

# **THE DECREES OF THE FIFTH LATERAN COUNCIL (1512-17)**

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Their Legitimacy, Origins, Contents, and  
Implementation

Nelson H. Minnich

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The Decrees of the Fifth Lateran Council  
(1512–17)

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LEO PAPA •X• (15)



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Nelson H. Minnich

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*The articles in this volume, as in all others in the Variorum Collected Studies Series, have not been given a new, continuous pagination. In order to avoid confusion, and to facilitate their use where these same studies have been referred to elsewhere, the original pagination has been maintained wherever possible.*

*Each article has been given a Roman number in order of appearance, as listed in the Contents. This number is repeated on each page and is quoted in the index entries.*

Eminentissimo Walthero Brandmüller,  
Sanctae Romanae Ecclesiae Cardinali Diacono titulo Sancti Iuliani Flandrensium,  
magistro conciliorum historiae  
dedicatur

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## PREFACE

With the five-hundredth anniversary of the Fifth Lateran Council (1512–17) having arrived, it is time to take a fresh look at a council attacked in its time by the French as illegitimate and unrepresentative of the Church and by Martin Luther as more focused on ceremonies than church reform. Later historians have dismissed it as small assembly of Italian prelates dominated by popes that squandered a great opportunity and left little legacy.

Articles I, II, III, and IV address the issues of what constitutes an ecumenical council, was Lateran V such a council, what role did popes Julius II and Leo X play in it, and how the council can be seen as a theater for demonstrating papal power. Article V examines a proposal that helped to set the agenda of the council.

Five articles examine particular decrees of the council. Article VI studies the background leading up to and the implementation of the decree resolving the controversy over the legitimacy of the credit organizations known as the *montes pietatis* that charged management fees. Article VII traces ecclesiastical censorship of printed books, the council's decree imposing it, and its implementation. The decree abrogating the Pragmatic Sanction of Bourges (1438) that accompanied the confirmation of the Concordat of Bologna (1516) is studied in its relation to Luther's evolving ecclesiology in Article VIII. The decree that addressed the bishops' demand that the privileges of mendicant friars be reined in and that bishops supervise their provision of pastoral care is the subject of Article IX. The claims of the decree closing the council, that it had accomplished almost all of the goals set for it and nothing remained for it to do except to impose a crusade tithe which it then did, is carefully studied for its accuracy in Article X.

While the implementation in varying degrees of the decrees on preventive censorship, the *montes pietatis*, and the Concordat of Bologna are acknowledged by historians, some of the provisions of its Great Reform Bull, ignored by scholars, also survived and were incorporated into the archetypical Counter-Reformation program of Carlo Borromeo in Milan and adopted by others.

Leo X saw the Lateran Council as one of the great achievements of his pontificate. He carefully managed the conflicts within it between the bishops and their rivals: cardinals, curial officials, members of religious orders, and civil rulers. He achieved what many of his predecessors had not: the abrogation of the Pragmatic Sanction of Bourges and the effective demise of conciliarism,

the legislation of a sweeping reform program for Rome and its curia, restraints on mendicant privileges, the prospects of a crusade against the Turks, and the termination of a council with the consent of its members.

While Lateran V may not go down in the annals of the Church as a great success, neither was it a complete failure. It met amidst schism in the Church and with Italy as the battle ground of the great powers. Church leaders were preoccupied with restoring church unity, peace among Christian princes, and organizing a crusade against the advancing Turks. While Church reform was not the highest priority (often described in terms of limiting papal power and revenues), it was also not neglected. The council ended in March of 1517, at the end of October of that year Luther posted his Ninety-Five Theses. A new set of problems awaited the pope.

Ms. Katya Mouris kindly composed the Index, for which the editor is most grateful.

NELSON H. MINNICH

*8 September 2015*

# I

## What is an Ecumenical Council? The Sixteenth-Century Teachings of the Theologian Roberto Bellarmino and the Canonist Domenico Giacobazzi\*

In October of 2006 the Istituto per le scienze religiose in Bologna published a revised edition of its classic collection of the decrees of the ecumenical councils. It inserted into its former title *Conciliarum Oecumenicorum Decreta* the word *Generaliumque*. The general editor, Giuseppe Alberigo, explained this alteration: “The present edition, as its title indicates, contains not only the texts from those councils formally accepted as ecumenical by the great christian traditions, but also the texts of the decisions of the principal ‘general’ councils, regarded as such because of the authority of their decisions, received by many churches, or because they are so regarded by the Roman tradition.” Alberigo stated that the councils included reflect the “orientations of different christian traditions,” not just the Roman. He himself referred to the medieval councils of Latin Christianity as “general synods” and noted that the Council of Ferrara-Florence-Rome was considered the eighth ecumenical council by the Roman Church but rejected as such by the Orthodox Churches.<sup>1</sup> These statements were seen by some as an attempt to diminish the authority of the Latin councils, considered as ecumenical by the Roman Catholic Church.

Two articles appeared in the Roman press in 2007 criticizing the distinction between ecumenical and general councils and the decision to include the decrees of certain councils in the collection. The first article was published in *l'Osservatore Romano* on 3 June 2007, its author being identified by three

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\* Originally published in Italian as “Cos’è un Concilio Ecumenico? Il dibattito storiografico contemporaneo sulla ratio universalitatis dei Concili alla luce delle riflessioni cinquecentesca del teologo Roberto Bellarmino e del canonista Domenico Giacobazzi,” *Storia dei Concili Ecumenici: Attori, canoni, eredità*, ed. Onorato Bucci and Pierantonio Piatti. Rome: Città Nuova Editrice, 2014, 13–35.

<sup>1</sup> Giuseppe Alberigo, “Preface,” *Conciliarum Oecumenicorum Generaliumque Decreta: Editio Critica*, Volume I: *The Oecumenical Councils, From Nicaea I to Nicaea II*, ed. Giuseppe Alberigo et alii [Corpus Christianorum] (Turnhout: Brepols Publishers, 2006), pp. VII–XI, here VIII–IX. The previous collection, *Conciliarum Oecumenicorum Decreta*, published by the Herder Verlag, went through successive editions from 1962 to 1998.

asterisks, the customary signature of the Secretariate of State. The second was printed in the 13 July 2007 issue of *l'Osservatore romano* and of *Avvenire* and its author was Msgr. Walter Brandmüller, president of the Pontifical Committee of Historical Sciences, founder and general editor of the monumental series *Konziliengeschichte* (published by Ferdinand Schöningh Verlag of Paderborn), and author of the volumes in that series on the councils of Konstanz (1414–18) and Pavia-Siena (1423–24).<sup>2</sup> The article signed with three asterisk and that by Brandmüller take issue with Alberigo, questioning by what criteria he assigned the title ecumenical to the seven councils celebrated in the East up to 787AD with few Latins present, but denied it to those held in the West with scarce participation of the Orthodox. The number of participants could not be the determinative criterion. Was the participation of the five patriarchs the crucial factor or only that of the patriarchs in the Byzantine Empire, as was the case with Chalcedon? Why include the Council of Trullano [also called Quinisextum] (691–92) and the two Photian councils of 869–70 and 879–80? Trullano lacked Western participation and its disciplinary decrees were openly rejected by pope Sergius I (687–701). While the first Photian council of 869–70 was for a while recognized in the West as the Eighth Ecumenical Council, as Constantinople IV, that of 879–80 was considered in the East to be the Eighth Ecumenical Council and its decisions were granted only a qualified acceptance by pope John VIII (872–82). The council that should be considered the Eighth Ecumenical Council by both churches, according to Brandmüller, is that of Ferrara-Florence-Rome (1438–45). The largest number of participants from both churches was present at that council and its decrees were signed variously by representatives of the Latin, Byzantine, Armenian, Coptic, Syrian, Chaldean, and Maronite churches. Despite this, the editors of the OCGD do not consider Ferrara-Florence-Rome to be ecumenical. They also deny ecumenical status to Vatican I, to which the Orthodox and Protestant churches were invited and in which over six-hundred Catholic bishops participated. The same status they deny to Vatican II in which two-thousand Catholic fathers from all over the world and observers from the Orthodox and Protestant communions were in attendance. And when discussing Vatican II, Brandmüller criticizes the claims attributed to Alberigo and his fellow editors that this council was a “new

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<sup>2</sup> \*\*\* “Sulla pubblicazione dei <<Conciliorum Oecumenicorum Generaliumque Decreta>> curata dal Prof. Giuseppe Alberigo,” *L'Osservatore Romano*, 125 (2007) Domenica 3 Giugno 2007, pagina 4 and Walter Brandmüller, “Nuova edizione dei decreti Conciliari,” *L'Osservatore Romano*, 157 (2007) Venerdì 13 Luglio 2007, pagina 4, col. 3 and *Avvenire*, 13 Luglio 2007.

beginning in the life of the Church” with an implied rupture with the past and that one should distinguish between the letter and spirit of its decrees. Instead, one should with Benedict XVI place and interpret its decrees within the tradition of the Church.

The article by Brandmüller traces the evolution of the meaning granted to the term “ecumenical” over the centuries. At first it signified councils whose participants came from the *oecumene*, that is, from the territory of the Roman Empire. As that diminished in size, the term was applied to the universal Church, both within and outside the empire. Decisions of ecumenical councils were considered as binding on the whole Church and in the case of its doctrinal decision to be irrevocable and infallible. For a council to be ecumenical, all the bishops of the Church should be invited. Their actual presence is less important than their acceptance of its decrees; and the acceptance by the pope, the head of the episcopal college, can substitute for that of the absent bishops. Brandmüller, provides a definition of an ecumenical council:

... i concilii ecumenici sono riunioni del collegio episcopale finalizzate all'esercizio del ministero magisteriale e pastorale della chiesa, i cui decreti sono obbligatori per tutta la Chiesa, e nel caso di quelli dottrinali, infallibili e perciò irrevocabili. È questo, dunque, l'elemento che definisce l'essenza di un concilio ecumenico a prescindere da ogni trasformazione storica. Su questo c'è unanime accordo.<sup>3</sup>

The editors of COGD, however, seem to consider as ecumenical only those councils that are compatible with the Byzantine model of five patriarchs which is not found in Sacred Scripture or in apostolic tradition. But the patriarch of Alexandria refused to accept the teachings of the Council of Chalcedon (451) and thus this council, commonly considered the Fourth Ecumenical Council, lacks by this criterion ecumenicity. Are no councils ecumenical after this schism, and are the Coptic, Syrian, and Armenian churches excluded from

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<sup>3</sup> Brandmüller, “Una nuova edizione,” pagina 4, col. 3 and *Avvenire*, 13 Luglio 2007. *Codex Iuris Canonici* (Città del Vaticano: Libreria Editrice Vaticana, 1983), pp. 58–59, Liber II: *De populo Dei*, Articulus 2: *De Collegio Episcoporum*, Canon 337 § 1 states: Potestatem in universam Ecclesiam Collegium Episcoporum sollemni modo exercet in Concilio Oecumenico. Canon 338 § 1: Unius Romani Pontificis est Concilium Oecumenicum convocare, eidem per se vel per alios praesidere, item Concilium transferre, suspendere vel dissolvere, eiusque decreta approbare. §2 Eiusdem Romani Pontificis est res in Concilio tractandas determinare atque ordinem in Concilio servandum constituere; propositis a Romano Pontifice quaestionibus Patres Concilii alias addere possunt, ab eodem Romano Pontifice probandas. Canon 341 § 1: Concilii Oecumenici decreta vim obligandi non habent nisi una cum Concilii Patribus a Romano Pontifice approbata, ab eodem fuerint confirmata et eius iussu promulgata.

the universal Christian church? Or are no councils ecumenical after the Great Schism of 1054 between the Eastern and Western churches? Can no council thereafter promulgate doctrinal statements and canonical norms applicable for the whole of Christianity?

What qualifies a council to be considered “general”? Are councils in the West to be considered only “general” after 1054, despite the fact that the Eastern bishops were invited and the decrees issued by these councils were meant to have juridical effect throughout the Church? Brandmüller suspects that Alberigo began with the list supplied by Roberto Bellarmino (1542–1621) which did not distinguish between general and ecumenical councils and then added both the distinction and other councils. Brandmüller rejects some of these additions. Calling the councils of Trent, Vatican I, and Vatican II general councils of the Roman Catholic Church implicitly diminishes the authority of their decrees for the universal church. Because the identity of the true pope was contested during the Great Western Schism, the See of Peter should be considered vacant and thus the Council of Pisa (1409) lacks legitimacy and should not be included in a collection of recognized councils. The decrees of Basel after its transfer in 1437 have no validity. Brandmüller insists on the use of theological and canonical criteria, and not just historical, when classifying councils; he holds that the pope alone determines the ecumenical status of a council; and he claims that Alberigo’s view of the church is not in the Roman tradition.<sup>4</sup>

In defense of Alberigo who at that time was in a deep coma in a hospital following a stroke [*ictus ischémico*] on April 11th and nearing death (he died on June 15th),<sup>5</sup> his disciple Alberto Melloni published a brief rejoinder in *Il Corriere della Sera* of 9 June 2007, a fuller response in an article entitled “Concili, ecumenicità e storia. Note in discussione,” in *Cristianesimo nella storia* 28 (2007), 509–42, and again later and very briefly in the “Preface” to the third volume of the *Decreta*. Melloni provided point by point rejoinders.

On the criteria that guided the selection of councils to be included in the COGD collection, he notes that the editors were not limited by the theological and canonical considerations of one ecclesial tradition, but sought to respect also other traditions and to provide texts based on historical and philological

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<sup>4</sup> \*\*\* “Sulla pubblicazione,” and Brandmüller, “Nuova edizione.”

<sup>5</sup> Alberto Melloni, Letter to Colleagues, Bologna, 2 July 2007; “Preface,” *Conciliarum Oecumenicorum Generaliumque Decreta*, Volume III (Turnhout: Brepols Publisher, 2010), pp. V–VI, here V; and his “Concili, ecumenicità e storia. Note in discussione,” in *Cristianesimo nella storia* 28 (2007), 509–42, here 528 n. 76. Hereafter this is cited as “Concili.” And see his obituary notice for Alberigo in the *Catholic Historical Review*, 93 (October, 2007), 1030–32, here 1032.

factors, texts that can be used by scholars in other disciplines according their methodologies.<sup>6</sup> The introduction to each council spells out any controversies surrounding that particular council. The term ecumenical assigned to various councils has had differing significations over the centuries. To use the current Codex of Canon Law to assign a definition to an ecumenical council is an ahistorical approach that uses Roman Catholic criteria not accepted by other traditions. The Roman Catholic Church has taken no official position on which are the ecumenical councils.<sup>7</sup> When the term is applied to modern councils it has a different meaning than when applied to the ancient ones, it is used analogously.<sup>8</sup> The Orthodox and Protestant churches reserve the term for the ancient councils and do not accept its application of the modern councils of the Roman Church.<sup>9</sup> Fearing that the denial of the status of ecumenical to the First Vatican Council diminishes the authority of its statements on papal primacy and infallibility, the Congregation of the Doctrine of the Faith has rejected the notion that the medieval councils of the West are not to be considered ecumenical and that reception is a key factor in determining the ecumenicity of a council.<sup>10</sup> When the editors of COGD used the term “general” to describe the councils of the West after the Great Schism of 1054, they were not implying that these councils had any less doctrinal authority.<sup>11</sup> They were following the practice of the medieval church which called its councils “general” and also the leadership of such recent popes as John XXIII who referred to Vatican II as a general council and Paul VI who on the seventh centenary of the Council of Lyon II in a letter to Cardinal Johannes Willebrand referred to this council as “*Hoc Lugdunense Concilium, quod sextum recensetur inter Generales Synodos in Occidentali orbe celebratas...*”<sup>12</sup> In so doing they were respectful of other ecclesial traditions and were reflecting the scholarly debate on how the terms “ecumenical” and “general” have been used over the centuries.<sup>13</sup> Melloni states that the COGD did not “attempt to introduce definitions, typologies, categories degrading or elevating qualifications which

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<sup>6</sup> “Concili,” 535 n. 99, 538.

<sup>7</sup> “Concili,” 529, 531 n. 87, 534.

<sup>8</sup> “Concili,” 520, 535 n. 102, 537.

<sup>9</sup> “Concili,” 525 n. 68, 537.

<sup>10</sup> “Concili,” 515 n. 28 and 522 n. 51.

<sup>11</sup> “Concili,” 526, 535 n. 99.

<sup>12</sup> Melloni, “*Il Corriere della Sera*” of 9 June 2007, and his “Concili,” 529–30, 531 n. 83.

<sup>13</sup> “Concili,” 513–20.

are historically floating as well as inappropriate.” It accepted the “consolidated attribution and self representation” of these councils as ecumenical.<sup>14</sup>

Melloni also addresses the question of the list of councils provided by Roberto Bellarmino (1542–1621) that came to enjoy a quasi-official status in the Roman Catholic circles. He notes that Bellarmino described the councils as “general.” His list was flawed in that it gave the incorrect dates for ten of the eighteen councils in his list, was guided by ahistorical criteria such as the need to defend the authority of the Council of Trent against the Protestants and papal authority against the decrees on conciliar superiority of the councils of Konstanz and Basel that still found supporters in some Catholic circles. His list became authoritative because of the backing given to it by the historian Cesare Baronio (1538–1607) and because of its use by the editors of the Roman edition of church councils (1608–12). But the list never gained official recognition by the Church as has been pointed out by scholars such as Yves Congar OP (1904–95), Karl August Fink (1904–83), and Hubert Jedin (1900–80). It is not coextensive nor identical with the Catholic tradition.<sup>15</sup> The editors of the first edition of COD ignored it by including the councils of Konstanz, of Basel up to its transfer, and of Vatican I which met after Bellarmino’s death; and in subsequent editions added the decrees of the later sessions of Ferrara-Florence-Rome and those of Vatican II. The editors of COGD have or will add to this edition the Council of Trullano, the Photian council of 879–80, the Council of Pisa (1409), that of Pavia-Siena (1423–24) whose legitimacy has been ably argued by Brandmüller, and the concluding sessions of Basel. For reasons of concision and considerations of the intentions of their convokers and the reception given to the certain councils’ decrees, they have left out some eleven other candidate councils.<sup>16</sup>

The accusations that Alberigo and his followers claim for Vatican II a “new beginning [il nuovo inizio],” an implied rupture with the past, and invoke the “so called ‘spirit of the Council’ [il cosiddetto “spirito del concilio”]” while showing a lack of concern for the “letter of the texts” [lettera dei testi] of its decrees are also addressed by Melloni. He notes that Alberigo preferred the formulation an “epochal transition [transizione epocale].”<sup>17</sup> The expression “spirit of the council” is one used by Paul VI, John Paul II, and Benedict

<sup>14</sup> Melloni, “Preface,” p. VI.

<sup>15</sup> *Corriere*, “Concili,” 516–18, 540.

<sup>16</sup> “Concili,” 519, 527 and n. 73.

<sup>17</sup> “Concili,” 511, 541. On pp. 536–39 Melloni also deals with the criticisms of Hermann Josef Sieben found in his review of COGD in *Theologie und Philosophie* 82 (2007), 284–87, and on p. 541 those of Agostino Marchetto in his *Chiesa e Papato nella storia e nel diritto: 25 anni di studi*

XVI and did not have a negative connotation until 1998 and then only in some circles. The problem was not one of seeing Vatican II as departing from the Catholic tradition, but of how its decrees were being implemented.<sup>18</sup> Alberigo is not outside the Catholic tradition. In his eagerness to protect papal prerogatives, Brandmüller has emphasized the central role of the pope in determining the ecumenicity of a council. But the Code of Canon Law, while sharing this goal, accords a determinative role also to the conciliar fathers in approving its decrees.<sup>19</sup> In a small private audience with Benedict XVI on 7 February 2007 in which Alberigo presented to the pope the first volume of the COGD, His Holiness received him with kindness and friendship and congratulated him on the publication. The pope has also renewed his intention to donate to Alberigo's Istituto in Bolgona his personal papers from the time of Vatican II. Such actions would seem to indicate that the pope did not view Alberigo's ecclesiology as outside the Catholic tradition.<sup>20</sup>

In recent months Brandmüller has returned to the controversy by addressing the questions he had raised earlier: what is an ecumenical council and by what criteria is this determined? While mentioning again the insertion of the word *Generaliumque* in the title of the revised collection COGD, his criticisms are no longer directed at the Bologna school but at a number of German scholars, primarily Josef Wohlmuth, who suggested that the eight universal councils of antiquity were in a separate category from the medieval general councils.<sup>21</sup>

Brandmüller notes that the term "ecumenical council" has changed its meaning over the centuries. It is not helpful he claims to fasten onto an evolving word, but rather one should look to the reality beneath it. To do so properly one needs to use the methodologies of both history and theology. History, while helpful in avoiding anachronisms, must not lead to relativism. One should neither dismiss the past nor make it the norm. History allows

*critici* [Collana storia e attualità, 16] (Città del Vaticano: Libreria Editrice Vaticana, 2002), esp. 206–07, 220–21, 233–46, 313–15, and 328–30.

<sup>18</sup> "Concili," 511–12 n. 18, 541–42.

<sup>19</sup> *Codex iuris canonici*, p. 59, Canon 341 § 1 states: "*una cum Concilii Patribus*". Brandmüller seems to be applying to the approval of the decrees of councils the statement of Vatican I whereby the pope, "ex sese, non autem ex consensu ecclesiae," can define doctrine and morals – see COD, 816: line 36.

<sup>20</sup> Melloni, "Letter to Colleagues," 2 July 2007 and obituary notice, 1032.

<sup>21</sup> Brandmüller, "Zum Problem der Ökumenizität von Konzilien." *Annuario Historiae Conciliorum* 41 (2009), 275–312, here 275 and 308 (mentioning OCGD), 287–88, 294–95, 302, and 309 (attacks on Wohlmuth). This article which appeared in print at the beginning of 2012 will hereafter be cited as "Zum Problem."

one to determine the authentic doctrinal and disciplinary texts and the facts surrounding them. While the historian is suspicious of the intrusion of theological presuppositions that might guide his work, he is also aware that the questions he asks determine the kinds of sources he selects and studies. These questions need to be guided by the authentic teachings of the Church as found in its practice. It is not illegitimate to view councils from a theological perspective, to look at contemporary theological and canonical texts and commentaries. Based on a combined historical and theological approach, Brandmüller offers the following definition of an ecumenical council: “the lawful assembly of the episcopacy of the Church for the purpose of carrying out the collegial exercise of the highest teaching and pastoral office.”<sup>22</sup> This definition conforms to the uncontested Catholic teaching over the centuries regarding councils.<sup>23</sup>

Before laying out his own criteria for determining the ecumenicity of a council, Brandmüller examines the four proposed by Hermann Josef Sieben.<sup>24</sup> The first is an imperial convocation. This is an historical fact, true for the first millennium. The imperial convocation was not based on an appropriate theological or ecclesiological principle, but then the popes did not oppose it. The key factor was that the convocation should be by a universal authority. When the Eastern Empire shrank in size so that various Eastern Christians were no longer within its borders, the pope who enjoys universal authority became the only appropriate convoker. Thus, an imperial convocation was historically conditioned. The second criterion is the council’s universal character as evidenced by the participation of the five patriarchs. But with the loss of Antioch, Alexandria, and Jerusalem to Muslim conquest, their participation was no longer possible and the universal character became a question of inviting all to attend. The departure of Eastern Christians due to schism does not alter the essential oneness and integrity of the Church and thus

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<sup>22</sup> Brandmüller, “Zum Problem,” 276–78, 307–08, here 277–78: “die rechtmäßige Versammlung des Episkopats der Kirche zum Zweck der kollegialen Ausübung des obersten Lehr- und Hirtenamtes.”

<sup>23</sup> Brandmüller, “Zum Problem,” 307.

<sup>24</sup> Hermann Josef Sieben, “Die Liste ökumenischer Konzilien der katholischen Kirche: Wortmeldung, historische Vergewisserung, theologische Deutung,” *Theologie und Philosophie* 82 (2007), 525–56, here 533–34 where he lays out four criteria for identifying an ecumenical council: its own claims to such status (“es sich selber als ökumenisch bezeichne”, 533), universal representation (“weltweite Vertretung der versammelten Bischöfe”, 533), co-operation of the Apostolic See of Rome in the presence of the pope or his legates (“Mitwirkung (Einberufung, Teilnahme, Bestätigung) des Papstes” 534), and the participation of the other patriarchs (“die Mitwirkung der fünf Patriarchen”, 534).

an ecumenical council is possible without the schismatics being present. The third criterion is the universal scope of its decisions. A council is the highest organ of the Church's office of teaching doctrine and legislating discipline. Its decisions should apply to the universal Church and not be limited to a local church. The fourth criterion is the collaboration of the papacy. The pope is not just one of the five patriarchs. Without his confirming and guiding the assembly, there is no council. He gives universal authority to it. Of the four criteria identified by Sieben, only the last two are not historically conditioned. The constant elements in ecumenical councils are its decisions that affect the whole Church and its confirmation by the pope.<sup>25</sup>

Brandmüller then examines the claims of an assembly itself to be an ecumenical or general council. Such claims are not determinative of its status as is evident from such councils as Ephesus II (449) and Pisa II (1511) which as not considered valid councils despite their own claims to this status.<sup>26</sup>

Does the universal reception of a council determine its ecumenicity? Must those who did not attend accept its decrees? Various answers have been given to this question over the centuries. The key factor is the reception by the pope. Because he enjoys universal jurisdiction, his acceptance is equivalent to acceptance by the whole Church.<sup>27</sup>

Does the presence of the name of a particular council in a list of councils found in the writings of popes or in the decrees of councils determine or confirm its status? Gregory the Great compared the first four councils to the four Gospels, while the decree incorporated into Gratian's *Decretum* singled out eight holy councils. But the identity of the eighth was contested and only the list ending with Nicaea II (787) was widely accepted. Various councils have made reference to earlier councils they considered authoritative. The most forceful of these lists is probably that found in the Bulls of Union for the Armenians and Copts of the Council of Florence where numbers were assigned to the first six councils. Brandmüller's survey of such citations of earlier councils by later ones reveals no clear standards for identifying which are the general or ecumenical councils.<sup>28</sup>

Should the ancient councils be the norm for determining which councils are ecumenical, as is proposed by Josef Wohlmuth? But the ancient councils were not homogeneous and changed over time. Besides, the distinction between the ecumenical council of antiquity and the general councils of

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<sup>25</sup> Brandmüller, "Zum Problem," 278–81.

<sup>26</sup> Brandmüller, "Zum Problem," 281.

<sup>27</sup> Brandmüller, "Zum Problem," 282.

<sup>28</sup> Brandmüller, "Zum Problem," 283–87, 308–09.

the Middle Ages implies that the later ones do not have authority over the whole Church but apply only to the Roman Church – this is the position of Lutheran and Calvinist writers. To claim that this distinction finds a basis in the list of councils given in a decree of the Council of Konstanz is false since all the councils there mentioned were called general councils.<sup>29</sup>

Having surveyed others' criteria, Brandmüller proposes his own set of criteria: the invitation to the whole Church to attend and the claim of universal church authority and worth from the moment it is called and/or approved by the highest universal church authority, namely the pope, unless his see is vacant.<sup>30</sup> Brandmüller then applies these criteria to the traditional councils considered ecumenical to see if they conform to them.

A number of councils fail to meet this test. The Quinisextum Council (691/92) is shown to be deficient because various popes resisted confirming it and its canons did not have authority over the universal Church.<sup>31</sup> The so-called Photian councils of 869/70 [Council of Constantinople IV] and 879/80 do not deserve to be considered ecumenical because they dealt with a local matter, the deposition and restoration of Photius as patriarch of Constantinople. This alone disqualifies them despite their convocation and approval by popes, their claims to ecumenical status, and later councils (e.g., Konstanz, Basel, and Lateran V) referring to Constantinople IV approvingly.<sup>32</sup> The medieval councils all qualified until the Great Schism created problems. Because the Council of Pisa I (1409) did not succeed in gaining the allegiance of the Roman and Avignonese obediences, it does not merit status as a general council. The same applies to the early sessions of the Council of Konstanz. Not until John XXIII was deposed, Gregory XII resigned, and the Avignonese obedience of Benedict XIII adhered to Konstanz with the *Capitula Narbonensia* of 1417 did that council become a general council. Martin V gave its decrees partial approval: confirming those against Wycliff and Hus but not *Haec sancta*. Basel is also problematic. Although convoked by a pope, inviting all to attend, and taking on issues of importance to the universal Church, its decrees lacked clear approbation by the pope and its transfer to Ferrara ended any claims to legitimacy by those who remained in Basel. The Council

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<sup>29</sup> Brandmüller, "Zum Problem," 287–88, 308–09.

<sup>30</sup> Brandmüller, "Zum Problem," 288: "Gesamtkirchliche Einberufung, Anspruch auf gesamtkirchliche Autorität und Geltung, sowie Einberufung und/oder Bestätigung durch die oberste gesamtkirchliche Autorität. Diese aber ist – vom Falle einer Sedisvakanz abgesehen – der Papst."

<sup>31</sup> Brandmüller, "Zum Problem," 289–91.

<sup>32</sup> Brandmüller, "Zum Problem," 291–94.

of Ferrara-Florence-Rome is clearly ecumenical. Geographically speaking it was the most ecumenical, given the participation of representatives from all over Christendom. Its failed reception in the East afterwards does not undermine its validity. The physical representation of prelates from all of Christendom, however, is not a condition for ecumenicity nor is reception by secular authorities, as is evident by the eventual general acceptance of Trent's doctrinal and disciplinary decrees that had a greater influence on the Church than did the decrees of many other councils that enjoyed wider participation. Trent was both convoked and approved by popes.<sup>33</sup> At the end of his survey Brandmüller concludes that there are serious difficulties in coming up with a definitive list of councils.<sup>34</sup>

Brandmüller finally addresses the question of whether one can make distinctions among the general councils. The terms "general," "universal," and "ecumenical" are synonymous in meaning, despite Wohlmut's attempt to distinguish "general" from "ecumenical." While Bellarmino distinguished those general councils that were fully approved from those that were partially approved or rejected, he did not subdivide the fully approved ones. Sieben suggests a division between the major and minor general councils.<sup>35</sup> But ranking councils is a "false question," even if Gregory the Great, Gratian's *Decretum*, and more recently Josef Ratzinger conferred a special prestige on the earlier councils.<sup>36</sup> One would be better served by the distinction between councils that taught doctrine and are infallible and those that issued merely disciplinary decrees that could be later modified or abrogated. The decree of Konstanz made such an implicit distinction in its *Professio fidei* when listing the councils a newly elected pope would have to uphold. Brandmüller then proceeds to assign councils to each of these categories. Most councils belong to the category of doctrinal councils, namely: Nicaea I, Constantinople I, Ephesus I, Chalcedon, Constantinople II and III, Nicaea II, Lateran IV, Lyon II, Vienne, part of Konstanz, Florence, Lateran V, Trent, and Vatican I. Because Vatican II has a pastoral purpose, what it taught regarding faith and morals is binding only to the extent that it openly declared it to be so. While

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<sup>33</sup> Brandmüller, "Zum Problem," 299–307.

<sup>34</sup> Brandmüller, "Zum Problem," 309: "Dass ein solches Unterfangen wie die Erstellung einer Liste der Ökumenische Konzilien und damit der Beendigung einer Jahrhunderte langen Diskussion auf erhebliche Schwierigkeiten stößt, ist offenkundig."

<sup>35</sup> Sieben, "Die Liste," 556–61.

<sup>36</sup> Brandmüller, "Zum Problem," 294–95, 309 (Wohlmut); 281–82, 308, 311 (Gregory, Gratian, and Ratzinger); 311 (Bellarmino); and 310 (Sieben).

Paul VI wanted to define no dogmas, the council's teachings nonetheless have a claim on the conscience of a Catholic Christian, as Ratzinger points out.<sup>37</sup>

The reason for excluding Basel from the list of doctrinal councils is not clear. Bellarmino put it, together with Konstanz, into the category of councils partly approved, partly rejected. If Konstanz is granted the status of a doctrinal council because of its condemnations of the teachings of Wycliff and Hus that were confirmed by Martin V, does not Basel deserve the same given its condemnation of the book of Agostino Favaroni on the nature of Christ and His relationship to the members of His Church? This condemnation was issued in its twenty-second session, after Eugenius IV's legates had assumed the council's presidency at the seventeenth. Was there no confirmation of this judgment by Eugenius IV? When Favaroni appealed the condemnation and his case was formally heard in Rome, Eugenius IV did not set aside the council's decree, but accepted instead Favaroni's resignation, done apparently in disgrace, from his archiepiscopal see of Nazareth.<sup>38</sup>

Brandmüller's article restates and defends the definition of an ecumenical or general council he had provided back in 2007. The two criteria he identifies that are constants in all the general councils, namely papal approval and a scope that affects the universal Church, echo the definition found in the current Code of Canon Law. By carefully surveying the historical record of various councils, he can claim that his definition is not ahistorical. This definition also allows him to challenge the inclusion in OCGD of the Quinisextum or Trullano Council (691/92), the two Photian councils (869/70 and 879/80), Pisa I (1409), Konstanz up to 1417, and Basel after 1437. In so doing he follows fairly closely in the Catholic tradition laid out by Bellarmino, even while admitting that there are serious difficulties in coming up with a definitive list.

Given the prominence of the term "Catholic tradition" in the discussions on ecumenical councils, it may be helpful to examine the writings of two sixteenth-century figures, Roberto Bellarmino (1542–1621) the theologian and Domenico Giacobazzi (1444–1527) the canonist, both made cardinals, whose scholarship on the question of what constitutes a general or ecumenical council has come to be considered classical among Catholic theologians and canonists. Because the views of Bellarmino played an important role in the debate between Brandmüller and Alberigo/Melloni and reappeared in

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<sup>37</sup> Brandmüller, "Zum Problem," 311–12.

<sup>38</sup> Brandmüller, "Zum Problem," 311–12 and n. 161. On Favaroni's trial, see D. Gionta, "Favaroni, Agostino (Agostino da Roma)," *Dizionario biografico degli italiani* 45 (1995), 447–51, here 450.

the cardinal's recent article, it may be useful to take a careful look first at Bellarmino's ideas on a general or ecumenical council.

Bellarmino held the chair of controversialist theology in the Roman College. His lectures were aimed at preparing his students to refute current errors, especially those of the Protestants. His lectures were eventually published in a three-volume work entitled *Disputationes de controversiis Christianae fidei adversus hujus temporis haereticos* (Ingolstadt, 1586–93). It was a highly successful work that went through various editions. He addressed the question of councils in the first volume that contained his lectures from the year 1576. It was treated in the section *Quarta controversia generalis: De conciliis*, consisting of four books: Liber I: *Qui est de natura et causis concilii*, II: *Qui est de conciliorum auctoritate*, III: *Qui est de ecclesia militante toto orbe terrarum diffusa*, and IV: *Ubi de notis ecclesiae*. In the preface to this fourth controversy, Bellarmino states that his intention is to defend against the attacks of Martin Luther and his followers the authority of church councils, especially that of Trent.<sup>39</sup>

The most relevant section for the present study is Liber I. In Caput IV Bellarmino provides a definition of general councils: "*Generalia dicuntur ea, quibus interesse possunt et debent Episcopi totius Orbis, nisi legitime impediuntur, et quibus nemo recte praesidet, nisi summus Pontifex, aut alius ejus nomine: inde enim dicuntur oecumenica, id est, Orbis terrae Concilia.*" Into the category of particular councils falls a council that is not approved by the apostolic see and not received by the whole Church, but also not rejected by them.<sup>40</sup>

In Caput V Bellarmino gives his famous list of the eighteen approved general councils and his reasons for considering them as such. He accepted the eight councils commonly considered ecumenical: Nicaea I, Constantinople I, Ephesus I, Chalcedon, Constantinople II, Constantinople III, Nicaea II, and Constantinople IV which he considered the eighth general council, to which he assigned the date 870, in which Photius was deposed and Ignatius restored as patriarch of Constantinople. Bellarmino rejected the subsequent Council

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<sup>39</sup> *Ven. Cardinalis Roberti Bellarmini Politiani S.J. Opera omnia, ex editione veneta, pluribus tum additis tum correctis, iterum editi Justinus Fèvre, Tomus II* (Paris: Apud Ludovicum Vivès, Editorem, 1870), pp. 189–196. Hereafter this tome is cited as *Disputationes*. On the *Disputationes* and their influence, see James Brodrick, *Robert Bellarmine: Saint and Scholar* (Westminster, MD: The Newman Press, 1961), 41–90 and Franco Motta, *Bellarmino: Una teologia politica della Controriforma* [Storia, 12] (Brescia: Editrice Morcelliana, 2005), 226–43; on Bellarmino's conciliar teachings, see Hermann Josef Sieben, *Die katholische Konzilidee von der Reformation bis zur Aufklärung* [Konziliengeschichte, Reihe B: *Untersuchungen*] (Paderborn: Ferdinand Schöningh, 1988), 147–80 and Christian D. Washburn, "St Robert Bellarmine on the Infallibility of General Councils of the Church," *Annuario Historiae Conciliorum* 41 (2009).

<sup>40</sup> *Disputationes, Controversia IV. Liber I. Caput iv*, pp. 198–99.

of Constantinople in which Photius was restored because the Greeks at the Council of Florence never acknowledged this council as “ecumenical.”<sup>41</sup> Bellarmino then went on to list the Western councils and assign them dates: Lateran I (1123), Lateran II (1139), Lateran III (1180), Lateran IV (1215), Lyons I (1245), Lyons II (1274), Vienne (1311), Florence (1439), Lateran V (1512–17), and Trent (1545–63). When describing an individual council he would typically mention under which emperor and pope it met, the number of bishops present, and the topics treated. He stated that none of the councils mentioned lacked either the approbation of the pope or reception by Catholics, citing as his evidence *Distinctio XVI, caput VIII Sancta octo* of the Gratian’s *Decretum* and the fact that the popes presided in the Western councils he listed.<sup>42</sup> He explicitly excluded from his list of approved council those of Pisa I (1409), Konstanz (1414–18), and Basel (1431–49).

Bellarmino placed in the category of partly approved, partly rejected three councils that are included in the COGD. He claims that the Quinisextum or Trullano Council can be rejected on the grounds that the pope was neither personally present nor represented by legates. Pope Sergius explicitly rejected the 102 canons that were later issued from the Trullo palace in Constantinople. These canons added material to the canons of the council that preceded and followed it. But because a subsequent pope and later legitimate councils approved the canons, this council can also be considered partly approved.<sup>43</sup> The decrees of the Council of Konstanz’s early sessions in which conciliar supremacy was taught should be rejected, as they were by the councils of Florence and Lateran V. But the decrees of the later sessions that were

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<sup>41</sup> *Disputatiiones*, IV.I.v, pp. 199–203, on the council of 879–80, pp. 202b–03a.

<sup>42</sup> *Disputatiiones*, IV.I.v, p. 203ab; *Corpus iuris canonici*, 2nd ed., ed. Emil Ludwig Richter and Emil Friedberg, Pars Prior: *Decretum Magistri Gratiani* (Leipzig: B. Tauchnitz, 1879), col. 45. Bellarmino’s list of 1576 is identical with that proposed by Arnauld Pontac in his *Secundus liber Chronographiae...* (Paris, 1567), as is noted by José Goñi Gaztambide, “El número de los concilios ecuménicos,” in: *Ecclesia militans. Studien zur Konzilien- und Reformationgeschichte: Remigius Bäumer zum 70. Geburtstag gewidmet*, eds. Walter Brandmüller, Herbert Immenkötter, and Erwin Iserloh, 2 vols. (Paderborn: Ferdinand Schöningh, 1988), I, 1–21, here 7–12, 20–21. The distinguished scholar on the idea of church councils, Hermann Josef Sieben, who has provided a fuller examination of the question of lists of councils in his “Die Liste ökumenischer Konzilien der katholischen Kirche: Wortmeldung, historische Vergewisserung, theologische Deutung,” *Theologie und Philosophie* 82 (2007), 525–56, here 535–36, has suggested four criteria for identifying an ecumenical council: its own claims to such status, universal representation, co-operation of the Apostolic See of Rome in the presence of the pope or his legates, and the participation of the other patriarchs.

<sup>43</sup> *Disputatiiones*, IV.I.vii, pp. 205ab.

approved by Martin V should be accepted.<sup>44</sup> The Council of Basel, although properly convoked by Martin V, nevertheless, was never approved by a pope as a council, even if its disposition of some ecclesiastical benefices and its censures were confirmed by Nicholas V. The council was rejected by Lateran V.<sup>45</sup>

In the category of neither approved nor rejected falls the Council of Pisa I (1409). Instead of healing the schism, it increased it by adding a third claimant to the papal throne. Nonetheless, the two popes who derive their titles from this council, Alexander V and John XXIII, are commonly regarded as legitimate pontiffs.<sup>46</sup> Bellarmino does not mention the Council of Pavia-Siena.

On the necessity of the presence of the bishops of the world in order to have a general council Bellarmino offers some reflections in *Caput XVII*. He notes that to have a general council either all or many of the bishops of the world are required. But if all, then there never was nor apparently could there ever be in the future such a council. If many, then who are they? He finds a solution to this problem in the custom of the Church, looking at the first four councils that are commonly considered to have been general councils. Based on their practice, he identifies four conditions. First, the convocation must be general and go out to all the major provinces of Christendom. Second, no bishop who is so constituted and not excommunicated is to be excluded, but may come from any place. Third, the five patriarchs (Rome, Constantinople, Alexandria, Antioch, and Jerusalem), to whom all the bishops are subject, are to be present either personally or through a representative. This requirement, however, is not totally binding, but is to be considered only good to follow. In the Council of Ephesus that condemned Nestorius the patriarch of Antioch, John, was absent. At the Council of Chalcedon the patriarch of Alexandria, Dioscorus, was ejected. The requirement of the presence of the five patriarchs no longer applies because the Eastern ones are “heretics or certainly schismatics.” Fourth, the council should be approved by the pope. At the councils of Constantinople I and Ephesus I there was no one from the West, but the popes confirmed their decrees in their own names and that of the Western bishops who were gathered in Rome. For the Council of Chalcedon the bishops of the West sent to pope Leo their consent and joined in his. Thus, according to Bellarmino’s account, the popes did not act independently but in collaboration with the bishops of the West in approving

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<sup>44</sup> *Ibid.*, pp. 205b–06a.

<sup>45</sup> *Ibid.*, p. 206a.

<sup>46</sup> *Disputationes*, IV.I.viii, p. 206a.

the decrees of the Eastern councils. Regarding the general councils held in the West, although many Western bishops attended, few came from the East. The number of bishops present does not determine the authority of a council. Only 150 attended Constantinople I, yet it is considered a general council; while many more bishops attended various national councils, they still lack the authority of a general council.<sup>47</sup>

The question of who should preside at an ecumenical council Bellarmino tries to resolve by an examination of ancient practice. In *Caput XIX* he reviews the historical record and finds that the emperor or his representative often presided, that is, he occupied the place of honor, but did not act as judge in doctrinal matters, did not speak or cast a vote on such issues, and when he signed the final decrees, he did so after the patriarchs, the first of whom to sign was the representative of the pope, if present. At the councils of the East, the popes were never present in person, they were unwilling that anyone should take precedence over them. That the pope deserved this position of primacy is supported by the account of Peter's role at the Council of Jerusalem where he was the first to rise and speak (Acts 15:7–11). The pope is the pastor of the whole flock of Christ. He is referred to as "father," while he calls his fellow bishops "sons." The practice of the early councils confirms his status as president of the assemblies who acted through his legates. At Nicaea, the legates yielded the position of honor at the right hand of emperor Constantine to patriarch Eustathius of Antioch out of respect for his years and reputation for holiness, but the papal legates are reported to have been the first to sign the final document. At the councils of the West the popes presided in person or through legates, as at Trent.<sup>48</sup>

Bellarmino argues that a general council, if it is legitimate and confirmed by the pope, cannot err when explaining the faith or when handing on moral precepts common to the whole Church. Because of Christ's promises to Peter and to the Church that this apostle's faith will not falter (Lk 22: 32) and the gates of hell will not prevail against His Church (Mt 16: 18), a council cannot err when it represents the Church and is confirmed by the pope, Christ's immediate vicar and shepherd of His flock. There is on earth no higher authority than the chair of Peter to which is joined the consent of a general council. But prior to papal confirmation of its decrees, a council can go into error. A council is not perfect nor does it represent the whole Church unless the head of the Church is joined to it and supports its decisions. Without

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<sup>47</sup> *Disputationes*, IV.I.xvii, pp. 222b–23b.

<sup>48</sup> *Disputationes*, pp. 225b–30b, IV.I.xix.

the confirmation of the pope himself, a council is not absolute. The consent of a papal legate to its decrees is not sufficient, for he can act contrary to the wishes of the pope, as was the case at Basel where Giuliano Cesarini (c. 1389–1444) agreed to the decree of its second session on conciliar supremacy over the pope.<sup>49</sup>

Bellarmino devotes a good deal of attention to refuting those Catholics at Paris who teach conciliar supremacy. Following the lead of Juan Torquemada (1388–1468), he holds that the decree *Haec sancta* of Konstanz is a disciplinary decree valid in the case where there is doubt as to who is the true pope. It was issued when only the Pisan obedience adhered to the council and hence is not the decree of a general council and was not confirmed by Martin V. While Basel was legitimate in its beginning, it lost its authority when transferred by the pope. Nicholas V confirmed only its decisions on benefices and censures, not its teaching on conciliar supremacy. Bellarmino cites in support of his critique of Basel the sixty-three arguments provided by Domenico Giacobazzi. The teaching of Lateran V on papal superiority over councils is valid, even if it was not received by all people, since the authority of a council does not come from that source. Lateran V is a legitimate council, and even if its teaching on this point is not properly speaking an article of the Catholic faith, for it was not proposed as such; nonetheless, to deny it would be temerarious.<sup>50</sup>

Bellarmino's teaching on a general council emphasizes the authority of the pope. The Roman pontiff is to preside in person or through his legate and his confirmation of its decrees is essential for their validity. Bellarmino does not enter directly into the question of a distinction between general and ecumenical councils. In the few times when he uses the word "ecumenical," he does so synonymously with "general."<sup>51</sup> He does not totally reject Konstanz and Basel, but accepts them in so far as they were approved by the popes. His teachings reflect the traditional papal ecclesiology of Rome and the need to defend the supreme authority of the pope. His is not an ecumenist's quest to find common ground, but a massive effort to identify and refute the errors of those he considered schismatics (the Orthodox), heretics (the Protestants), and temerarious Catholics (the Gallican defenders of conciliar superiority).

The other major writer on councils of the sixteenth century is Domenico Giacobazzi (1444–1527), who was born into a Roman patrician family, trained

<sup>49</sup> *Disputationes*, pp. 237b–39a, 257b, 260a–61a, 267b, IV.II, ii, ix, xi, xv.

<sup>50</sup> *Disputationes*, pp. 264a–65a, 269a, 271a–b, 275b–77b, IV.II.xiii, xvi–xvii, xix.

<sup>51</sup> E.g., *Disputationes*, p. 198b, IV.I.iv ("Generalia dicuntur ea...inde enim dicuntur oecumenica, id est, Orbis terrae Concilia."); p. 239a, IV.II.ii ("...neque Concilium oecumenicum legitimum, et approbatum potest errare.")

in both laws which he taught at the University of Rome, named consistorial advocate (1485), auditor of the Rota (1492), canon of the Basilica of St Peter (1503), referendarius of the Signature (1504), bishop of Nocera dei Pagani (1511–17) in which capacity he attended Lateran V (1512–17), member of its deputation on reform (1513), promoted to the cardinalate in 1517, and died during the Sack of Rome (1527). From 1512 to 1523 he worked on his treatise, *De concilio*. In this work he tries, among other things, to sort out the conflicting claims of the conciliarist council of Pisa-Milan-Asti-Lyons (1511–12) and its rival papal Fifth Lateran Council. This substantial work in ten books was published posthumously in Rome in 1538 as *Tractatus de concilio* by his nephew, cardinal Cristoforo (d. 1540). It enjoyed great prestige, was cited repeatedly at Trent, and was included in collections of writings on papal authority or on councils. The editor of a collection of conciliar documents, Gabriel Cossart (1615–74), appended it to his collection (1671–72) and in this position it was reprinted in subsequent revised editions, until most recently it was inserted as an introduction to the monumental collection published in 1903 by Jean-Baptiste Martin (1864–1922) and Louis Petit (1868–1927).<sup>52</sup>

Giacobazzi provides a clear definition of a general council. He first notes those of other writers, notably the author of the gloss on Distinctio 16 of Gratian's *Decretum* (“*generale concilium est illud quod a papa vel ejus legato cum omnibus episcopis statuitur*”) and Juan Torquemada (“*concilium universale est congregatio praelatorum majorum ecclesiae auctoritate Romani pontificis specialiter convocata ad aliquid communi intentione solenniter tractandum in religione Christiana, papa in ipso concilio praesidente, vel alio loco ejus*”).<sup>53</sup> Based in part on these definitions, Giacobazzi proposes his own: “*Concilium est congregatio praelatorum ex universo orbe et aliarum*

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<sup>52</sup> Josef Klotzner, *Kardinal Dominikus Jacobazzi und sein Konzilswerk: Ein Beitrag zur Geschichte der konziliaren Idee* [Analecta Gregoriana, Vol. 45 Series Facultatis Historiae Ecclesiasticae, Sectio B (n. 6)] (Rome: Apud Aedes Universitatis Gregorianae, 1948), 19–65; Konrad Eubel, *Hierarchia catholica medii et recentioris aevi*, 2nd ed. rev. by Ludwig Schmitz-Kallenberg (Münster: Sumptis et Typis Librariae Regensbergianae, 1923), III, 16 n. 19, 229 Lucerin. n. 3. See also Hermann Josef Sieben, *Traktate und Theorien zum Konzil: Vom Beginn des Grossen Schismas bis zum Vorabend der Reformation (1378–1521)* [Frankfurter Theologische Studien, 30] (Frankfurt am Main: Verlag Josef Knecht, 1983), 213–43, esp. 231. The treatise *De concilio* appears in Tome 0: *Introductio seu apparatus ad sacrosancta concilia* of *Sacrorum conciliorum nova et amplissima collectio*, 54 vols. in 58 (Paris: Hubert Welter, 1901–27), sig. a2v–a6v and pp. 1–580. Hereafter this treatise as published in Tome 0 is cited as Giacobazzi.

<sup>53</sup> Giacobazzi, cols. 2aC, 2bAB, 3aAB. On the gloss, see Gratian, *The Treatise on Laws (Decretum DD. 1–20)*, trans. Augustine Thompson, *with the Ordinary Gloss*, trans. James Gordley [Studies in Medieval and Early Modern Canon Law, 2] (Washington, DC: The Catholic University of America, 1993), p. 66, gloss b *It*; and for Torquemada's definition, Giacobazzi cites his comments on 17 *di.* in his *Summa.* and his treatise *De potestate pape* lib.3. cap. 5.

*personarum auctoritate, et voluntate papae convocatarum ad aliquid communi intentione communiter tractandum in religione christiana, papa in ipso concilio praesidente vel alio loco ejus et aliquando Christi, sive ipsiusmet concilii auctoritate suffulta.*” He adds the phrase on Christ’s or the council’s own authority to cover situations in which the pope’s see is vacant or he is a heretic and unwilling to call a council.<sup>54</sup> Giacobazzi distinguishes a general council from a local one: “*concilium generale dictum ab ejus effectu quia generaliter omnes convocantur et omnes convocati consulunt.*” A pope can make a local council (to which not all bishops are called) into a general council by declaring it such, even if it is not properly speaking a general council.<sup>55</sup>

In the category of general councils, Giacobazzi distinguishes ecumenical councils from general synods. He defines an ecumenical council as: “*De oecumenico, hoc est totius orbis concilio et [cum] sint vocandi omnes episcopi orbis ad concilium universale.*”<sup>56</sup> Ecumenical councils are a special case of general councils. Properly speaking there are only eight ecumenical councils, the holy councils of the ancient church, especially the first four. The ecumenical councils are Nicaea I and II, Constantinople I–IV, Ephesus, and Chalcedon. The Latin councils of the Middle Ages, especially Konstanz, are not considered ecumenical councils, that is, they were not universal, not of the whole world.<sup>57</sup> They fall into the category of general synods. Among these are to be counted the apostolic synods found in the Acts of the Apostles (1: 15–26, 6: 2–6, 15: 6–29), the papal synods of the early Church, and the medieval councils.<sup>58</sup>

Giacobazzi devotes a good deal of attention to the councils of Konstanz and Basel. Because there were three rival popes at the time of Konstanz, it was as if there were no pope at all, a situation of “*quasi sede vacante.*” In this case power devolves to the council which has its authority directly from Christ. The decree *Haec sancta* was issued for ending the schism by this council and is not a general constitution. It is a disciplinary decree and not a matter of faith. Martin V did not confirm this decree, but only those that had been enacted “*concilialiter.*” *Haec Sancta* was enacted by only the Pisan obedience, not by a

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<sup>54</sup> Giacobazzi, 3aB.

<sup>55</sup> Giacobazzi, 141bC.

<sup>56</sup> Giacobazzi, 194aC.

<sup>57</sup> Giacobazzi, 4aC–10bB, 12bE (“*Proprie tamen concilia universalia oecumenica sunt suprascripta octo concilia 16. di. c. sancta octo; alia vero quae non excedunt provinciam ubi facta sunt, dicuntur localia: quae possunt appellari universalia vel quia papa vel ejus legatus eis interfuit, vel quia per papam confirmata, vel quia locum habuerunt in universali ecclesia.*”), 64aD.

<sup>58</sup> Giacobazzi, 11bC–12aB, 14aB, 14bD.

council representing the whole Church.<sup>59</sup> The Council of Basel was legitimate from the beginning because convoked by Martin V. Eugenius IV, however, tried to dissolve it and then transferred it to Ferrara. What remained in Basel was more a *conciliabulum* than a true council. It did much presumptuously to disturb the Church and its decrees were not received, rather they were repudiated and had no validity. This is especially true for its decree on conciliar superiority. Giacobazzi rehearses sixty-four arguments for the superiority of a council over the pope and those in particular that were put forth at Basel. He then systematically refutes each in turn.<sup>60</sup> His conclusion that when there is only one undoubted pope whose mandate gathers a council, then he is the first and principal part of the council and he can dissolve it at will and no other council is above him is somewhat similar in its wording to that of the decree *Pastor Aeternus* of Lateran V.<sup>61</sup>

On the question of the number of prelates who must be present to have a council, Giacobazzi distinguishes. For an ecumenical council, that is, of the whole world, all the bishops of the world should be invited and it would seem that at least two-thirds of them should be present in the council. This conclusion is based on the legal principle that two parts out of three represent the whole. But for the existence of a general council neither two-thirds nor the majority of all the bishops of the whole world are required. This is clear from the historical record of these councils. Never was the majority of bishops present, for in the whole world there are over three thousand bishops, as the *Provincialia* of Alberico da Rosciate (1290–1360) estimates. But the highest number of bishops recorded in a council was 630 at Chalcedon. Many councils had less members and no one says they were not ecumenical councils.<sup>62</sup> Also, on the question of inviting all the bishops of the whole world to attend, Giacobazzi observed that it is impossible for the pope to extend this invitation personally and individually to all the bishops.<sup>63</sup> For a general synod, Giacobazzi notes that attendance varied widely. But while canonists claim ten persons are sufficient to make a group or people, he finds it hard to claim such a number is adequate for constituting a general council, even if many general synods had very few fathers. But the prelates present could represent the majority who are absent. Nonetheless, such synods are more

<sup>59</sup> Giacobazzi, 117bA, 216bD, 217aB, 537aA; Klotzner, *Jacobazzi*, 162–63, 165–66.

<sup>60</sup> Giacobazzi, 135bD, 217aB, 445bD; Klotzner, *Jacobazzi*, 166; Sieben, *Traktate*, 232..

<sup>61</sup> Giacobazzi, 445bD–555bD. On the similarity between Giacobazzi's wording and that of *Pastor Aeternus*, see 95bE and 536bE–37aA and COD 642: 20–22.

<sup>62</sup> Giacobazzi, 193aA–194bD.

<sup>63</sup> Giacobazzi, 195aC.

like local synods. However, if the pope wishes to constitute a council with the prelates from only certain provinces or in his patriarchate and approves its decisions as binding on all, “it will be a general or ecumenical council.”<sup>64</sup> Giacobazzi seems here to have forgotten his earlier distinction.

From this brief survey of the writings of Bellarmino and Giacobazzi, it would seem that Brandmüller is closer to Bellarmino in emphasizing the prerogatives of the pope and in not distinguishing the ancient ecumenical from the medieval general councils, while Melloni finds support in Giacobazzi who gave an exclusive status of ecumenical to the eight ancient councils, based on the tradition enshrined in Gratian’s *Decretum*. But even in these classical treatises of the sixteenth century aimed primarily at refuting the views of Protestants (Bellarmino) and of the conciliarist (Giacobazzi) there was some fluidity in the use of the terms “general” and “ecumenical,” a situation that persists to this day.

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<sup>64</sup> Giacobazzi, 2bC–E, 195aBC (“*et erit concilium generale et oecumenicum*”), 196aC. Giacobazzi claims apparently erroneously that the decree *Frequens* of the Council of Konstanz allowed the pope to call to a council bishops from only certain provinces and not the whole world – 195bE. But the decree states that all prelates and others who are customarily called to attend a council should assemble in it (COD 438:31–439: 27, here 439: 22–23); there is no provision for calling only some.



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