальных обстоятельств сторон.

**Ключевые слова:** Образ Сатаны, каноническое право, римское право, определение понятия справедливости, *aequitas*, *justitia*.

DOI: 10.17323/2587-8719-2022-4-99-126.

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O'Callaghan, J. F. 2022. "Fray Juan Gil de Zamora, Infante Sancho, and Alfonso el Sabio" [in English]. *Filosofiya. Zhurnal Vysshey shkoly ekonomiki [Philosophy. Journal of the Higher School of Economics]* 6 (4), 127–152.

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JOSEPH F. O'CALLAGHAN\*

## FRAY JUAN GIL DE ZAMORA, INFANTE SANCHO, AND ALFONSO EL SABIO\*\*

Submitted: Oct. 02, 2022. Reviewed: Oct. 27, 2022. Accepted: Nov. 15, 2022.

**Abstract:** In his *De preconiiis Hispanie*, Fray Juan Gil de Zamora endeavored to inculcate in Infante Sancho, Alfonso X's second son and heir, an understanding of the history of Spain and to cite examples of rulers who used their authority well and those who abused it. He reminded the young prince that he would be accountable to God and that he should not pursue his own interests to the detriment of his people. He specifically denounced royal avarice and argued that a king should not impoverish his people with unaccustomed levies of taxation. Moreover, he stressed the king's duty to rule in accordance with the approved laws and customs established with the consent of the people. Although he did not criticize Alfonso X by name, he was aware of popular complaints of excessive taxation and innovations in the law. While providing Infante Sancho with a manual for good government, he also conveyed a tacit critique of El Rey Sabio.

**Keywords:** *De preconiiis Hispanie*, Castigos, Digna vox, Lucas of Tuy, Vincentius Hispanus, Visigoths, King Rodrigo, Count Julian, Reconquest, Royal Virtues.

DOI: 10.17323/2587-8719-2022-4-127-152.

Much has been written about medieval kings and emperors who were endowed with and exercised power and authority over their subjects. In doing so they usually depended upon the counsel of bishops, nobles, and professional officials who constituted their court. Many of them derived their concept of power and authority not only from the law books, especially Justinian's Code, but also from their study of ancient philosophers such as Aristotle and the writings of contemporary scholars such as Thomas Aquinas's treatise on kingship. In the kingdom of Castile the Franciscan Fray Juan Gil de Zamora dedicated to Infante Sancho, Alfonso X's second son, a notable Latin treatise, *De preconiiis Hispanie* (DPH). Drawing on a wide array of biblical sources, classical and medieval authors, and historians of Spain, he discoursed on Roman emperors and kings of Spain who had exercised power and authority in earlier centuries (Barrio Vega, 2012). My study will focus on the lessons that he endeavored to inculcate

\*Joseph F. O'Callaghan, PhD in Medieval History, Professor Emeritus at the Fordham University (New York, USA), [c1onmeen@optonline.net](mailto:c1onmeen@optonline.net).

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in the young prince who became heir to the throne after the death of his older brother Fernando de la Cerda in 1275.<sup>1</sup> No doubt Fray Juan believed that Sancho would wield royal power and authority wisely if he understood the history of Spain and learned from the example of those rulers who used their authority well and those who abused it. Although he was well aware of the presence of the reigning monarch, Alfonso X, Fray Juan also knew that the king, especially in his later years, had to face several major crises, including poor health and a hostile nobility, yet he did not criticize him overtly. Nevertheless, there is reason to believe that some of his remarks convey a tacit critique of the king.

Fray Juan's fellow Franciscan Manuel de Castro suggested that he was born about 1241, that he entered the Order in 1266 at the age of twenty-five, that he was eventually sent to study at the University of Paris and that he died about 1318, but all that is approximate (Gil de Zamora, 1955: XXV–CXXVI; Ferrero Hernández, 2010: 19–33). After returning from Paris to Castile, his learning was such that he attracted the attention of Alfonso X, who asked him to compose a liturgical office in honor of the Virgin Mary. Fray Juan, describing himself as *humillimus scriptor* and *doctor insufficientis*, expressed the wish that his most serene Lord Alfonso, king of Castile, León, and Vandalia [his term for Andalucía], would enjoy “regni terreni gubernaculum meritorium, et aeterni bravium remuneratorium” (“a worthy government of an earthly kingdom and the reward of eternal recompense”) (Fita, 1885: 379–409; esp. 379–380). A prolific writer on a wide range of secular and religious themes, Fray Juan, the king's *scriptor*, does not seem to have been employed as a scribe in the royal chancery. His *Liber Marie*, a collection of miracle stories of the Virgin Mary, however, is believed to have contributed to the king's *Cantigas de Santa María* (Cantigas De Santa Maria, 1981). In his incomplete biography of Alfonso X, he characterized that young prince in these words (Fita, 1884: 308–328; esp. 319, cap. 16):

acer ingenio, pervigil studio, memoria luculentus; quoad exteriora vero discretus eloquencia, procerus elegancia, modestus in risu, honestus in visu, planus in incessu, sobrius in convictu. Adeo nihilominus extitit liberalis, quod ipsius liberalitas prodigalitatis speciem induebat ([A man of] sharp intellect, attentive in study, with an excellent memory, discreet in speech, distinguished by his elegance,

<sup>1</sup>In *Cantigas De Santa Maria*, 1959-1974: 166, Cap. 15.22, Sancho IV explained that he had inherited his father's kingdoms after the death of his older brother Fernando, who had been married and left children, the so-called Infantes de la Cerda.



moderate in laughter, honest in his gaze, easy in his gait, and temperate in eating. Although he was open-handed, his liberality clothed a sort of prodigality.)

Internal references to 1277,<sup>2</sup> 1278,<sup>3</sup> and 1281<sup>4</sup> indicate that Fray Juan was writing his *Liber de preconiiis Hispanie* in those years, if not before. In 1278 Infante Sancho was twenty years of age and already actively involved in the political life of the kingdom. That being so, he had likely received the fundamentals of his education from others before the Franciscan's return from Paris. In the *Siete Partidas* (2,7,4–10) Alfonso X described the functions and responsibilities of the tutors assigned to his sons (O'Callaghan, 2019: 30–34). However, we do not know the names of the tutors who provided Sancho's basic education. Nor do we know whether Alfonso X appointed Fray Juan as Sancho's tutor, or whether Fray Juan, on his own initiative, decided to write the *De preconiiis Hispanie* for Sancho's instruction, or whether someone else prompted him to do so. Perhaps King Alfonso suggested that a book of this sort would be advantageous for the young prince. The description of Fray Juan as Sancho's tutor ought to be understood with those caveats.

As part of his education, Sancho learned the Latin language and Fray Juan, by dedicating the *De preconiiis* to him, obviously expected that he would be able to read it. In the prologue he addressed Sancho as “maiori filio et heredi” (“the oldest son and heir”) of Alfonso X. That was an acknowledgment of the fact, that, after the sudden death of the king's oldest son, Fernando de la Cerda, in 1275, the king recognized Sancho as the heir to the throne in the Cortes of Burgos in 1276. The description of Sancho as “Biscaye potentifico adeptori” (“the powerful conqueror of Viscaya”), is an interpolation in the prologue inserted after Sancho became king and refers to his overthrow of Lope Díaz de Haro and his subjugation of Lope's lordship of Vizcaya in 1287.<sup>5</sup> Identifying himself as *doctor indignus*, Fray Juan expressed the hope that his book would encourage Sancho to accomplish difficult and noble things. He explained that his book was divided into twelve tractates or treatises and that he had written them “propter mores

<sup>2</sup>DPH. 8. 6. 51: “usque ad regem Allefonsum in Regem Romanorum electum et illustrem Sancium filium eius, qui iam eidem inceptit corregnare sub anno Domini MLXXVII.”

<sup>3</sup>DPH. 1. 3. 29: “VI mixta usque hodiernum diem sub era MCCCXVI sub anno Domini. MCCLXXVIII.”

<sup>4</sup>DPH. 5. 28. 135: “Cumque omnia supradicta fere infra quadringentos septuaginta annos minus septem ab era DCCCXXV usque ad eram MCCCXIX, usque ad annum Domini MCCLXXXI.”

<sup>5</sup>That phrase does not appear in the Castilian translation, DPH. 51; Gaibrois de Ballesteros, 1922-1928; Nieto Soria, 1994: 860-96.

et non propter historias.” His purpose, therefore, was not to recount history, which one could read in other books, but rather to present moral examples that the infante could follow (Rojo Alique, 2014: 297–318; esp. 306–311).

The *De preconiis Hispanie* ought to be read in the context of the last decade of Alfonso X's reign, his most difficult years troubled by an increasingly debilitating cancer. Over time, his erratic behavior led many to believe that he was no longer capable of governing. In the Cortes of Burgos in 1272, for example, the king, because of his innovations in the law and imposition of extraordinary taxes, encountered opposition from the nobility and the townsmen. The magnates repudiated their allegiance to him and took service with the emir of Granada. After persuading them to return, he travelled to the papal court in the futile hope of securing recognition as Holy Roman emperor. In his absence, the Marinids of Morocco invaded Castile, his oldest son Fernando de la Cerda died suddenly enroute to the frontier, and Infante Sancho halted the Marinid advance. Upon returning home, King Alfonso recognized Sancho as heir to the throne in the Cortes of Burgos in 1276, but thereafter had to contend with the counterclaims of his grandson Alfonso de la Cerda who was recognized by his maternal grandfather Philip III of France. These woes were compounded by the treachery of his brother Infante Fadrique whom he arbitrarily executed in 1277, and his abandonment by Queen Violante. When the Marinids invaded again in 1277, the king attempted to deny them access to the peninsula by unsuccessfully besieging Algeciras. Then, under French pressure, he decided to partition his realm for the benefit of his grandson Alfonso de la Cerda. Infuriated, Infante Sancho, after exchanging harsh words with his father during the Cortes of Seville in 1281, summoned the estates of the realm to Valladolid. The assembly transferred all royal authority to Sancho, leaving his father with the empty title of king. Worn out by disease, the old king disinherited Sancho and appealed for help to his erstwhile enemies, the Marinids. When he died at Seville in April 1284, Sancho succeeded him (O'Callaghan, 1993: 236–269; González Jiménez, 2004: ef239–371).

#### IN PRAISE OF HISPANIA

There are two principal themes to Fray Juan's book, namely, *Hispania*, and his conception of kingship. The title of his book, *De preconiis Hispanie*, informs us that the focus of his attention was the entire Iberian Peninsula. His understanding was based upon the Hispania of the Romans, divided into the two great provinces, Hispania Citerior and Hispania Ulterior. He was also aware of the five ecclesiastical provinces that embraced the entire

peninsula, namely, Tarraconensis, Cartaginensis, Baetica, Lusitania, and Gallaetia (DPH. 2. 1. 9). He repeated the legend that the name Hispania was derived from Hispan, the *primus rex hispanorum* (DPH. 1. 3). As he described the early settlement of Spain, he drew upon the legends recorded by Isidore of Seville, Lucas, bishop of Túy, and Rodrigo Jiménez de Rada, archbishop of Toledo (DPH. 1. 2. 1–3; Isidore of Seville, 1894b and Isidore of Seville, 1894a: 267–303; 424–481; Lucas de Túy, 2003; Rodrigo Jimenez de Rada, 1987). Inspired probably by Isidore, he praised Spain’s fertility and the wealth of the countryside (DPH. 2. 1).

In his description of the most notable places in Spain, he identified the individual kingdoms of León, Castile, Aragón, Portugal, and Navarre, but he recognized that they belonged to the broader entity of *Hispania* (DPH. 8. 1–6). Given his knowledge of peninsular history, it is possible that he believed that they might all be united as one kingdom of Spain.

After mentioning Spain’s distinguished philosophers, historians, and poets, he proclaimed these words of praise (DPH. 7. 3. 17):

Prefulget etiam Hispania omnimoda libertate, cum in agendis causis civilibus propriis utatur legibus, et reges Hispanie nulli subdantur imperio temporali (Spain shines forth in full liberty for she uses her own laws in adjudicating civil suits and the kings of Spain are subject to no temporal empire).

He borrowed that statement from Bishop Lucas of Túy (1239–1249) (Lucas de Túy, 2003: 3). His purpose was to affirm the autonomy of the kings of Spain and to emphasize that they were not subject to the Holy Roman emperor who claimed universal dominion in Western Europe. The canonist Vincentius Hispanus (d. 1248), who also conceived of Hispania as one, repudiated imperial claims to Spain by asserting that Charlemagne failed to subjugate the peninsula. Ruling over “Beata domina Yspania” (“Blessed Lady Spain”), the Spaniards were creating their own empire and had their own laws and had no need of imperial laws (Post, 1964: 482–493 (Vincentius Hispanus and Spanish Nationalism); esp. 490, n. 190; O’Callaghan, 1993: 22–24). Fray Juan also noted that Charlemagne was unable to occupy Spain and that, indeed, he was defeated by the men of Spain (DPH. 5. 28. 135). Despite that rejection of imperial dominance over Spain, he usually referred to Alfonso X as *rex Romanorum electus*, the elected king of the Romans, the title borne by the Holy Roman emperor before being crowned by the pope. Fray Juan’s failure to discuss *el Sabio’s* pursuit of the imperial crown prompted Manuel de Castro to wonder whether Fray Juan was among those who tried to

dissuade the king from that quest. That is possible because he never explicitly criticized any action taken by the king (Castro, 1962: 507–541; esp. 508).

The ancient glories and the unity of Hispania were destroyed by the Muslim invasion in 711, to which Fray Juan alluded many times (O'Callaghan, 1975: 51–54). For example, he commented that

supervenit dominium gothorum et duravit usque ad regem Rodericum qui fuit ultimus rex gotorum; sub quo tota Hispania fuit ab arabibus occupata et disipata in era septingentissima LII (Gothic rule came to pass and lasted until King Rodrigo, the last king of the Goths, under whom all of Spain was occupied and destroyed by the Arabs in the era 752),

except for the northern mountainous regions (DPH. 8. 6. 49). The equivalence of the date he cited was 714AD, though the actual date was 711. He also pointed out that at the time of King Witiza and his successor Rodrigo, the kingdom of Spain was extensive, stretching from Tangier in Africa as far as the Rhone River. Nevertheless, the kingdom was troubled by arrogance, religious indifference, discord, excessive luxury, and cowardice. As a consequence of the malice of kings and prelates, the kingdom of the Christians was crushed between the seas so that Muḥammad might reign in Spain (DPH. 8. 7. 55–56).

Fray Juan Gil recounted the fable foreshadowing the Muslim conquest of Spain. King Rodrigo, thinking that a locked chest in the palace in Toledo might be full of treasure, opened it and discovered a cloth with a Latin inscription saying that when the chest was opened the Arab warriors depicted on the cloth would invade Spain and destroy it. The villain who facilitated the Arab invasion was Count Julián whose daughter King Rodrigo raped. In revenge, Julián introduced the Muslims into Spain and they quickly defeated Rodrigo, the *ultimus rex gothorum* (DPH. 5. 12–15). In scathing language Fray Juan Gil denounced Count Julián, saying “Memoria eius in omni ore amarescit, et nomen eius in eternum putrescit” (“May his memory be bitter in every mouth and may his name putrefy forever”) (DPH. 5. 15. 64). He continued, exclaiming, “Proh dolor. Hic finitur gloria gothice ac hispanice maiestatis [...] Hispania filios suos plorat, et consolari non potuit” (“The glory of the Goths and of Hispanic majesty ended here [...] Spain weeps for her children and cannot be consoled”) (DPH. 5. 16. 65). In a lengthy lamentation, he mourned, “Quis dabit capiti meo aquas, et fontem oculis lacrimarum ut plorem excidium hispanorum, et miseriam gentis gothorum?” (“Who will give water for my head and a fountain of tears for my eyes so that I might weep for the destruction of the people of Spain and the misery

of the Gothic people?") (DPH. 5. 16. 66). Reflecting his mentor's example, Sancho IV, in the prologue to his *Castigos*, denounced Rodrigo, the last king of the Goths, who lost Spain "por la maldat e traycion abominable del malo del conde don Jullian" ("through the wickedness and abominable treason of the evil Count don Julián") (*Castigos del rey don Sancho IV*, 2001: prol. 11; caps. 10. 27, 40. 38).

As he recounted the triumphant march of the Muslim armies after routing Rodrigo, Fray Juan commented that the Jews betrayed Toledo, the *civitas regia*, to the Saracens. He added that in his own time there were 70,000 Jews, not counting women, children, and the poor, paying tribute in Toledo, an obvious exaggeration (DPH. 8. 2. 17). At that time, in the era 752, "Tota Hispania fuit ab arabibus occupata et disipata" ("All of Spain was occupied and destroyed by the Arabs"), except for the northern mountainous regions. Over a long time, by God's grace, "recuperata fuit" ("it was recovered") by Pelayo and Alfonso el Casto. Indeed, Fray Juan remarked: "Recuperata fuit nihilominus Hispania per multos reges nobiles" ("Nevertheless Spain was recovered by many noble kings") until the time of Alfonso X and his son Sancho (DPH. 8. 6. 49–51).

The passages cited above indicate that Fray Juan conceived of the Iberian Peninsula as one entity that included several kingdoms and provinces. He often spoke of *Hispania misera* (DPH. 8. 12. 139–140; 9. 11. 121), and the *reges Hispanie* (DPH. 8. 1. 2), and noted that Emperor Trajan was a native Spaniard, *natione hispanus* (DPH. 8. 1. 4). Although he mentioned the election of Alfonso VI as *rex Hispanie* (DPH. 8. 11), and referred to him casually as *imperator*, he did not record that Alfonso VII was crowned as emperor of Spain. As I suggested, he may have expected that by conquest or intermarriage those kingdoms would be united in one kingdom of Spain.

However, he cited the tendency of the eleventh- and twelfth-century kings of Castile-León to divide their realms among their sons, a process that impeded unification until Fernando III reunited them in 1230 (DPH. 8. 10). Fray Juan did not speak of Alfonso X's plan to divide his realms between Infante Sancho and Alfonso de la Cerda, nor the final partition in his last will benefiting his younger sons Juan and Jaime. Whatever deterred Fray Juan from speaking of this matter, his pupil Infante Sancho had a good reason for objecting to the division. In the Cortes of Seville in 1281 when the king proposed giving Alfonso de la Cerda a share of the inheritance that Sancho rightly believed to be his, he protested loudly and apparently decided that it was time to deprive his father of royal authority. In his *Castigos* (*ibid.*: 11. 104), in a catalogue of actions that a king ought not to do, he stated

“Non cae al rey de menguar su regno, nin [partirlo] entre sus fijos para depués de sus días, nin le cae bien enajenar nin de malparar los bienes del su regno. El regno que es partido e menguado conviene que sea desollado por raiz, segund que dixo Ihesu Christo en el Evangelio” (“The king ought not to diminish his kingdom nor divide it among his sons after his days, nor ought he to alienate or abuse the goods of his kingdom. The kingdom that is divided and diminished would be uprooted as Jesus Christ said in the gospel” (Matt. 12:25)).

He also pointed to the discord, wars, deaths, and other evils that occurred when a king divided his realms among his sons (Cantigas De Santa Maria, 1959-1974: 15. 16). Although it is likely that the majority of the population were descended from the Iberians and the Romans, Fray Juan accepted the idea that they were now the Gothic people. Pelayo and his successors were identified as the heirs of the Visigoths and the people who survived the collapse of the Visigothic kingdom were the Goths. This is a persistent theme reflected in the historiography of the Middle Ages (O'Callaghan, 2003: 6-7).

Fray Juan also used the language of reconquest. Although he spoke of the occupation and destruction of the kingdom of Spain by the Arabs, and denounced the treachery of Count Julián and King Rodrigo, he was moved by the knowledge that the lands once seized by the enemy were being recovered. That process had reached a climax in his own time with Fernando III's conquest of Córdoba, Jaén, and Seville, and Infante Alfonso's occupation of the kingdom of Murcia. Moreover, the emir of Granada was reduced to tributary vassalage. At the same time the kings of Portugal and Aragón subjugated Muslim territory on the western and eastern frontiers. In describing the recovery of Spain, Fray Juan surely hoped to inspire Infante Sancho to continue the work until the last vestige of Muslim rule in Spain would be extinguished. In tractates 11 and 12 of the *De preconiis* he explicated the *De re militari* of the Roman author Vegetius and offered it to Infante Sancho as a guide for the conduct of war against the Moors (Vegetius, Milner, 1993).

#### THE QUALITIES OF A GOOD KING

Now, let me direct attention to Fray Juan's second great theme, the several qualities or virtues that a king ought to possess (Castro, 1962: 507-541). After delineating each virtue in general terms, he offered several examples, usually persons from the ancient world, that Infante Sancho might emulate (Dacosta, 2006: 99-121). His discussion of the virtue of largesse (*largitas*) and the vice of (*auaritia*) as reflected in the behavior

of rulers is best understood in the context of his own time. Commenting on the liberality of the rulers of Spain, he remarked (DPH. 3. 1. 1): “Immo, tanta est principum largitas, quod prodigalitatis speciem induit” (Indeed, so great is the largesse of princes as to clothe a type of prodigality). In his biography of Alfonso X cited above, he described the king in similar language (Fita, 1884: 319; cap. 16): “Adeo nihilominus extitit liberalis, quod ipsius liberalitas prodigalitatis speciem induebat”. Although *largitas* or generosity was a necessity for a king at times, especially when a favor was required, he ought also to be temperate in giving. Fray Juan urged Sancho to commit to memory this principle (DPH. 3. 1. 6):

Qui largus est sibi et parcus suis, est destructor regni, et similiter qui est parcus sibi et largus suis, tamen melior est iste aliquantulum (The one who is generous to himself but sparing to his people is a destroyer of the kingdom; similarly, the one who is sparing to himself and generous to his people is so much better).

Kings ought to freely do well (*benefacere*) to others so that they would willingly serve them. The word *benefacere* referred to the benefices that lords were accustomed to give to their vassals in return for their service. Fray Juan continued, saying,

Ut ergo reges virtutem possideant largitatis, non accipiant maiorem partem de pecuniis subditorum quam ius exposcit vel natura dictavit, nec leges exarent ut populum opprimant et marsupia auriant (Therefore, so that kings may possess the virtue of generosity, they ought not to accept a greater part of the money of their subjects than the law requires or nature dictates, so that they do not undercut the laws and oppress the people and empty their purses) (DPH. 3.2.13).

He underscored this principle by quoting from the prophet Isaiah (10, 1–2) and Aristotle’s admonition to Alexander the Great in the *Secretum Secretorum* (Bizzarri, 2014: 131–137; esp 135; *Secreto de los secretos...*, 2010: 135).

In the same vein, he commented,

Siquidem principes antiqui non affectabant dominari propter pecuniam, sed propter gloriam et reipublice custodiam, et ideo non solum sua, propter rempublicam exponebant, sed etiam semetipsos (Indeed, ancient princes did not desire to rule for money, but for the glory and protection of the republic, and so their actions not only served the republic but themselves as well) (DPH. 3. 3. 15).

After citing examples of ancient rulers who conducted themselves according to these principles, he added (DPH. 3.3.19):

non enim dominari propter lucra temporalia intendebant, set magis propter utilitatem reipublice, et sui honestatem et gloriam intendebant (They did not aim to rule on account of temporal riches, but they intended rather the utility of the republic and its honor and glory).

Juan Gil's consistent use of the term *respublica* expresses the contemporary conception of the state as a corporate entity, a juridical person, with its own reason for being and its own public law. A fundamental responsibility of a king was to further the utility of the republic, in other words the good estate of the realm (Post, 1964: 494–561; Strayer, 1970; Ferrari, 1934; O'Callaghan, 1993: 17–21).

In reading these lines, one must ask whether Fray Juan, consciously or not, was describing the conduct of his master Alfonso X. We know that he was aware of the king's prodigality. Such was *el Sabio's* fame that great nobles and townsmen (*burgenses*) flocked to his court from nearly all parts of the world. Scholars too came to contribute their knowledge to the great works of history, science, poetry, and literature that the king commissioned. As Fray Juan remarked, whether seeking refuge from enemies, or counsel or solace, or relief from poverty and penury, they all shared in King Alfonso's generous munificence (Fita, 1884: 321, cap. 21).

The antithesis of largesse is avarice. Recalling the biblical passage "the love of money is the root of all evil" (1 Tim 6:10), Fray Juan warned Infante Sancho (DPH. 3.4.37): "Advertatis, Domine, quod avaritia multum est in principibus detestanda" ("Be aware, O Lord, that avarice in princes is very much to be detested"). Condemning the pursuit of earthly wealth as akin to idolatry, he argued that the avaricious monarch would never be content with what he could rightfully claim but would always seek greater riches. In doing so he would turn away from his creator and be thrust into hell. The demon of avarice causes kings to be lost, to lie, to violate alliances, to break friendships, and to alter kingdoms. In a long disquisition on all the evils of avarice, drawn in part from the *Secretum Secretorum*, he exhorted kings to be satisfied with what was necessary for good government, to restrain their tax collectors, and not to take from others what they needed to live. Fray Juan continued (DPH. 3.4.44):

Attendite, tamen, reges, quod ipse vobis dedit regnum et gentes, non tamen ut ipsos depauperetis ex avaritia sine causa set ut eas ditaretis vestro consilio et auxilio [...] Ut autem hec omnia prudenter rex faciat, et exactionibus insuetis



pauperes, viduas, et orphanos et pupillos non opprimat, et subvertat usque ad solum (Now understand, kings, that he [God] gave you a kingdom and people, not, however, that you might impoverish them through avarice without cause, but rather that you might enrich them with your counsel and assistance [...]) So that the king may do all these things prudently, let him not oppress the poor, widows, orphans, and children with unaccustomed exactions and drive them into the ground).

As an apt pupil, Infante Sancho took that lesson to heart and in his *Castigos*, a book of counsel dedicated to his own son, the future Fernando IV, he recorded a catalogue of miseries brought on by greed (*cobdiçia*) (*Castigos del rey don Sancho IV*, 2001: 207–211, 319–320; caps. 22. 49). When Fray Juan was writing his diatribe against avarice, King Alfonso was immersed in the most critical period of his reign. Not only was he suffering from a serious illness that exacerbated his relationships with his family and his courtiers, but he was also attempting to cope with the repeated intervention of the Marinids of Morocco, and ever intensifying financial problems. At the beginning of his reign, he was confronted with a serious inflation which he attempted to control by regulating prices and wages in several sessions of the Cortes. At the same time, he required money to pursue his crusade in Africa and his quest for the title of Holy Roman Emperor. In 1278, a date recorded by Fray Juan, the king was attempting to capture Algeciras in order to prevent Marinid incursions from Morocco. In 1281, another date mentioned by Fray Juan, he was waging war against Granada. As his ordinary revenues were insufficient for these purposes, he resorted to extraordinary taxation such as the *servicios* authorized by the Cortes, the imposition of customs duties, the *servicio de los ganados*, a tax on migratory sheep, and the determined collection of fines for violations of the law. Fray Juan must certainly have heard that the nobles and the townsmen in the Cortes of Burgos in 1272 protested the burden of taxes and the king's innovations in the law. Dissatisfied with the king's response to their demands, the magnates repudiated their vassalage and went into exile to serve the emir of Granada, though they were induced to return early in 1273 after the king promised concessions (O'Callaghan, 1985; González Jiménez, 2004: 239–327). In upbraiding the avaricious king in such strong language, Fray Juan surely had the example of *el rey sabio* before him.

Continuing his exposition of the virtues, Juan Gil extolled the fortitude and prowess of the knights of Spain. Kings, who were responsible for the protection of the *patria*, the fatherland, had need of the fortitude of their *cavallería*. Without it they could not defend the people against

the incursions of the enemy. Fortitude, however, entailed much more than physical bravery. It was also a matter of personal character, especially desirable in kings. If a king wished to be loved by his people, he should not be cruel without reason, nor should he tolerate cruelty on the part of his ministers. Nor should a wise man sanction barbarous mutilations of the body. Rather, in punishing malefactors, the king ought always to act in a spirit of clemency. Yet, just as one prunes a tree so that it might flourish, so the wicked should be removed in order that good men might increase and be preserved for the republic (DPH. 4.1-2; Castro, 1962: 540-541). This passage prompts several reflections. First, when Fray Juan insisted that kings need the services of their nobility, one wonders whether he was thinking of the impasse created when the nobles repudiated their vassalage in the Cortes of Burgos in 1272 and went into exile to Granada. Secondly, while urging kings not to act with wanton cruelty, a sign of tyranny, and to shun barbarous penalties, was he thinking of municipal *fueros* and even the Alfonsine law codes that imposed such punishments for certain crimes (O'Callaghan, 2019: Ch. 13; Crime and Punishment)? Thirdly, although he acknowledged the necessity for the king to act firmly, but mercifully, and to remove from the community persons who would subvert the republic, did he have in mind the king's execution, for some unspecified reason, of his own brother Fadrique in 1277? Fadrique was hanged and his ally in treachery, Simón de los Cameros, was burned to death (O'Callaghan, 1993: 241-243; O'Callaghan, 1998: 144-151). When writing these lines, it seems unlikely that Fray Juan was unaware of the political upheavals roiling the kingdom.

After commenting briefly on the virtues of magnificence and faithfulness, Fray Juan dwelt at greater length on patience and perseverance. All four were aspects of fortitude. Magnificence referred to an elevated spirit that endeavored to do great things and to avoid activities that were vile or common. Faithfulness was a habit of mind that encouraged one to act with honesty. Patience often required that one suffer bodily harm in order to achieve one's purpose and that one discipline the wicked so that the republic would not be destroyed. Perseverance was the persistent pursuit of an objective (DPH. 4. 3-6). In his discussion of perseverance, Fray Juan cited the example of Xenophon, the Greek warrior and philosopher, who, on hearing of the death of his oldest son who fell in battle, removed his crown; but when he learned that his son died while fighting bravely, he took it up again and publicly lauded his son's courage (DPH. 4.6.28; Castro, 1962: 513-515). One might ask, was this an allusion to the death of Fernando de la Cerda, the king's eldest son, who died suddenly in 1275 as he prepared to oppose

the marauding Marinids? Is it possible that Alfonso X, returning, “angry and ill,” from his disappointing visit to Pope Gregory X, mourning the death of his daughter Leonor, and pained by this accumulation of sorrows, threw down his crown in exasperation? Did Fray Juan and others try to assuage his sorrow by emphasizing the bravery of his son, not yet twenty years of age (Desclot, 1949: 10–13; cap. 66; O’Callaghan, 1993: 234–236)?

Echoing the *Siete Partidas* (2,15,2), Sancho IV admonished his son to love all his children, but above all the oldest son who, by divine ordinance, would inherit his kingdom. He went on to explain that after the death of his oldest brother Fernando de la Cerda, who was married and had children, he, Sancho, rightfully inherited his father’s dominions (Castigos del rey don Sancho IV, 2001: 15.19–22).

In order to illustrate the virtues described above, Fray Juan drew on his *Liber illustrium personarum* for examples of Roman emperors, Visigothic kings, and the kings of Asturias, León, and Castile (DPH. 5.1–37). After reviewing their exploits, he urged kings to cultivate three noble qualities, namely, fear of God’s power, knowledge of God’s truth, and love of God’s goodness. As the king received his authority from God and would be answerable to God for his exercise of it, he would do well to fear God. “Timete igitur ut timeamini” (“Fear, therefore, so that you might be feared”) (DPH. 6.2.1.26). A king who was known to fear God would inspire fear among his people, who would be more likely to obey him. Fray Juan insisted that because the kings of the Moors did not have a true fear of God, they perished at the hands of their vassals (DPH. 6.2.1.39). The second stage of royal nobility was knowledge of divine truth, which would inspire the king to be a lover of truth. In order to maintain a stable kingdom, the king ought not to lie or engage in duplicitous or indiscreet talk. Otherwise, he would be seen as a foolish liar who would appear reprehensible, not only before God, but also before men. A king who was a liar would never have faithful friends or vassals. So that he might always speak the truth, the king should choose his words carefully, not saying too much or too little, “quia ex ore regis super populum vita et mors” (“because life and death fall upon the people from the mouth of the king”) (DPH. 6.2.2). In return for the gifts of God, kings ought also to love and serve God’s goodness so that they might enjoy those gifts more abundantly (DPH. 6.2.3; Castro, 1962: 521–526). Those passages, drawn in part from the Bible and the Pseudo-Aristotle, recall the depiction of the character of a king set down in the *Siete Partidas* (2, 2–5) (O’Callaghan, 2019: 45–47). In words reminiscent of his mentor’s teaching, Sancho IV remarked that the king who has true and loyal vassals and people

holds his kingdom firmly and peacefully. He quoted Solomon who said “verdat e justiçia guardan al rey e a su estado” (“truth and justice protect the king and his estate”) (*Castigos del rey don Sancho IV*, 2001: 33. 11,35).

After considering the king's relationship with God, Fray Juan discoursed at length on the bonds between king and people. Proclaiming that Spain was honored by so many personages worthy of praise, including the best knights in the world, he commented that the prince who would rule over such strong and wise people should be cautious. “Beatus et gloriosus erit princeps qui populos huiusmodi habet regere, dummodo et ipse sapientia gubernetur et suorum consilio perfruatur” (“Blessed and glorious will that prince be who rules these people, provided that he governs himself with wisdom and enjoys their counsel”). Kings ought to learn to rule their kingdoms with wisdom and mercy and not merely with a strong hand. If the king relies more on equity than power to rule his people, justice will be served (DPH. 7. 4). The king ought to curb his appetite for honors, riches, and pleasures. By seeking undue honors so as to exalt himself over others, his status will be shown to be mere pretense. By curbing his appetite for riches and guarding against avarice he will not seize what rightfully belongs to others. The king would be well advised to choose his words carefully, not engaging in hyperbole, not minimizing what he needs to say, not distorting his meaning, not indulging in self-praise, scurrility, vituperation, blasphemy, or cursing, not lying, or falling into perjury. Moreover, he ought to avoid the sins of gluttony, drunkenness, and adultery, because they deprive a man of the ultimate perfection of his soul; they corrupt his body, and they cause his death before its natural course is ended. While condemning incest and sodomy, Fray Juan also remarked that adultery caused manifest injury and made it difficult to determine the certain paternity of children (DPH. 7. 4. 1. 1–3; Castro, 1962: 515–516).

Attentive to the wisdom of his master, Sancho IV touched on similar themes in his *Castigos*, admonishing his son Fernando to be truthful (caps. 11,33,41), sparing in his language (cap. 26), restrained in his intake of food and drink (cap. 11), and avoiding illicit relations with women (caps. 11,19–20, 28). Fray Juan's comments about royal adultery reflect the *Siete Partidas* (2, 2, 5). The *Partidas* (2, 14, 1) expressly declared that if the queen should have an affair, she would offend the king's honor, dishonor herself, and bring into question the legitimacy of her children. While we have no evidence that Queen Violante betrayed her husband, we know that Alfonso X's promiscuous relations with at least three women produced at least five illegitimate children. We also know that Sancho

fathered four children out of wedlock by three women. Fray Juan surely knew that. In speaking of adultery, was he exhorting the king and his son to curb their sexual appetites?

After considering the king's personal character and conduct, Fray Juan directed attention to his relationships with his people. He focused on justice and mercy, the king's education, and the virtues of prudence and counsel. Emphasizing that the king had need of justice and mercy, he urged him to rule in accordance with "iura et leges," that is, law in general and enacted laws, so that others may imitate his example (DPH. 7. 4. 1).

According to Saint Bernard, who quoted the Roman jurist Ulpian (without mentioning his name), "iustitia est constans et perpetua voluntas ius suum cuique tribuendi" ("justice is the constant and perpetual desire to render his right to each one") (DI. 1. 10 pr. Ulp. 2 reg.). Justice served superiors and inferiors and one's equals without distinction. Fray Juan remarked that

"dixerunt indi quod maior utilitas est in iustitia regni quam in fertilitate, et rex iustus est utilior quam pluvia. Et dixerunt quod rex et iustitia sunt duo gemelli quorum alterum sine altero impossibile est durare" ("The Hindus declared that there is greater utility in the justice of a kingdom than in fertility and a just king is more useful than rain. They also said that the king and justice are twins that cannot exist without one another").

Concluding this exposition, Fray Juan added "Debet etiam rex esse populo liberalis et largus, beneficia sua communicans quibus expedit et quantum expedit" ("The king ought to be liberal and generous to his people, conferring his benefits upon those in need insofar as they need them") (DPH. 7. 4. 2. 1–2; *ibid.*: 512–513).

In discussing the *scientia regis*, Fray Juan pointed out that a king ought to be endowed with counsel and prudence. On that account, he had need of the seven liberal arts, namely, grammar, logic, rhetoric, arithmetic, geometry, music, and astronomy. Standing between God and men, between heaven and earth, a king, knowing both celestial and terrestrial things, should govern the latter by the former. As a king ought to be well-educated, Fray Juan cited a purported letter of the *rex Romanorum* urging the king of France to instruct his sons in the liberal arts "quia rex illiteratus est quasi asinus coronatus" ("because an illiterate king is like a crowned ass") (DPH. 7. 4. 2. 2).<sup>6</sup> Although the identity of the *rex Romanorum* and of the king of France

<sup>6</sup>Fray Juan did not mention his source, John of Salisbury, 1993: lib. 4, cap. 6; Castro, 1962: 517–521.

is unknown, Alfonso el sabio, a *rex Romanorum*, would certainly agree with that comment.

Prudence guided a king's thoughts to noble ends so that he would know those things necessary and beautiful for a gracious life (DPH. 7.4.2.3). A prudent king assured an orderly regimen and saved his rule from collapse. In order to achieve that goal, he should always take counsel before acting (*ibid.*: 511–512). Giving counsel to the king was the basic obligation of his vassals. With that in mind, Fray Juan offered this bit of advice (DPH. 7.4.2.4):

Et hec doctrina perutilis est ut rex nunquam consulat clericos et laicos simul, nec sciant isti de illis, ne illi de isti, nisi post concordiam utrorumque (This teaching is very useful that the king should never take counsel with the clergy and laity together, so that neither side would know what the other was thinking until they had all come to agreement).

One wonders whether that was a common practice when the king summoned the Cortes.

As further guidance for the young prince, Fray Juan reviewed the lives of ancient rulers, including the Roman emperors and their successors in the east and west. Although they were obliged to rule the world rightly, they destroyed it and, on that account, suffered divine punishment (DPH. 9.1–9). Of particular interest were the seditions and divisions among the Goths. After recording the many Visigothic kings who were assassinated, he mentioned Witiza whose eyes were cut out by Rodrigo, the last Gothic king. Rodrigo himself was reportedly killed by Count Julián, who was blamed for the conquest of all of Spain. In Fray Juan's mind the sufferings of Spain equaled or surpassed those of ancient Babylon, Rome, Carthage, and Jerusalem. Through fratricide and parricide, the Gothic kings, failing to observe the legitimate succession, usurped the power of the kingdom. In turn, the Arabs devastated Spain and Gallia Gothica (DPH. 9.10–11).

Concluding his remarks on the recovery of Spain, Fray Juan noted that in the year of our Lord 1277, Infante Sancho began to reign with his father (DPH. 8.6.51). The *De preconiiis numantine* gives the correct date 1278 (Liber de preconiiis..., 1884: 131–200; esp. 146, cap. 18). The background of that statement is as follows. In April of that year, according to Cantiga 235, King Alfonso was on the verge of death, but he recovered on Easter Sunday (17 April) (Cantigas De Santa Maria, 1981: 723–724 no. 235; O'Callaghan, 1998: 156–158). Given the imminent possibility of his demise, he summoned the Cortes to Segovia sometime in June in order to ensure the stability of his

kingdom by conferring greater responsibility on Infante Sancho, whom he had recognized as heir to the throne in the Cortes of Burgos two years before. Not only did he confirm that commitment, but he now entrusted Sancho with a major share of royal duties (Jofré de Loaysa, García Martínez, 1982: 90–92; cap. 219. 19 21; Crónica de Alfonso X, 1998: 189–194; caps. 67–68; O’Callaghan, 1993: 246–247).

As Fray Juan put it,

Recuperata fuit nihilominus Hispania per multos reges nobiles [...] usque ad regem Allefonsum in regem Romanorum electum et illustrem Sancium filium eius, qui iam eidem incepit corregnare sub anno Domini MCCLXXVII (Nevertheless Spain was recovered by many noble kings [...] until King Alfonso, elected king of the Romans, and his illustrious son Sancho, who began to rule with him in the year of our Lord 1277) (DPH. 8.6.51).

What did it mean to say that he began to *corregnare*, to reign together with his father? Clearly, he was not given the title of king, so one might say that Fray Juan indulged in a bit of hyperbole. Even so, it is apparent that Sancho was entrusted with greater responsibility, especially for the management of the war against Granada. Accusing Alfonso X of “perfidy and infidelity” because he dismissed the claims of the Infantes de la Cerda, the French chronicler Guillaume de Nangis confirmed the substance of Fray Juan’s remarks. He continued,

et quasi se curis regni et occupationibus detrahens, utpote paralytici morbi contagio jam corruptus, eum in pare regni praesentialiter introduxit (Inasmuch as he was already deteriorating from the infection of a paralytic illness, he withdrew himself as it were from the cares and concerns of the kingdom and introduced Sancho into the kingdom as an equal) (Guillaume de Nangis, 1894: 497–498).

Both Fray Juan and Guillaume agreed that something exceptional occurred during the Cortes of Segovia in 1278. Sancho was not given the title of king, but Fray Juan was emphatic in saying that he now reigned together with his father and Guillaume insisted that he was elevated to equal status with his father. In his first will of November 1282, Alfonso el Sabio confirmed Infante Sancho’s new status when he declared that he had given him “greater power than any king’s son had in his father’s lifetime” (Testamento otorgado..., 1851). One may assume with confidence that the king made some explicit statement in the Cortes indicating that he was sharing his responsibilities with his son, who was to be obeyed as king even though he was not given that title. The king acted, knowing that Sancho had reached the age of twenty in May 1278. As such, he had attained his majority,

according to the original version of the *Partidas* (2, 15, 3), and would be fully capable of ruling without a regency, should his father die.

These events, I believe, provoked an attempt on Alfonso el Sabio's life at Segovia, as reported by Fray Juan. In his lengthy review of murderous and tyrannical kings, he obviously intended to caution Infante Sancho against such behavior and to be aware of the need for constant security against sedition. After citing examples of treasonable activities by the nobility since the time of King Rodrigo, he commented that the counts of Castile frequently rebelled against Fernando III, "although he was their natural lord." Remarking that their descendants were still impatient against their lords, he went on to say (DPH. 9. 11)<sup>7</sup>:

In regem Aldefonsum filium prefati regis Fernandi apud Secobiam tres sagittas proditiosi homines emiserunt, ut ipsum et vita et regno privarent. Set sagitte in partem aliam, voluntate deifica declinarunt, regem intactum declinantes; et ut vulgariter dicebatur, de nobilium consilio factum quorum sanguis quiescere nunquam novit (Traacherous men fired three arrows at King Alfonso, the son of the aforesaid King Fernando, at Segovia, to deprive him of his life and kingdom, but the arrows, by the will of God, went awry, leaving the king unharmed. And as it is commonly said, this was done with the counsel of the nobles whose blood is never known to be at rest).

That account is also found in his *De preconiis civitatis numantine* (Liber de preconiis..., 1884: 199; bk.7, cap. 31) and in his biography of Alfonso X. In the latter text he noted that no one knew who shot the arrows or the one who counselled the attack (Fita, 1884: 323; cap. 23). The attempted assassination occurred in Segovia on an unspecified date. The king was in that city on several occasions, but I suspect that some nobles, outraged by the execution of Infante Fadrique and Simón de los Cameros, and disgruntled by the king's failure to declare Alfonso de la Cerda as heir to the throne, attempted the assassination sometime in June or July 1278 when the king convened the Cortes of Segovia.<sup>8</sup>

Even though he admitted that the blood of the nobility was never at rest, Fray Juan Gil reminded Infante Sancho that to rule successfully he had to maintain good relationships with the magnates, who had certain rights and obligations. In the first instance, they had to obey the divine commandments

<sup>7</sup>See: Gil de Zamora, 1955: 330–331. The assault is omitted in the Costas Rodríguez and Pérez Rosado edition of *Alabaņas*.

<sup>8</sup>The royal itinerary places the king in Segovia from 8 June to 30 July 1278; González Jiménez y Carmona Ruiz, 2012: 540–542.



and were not required to observe anything to the contrary. Secondly, they were not bound to obey the commands of their lords unless they consented to them. They had to abide by the laws, statutes, and approved customs that the people established to limit the cupidity and vexations of princes and magnates, who committed rapine and extortion. As Fray Juan was aware, kings had consistently condemned *asonadas* or plundering raids carried out by the nobility. He summed up this passage, saying that “secundum iura et leges et laudabiles terrarum consuetudines debent subiectos suos regere principes” (“Princes should rule their subjects according to rights and laws and the praiseworthy customs of the realm”) (DPH. 10. 1. 2–3).

These considerations are noteworthy for three reasons. First, subjects and vassals were not obliged to obey the *imperia dominorum* unless they promised to do so by opening their lips, that is, by giving oral consent. Secondly, Fray Juan stressed that the people had established laws and customs to restrain the abuses of magnates and princes. Thirdly, he declared that princes ought to rule according to approved laws and customs. All of that was a rejection of arbitrary government.

Lest there be any doubt, he quoted the Roman law principle that states,

Digna vox maiestate regnantis legibus alligatum se principem profiteri: adeo de auctoritate iuris nostra pendet auctoritas (It is a statement worthy of the majesty of a reigning prince for him to profess to be subject to the law; for our authority is dependent upon the authority of the law) (DPH. 10. 1. 4).

Recognizing the hypocrisy of exempting the prince from obeying the laws, while requiring everyone else to do so, that statement acknowledged that the laws would be more effective if the prince as well as the people submitted to them.<sup>9</sup>

Continuing his exposition of the rights and obligations of the nobility, Fray Juan pointed out that, just as the subject owed allegiance to his lord, so the lord owed allegiance to his subject. If the subject wronged his lord, without doubt he would be a traitor (*proditor*). Moreover, if the lord demanded something unjust from his subjects, he would commit

<sup>9</sup>Codex Iustinianus, 1877a; Codex Iustinianus, 1877b; ; Codex Iustinianus, 1877c: . The law was enacted in 429 by Emperors Theodosius and Valentinian. The text adds “Et re vera maius imperio submittere legibus principatum. Et oraculo praesentis edicti quod nobis licere non patimur indicamus” (“And, indeed, it is the greatest attribute of imperial power for the sovereign to be subject to the laws. By this present edict we forbid others to do what we do not permit ourselves”). In support of his argument, Fray Juan cited Gratian’s *Decretum* (part 1, dist. 95, cap. 7) and Gregory IX’s *Decretals*, bk. 2, tit. 24, cap. 3.

the crime of treason (*crimen proditiōnis*). The *fueros*, laws, and customs of the kingdom required lords to render certain things to their vassals, just as their vassals owed them tributes and services (DPH. 10. 1). That passage emphasized the mutual dependence of lords and vassals, or more precisely, of the king and his nobility. It seems to reflect the nobles' complaints that the king did not exhibit proper regard for their rights.

In the very next section, Fray Juan made that point explicit (DPH. 10. 2):

Set hodie, peccatis exigentibus, non petunt principes a vassallis debitum, set indebitum, non quod iustum est et consuetum, set quod iniustum et penitus insuetum et ad que vassalli nullatenus obligantur [...] Sic et homines populares a presidentibus continue devorantur, quamquam ipsi populares principibus et prelatibus fidelius et utilius obsequantur.

Today, however, because of our sins, princes do not ask of their vassals what is due, but what is undue, not what is just and customary, but what is unjust and scarcely customary, and to which the vassals are never obliged [...] Thus, the people are continually devoured by their leaders, although the people serve the princes and prelates more faithfully and more advantageously.

Those remarks clearly point to the contemporary protest against Alfonso X's imposition of extraordinary taxation.

Fray Juan went on to say "this is nothing to wonder at because the princes and prelates of our times" despise good people and love bad people. Decrying their failings, he condemned them for robbing the poor who were reduced to starvation. He commented that the only book they read is the book of exactions and extortions that they read a thousand times a day so that they can oppress and kill others. Bemoaning "Hispania misera," tortured by oppression, he concluded this indictment by appealing to the king of glory to relieve his people (DPH. 10. 2. 10–17).

#### THE MEANING OF THE NAME SANCHO

As he brought the *De preconiiis Hispanie* to a conclusion, Fray Juan addressed Infante Sancho in the expectation that he would amend abuses. Prompted by Sancho's courtesy and kindness, and by the cries of the poor, he was emboldened to write his book. As a true Franciscan concerned for the plight of the poor, he lamented that there was no one to hear them.<sup>10</sup> In a sweeping condemnation, he dismissed false kings, false leaders, false

<sup>10</sup>Jofré de Loaysa, García Martínez, 1982: 146, cap. 57, related that Sancho IV, before being interred in the cathedral of Toledo, had taken the Franciscan habit. I have not seen Castro, 1997: 327–349.

bishops, false religious, and false judges who ruled in the courts. They were robbers rather than rulers, Pilates rather than prelates, dissipators rather than dispensers, oppressors of the poor rather than defenders, enriched at the expense of the poor. Speaking directly to Infante Sancho, he urged him to be mindful of the status to which God had called him, namely, to be a shepherd for his people, an industrious ruler, and a determined advocate. In blunt language, he told the young prince: “Vos estis propter populum et per populum, non autem populus propter vos vel per vos” (“you are on account of the people and for the people; the people are not on account of you or for you”) (DPH. 10.3.20).

He reminded Sancho that God placed him in this state to punish tyranny, to console the afflicted, to teach the people, to overcome timidity, to liberate the clergy, to abase the haughty, and to protect the humble. He emphasized that a kingdom is unstable if it is not founded on mercy, secure in what is promised, strong in suffering, ready for peace, stern in punishment, lawful in judgment, temperate in speech, discreet in command, careful in spending, quick to help, faithful in counsel, circumspect in responding. The most high God called him to the height of such a dignity so that he might display devotion to the religious, kindness to the lowly, courtesy to equals, firmness to the proud, benevolence to the humble, mercy to penitents, and sternness to the obstinate. After a long quotation from Ecclesiasticus (50:6–11; 24:17–21), he expressed the hope that Sancho would preserve the people and the kingdom in justice, customs, and doctrine (DPH. 10.3.18–23).

Fray Juan then declared that the prince’s name reflected the virtues just cited. Explaining that the name had four meanings, he argued that Sancho was derived from the Latin *sancio*, meaning firm. Adding that “lex est sancio iustiniana” (“law is Justinian’s sanction”), he stressed Sancho’s obligation to do justice “que est virtus conferens ius suum unicuique” (“which is a virtue giving everyone his right”). Secondly, he stated that the name was equivalent to *satius*, that is, full of grace and truth. That should be understood as the virtue of temperance that constrained the illicit desires of the heart. The third meaning was *sanctus* or holy, characterized by the virtue of fortitude, manifested in his military, civil, and divine actions. Just as the saints who suffered the harshness of martyrdom were strong, so too was Sancho called to endure the hard and rough events of everyday life. The fourth meaning of his name was *sapidus* or *sapiens* or wise, marked by the virtue of prudence, that enabled him to distinguish the good from the bad. This was a virtue especially necessary for kings and prelates who

are ordained over others to rule the world. Those who lacked it could never rule a kingdom very well. Fray Juan concluded by telling Infante Sancho that his kingdom would be a virtuous realm if he practiced the four cardinal virtues, namely, justice, temperance, fortitude, and prudence. Should he do so, grace would lead him, like other good kings, to glory where the king of kings reigns for all time. Amen (DPH. 10. 3. 18–28).

With that, I believe that Fray Juan terminated his book. The last two tractates in which he summarized Vegetius's teaching about warfare were probably added as an afterthought.

This last section in which Fray Juan addressed Sancho directly was probably written in 1282 after the assembly of Valladolid transferred royal authority from King Alfonso to Sancho. Without identifying Sancho as king, he spoke to him as one possessing the fullness of royal power. There is nary a hint that Alfonso X still reigned or that Sancho reigned with him. Fray Juan's language assumes that there is now only one ruler. Like so many others, he seems to have recognized that *el Sabio's* reign was finished and a new reign was about to begin.

#### CONCLUSION

When Fray Juan dedicated his *De preconiiis Hispanie* to Infante Sancho, *maiori filio et heredi*, he knew that Alfonso X had formally recognized Sancho as his oldest son and heir in 1276 following the death of Fernando de la Cerda. Two years later when he declared that Sancho reigned together with his father (he used the word *corregnare*) he knew that the ailing king had entrusted his son with significant responsibilities for the government of the realm.

With every expectation that Sancho would soon be king in his own right, he set out to write a *speculum principum*, a mirror of princes, for the guidance of the young man. By lauding the fertility and beauty of Hispania, and praising the sanctity, wisdom, and bravery of the many men who brought distinction to their *patria*, he hoped that Sancho would understand that he was being given an extraordinary legacy and that it would be his responsibility to preserve it and defend it.

In order to do so, he reminded Sancho of his obligations to God and to the people that God entrusted to his care. Ruling by God's grace, he was admonished to love and fear God who would ultimately hold him accountable for his actions, good or bad. In straightforward language, Fray Juan told Sancho that he ruled for the people and not for himself. As he discussed honesty, justice, generosity, prudence, and the other virtues

appropriate to kingship, he warned the prince against pursuing his own interests rather than those of the people.

He focused on two issues that might damage the ruler's positive relationship with his people and thereby lead to the destruction of the kingdom. Denouncing avarice in a king as an especially detestable vice, he stated unequivocally that a king should be content with those taxes that the law allowed, and that he should not burden and impoverish his people with unaccustomed levies. Today, however, he lamented that princes ask of their vassals not what is due, but what is not due, not what is just and customary, but what is unjust and unaccustomed. And so the people are devoured by their rulers.

Secondly, Fray Juan stressed the king's duty to rule in accordance with law and justice. Citing the Roman legal principle *Digna vox*, he affirmed that, as the king's authority depended upon the law, so it was imperative that he should obey the law as well as everyone else. If the king ruled according to the approved laws and customs established with the consent of the people, justice would be served, and each person would be assured of his proper rights.

In writing these words, Fray Juan was not dwelling in an ethereal world, a world of abstraction. Rather, he was alive and writing during the ten or fifteen years of one of the most critical periods in Castilian history, marked by the unraveling of Alfonso X's reign. As a servant of the king and of his son, he witnessed the king's frailties, the growing tensions within the royal family, the rupture of the king's relations with his vassals, the Marinid threat, the failure of the king's imperial ambitions.

With those events in mind, it seems foolish to imagine that Fray Juan's work did not reflect the reality of the political turmoil surrounding him. Although he did not criticize Alfonso X by name, I believe that he intended not only to provide Infante Sancho with a manual for good government, but also to forewarn him against the malpractices of his father.

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O'Callaghan, J.F. [О'Кэллэген, Дж. Ф.] Fray Juan Gil de Zamora, Infante Sancho, and Alfonso el Sabio [Хуан Хиль де Самора, инфант Санчо и Альфонсо X Мудрый] // Философия. Журнал Высшей школы экономики. — 2022. — Т. 6, № 4. — С. 127–152.

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ДЖОЗЕФ О'КЭЛЛЭГЕН

PHD, ПРОФЕССОР

ФОРДХЕМСКИЙ УНИВЕРСИТЕТ (НЬЮ-ЙОРК, США)

## ХУАН ХИЛЬ ДЕ САМОРА, ИНФАНТ САНЧО И АЛЬФОНСО X МУДРЫЙ

Получено: 02.10.2022. Рецензировано: 27.10.2022. Принято: 15.11.2022.

**Аннотация:** В своем трактате «Хвала Испании» брат Хуан Хиль де Самора попытался привить инфанту Санчо, второму сыну и наследнику Альфонсо X, правильное понимание истории Испании и привести примеры тех правителей, которые хорошо использовали свою власть, и тех, которые злоупотребляли ею. Он напоминал молодому принцу, что тот не должен следовать личным интересам в ущерб своему народу, ведь он будет ответственен перед Богом. Особенно брат Хуан Хиль де Самора осуждал королевскую алчность и утверждал, что правитель не должен обеднять свой народ чрезвычайными налоговыми сборами. Более того, он подчеркивал обязанность короля править в согласии с утвержденными законами и обычаями, установленными с согласия народа. Хотя он не выражал несогласие с политическими решениями Альфонсо X напрямую, он знал о популярных жалобах на чрезмерное налогообложение и нововведения в праве. Предоставляя инфанту Санчо руководство для хорошего правления, он также озвучивал молчаливую критику политики Мудрого короля.

**Ключевые слова:** De preconiis Hispanie, Castigos, Digna vox, Лука Туйский, Викентий Испанский, вестготы, король Родриго, граф Юлиан, реконкиста, королевские добродетели.

DOI: 10.17323/2587-8719-2022-4-127-152.



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# PHILOSOPHICAL CRITICISM

BOOK REVIEWS

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ФИЛОСОФСКАЯ КРИТИКА

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Fedonnikov, N. A. 2022. "The Concepts of Tyrant and Tyranny in Medieval Political Discourse : Reflections on a New Book Devoted to the Problem of the Tyrant and Tyranny in the Middle Ages" [in English]. *Filosofiya. Zhurnal Vysshey shkoly ekonomiki [Philosophy. Journal of the Higher School of Economics]* 6 (4), 155–162.

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NIKITA FEDONNIKOV\*

## THE CONCEPTS OF TYRANT AND TYRANNY IN MEDIEVAL POLITICAL DISCOURSE\*\*

REFLECTIONS ON A NEW BOOK DEVOTED TO THE PROBLEM  
OF THE TYRANT AND TYRANNY IN THE MIDDLE AGES

GOLD, J., C. SCHANZE, AND S. TEBRUCK, EDS. 2022. *TYRANNENBILDER: ZUR POLYVALENZ  
DES ERZÄHLENS VON TYRANNIS IN MITTELALTER UND FRÜHER NEUZEIT* [IN GERMAN].  
BERLIN: WALTER DE GRUYTER

DOI: 10.17323/2587-8719-2022-4-155-162.

The concept of power and authority is one of the central motives of the so-called “new political history” (Le Goff, 1981). The approach to rulership as a complex social phenomenon, not reducible to formal institutional design of the state or society, has allowed historians to immerse deeper into the understanding of how the political systems of various communities functioned in a historical period. Going beyond the study of the institutional framework of the state and its legal system, historians began to pay considerable attention to the very concept of power, its content and functioning in different historical periods. Medieval history traditionally was a “methodological laboratory” in this research field. Particular interest in the European Middle Ages in this regard is largely due to the desire to determine how the political system functioned in pre-modern society. Starting with the studies of Mark Bloch (Bloch, 1924), Ernst Kantorowicz (Kantorowicz, 1946; 1957), and Percy Ernst Schramm (Schramm, 1954–1956), the study of medieval perception of rulership has given us hundreds of works devoted to the issues of representation of power, its self-determination, communication with society, and the formation of its political space. One of the central motifs of medieval perception of rulership is the concept of “tyrant”. Attracting the attention of researchers of political thought in the 19th century

\*Nikita Fedonnikov, Lecturer at the Russian Presidential Academy of National Economy and Public Administration (Moscow, Russia), [fedonnikov-na@ranepa.ru](mailto:fedonnikov-na@ranepa.ru).

\*\*© Nikita Fedonnikov. © Philosophy. Journal of the Higher School of Economics.

(R. W. Carlyle, A. J. Carlyle, 1903), the topic of the perception of tyranny turned out to be especially relevant in the context of research on the “new political history”, nevertheless such a multifaceted phenomenon can hardly be called fully explored<sup>1</sup>.

The idea of a bad ruler responsible for the dysfunction of the political system was formed in ancient philosophy, especially by Plato, Aristotle and Cicero. It became especially relevant in the medieval era, in connection with the active entry of Christian doctrine into political practices. The reception of ancient political thought, the appealing to the Holy Scriptures and the rich political context of the medieval era forms a complex, often contradictory and heterogeneous set of views on church and secular power, their nature, purpose, forms of legitimation, methods of communication with the elite and the people. Medieval political thought, if it could be discussed as a whole in the strict modern sense of the word, was in fact inseparable from ethics and theology and therefore reasoning about virtues and vices played a colossal role in its system. The adaptation and development of the concept of tyrannical rule goes hand in hand with the profound structural changes that engulfed the entire political and social system of the Mediterranean and Europe in the early Middle Ages. The Roman late imperial political structure, overgrown with a complex, multi-level bureaucratic apparatus, is being replaced with seemingly primitive, but stable forms of government, which are based on a system of personal and inter-clan, hierarchical relations of various political subjects: the king, the nobility, the clergy. The atomization of society, the deprivation of the people of political subjectivity, the convergence of the power structure with the church organization, the strengthening of the role of the Church as the “ideologist” of power led to the emergence of new ideas that actually legitimize the established political and social order. The search for an ideal political system, so topical in ancient political thought, is a thing of the past: for medieval political thought, monarchy is the only possible form of government. That is why the central figure in the political discourse becomes the king (emperor) as the executor of God’s will on Earth. The function of the good king in his every political action is to establish within the social order a justice that mirrors the perfect unchanging celestial order. He is the human exponent of God’s law, and his role is to imitate Lord’s rule of the universe. And for

<sup>1</sup>It is not possible to indicate in the review all the researches devoted to tyranny, a more complete list of published works with a detailed historiographical analysis can be found in the introduction to the reviewed volume. See, e.g.: Mandt, 1990; Green, 1993.

this reason, the inconsistency with this moral content, as well as its complete opposite, remain the focus of attention of medieval intellectuals.

Investigation of the tyrants and tyranny in this regard is the key to understanding how power existed, what it is determined to be and how it functioned in the perception of medieval society. The depiction of the nature of the tyrant and his actions or the functioning of tyranny and their evaluation are generally undertaken from an external perspective, which already refers to the functional and instrumental potential of the terms “tyrant” and “tyranny”. One of the latest volumes devoted to the problem of the tyrant and tyranny in the Middle Ages is *Tyrannenbilder: Zur Polyvalenz des Erzählens von Tyrannis in Mittelalter und Früher Neuzeit*, edited by Julia Gold, Christoph Schanze and Stefan Tebruck (University of Giessen) (Tyrannenbilder, 2022). The volume became the result of the conference *Polyvalenz der Tyrannis. Figurationen eines Herrschaftskonzepts in Mittelalter und Früher Neuzeit* that took place 24–26 September 2018 in castle Rauischholzhausen, representing a collection of more than twenty case-studies made by a group of German historians in which the Medieval and Early Modern concept of a bad ruler is analyzed using examples of specific images and narratives. The articles of the volume are united by a common theoretical framework: the political categories “tyrant” and “tyranny” are considered as a form of reflection on the political system, its functioning, normative restrictions and ways to overcome its deviation.

The scale of the volume and variety of sources analyzed by a team of authors is striking. Medieval political treatises, commentaries on the Holy Scriptures, liturgical texts, chronicles, epics, lives of saints, letters, plays and even cinema have become the objects of the authors’ research. The researchers answer a host of questions related to the reception of tyrannical rule in medieval culture. Some of them address questions that are already classical for studies on the history of political thought: what is the nature of the power of a tyrant, what biblical images are used by medieval authors to construct the image of a tyrant, how ideas about tyranny develop as ideas about power and rulership transform, is it permissible to commit a regicide over a tyrant and under what conditions, is a pagan ruler able not to be a tyrant? Others are more likely to address the functioning of the image of a tyrant in literature: what is the role and plot trajectory of a bad ruler in hagiographic and instructive literature, can a tyrant have good qualities or is he presented as a negative caricature figure, what distinguishing features and actions allow the reader to conclude that the character is a tyrant? Also, the authors pay special attention to

the very concepts of “tyrant” and “tyranny,” their distribution in language and literature, the search for analogues in vernacular languages. The concept of wicked rulership in the context of ecclesiastical authority is not left without attention: in which terms and to what extent the medieval authors could define the papal rule as tyranny? Therefore, reflection on the political system and rulership as an abstract category was largely embodied in personalized images of the ruler. As the authors themselves write (Tyrrannenbilder, 2022: 9):

In any case, the attribution “tyrant” is a category of exclusion and demarcation, which evokes an “us against him” constellation both on the level of the text and on the level of reception.

Articles devoted to specific cases are preceded by a detailed introduction, in which the authors reflected the complex methodological observations of their research, presented a very extensive list of already published works devoted to the image of a tyrant and tyranny, and also described in general terms the evolution of ideas about wicked rulership. In my humble opinion, the introduction is a bit lacking an immersion in the broader context of the development of medieval political thought, taking into account the political and sociocultural changes that accompany the transition from antiquity to the Middle Ages and from the Middle Ages to the early Modern period. Such a description, albeit not claiming to be complete, would allow the authors to better orient the reader in the system of ideas about power and domination, so it might be much easier to understand specific author’s case studies. Moreover, this would greatly facilitate the task of the authors themselves, since most of them have to turn to the political and cultural context of the creation, distribution and functioning of the sources they analyze.

The volume is divided into three parts, each frames a certain period, source genre or scientific approach. The first section combines articles devoted to the study of images of tyrants in narrative and prescriptive sources. The specificity of the sources studied by the authors is determined by the fact that all of them are aimed at communication with the rulers, and therefore, they represent a kind of instruction on what should be avoided in the government. Daria Jansen (University of Tuebingen) and Hans-Joachim Schmidt (University of Freiburg) refer in their research to the Old Testament images of Nimrod, Judith and Holofernes, their reception and evolution in the medieval intellectual environment. Christian Buhr (University of Würzburg) and Elke Ukena-Best (University of Heidelberg), referring to hagiographic

material, consider how the image of a bad ruler is constructed and its functions in relation to the story arc of a saint. Gesine Mierke (Technical University of Chemnitz), Mathias Herweg (Karlsruhe Institute of Technologies) and Julia Gold (University of Giessen), exploring the German chronicles of the 12th–14th centuries, examined educational role of the images of tyrants, paying attention to violent painful deaths and mental deviations as elements of the bad ruler’s narrative construction. Marion Darilek (University of Tuebingen), Matthias Standke (University of Paderborn), Thomas Poser (University of Zurich) and Michael Schwarzbach-Dobson (University of Cologne), studying medieval literature through the prism of cultural studies, investigated the problem of forming the image of a tyrant as a part of storytelling. The focus of their research is the inhumanity of the tyrant, the opposition of the images of a good and bad ruler, as well as the intra-plot communication of rulers and philosophers (wise men).

The second section, called “tyrant in political conflict” depicts both the strategies in which the term “tyrant” could be purposefully used and the performance logic of the tyranny image. Christian Stadelmaier (University of Giessen), Albrecht Dröse (Technical University of Dresden), Oliver Landolt (Schwyz), Alexander Jendorff (University of Giessen) and Markus Debortol (University of Innsbruck) drew attention to the discourse of tyranny, that is applied in various political realities, either by pointing to a deviation from the intended ideal in political practice, or forming a conceptual framework in which the tyrant is presented as a counterexample. Started with the image of tyrant as the instrument of Carolingian “renovatio” propaganda, the chapter continues with the “papal tyranny,” shows tyranny as an image of “foreign” in the construction of Swiss national identity or political entity of Europe, or the usage of “tyranny” terminology in the way of stigmatization and marginalization that supports and accompanies legal arguments. DS Mayfield (University of Heidelberg) and Giulia Frare (Ca’ Foscari University of Venice) are dedicated to Shakespeare’s *Measure for Measure* and Gryphius’ *Leo Armenius* to depict the discourse of tyranny and those meanings that reflect the image of a tyrant in the drama of the Early Modern period. This section ends with the article of Till Nitschmann (University of Hannover) that deals with the modern reception of medieval and early modern images and forms of rulership, which are presented in a rigorous political negotiation process. The investigation of the image of Jeffrey Baratheon from the *Game of Thrones* series leads the author to the conclusion that the author and showrunners built the whole image of the world of Westeros as the absolute opposite of modern Western democracy.

The third part, much shorter than the previous two sections depicts the development of the image of tyrant and its linguistics aspects during the early modern period. Karl Gerhard Hempel (University of Salento) explores the way German humanists adapted and transformed the tyrant discourse in their German translations of ancient texts. An article by Johannes Kaus Kipf (University of Munich) questions the specific use of the word “tyrant” in the writings of Martin Luther and explores how and to what extent this word could become a key concept for Luther’s political theology. Both studies address the question of how the discourse of tyranny is transferred to the vernacular language.

The structure of the volume is a little puzzling due to its disproportion and scatter of similar research topics in different blocks. More harmonious and logical should be the division into blocks that was formed during the conference itself, with a more detailed division into blocks depending on the type of sources under study. For example, it would be appropriate to divide the block “the image of a tyrant in narrative and normative texts” into three parts, setting apart the studies of the chronicles and epic from the studies of the biblical and hagiographic tradition, and to separate into another chapter the articles devoted to the image of a tyrant in discourse and ideology.

The variety of approaches and methods used by the authors, directed to the study of the categories of “tyrant” and “tyranny,” made it possible to reveal a very complex and multifaceted, but at the same time rather monolithic structure of the image formed in the Middle Ages. The main characteristic feature that distinguished a tyrant from a good ruler is his deliberate opposition to God, caused by pride. The tyrant rebels against the Lord, rejects the order established by Him, pursuing his own earthly goals. He is overcome by other vices, among which anger, greed and cruelty are especially common in medieval sources. He elevates of power through usurpation, rules without advice and assistance, his obsession often manifests itself in the form of mental insanity, even reflected in his inhuman, beastlike appearance. His reign is always short, full of wars and rebellions, and a sudden, painful, violent death awaits him, what will inevitably be followed by Divine punishment. Even more interesting is the revealed variety of contexts in which the image of a tyrant and the idea of tyranny are used. The image of a tyrant can be an invitation to talk about the sinfulness of secular power, an appeal that legitimizes the rebellion and overthrow of the ruler, an example “ex negativo” for the ruling elites, an instrument of church propaganda, a figure that sets off the image of a righteous man,



a saint or a good ruler in literature, and even a construct that acts as one of the foundations of the community's identity.

The potential for further study of the topic is huge. It remains to be hoped that the authors of the collection will not limit themselves to a one-time conference on the image of a tyrant and ideas about tyranny, and the result of their work will be more than one volume that will expand the chronological and geographical scope of the study area. On the one hand, addressing the problem of tyrannical power in late antiquity and early medieval period will allow to better understand how ideas about power spread and evolve, which ideas and images cease to be relevant, and which acquire a "second life" as political systems transform. In this regard, it would be especially interesting to pay attention to the Merovingian, Visigothic, Anglo-Saxon and Early Irish tyranny-discourse and the extent of its influence on Carolingian concept of rulership. On the other hand, research on the image of tyrant in the Orthodox Byzantine and Russian, as well as in the Muslim tradition, would significantly expand the context in which the ideas of tyrannical rule developed, spread and applied in practice. This would make it possible to have a much richer field for comparison, to trace the similarities and differences in the functioning of the concept at the level of political ideology, genre features, literary topoi, practical application, and a variety of language forms.

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НИКИТА ФЕДОННИКОВ

ПРЕПОДАВАТЕЛЬ

РОССИЙСКАЯ АКАДЕМИЯ НАРОДНОГО ХОЗЯЙСТВА И ГОСУДАРСТВЕННОЙ СЛУЖБЫ (МОСКВА)

ПОНЯТИЯ «ТИРАН» И «ТИРАНИЯ» В СРЕДНЕВЕКОВОМ  
ПОЛИТИЧЕСКОМ ДИСКУРСЕ

РАЗМЫШЛЕНИЯ НАД НОВОЙ КНИГОЙ  
О ПРОБЛЕМЕ ТИРАНА И ТИРАНИИ В СРЕДНИЕ ВЕКА

TYRANNENBILDER : ZUR POLYVALENZ DES ERZÄHLENS VON TYRANNIS IN MITTELALTER  
UND FRÜHER NEUZEIT / HRSG. VON J. GOLD, C. SCHANZE, S. TEBRUCK. — BERLIN :  
WALTER DE GRUYTER, 2022.

DOI: 10.17323/2587-8719-2022-4-155-162.

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Nekhaenko, F. V. 2022. "Alain de Libera's Subjectivity between Man and Christ : Reflections on the Book by A. de Libera" [in English]. *Filosofiya. Zhurnal Vysshey shkoly ekonomiki [Philosophy. Journal of the Higher School of Economics]* 6 (4), 163–177.

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FEDOR NEKHAENKO\*

## ALAIN DE LIBERA'S SUBJECTIVITY BETWEEN MAN AND CHRIST\*\*

REFLECTIONS ON THE BOOK BY A. DE LIBERA

LIBERA, A. 2021. *LE SUJET DE LA PASSION: COURS DU COLLÈGE DE FRANCE 2015–16* [IN FRENCH]. PARIS: VRIN

DOI: 10.17323/2587-8719-2022-4-163-177.

...nous sautons de Pierre Lombard, évoqué la semaine dernière, autrement dit du XII<sup>e</sup> siècle, au XVI<sup>e</sup>, du Moyen Âge à la modernité (Libera, 2021: 345).

Prominent scholars ordinary have a distinctive style one cannot confuse: Libera is not an exception. Developing his method and approach for almost 40 years he presents a brilliant example of non-narrative academic research in his his final recorded lectures<sup>1</sup> present a brilliant example of non-narrative academic research. What Libera as in the epigraph above jumps from one issue to another makes his thought difficult to follow, decipher, and completely comprehend.<sup>2</sup> I do not have a right to blame Libera: he delivered a course that imposes limitations on the coherency of the written text based on the orally performed lectures. Nevertheless, Libera seems to intentionally avoid the logical and temporal sequence of the history necessary to deepen the understanding of the main researcher's finding — an alternative to Aristotle-Descartes-Heidegger's line of subjectivity to perform actions and suffer passions. The topic itself is not covered in a volume promised by the author since Libera tends to make significant and yet non-related to passions digressions devouring a reader with supplementary information. The most

\*Fedor Nekhaenko, BA Student at the National Research University Higher School of Economics (Moscow, Russia), t.a.nkmail.ru@gmail.com, ORCID: 0000-0002-0777-8443.

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<sup>1</sup>Collège de France has his lectures recently uploaded on their YouTube channel (Libera, 2022).

<sup>2</sup>One time Libera called his method "dadadaïsme" but did not cut the history as he proceeded in the present course (Libera, 1999: 9).

vivid example clarifying Libera's approach is the striking juxtaposition of the first and last talks: whereas the speaker begins with a full table of different meanings of what passions are (Libera, 2021: 14–16), finishing the course he briefly mentions Christological disputes transmitted through Peter Lombard to the Latin West (*ibid.*: 493–495). Only a few times Libera returns to his primal definitions reduced solely to Christ's passions.

After a small part devoted to the analysis of Libera's methodological innovations applied via the course I will settle down the essential contribution: first, reconstruction of the archeology Libera has not collected into consistent and consecutive series of chronologically placed arguments, then a demonstration of possible fallacies stemming from Libera's method and history through a small investigation conducted over Eckhart's theory of passions and love compared with author's perspective. I do not want to downplay Libera's profound study; contrary, elucidate how the research initiated by the French medievalist could obtain a new life if a germane consideration would be given to summarizing and deepening contours and ramifications Libera abandons himself.

To name the course given at Collège de France "Le sujet" and propose to archeologically excavate the history makes a tricky and evasive step towards Foucault's project before he started teaching at the same Collège (*ibid.*: 14). However, in every text Libera highlights his method oscillates between analytical and continental tradition including Foucault (Libera, 1996: 229). To stress the interdisciplinary<sup>3</sup> he claims Collingwood to be his methodological spiring. Collingwood is an English historian who has coined the notion of structural complexes which become "complexe questions-réponses, un CQR" for Libera (Libera, 2014: 28; Libera, 1999: 625). In a nutshell, English structuralism enables Libera to construct from multiple authors historical entities which do not necessarily compose a unified series (Libera, 2021: 67). Though, Libera could not manage to deceive his audience by referencing an analytical philosopher. The French professor remains highly indebted to 2 intellectuals referenced a lot more than Collingwood — Heidegger and Foucault. Criticizing Heidegger for a historically inaccurate opinion regarding the roots of Cartesian subjectivity, Libera takes at simul his core idea of the historical deconstruction (*Abbauen* or *Destruktion*) (*ibid.*: 66, 131). As a discipline history is a critical survey penetrating the a priori

<sup>3</sup>Certainly remarkable in his books on universals and short introduction to the philosophy where an "analytical" approach to scholastic logic occupies a substantial place (Libera, 1999; Libera, 2001).

rooted concepts. Hence, Libera attempts to decolonize the Middle Ages by reestablishing Greek Eastern Fathers' (Gregory of Nyssa, Maximus the Confessor, and John of Damascus)<sup>4</sup> view on subjectivity tied with Christ's twofold natures and wills that Libera reckons as taken into oblivion by European medievalists (Libera, 2021: 7, 219). Decolonization is only reassured by the author speculating about the importance of the translation made not ad verbum and citing all his sources in original language ad sensum (ibid.: 28, 68–71) that I can only praise as a brilliant and astonishing toil. Overall, his methodology determines the issue at stake with lectures' exposition: when the history which may revolutionize the field of intellectual medieval milieu is cut into pieces, the duty calls to restore an appropriate structure of the narrative.

The variety of sources from the Bible to Zwingli Libera chooses represents French medievalist's tradition of "longue durée"<sup>5</sup> by which Middle Ages could be extended as long as to the XIX century (ibid.: 9, 493). "Longue durée" perfectly fits with Libera's excursions exploited to have an opportunity for speculations about Heidegger, Lacan, or Balthasar instead of medieval sources themselves (ibid.: 130–131). In the following exposition, I will omit all of them and rather discuss at length primal sources sometimes underestimated by Libera.

Libera believes the modern subject of Charron, Descartes, and Leibniz was given birth by Greek theologians who created the subject of action and passion instead of Aristotle's "ὑποκείμενον" as a vessel for "συμβεβηκότι". Greeks had attempted to unite in one subject two natures and wills that led to the theory of mutual immanence containing "ὑπόστασις" and "περίφρασις", whereas Libera found a link by which Christology had been transmitted into anthropology that opened a new realm of subjectivity humanity took for granted in the modernity.

<sup>4</sup>Greek fathers signify an additional line of thought to Libera's texts on the role Arabic philosophy played in the Latin West. Libera became famous for his critique of Sylvain Gouguenheim who had claimed Greek translations of Aristotle are more important than Arabic (Libera, 2009). As in his bestseller "Penser au Moyen Âge", the author believes medieval philosophy as a way of thinking was born in the East (Libera, 1991: 99–105). Furthermore, Libera always tries to bring to attention different traditions: e. g., in discussing the pre-history of the quarrel over universals he intentionally uses Alexander of Aphrodisias, Boethius, and Avicenna who represent three religions and languages (Libera, 1999: 12).

<sup>5</sup>French historiography not acknowledged by Libera in the work I am reviewing plays a decisive role in the discontinuous approach to the history of the Middle Ages. Paul Vignaux, Georges Duby, and Jacques Le Goff were acclaimed by Libera as sources inspiring him to of to study history in its rebellious diversity (Libera, 2014: 20).

The story begins with the Bible presenting Jesus' passions and the first ambiguities of the crucifixion. Lk. 22:42 and Mt. 26:39 tell the same story of Christ questioning the father's will and providence via the metaphor of chalice in the Gethsemane garden (Libera, 2021: 134), whereas Jn. 3:15 and 1 Cor. 2:18 respectively state that Son of Man and Lord of Glory were raptured. This CQR activates the search for Christ's unique subjectivity between human and divine. Who was crucified: man (god), (man) god, or man-god (ibid.: 251)? Simultaneously, "πάθος" as a term was regarded to signify vice and sexual depravity in Col. 3:5 (ibid.: 77, 85, 104). The Bible leaves a gap to tie subjectivity with passions through Christology. Cappadocians think that passions indicate the tendency to sin designating man's post-Adamic will that came from Neo-Platonists' ethical approach to the problem of evil (ibid.: 105–106). Sin could not be applied to Christ: thus, for Gregory of Nyssa and Basil of Caesarea Christ is a man who suffered and yet did not sin (ibid.: 111–113). He took a share in human nature and experience (temptation, prosecution, death) without what Latins translated as "fornicatio". At this point, historical paths split up into Latin and Greek versions which will be united in Peter Lombard's *Sententiarum libri quattuor*. Though, this division results in the identical explanation of how two natures unite in Christ and humans that were created independently.<sup>6</sup>

In the Latin West, Augustine and Boethius represent a new theory of Christ's compositional nature. Libera tersely exposes Augustine's exegesis of Christ's nature. Divine and human forms are not idem since the people did not know Christ was God when they crucified him (ibid.: 256). Consequently, Christ died as a man being God: God appeared in the lower form of a slave to be killed and resurrected. Identically, the son will judge on the day of Parousia under divine power (ibid.: 259). Libera believes Augustine illuminates the issue via the so-called "le chiese des proprietes" which permits two different natures to communicate without total unification. Divine and human remain distinct to prevent impassible God from suffering and inferior human from judging (ibid.: 263). For Libera, the same model is applied to Augustine to body-soul (corpus-anima) division where two entities compose the unity but a man could be named either by his soul,

<sup>6</sup>Unfortunately, Libera does not elucidate what essentially distinguishes the East from the Western point of view summed up by Peter Lombard. Course's decolonization strikes a reader who is familiar with previous texts of Libera: his story is Europocentric and almost deprived of Arabic and Jewish concepts. Moreover, most of the time the author elaborates on Western accounts of the passions.

body, or the unity. The mutual relationship opens the dimension for the subject's suffering and acting continued by Boethius.

Deliberating Latin philosopher Libera points out that Boethius has the second notion for subjectivity besides his well-known "persona" defined as "naturae rationalis individua substantia" by which he translated "πρόσωπον" (Libera, 2021: 238). "Substantia" contains an explicit reference to Aristotle's "οὐσία" which Libera tries to avoid in the search for alternative subjectivity. Nevertheless, Boethius uses "subsistentia" (ὑπόστασις) to convey the sense of subjective performance (ibid.: 240). What contrary to Augustine's step Boethius does not apply it to Christ or humanity is omitted by Libera who stresses the transition from Boethius to Thomas who is credited to unite two meanings of "substantia" and "subsistentia" in one formula representing modern subjectivity (ibid.: 241). I may suppose that Augustine and Boethius determine two facets of the subjectivity composed of chiasmus of properties that enables one to descend from Christ to a human and "subsistentia" being a process of sustaining oneself.

In the Greek East, Maximus the Confessor fought against Sergius, the emperor, and Monothelitism (heresy of one will) till his death in torture for what will become a Christian dogma (ibid.: 163). Following Gregory of Nyssa's<sup>7</sup> concept according to which the suffering is accomplished through humanity, Sergius I avoids the paradox of willing two opposite things by claiming the sole divine will has the Son suffer (ibid.: 136, 176–177). Defending 2 wills concept Maximus exploits several new concepts rooted in languages regarding Christ's will: "περιχώρησις" as mutual immanence of Christ's wills, "ὑπόστασις" designating the mutual dependency of the whole and parts in Christ, and "γνώμη" standing for a human weak will to sin that Christ does not have (ibid.: 179, 208). "Περιχώρησις" makes possible two distinct natures to communicate (ibid.: 210):

Son's will cannot disobey Father since the Word is deprived of "γνώμη" which people use to choose actions based on uncertain means and ends after the Fall (ibid.: 208).

Ergo, regarding Maximus' theory, Christ will divinely with a human voluntas.

<sup>7</sup>The author highlights the astonishing archeology of Sergius' sources whom the patriarch himself hardly knew: Aristotle and Porphyry. Via the introduction to Categories latter pagan philosopher fixed the determination of the subject as "ὑποκείμενον" without acting and suffering (Libera, 2021: 252). Monothelitism is rooted in ontological subjectivity transmitted to the most pious Cappadocians from the precarious rival of the Christianity.

Maximus' opinion was taken and elucidated by John of Damascus (Libera, 2021: 213). John remains loyal to the paradox of the New Testament that leads to the necessity of communication between two natures: man must be raptured and God should undergo passions (ibid.: 253). He upholds that two natures communicate (ἀντίδοσις) by the means of mutual idiomatic language (ibid.: 252). What John maintains as an exchange between being in heaven and being crucified is called relationship “d'immanence mutuelle” by Libera (ibid.: 254–255). Furthermore, to sustain this mutual communication of two natures John believes Christ's persona is not an individual located at the bottom of Porphyry's tree<sup>8</sup> (ibid.: 287). Christ is everything (ἅλος/totus) but not everything in its nature (ὅλων/totum) (ibid.: 384–386). The first statement makes Christ an ideal subject for any person because he suffers from being a human person (totus) and remains impassive by the majesty of the divine (totum). Christology becomes the sample for anthropology that will be elaborated on at length in the Latin West.

Libera proceeds to Peter Lombard to argue that in the 3<sup>rd</sup> book of the *Sententiarum libri quattuor* one of the opinions on the incarnation was taken from the Latin translation of John's writing (ibid.: 316). Peter enumerates 3 theories of divine embodiment: 1) assumed theory; 2) 2 natures and 3 substances; 3) extrinsic theory (ibid.: 311). For Hugh of Saint Victor who represents the first auctoritas man turns into God by grace in a new union after the incarnation, while for John of Damascus—a possible defender of the 2<sup>nd</sup> concept—Christ is a compound substance from the divine and human supplemented with body, spirit, and soul (ibid.: 311–312, 316). However, the 3<sup>rd</sup> theory supported by Augustine and Abelard is cardinal to Libera's narrative. According to them human soul and body are of accidental use implemented to appear before people. God became man through wearing a garment (habitus) that saves divine impassibility (ibid.: 317–320). What we believe to be passions are illusions exploited by God's camouflage. Returning for the last time to Augustine Libera reassures that Christology is parallel to anthropology: God incarnates in a human form like a soul has a body (*Filius Dei habendo hominem tamquam anima corpus*) (ibid.: 323). Though, the relationship between John and Augustine begs the question: how to unite “ἅλος-ὅλων” with “habitus”? Unfortunately, Libera does not provide an answer and abandons John's concept for further consideration

<sup>8</sup>In my view, Libera does not provide enough textual proof regarding the critique of Porphyry in John's “De fide Catolica”. Libera's history would look more consistent if a proponent of “ὑπόστασις” attacks an advocate of “ὑποκείμενον”.



of Francis, Eckhart, Suso, Luther, and Zwingli. This shift falls in danger of a massive “re-colonization” of the passions that Libera brings to the established realm of Western theology. Maximus and John’s CQR await necessary consideration.

Francis is a figure one could not expect in the course of personalities elected before: Libera tries to decipher the invention of the stigmatization with divine-human suffering. Francis was believed by OFM to receive the vision of the crucifixion carried by the seraphim that left 5 marks (stigmata) on his body per Christ’s 5 wounds on the cross. One facet of the number of wings mentioned (per senas alas) enriches Libera’s mind (Libera, 2021: 449). Libera is adamant 6 wings correspond to 6 digress of the divine illumination that structures communication of the idioms between Christ and human bodies (ibid.: 451–454). The model of the transmission between *verbum et homo* goes without questioning for Libera. As in the case of John of Damascus, it resembles broad strokes future researchers should complete themselves. Quickly switching to his beloved Eckhart Libera does not attempt to identify Francis and Bonaventure’s sources or link the concept with Eastern Greek fathers.

Libera favors making binary distinctions: Eckhart is juxtaposed with his famous disciple Suso as in “Penser au Moyen Âge” (Libera, 1991: 341–343). While Suso’s path is centered on “πάθος”, Eckhart’s one is “ἀπάθεια” that I will question in the final part of the review (Libera, 2021: 417). Postulating divine internal inhabitation Eckhart transcends previous theologians who reserved themselves to the mere analogy between anthropology and Christology as Augustine does (ibid.: 413). Christ’s incarnation results in divine humiliation that admits a soul to be possessed by God. The state of such divinity is reached through the detachment (*Abgeschiedenheit*) in Libera’s opinion on Eckhart’s corpus (ibid.: 414). The soul rejects being attached to anything besides God himself. Grace is a negation and detachment since God did not suffer and man should stay the same (ibid.: 417). Libera does not claim explicitly that Eckhart takes the theory of Augustine-Peter’s habitus to guarantee an ethical ideal based on Christ’s detachment from sorrow and joy (ibid.: 421). Eckhart even goes so far as to reference Augustine’s theory of “*homo exterior et inferior*”: whereas the former moves and suffers, the latter remains dispassionate (ibid.: 420). Eckhart merges the 6<sup>th</sup> and 7<sup>th</sup> stages of happiness in seeing God directly during this life that is derived from Augustine’s “*De vera religione*” where the bishop claims the final stage is post-mortal (ibid.: 465, 468). Without a proper justification, Libera finds the same idea of idioms’ chiasmus about which Eckhart does not

say a word (Libera, 2021: 396, 469). I would suggest Christ's nature is irrelevant to Ekchart's theology being extremely mystical and founded on the idea of ubiquitous and omnipresent divinity. The analogy between John of Damascus and Meister Eckhart may sound legitimate but the claim of proven direct reception seems controversial and pends an appropriate elaboration as Libera's research on Maximus and John himself.

Opening the path to suffering and compassion Suso wrote a book to defend Eckhart after posthumous accusations brought by John XXII (ibid.: 414–415). Analyzing images by which Suso's manuscript (Strasbourg, BNU, 1998–2022) was illuminated Libera claims that for Suso suffering and compassion are better than mortification, undergoing passions establishes spiritual chivalry, and eternal formless deity bows people in their compassion (Libera, 2021: 423–425). Further on, Suso in the text advises meditating on Christ's sufferings in *silentio* to improve the skill of compassion (ibid.: 465). However, the question of the potential backlash between Suso and the illuminator's intentions goes unnoticed. Transmitting Christ's model into humanity Suso makes a reverse step to claim people need to suffer and sympathize with Christ.

Jumping from XIV to XVI century Libera shifts to the last set of issues surrounding the Eucharist among protestants. At first glance, having reduced 7 sacramenta to 2, Luther articulates the idem to the Fourth Council of the Lateran formula against a figurative reading of the Eucharist: “transsubstantiat pane in corpus, et vino in sanquinem potestate divine” (ibid.: 346, 350). Even so, Luther differs from the catholic dogma since he upholds the substance of bread remains with the substance of Christ's body added, whereas Catholics believe the substance is replaced by *corpus Christi* (ibid.: 351). For Luther, Christ's *modus essendi* is “l'ubiquisme” for he is present simultaneously in Heaven and among terrestrial substances during Eucharist (ibid.: 352–353). Libera once again finds in Luther the idea of “*communicatio idiomatum*” which justifies the concept of omnipresent Christ (ibid.: 391). If Christ is united with bread, people consuming the body take communion with Christ on the verge of Christology and anthropology.

Zwingli who rejects ubiquity and theopaschism proposed by Luther goes in the opposite direction by excluding Christ's passions (ibid.: 353, 360). Zwingli argues as Eucharistic bread signifies symbolically *corpus Christi* did not suffer and die on the cross (ibid.: 351, 355; 358). Divine sufferings are only a sign of human passion (ibid.: 361). Consequently, Zwingli rigidly

opposes any transmission of the subjectivity contra Luther<sup>9</sup>. Luther was not only supported and got approved at the Montbéliard Colloquium but also followed by Chemnitz who believed divine nature is hidden in Christ (Libera, 2021: 346; 391). Identifying 4 genera of how to speak about Jesus Chemnitz as Luther excludes the possibility of the transmission of the sufferings from human nature to the divine since God remains impassive (ibid.: 394–395). Idiomatic language Damascus, Luther, and Chemnitz employ prohibits divine passions by allowing only unidirectional influence from human to divine (ibid.: 394). To what extent Lutherans were acquainted with John's tractate and might have referenced him is put down by Libera<sup>10</sup>.

All in all, through the centuries theologians have produced groups of questions pretending to define how divine and human convey. As an offspring of their reflections disjunctive to Aristotle-Porphry-Gregory of Nyssa-Sergius subjectivity has been coined and bowed with Christ's model. 4 structures of the non-linear history could be discerned after a brief exposition of Libera's achievements: (1) Augustine, Boethius, and Abelard (Peter Lombard?<sup>11</sup>) consider Christ's humanity to be a garment used by God to appear before people and suffer in a form of a human, this trick enables Augustine to make an analogy with the soul-body relationship; (2) Maximus the Confessor and John of Damascus speak of Christ with mutual idioms which make possible divine passions and human rapture, nevertheless, divinity itself is impassible; (3) saving divine impassibility Eckhart and Suso maintain a divine presence in the soul by reinforcing the level of the proximity between Christology and anthropology; (4) Luther and Chemnitz utilizing Eucharist translate divine ubiquity and omnipresence of the idiomatic Son. Libera is right regarding the core henotic all auctoritates quoted — different attempts to establish a human identity on Christ's model. Surprisingly, he does not mark the differences and outcomes for modern subjectivity established by Thomas, Descartes, and Leibniz in the conclusion (ibid.: 237, 241, 282). In my view, gradual humanization

<sup>9</sup>Of course, Libera does not formulate a concise conclusion of the present comparison.

<sup>10</sup>To be honest, Libera finishes his analysis with some small remarks about the sin and moral modality in Post-Tridentine Scholasticism. Jesuits argue men can avoid all sins physically or logically but remains morally guilty that Libera seems to regard as the prolongation of the ethical model of Christ and “γνώμη” (Libera, 2021: 505). Symptomatically, the theory was attacked by Arnauld who could be called the proponent of the pure logical Port-Royal “subiectum-ύποκειµενον” beyond doubt. I hope Libera will advance the topic since Post-Tridentine Scholasticism is terra incognita and thesaurus for a historian loyal to “longue durée”.

<sup>11</sup>His own opinion is lurking among authorities cited.

of the divine would be the best solution uncovering the secularized modern subjectivity of actions and passions. The secularization is evident in the case of the abrasion of the demarcation between divine and human that reaches its focal point in the writings of Rhenish mystics among 4 “les complexes”.

A reader may notice that Libera does not exhaust all the ramifications of the amazing discoveries he elegantly produces and makes spurious assumptions. This untidiness stemming from a non-linear narrative fashion which resembles a post-structuralist approach might perturb Libera’s findings and their demonstrability. I would rather concentrate on one topic related with an essential complex of Libera’s history of subjectivity<sup>12</sup> — Eckhartian negativity. Libera has been long ago adamant Eckhart unambiguously gives preference to nothing and emptiness over passions and love (Libera, 1991: 318–322). I do believe Libera unintentionally chooses the sources he finds germane: e.g., contested by modern scholarship<sup>13</sup> “Von Abgescheidenheit” where “nicht” replaces everything else (Libera, 2021: 415). Though, he ignores a vast part of what Eckhart has written positively describing love and passions uniting with the divine. The step towards nothing reduces the complex of problems for Libera: I want to doubt what he states that the movement from anthropology to Christology was not accomplished (ibid.: 394). For Eckhart, as I will be striving to demonstrate even the divine could suffer due to the complexity of mutual dependence Libera has not discovered in this course of lectures.

In what follows I will provide a twofold argument reclaiming Eckhart’s theory of love expressed in his German sermons, then restoring his concept of passions formulated in “Das Buch der Göttliche Tröstung”. Both ideas contradict Libera confided presentation of an apathetic and lethargic philosopher and demand further study of the subjectivity Libera found. From the beginning of his pastoral care in Germany Dominican friar exclaims “God is love” (daß Gott die Liebe sei) since the divine love (minne) constitutes every being in its existence (wesene)<sup>14</sup>. Eckhart transforms rigid scholastic notions applied to God into mystical language of love. God’s “minne” is not

<sup>12</sup>In “La philosophie médiévale”, the French historian pinpoints that Eckhart is a central point of his search for medieval philosophy consolidating logic, metaphysics, and psychology in one system (Libera, 2001: 113). Eckhart is not an author picked by random choice: he is crucial for Libera’s presentation of the Middle Ages.

<sup>13</sup>Libera says he does not understand why scholarship distrusts the spurious work without validation of his opposite opinion (Libera, 2021: 417).

<sup>14</sup>“...therefore all beings (alle Kreaturen) are kept in existence (wesene) by love (minne) which is God (von der minne, diu got ist)” (Meister Eckhart, 1993a: Pf 5, Q 65).

equivalent to “Liebe” which appears at the beginning of the paragraph: both terms are related to the divine differently<sup>15</sup>. “Liebe” designates a human being loving God because he is enormously appealing (liebens) (Meister Eckhart, 1993b: II). Eckhart even speaks with a strong modal verb to denote that everyone must (muß) love him<sup>16</sup>. Accordingly, “Liebe” and “minne” connected with God signify the order of nature: creatures love (Liebe) God since the mere act of creation and participation contains love (minne) as a signature of the supreme creator.

Love excludes the particularity so essential for humans who place terrestrial goods above celestial ones and restores the original condition when a person is closer to the divine instead of their personality (Meister Eckhart, 1993a: Q 5a): splitting two kinds of love belongs to the realm of rational

<sup>15</sup>It seems highly probable that Eckhart occupied with exegesis while preaching divides the biblical notion of the highest love (ἀγάπη/caritas) into these two categories to support his concept of a mutual active-passive relationship between a creature and God. Libera omits the second side I want to explore. In the 3<sup>rd</sup> question of *Quaestiones Parisienses*, German mystic writes “delectio” is born in beatitude (dilectio est principalior in beatitudine) that may be caused by Eckhart’s desire to sacralize profane language rather than interpret the Holy Scripture (Meister Eckhart, 1993b: *Quaestiones Parisienses*, III). This notion appears in the Vulgate when Paul prescribes to love your neighbor fulfilling the law (dilectio proximo malum non operatur plenitudo ergo legis est dilectio) (Rom 13:10). Strangely enough, in the Latin translation of the Bible which the philosopher has read the key passage “God is love” was rendered as “Deus caritas est” (1 Jn. 4:8–16), while Augustine blending these notions writes “Deus dilicetio est” (Aurelius Augustinus, 1968: 8.8.10). What Eckhart prefers Augustine over the Bible might be the key solving the problem.

<sup>16</sup>Delivering the 3<sup>rd</sup> gospel he gives two hints: first, the theologian amplifies the theory of love with the scholastic notion of supreme good (guot) which a soul obtains and cannot resist apprehending with all epistemological powers accumulated (diu sêle alzemâle) besides love (Meister Eckhart, 1993a: Pf 3, Q 104). Having referenced the scholastic philosophy of the intellect Eckhart fills the preaching with other scholastic terms: I point not only to “guot” which is a German translation for “summum bonum” but also to powers of the soul which scholastics name “vis animae”. He incorporates the terminology into the theory based on the rejection of scholastic (primarily Thomistic) concepts of God as “esse” and the supremacy of “intellectus agens”. Second, he uses “minne” for love: I assume Eckhart supports his concept of the passive intellectual union with God by implicating that since the good has been grasped by “Liebe” the divine intervenes in loving a creature (minne). Furthermore, I can provide a shred of supporting evidence for such reading because God is good (got ist ain gut) who persecutes (iaget) creatures to guarantee that a human being could search for him in response (ibid.: Q 63, Jundt 7). The path starts with “minne” encrypted in a creature by the act of creation, continues when one discovers the good being God and reaches the climax at the stage of “Liebe”. Contrary to Libera, Eckhart believes in the possibility of human actions changing God.

distinction<sup>17</sup>. The mystic goes so far as approaching the boundary which distinguishes heretic from orthodox theologian to preach that love (Liebe) permits becoming more God than oneself (in der liebe bin ich me got, dann ich in mir selber bin) (Meister Eckhart, 1993b: *Das Buch der Göttliche Tröstung*, II). Employing the same language of detachment, the philosopher recommends avoiding willing (selbst entäußert<sup>18</sup>) to free the space for God (der Wille... in den Willen Gottes... geformt ist) (ibid.: Pf 24). Surprisingly, such a will allows us to do everything (vermagst du alles) including love (es sei Liebe oder as du willst) that Eckhart underscores at the end of the sentence (ibid.: *Die Rede der Unterscheidung*, X). Libera errs that Eckhartian negation necessarily excludes all the passions important for Suso.

In “*Das Buch der Göttliche Tröstung*” Eckhart presents the second aspect of the passive unification with God through suffering (lîden) that undermines Libera’s confidence in what Eckhart rejects all passions (Meister Eckhart, 1993a: *Das Buch der Göttliche Tröstung*, II). The beatitude is a personal experience of undergoing passions for God (lîden durch got und durch woltât) that corresponds to God who consolidates with humanity in suffering (in lîdenne)<sup>19</sup>. Eckhart apparently alludes to Christ whose sufferings have atoned people from the original sin: what deserves attention is the mutual influence of the divine and human resembling the idiomatic chiasmus into both sides all theologians denied according to Libera. Love asks for a Son-like pilgrimage without affection and desire. In God human suffering (Eden) ceases to be painful since God becomes my suffering (mîn leit got ist) in total passivity of the divine controlling a subject. God absolves the pain (leit) symphonizing (mitlîdet) with creatures who are open to his participation. Unhappiness, misery, and sorrow (untrôst und leit und enleget) are the attributes of all who attempt to abandon God (Was nicht Gott ist) and refuse to embrace his love that guarantees a felicity bestowed by the divine (süezicheit, wunne und trôst, den got gibet) (ibid.: I). The ontological division is again structural for emotional: one obtains benevolent passions via God’s grace, whereas a person who rejects the help from the divine is destined to remain wretched. On top of that, Eckhart reinforces that human activity results in the deterioration of creatures’ conditions because

<sup>17</sup>In “*Das Buch der Göttliche Tröstung*” Eckhart presents what the relationship of two amalgamated in one (zwei als ein) creates love (Meister Eckhart, 1993b: *Das Buch der Göttliche Tröstung*, II).

<sup>18</sup>The phrase literally means “to leave/abandon” the will (der Wille).

<sup>19</sup>“...that God is with us in suffering (in lîdenne) means that He Himself suffers with us (lîdet selbe)” (Meister Eckhart, 1993a: *Das Buch der Göttliche Tröstung*, II).

only God could make life better by his actions that are already hidden in every individual. The polarization resembles famous Augustine's division between two types of love (*caritas*) (Aurelius Augustinus, 1899: 5 12–5. 18): either love is bound to the order of created (*niht ledic der créature*) making a human being indifferent and cold to divine love (*kalt an götlicher minne*) or love is directed to divine good transforming negative affections and securing the salvation (Meister Eckhart, 1993b: *Das Buch der Göttliche Tröstung*, II). Depicting the former kind of attachment Eckhart introduces another emotional dimension for love which is the coldness of a human being refusing to become divine. The German mystic does not assume God would turn away from somebody he has created: a human arrogance presented via love language obstructs the unification. Finally, privation of the divine receives its emotional dimension in mirthless and naked nothingness (*ein bloßes Nichts, unerfreulich, wertlos und hassenswert*) (*ibid.*: *Das Buch der Göttliche Tröstung*, II). Nothingness is bound with the absence of God bringing joy and bliss since humanity is nil without grace and apprehension of divine love (*minne*). The subjective agency is so extended that God needs his people to believe and trust him by accepting the proposal, whereas Libera does not recognize the universality of Eckhart's offer: not only love is essential for amalgamating with the divine that Libera might have fended off by alluding to the apophatic language akin to Saint Dionisius' theology of love and nothingness but God also requires people to participate in the passions crucial for the beatific experience. In light of reconsidered Eckhart, the way of reuniting “*nicht*” with “*Liebe-minne*” is sophisticated: either Eckhart purposefully speaks in aporias or his sources — probably Albert and Thomas' two different theories of passions — might have caused the contradiction he was not aware of. Even so, Rhinish mystics could not be distinguished between ascetic Eckhart and compassionate Suso who was evidentially influenced by Eckhart's positive program.

In conclusion, despite my critical claims on the methodology and consistency Libera unveils through his lecture the world of yet not explored medieval intellectual culture linked with our present society and mentality. His general proofs and complexes of authors with germane questions and answers sound strong in their heart: essential for modern subjectivity idea of suffering and acting originates in the concept of “*ὑποκειμένον*” implanted by various theologians from Christology into anthropology and excluded by the dominant Heideggerian point of view. I hope that the remarks and reservations expressed in my review will make a tiny contribution that advances the amazing research Libera started 10 years ago.

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ФЕДОР НЕХАЕНКО

СТУДЕНТ ВАКАЛАВРИАТА

НАЦИОНАЛЬНЫЙ ИССЛЕДОВАТЕЛЬСКИЙ УНИВЕРСИТЕТ «ВЫСШАЯ ШКОЛА ЭКОНОМИКИ» (МОСКВА);

ORCID: 0000-0002-0777-8443

СУБЪЕКТИВНОСТЬ МЕЖДУ ЧЕЛОВЕКОМ И ХРИСТОМ  
АЛЕНА ДЕ ЛИБЕРА

РАЗМЫШЛЕНИЕ НАД КНИГОЙ А. ДЕ ЛИБЕРА

*LIBERA A. LE SUJET DE LA PASSION : COURS DU COLLÈGE DE FRANCE 2015–16. — PARIS :  
VRIN, 2021.*

DOI: 10.17323/2587-8719-2022-4-163-177.



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# ACADEMICAL LIFE

CONFERENCES, CONGRESSES, SYMPOSIA

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# АКАДЕМИЧЕСКАЯ ЖИЗНЬ

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JURIDICAL MONUMENTS OF 5-17TH CC.:  
AUTHORITATIVE TEXTS

OCTOBER 12, 2022 (MOSCOW, RUSSIA)

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DOI: 10.17323/2587-8719-2022-4-181-188.

A conference devoted to medieval legal history was held on October 12, 2022, at the Institute of World History, Russian Academy of Sciences, as a part of a research project “Legal History of Middle Ages and Modernity”. The talk was concentrated on authoritative texts, as it had been previously declared in the conference’s title. The choice of this topic was substantiated by the fact that despite the superficial monotony of medieval legal history, the inner logic of the history of medieval jurisprudence is that of authoritative texts. The logic of authoritative texts was the main criteria for compiling juridical monuments, for fixation of oral tradition, and for different essays to make codifications. Nevertheless, the nature of this authority stays obscure, and the aim of the conference was to investigate the history of different legal texts as authoritative texts.

The board announced four key problems to be discussed within the scope of the conference. First of all, it was the problem of studying and commenting on juridical texts in medieval universities and other law corporations: how and where were the authoritative texts studied, commented on, and glossed? Furthermore, the history of juridical monuments as authoritative texts in education was set as a problem. It implied the manuscript tradition, manuscript marginals, and practices of direct and indirect quotation. The third problem suggested by the board to discuss was the problem of early law codifications and its’ commenting in the writings of both civil and canon glossators and commentators. Eventually, the problem of the later existence of medieval juridical monuments was proposed by the board: how were the authoritative juridical texts and their’ ideas transmitted and translated in all-European context. The presentations were arranged generally chronologically in accordance to their topics. Consequently the speakers covered different times from the 9th c. up to medievalism of 20th c. and different geographic areas of European continent from Rus’ to Castile and León.

The report made by Andrey Vinogradov, an Associate Professor of the Center for Medieval Studies at the Higher School of Economics, was devoted to the contradiction between two crucial norms in medieval Russian canonical legal practice. The report was entitled “The Conflict of Authorities:

Tithe and Nomocanon in Pre-Mongol Rus'” (“Конфликт авторитетов: десятина и ‘Номоканон’ в домонгольской Руси”) and was based partly on the Primary Chronicle (as well as legal sources from medieval Rus' such as The Statute of Sviatoslav Ol'govich of 1137) which testified to the well-known usage of tithe and the allegation in the Church Statute of Prince Yaroslav to the Greek Nomocanon (probably the Nomocanon in 14 titles) which traditionally introduced hard-set remunerations to bishops in the context of Byzantine canon law. Therefore conflict between the usage of the tithe (the tradition which came to Rus' probably from the West) and the usage of remunerations to bishops (the norm from Byzantine canon law) is on hand. These two norms were practically in force in parallel, for example in Novgorod, as it was shown on the basis of the Statute of Sviatoslav Ol'govich of 1137 by Andrey Vinogradov. The Statute explicitly replaced the usage of tithe with the usage of remunerations.

Two questions were set by the speaker to this conflict of norms evidence, first, whose interest was the ground for such a replacement, and, second, whose enterprise such a replacement could be. Was it introduced by the prince to conciliate the archbishop in the context of the Revolution of Novgorod of 1136 or to humiliate the archbishop, or was it initiated by the archbishop himself, Niphont of Novgorod due to his Greek sympathies? The speaker hypothesized that the Greek practice of remunerations was after all more sustainable than that of the tithe and therefore the replacement of the tithe by the remunerations was expedient for the archbishop in the context of frequent change of princes in Novgorod after the Revolution of 1136. Therefore, even though the legal framework of the Russian church stayed formally independent of Byzantine, Greek canon norms could be present in Russian canonical legal practice.

The report of the next speaker, Mikhail Zemlyakov, an Associate Professor of the Faculty of Humanities, School of History at the Higher School of Economics, moved the discussion towards the western region of the medieval European world. The report title was “The Anonymous Treatise on Roman and Frankish Offices of 9–10th cc. and its dependence on Late-Roman Law and on *Etymologies* by Isidore of Seville” (“Анонимный трактат о римских и франкских должностях рубежа IX–X вв. и влияние на него позднеримского права и ‘Этимологий’ Исидора Севильского”). It was devoted to Vat. Reg. Lat. 1050, a manuscript of French provenance containing the anonymous *Decurio de gradibus* which was composed to describe the variety of late-Roman and Frankish offices, their system, and the limits of their commissions and jurisdictions. As it was presented by the speaker,

the *Decurio de gradibus* makes use of many sources including the book IX of *Etymologies*, the Code and the Institutions of Justinian, and Germanic legal monuments like the Breviary of Alaric, the *Lex Salica*, and the *Lex Rupuaria*.

The main hypothesis of the speaker touched upon the question of the practical application of *Decurio de gradibus* and Vat. Reg. Lat. 1050 on the whole. In contrast to the conjectures made previously by scholars, Mikhail Zemlyakov inferred a suggestion that this manuscript was not used as a schoolbook but was composed either in the kingdom of Lower Burgundy or in the Burgundian kingdom where the remains of the Roman administrative structure were still present in 8-9th cc. and should have been transferred into the Frankish political culture and nomenclature.

Galina Popova, a Senior Fellow of the Institute of World History at the Russian Academy of Sciences, presented a report entitled as “Was the Visigothic *Book of the Judgments* an Authoritative Text in 12-13th cc.?” (“Была ли вестгосткая ‘Книга приговоров’ авторитетным текстом в XII-XIII вв.?”). The chronological focus of the report was explained by the speaker with the fact that nearly half of Latin manuscripts containing the *Book of Judgments* date from the period of 12-13th cc., and, furthermore, this is the time of the beginning of medieval reception of Roman law through the Roman codifications. Moreover, the very tradition of Visigothic law is one of the most crucial problems in the studies of the *Book of Judgements* because there are no extant manuscripts that would date from the epoch of Visigothic Kingdom: the whole manuscript tradition is no older than 721. The speaker also focused on the Visigothic law in the Mozarab enclaves in Al-Andalus, in Toledo, which has been supposed to be the area of practical usage of the *Book of Judgements* as the local law, as the “law of the Christians”.

Nevertheless, as Galina Popova showed in the report, the Mozarab legal documentation does not contain a single quotation from the *Book of Judgements* but contains only one example showing the actual acquaintance with the text of the *Book of Judgements*. Besides, the clauses the Mozarab legal documentation makes use of are completely different from the formulas elaborated in the *Book of Judgements* because the Mozarabs used Arab formulas. Finally, the speaker concluded that the real reception of the *Book of Judgements* in Toledo constituted the transformation and the transmission of the Visigothic law into the local law and the local traditions of private law, and not in the knowledge of the original text.

The Iberian region continued to be the focus of the discussion due to the report of Alexander Marey, an Associate Professor of the Faculty of Humanities, the School of Philosophy and Cultural Studies at the Higher

School of Economics. The report entitled “A Never-Existed Corpus? How the Siete Partidas Began to Be Studied in Universities” (“Свод, которого не было? Как Семь Партид начали изучать в университетах”). The Siete Partidas were composed in vernacular by order of Alfonso X of Castile and possibly should have replaced both the Corpus of Justinian and the Decree of Gratian, as a part of the realisation of the imperial political ambitions of the Castile king. The Siete Partidas received the status of the secondary statutory document in the middle of the 14th c. and were quite widespread in manuscripts among Spanish jurists and notaries. Nevertheless, the academic jurisprudence stayed mostly ignorant of the text of Siete Partidas, it was not commented on and not studied until the end of 15th c. when the first primitive gloss appeared and the middle of 16 c. when Gregorio López composed the detailed commentary to the corpus of Siete Partidas. Finally, Francisco Suárez in his *Tractatus de legibus ac Deo legislatore* (1612) was the first to recognise the Siete Partidas as the authoritative text as well as traditionally studied texts like the Corpus of Justinian or the Corpus of Canon Law. Thereby the legislation of Alfonso X (which has never been in force as a principal source of law but was well-known and used) had not been the authoritative text for medieval jurists for centuries.

The hypothesis which was put forward by Alexander Marey was that the authoritative status of the text of the Siete Partidas was closely connected with the composition of the gloss by Gregorio López. Up to that time, the Siete Partidas existed just as the “Spanish laws”, in vernacular, and were not connected by the commentary apparatus to the tradition of *ius commune* and the authoritative writings of the Church Fathers. Just such connection made finally possible the study of the Siete Partidas and included this text in the whole range of legal *auctoritates*.

The academic medieval tradition of making glosses and commentaries became also the focus of the next report presented by Elena Kazbekova, a Senior Research Fellow of the Institute of World History of the Russian Academy of Sciences. The report title was “A Student, a Professor, a Doctor, a Scribe? On the Criteria of Identification of Those Who Inscribed Notes and Glosses in Corpuses of Canon Law in 13–14th cc.” (“Студент, преподаватель, ученый, писец? О критериях определения тех, кто вписывал пометы и глоссы в своды канонического права XIII–XIV вв.”). Mainly such criteria allow a researcher to recognise a professional scribe by the manner of writing and the misspelling of Latin words, to recognise a scholar by the content of a gloss or a note and the writing behaviour, and any other hand by the handwriting when the latter is known by other sources.



The speaker presented the case of the manuscript from the Russian State Archive of Ancient Acts containing the *Compilatio Prima* by Bernard of Pavia. The manuscript dates from the beginning of 13th c. and comes from the north of France, it is furnished with the initials and decorated with flourishes. The text is supplied with two apparatuses of glosses, the first one has been swept out and the second one is the gloss of Tancred of Bologna. To identify the hand which copied the gloss of Tancred of Bologna into the manuscript, Elena Kazbekova made use of the negligent handwriting, the writing behaviour, the annotation symbols, and the usage of pasting-ins and compared these features to those of two other manuscripts, one from Oxford, Bodleian. MS. Bywater adds. 2, containing the Missal (Cistercian) for major feasts, and another one from Paris, BNF. Lat. 15996, containing the *Breviarium Extravagantium Bernardi Papiensis*. Finally, the comparison of these three manuscripts was presented by the speaker as evidence of the existence of a specific group of professional scribes of high qualification with a specific style of pasting-ins and their own culture of the usage of annotation symbols, perhaps of the Cistercian circle.

Anna Anisimova, a Senior Research Fellow of the Institute of World History of the Russian Academy of Sciences and an Associate Professor of the State University of the Humanities, presented a report entitled as “Juridical Monuments in English Monastic Digests” (“Юридические памятники в английских монастырских сборниках”). The monastic cartularies or registers of 13-15th cc. were characterised by the diverse composition, they included a huge variety of texts such as legal documents (the statutes), poetry, annals, and histories both in Latin and French languages. The speaker referred to the cartularies of the priory of the Canterbury cathedral, of St Augustine’s Abbey in Canterbury, of Burton upon Trent Abbey, the priory of Worcester Cathedral, Malmesbury Abbey, and some others.

The main point made by the speaker was that it was essential for the compilers of English monastic cartularies to include in their digests the legal texts of all-English importance, for example, statutes, but mainly the *Magna Carta* in different recensions. The disposition of monasteries to copy various statutes into their cartularies was supposed by the speaker to be connected with the lively development of legal culture in 13th c. in England and the political instability as a framework.

The medieval phenomenon of the *auctoritates*, the authoritative texts, is closely connected to the fundamental questions of medieval political theory. The report made by Maria Ponomareva, a graduate student of the Institute of World History of the Russian Academy of Sciences entitled “*Lex Regia*

in the Writings of Oldrado da Ponte: Pros and Cons for the Emperor” (“*Lex Regia* у Ольдрадо да Понте: ‘за’ и ‘против’ императора”) was devoted to the question of the legal reasons for and against the possibility of the world monarchy *de iure*. The speaker addressed to the fragment from Ulpian devoted to *imperium* and *potestas* of the *princeps* as translated to him and into him by the Roman people with the support of *lex regia*, the royal law (D. 1. 4. 1 pr (Ulp., 1 Inst.)) and two different interpretations of this fragment common to the Glossators. According to one interpretation, this translation is irrevocable and took place just historically; according to the second one, this translation was a concession, and the Roman people can revoke the emperor’s power.

The main argument of Maria Ponomareva was that within the formation of the hierarchical system of authoritative texts in legal studies of the following generation of medieval jurists, the school of postglossators, the conflict between two interpretations became irrelevant to the question of the world monarchy. It was shown by the speaker on the basis of *Consilium* LXIX which is partly a university *quaestio* and partly a consultation, written by Oldrado da Ponte in the first half of 14th c. The *Consilium* is structured according to the hierarchical system of authoritative texts and therefore the force of sources of law so the Roman law takes place below the *ius gentium*, and the *ius gentium* takes place below the natural law and the divine law. As there is no mention of the emperor as the world monarch neither in Old Testament nor in New Testament, and according to *ius gentium* there are many kingdoms and dominions, the case of translation of the power from Roman people to the emperor could be justified only by civil law and can *not de iure* pertain to other nations.

Olga Togoeva, a Senior Research Fellow of the Institute of World History of the Russian Academy of Sciences, presented a report devoted to the justification of tyrannicide in the context of authoritative texts. The report title was “Authoritative Opinion in Doubt: *Justification* of 1408 by Jean Petit and Its Critics” (“Авторитетное мнение, поставленное под сомнение: ‘Оправдание’ Жана Пти 1408 г. и его критики”). The *Justification* was composed by Jean Petit in connection with the assassination of Louis I, Duke of Orléans organised by John the Fearless, Duke of Burgundy. As Louis I was the brother of the king, the assassination was extremely close to regicide. The *Justification* was a plea for John the Fearless accused in the assassination. From the legal point of view, Jean petit in the *Justification* introduces and justifies the concept of “*homicidium iustum*”, the just homicide, and he analyses it in the case of John the Fearless as the tyrannicide.

In the history of the reception of the *Justification* two periods were defined by scholars, the first one before 1422 when the treatise was included in the *Chronicle* by Enguerrand de Monstrelet, and the second after 1422.

The point made by the speaker was that the history of the reception of the *Justification* should be divided into four periods, each one closely connected to the focus of its critics. Therefore the first point is 1408 when the lawyer Thomas de Bourgh who served Louis's widow composed a discourse to disprove the theory of Jean Petit, and his argument was based on the concept of greed as the root of all evil including murder. Furthermore, according to the speaker, the second period should be associated with the criticism by Jean Gerson whose argument was congenial to that of Coluccio Salutati and the Italian civilist tradition, according to which even tyrannicide could take place only on the basis of a court decision. In 1414 Jean Gerson organised a council in Paris and invited fourteenth doctors of theology who discussed the text of the *Justification* and finally burned eleven manuscripts of the *Justification*. Furthermore, the *Justification* was denounced by the Council of Constance in 1418. Nevertheless, the final point that turned the history of the reception of the *Justification* is when John the Fearless was assassinated in 1419 in the presence of dauphin Charles. As a result, the condemnation of the *Justification* was repealed and Charles VI discharged Jean Petit (who had deceased a long time before) of all accusations. The authority of the text is revealed as closely connected with the political reality and actual state of political rivalry among noblemen.

The report which concluded the conference was presented by Grigory Borisov, a graduate student of Eberhard Karls Universität Tübingen. The report was entitled "The Authority of Medieval Law in History of Law in 19–20 cc.: Metanarratives of European Legal History and Its Critics" ("Авторитет средневекового права в истории права XIX–XX вв.: метанарративы европейской правовой истории и их критики"). The speaker presented an overview of different approaches to the history of medieval law and the tendencies in the late Modern historiography of medieval law. The speaker made use of the concept of metanarrative to describe these approaches meaning the "mental framework of research models for the construction of historical narrative", and he distinguished two main metanarratives: a national one and an evolutionist one. This overview made a strong connection between the approaches to the history of medieval law and their ideological and political context. Despite the fact that the talk of Grigory Borisov differed considerably from all others' reports, the speaker reminded of the fundamental significance of the craft of the historian.

In conclusion, Galina Popova as a member of the board stressed the fact that authority is one of the most crucial features of juridical sources and therefore the conference topic showed up as a fruitful one. Furthermore, the complex research of such a feature could never be covered by just one conference, and so the future continuation of the discussion is obviously anticipated.

*Maria Ponomareva*  
*Graduate Student, Institute of World History*  
*Russian Academy of Sciences (Moscow, Russia)*

SIXTH ALL-RUSSIAN INTERDISCIPLINARY CONFERENCE  
“REPUBLICANISM: THEORY, HISTORY, MODERN PRACTICES”.  
CONFERENCE CHRONICLES  
DECEMBER 16, 2022 (ST. PETERSBURG, RUSSIA)

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DOI: 10.17323/2587-8719-2022-4-189-192.

On December 16, 2022, the Sixth All-Russian Interdisciplinary Conference “Republicanism: Theory, History, Modern Practices”, traditionally organized by the Research Center “Res Publica”, was held at the European University at St. Petersburg. The central topic of this year was the phenomenon of *Caesarism* in the context of different historical epochs from Greco-Roman Antiquity to the present. Leading Russian and foreign historians, philosophers, and political theorists participated in the event. Even though this year’s conference was held for the first time in a one-day format, the program was very eventful: it included four thematic sections and a keynote address from a special guest, Professor David Bell (Princeton University).

SECTION 1. ANCIENT AND MEDIEVAL ORIGINS OF CAESARISM:  
CAESAR, AUGUSTUS, AND OTHERS

The first section, chaired by Alexander Marey (HSE), included three presentations on the origins of Caesarism in Roman antiquity and the Russian Middle Ages. The first one was presented by Konstantin Markov (NNSU, Nizhny Novgorod), whose paper’s title was “The Ideal Principate of Senator Cassius Dio: ‘Absolute Monarchy’ or ‘State System of Mixed Type’?” The speaker contrasted two main approaches to interpreting the speech of Maecenas from Book LII of the *History of Rome*. While some contemporary scholars believe Cassius Dio’s political ideal is a “mixed government”, others suppose that the historian extolled absolute monarchy in his text. Moreover, Markov stressed the “institutional innovations” presented in the speech of Maecenas, aimed at limiting imperial power.

The next speaker, Oleg Kharkhordin (EUSPb), continued the discussion of Cassius Dio with his paper “Octavian Augustus combined monarchy with democracy according to Cassius Dio’s *History of Rome* (LVI. 43. 4)—what does it mean?” Relying on Book LVI of the *History of Rome*, he observed that, unlike other ancient historians, who considered Augustus’ reign a transitional period from mixed government regime to monarchy,

Cassius Dio proposed a different point of view. He argued that the Romans, at the end of Augustus' life, viewed his rule as a combination of monarchy and democracy. Such a combination might, at first glance, resemble M. Weber's idea of plebiscitary democracy. Nevertheless, the speaker noted that Dio's mixture of *monarchia* and *demokratia* meant a mixture of monarchy and aristocracy since the plebeian tribunes had been eliminated, and their power had passed to the emperor by then.

The section ended with a presentation by Konstantin Jerusalimsky (RSUH / EUSPb) on "Prus, the Brother of Octavian Augustus, and the Russian Imperial Idea in the XV–XVII Centuries". The paper focused on the role of Octavian Augustus's fictitious brother Prus in shaping the Russian "Imperial Idea" and the reactions of European countries to his appearance in Russian foreign policy discourse.

## SECTION 2. CAESARISM IN RUSSIAN THOUGHT OF THE XVIII–XIX CENTURIES

The chair of the second section was Pavel Lukin (Institute of Russian History at the Russian Academy of Sciences). Within its frames, Natalia Potapova (EUSPb) presented her paper "Bonapartism in the policy of Alexander I towards the Grand Duchy of Finland". She analyzed the rhetoric of "The Grand Duchy of Finland"'s founders, who, like Napoleon, simultaneously used in their argumentation — two discourses, revolutionary and monarchical.

The next speaker, Victor Kaplun (EUSPb), in his paper "*Caesar non est supra grammaticos*: The Russian Enlightenment on Tyranny", attempted to prove that the Russian culture of the Modern epoch, being a full-fledged branch of the European Enlightenment, was characterized by the criticism of the Caesarist forms of power, which anticipated the critical analysis of the Caesarist regimes in Europe of the XIX–XX centuries.

The third paper of the section entitled "The Second Republic and the Second Empire in Herzen's Interpretations of 1850 – the 60s" was presented by Andrey Teslya (BFU, Kaliningrad). The presentation was dedicated to analyzing Alexander Herzen's reflection upon the reasons for the failure of the pan-European revolutionary movement of 1846–1848 and the possible alternatives to the prevailing political order based on his cogitations on the specifics of the Second Empire.

### SECTION 3. CAESARISM IN EUROPEAN THOUGHT OF THE XIX–XXI CENTURIES

The third section, chaired by Viktor Kaplun, was opened with the paper of Nikolai Vlasov (SPbSU), “Otto von Bismarck — Bonaparte or Caesar?” The author tried to analyze the formal and informal mechanisms of power inherent in Bismarck’s political regime to find features of Bonapartism and Caesarism.

Yuriy Basilov, in his paper “Caesarism and Bonapartism. Genealogy of the Concept in German Thought in the XIX–XX Centuries”, tried to follow the evolution of Caesarism in German political Thought from Karl Marx to Oswald Spengler.

The final presentation of this section was given by Andrey Medushevsky (HSE) on “Democratic Caesarism: from Historical Forms to Modern Constitutional Dictatorship”. In his presentation, the author asked to what extent the classical theory of Democratic Caesarism, which began to form during the transition from Republic to Empire in Rome, can explain the subsequent forms of unlimited power based on the mechanism of the plebiscite. The speaker was also interested in the legitimacy of using this theoretical framework in analyzing modern constitutional upheavals, particularly in Russian and other post-Soviet political regimes. In the context of the analysis of the Russian constitutional amendments of 2020, the presenter proposed the concept of “constitutional dictatorship” as a new modern form of Democratic Caesarism.

### SECTION 4. CAESARISM AND EXTERNAL EXPANSION: HISTORICAL ACCIDENTS OR POLITICAL FORM?

The final section of the conference, chaired by Fedor Lukyanov (HSE), was devoted to the propensity of Caesarist regimes for external expansion and imperialist wars.

Grigory Yudin (MSSSES) presented his paper “Bonapartism and Imperialism”. He tried to identify why former Republics, transforming into Empires, often get involved in imperialist military reckless schemes leading to dangerous and unexpected consequences, including the fall of these regimes.

Artemy Magun (EUSPb) spoke on “Guglielmo Ferrero and Negativity in Imperialism”. Basing on contemporary historiographical debates, he tried to update G. Ferrero’s views on Imperialism and Caesarism. Theoretical foundations of later were based on the premise that the French Revolution

destroyed concepts of legitimacy without offering any worthy alternative in return, which led to a big European War.

Alexander Filippov (HSE) read the “Empire versus World Society” presentation. As an alternative to globalization, which is rapidly going out of fashion, the speaker suggested using the concept of “World Society” (Weltgesellschaft), developed by sociologist Nicholas Luhmann. Based on the idea of communication, the World Society’s conception, with its functional differentiation of world systems, inevitably replaces societies based on economic and political stratification and hierarchy with solid territorial boundaries. Once, the main competitor of world society was the Soviet empire. Even though the USSR lost, Filippov noted that today World Society faces a new crisis associated with the resurgence of Empires with their reliance on large political spaces and old political hierarchies.

#### KEYNOTE ADDRESS

The conference concluded with a lecture on “Democratic Republicanism, Caesarism, and the Charismatic Bond in the Age of Revolution” by David Bell (Princeton University). He noted that 1775–1825, which he called the Age of Revolution, was notable not only for the emergence of new republican and democratic political regimes across the Atlantic world. Also, it was interesting for the particular kind of political leadership represented by charismatic military heroes who elicited intense emotional support from a broad public and often used it to help impose the dictatorial rule. Prof. Bell examined the cultural and political changes that made this new form of political leadership possible and briefly discussed two of the most important examples from the period under consideration. The first was Napoleon Bonaparte, and the second was Simon Bolivar, whom the author considers to be the role models for XIX and XX-century Caesarism.

*Ivan Naumov, MA Student  
Research Center “Res Publica”  
European University at St. Petersburg*



THE REVIEW OF THE WORKSHOP  
“PHENOMENOLOGY IN USSR”  
SEPTEMBER 20–21, 2022 (MOSCOW, RUSSIA)

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DOI: 10.17323/2587-8719-2022-4-193-195.

A workshop on “Phenomenology in the USSR” took place on the 21st and 22nd of September, 2022, at the Higher School of Economics in Moscow (Russia) within the Laboratory for Transcendental Philosophy framework<sup>1</sup>. The main idea of the workshop was to sketch the long story of phenomenological thought in Russia, first initiated by the lecture of Husserl’s *Logical Investigations* and *Philosophy as Rigorous Science* that were published in *Logos* journal in the early 1910s. Further development of this reception went through some historical twists and turns after the October Revolution and was almost wiped out under “orthodoxal” Marxist-Leninist thought. Even though at the beginning of the 1920s, some of Gustav Spet’s colleagues and disciples could still work on phenomenological topics in the soviet State Academy of Art Sciences (GAKHN). Their work has been sat in the archives, and the relevant debates in the institutional field came to a halt until the early 1980s. Even under ideological suppression, phenomenological thought in USSR grew into quite an original movement. Numerous philosophers could be respectively considered as its proponents, such as Merab Mamardashvili (1930–1990), Vladimir Bibikhin (1938–2004), and Nelly Motroshilova (1934–2021). However, their contribution to the “ideologically hostile” phenomenology was concealed under the forms of translations and historical works.

The relations between phenomenology and ideology and its influence on the development of an autochthonous phenomenological movement in Russia were particularly considered during the workshop “Phenomenology in the USSR.” Fifteen scholars from different institutions presented papers concerning methodological problems of soviet phenomenologists and various aspects of philosophies of Gustav Spet, Merab Mamardashvili, Givi Margvelashvili, Nicolay Zhinkin, and Nelly Motroshilova, whose archives will be published soon. Diverse topics within the scope of phenomenology, from its

<sup>1</sup>This review was prepared within the framework of the the Research Project No 73 “Development of Transcendentalism in Russian Thought: from Classical to Soviet Models of Description” of the Fundamental Research Program of the HSE University in 2022.

relation to ideology, the possibility of non-indoctrinated thoughts, aesthetics, phenomenological language, and revelation, as well as concrete problems having a universal significance, were addressed for two days of work.

The first day started with the opening remarks of Vladislav Terekhovich, the head of the School of Philosophy and Culturology, and the head of the Laboratory, Dr. Svetlana Klimova, who outlined the main directions of the further discussion. Then there was an intervention by Maxim Miroshnichenko (Poletayev Institute for Theoretical and Historical Studies in the Humanities) devoted to Lefevre and Pyatigorsky’s works. They both focused on searching for a scientific notion of a human, working in the domain of cosmic functionalism and observational philosophy, respectively. According to the remark of Georgy Chernavin, this report “turned inside out” the subject of phenomenology in the USSR because the focus of the report was clearly antiphenomenological projects of researchers who spent a significant part of their lives in exile.

Svetlana Konacheva (RSUH) presented the second paper, *Soviet Heideggerian Thought: From Existentialism to Phenomenology*. Tatyana Shchedrina (RGGU) expanded the disciplinary frame with the accent on the archive work on the heritage of Gustav Gustavovich Shpet — one of the most significant followers of Husserl in the USSR, who began his phenomenological studies in pre-revolutionary Russia and continued them despite radical ideological changes. In their reports, Diana Gasparyan (HSE University) and Mikhail Belousov (RANEPA) examined various aspects of Merab Mamardashvili’s work, which can be described as phenomenological. Mikhail Belousov, in particular, drew attention to the similarity of the understanding of *metaphysical a posteriori* by Mamardashvili (*Lectures on Proust*) and Marcel Proust with Husserl’s concept of “a posteriori necessity.” Alexey Savin (RANEPA) presented the paper about the reception and development of phenomenological ideas in the work of Soviet philosophers who adhered to Marxism-Leninism and paid particular attention to the forms of autolegitimation in post-soviet philosophy that used the rupture with Marxism-Leninism as a part of its identity. Tatyana Litvin (HSE University) completed the first day of the workshop with a report devoted to the phenomenological motives of Mamardashvili’s work.

Andrey Patkul (SPBU) opened the second day of the workshop with a speech about the axiological interpretation of Givi Margvelashvili’s philosophical project, which is little known in the Russian-speaking world. Georgy Chernavin (HSE University) did not turn to the reception and development of phenomenology in the USSR. In his paper, Professor Chernavin

made a phenomenological division of the concept of conscience contained in the "Stalinist" works of Marietta Shaginyan, showing an ethical blind spot, personified and taken out. The phenomenological motives in the works of Nikolai Ivanovich Zhinkin, devoted to studying the inner word and the meaning of speech, were covered by Ekaterina Khan (RUDN University) in her speech. Viktor Molchanov (RSUH) touched upon his personal experience of participating in the formation and development of the phenomenological movement in the USSR. Dmitry Kleopov (MSU) spoke with a homage to Vladimir Bibikhin, referring to his understanding of the language of philosophy and the influence of Wittgenstein on it. The report of Natalia Artemenko (SPBU) was devoted to the reception of Husserl in the work of Nelli Motroshilova in the 1980s and her experience in processing archives prepared for publication. Anna Ganzha (HSE University) concluded the workshop with a report on the work of Soviet filmmakers and writers whose language can be considered indoctrinated by ideology. In the final report, some institutional dimension was offered, including the history of marginality.

*Mariia Stenina and Ilya Onegin  
Laboratory for Transcendental Philosophy  
HSE University (Moscow, Russia)*

