
Gradual Emergence of the Papal Power

Augustine witnessed the beginning of the crumbling of imperial Rome, but his *City of God* concept was a foreshadowing of the churchly counterpart of old Rome, which was to rise into a vast spiritual empire in succeeding centuries. This is therefore a suitable place to trace the gradual growth of the once-humble bishop of Rome into the proud pontiff on the papal throne, ruling as head of the Catholic Church in the very seat of the old Roman Empire.

The transformation of the pagan capital of the world into the ecclesiastical capital of Christendom was a long process, but the cornerstone of the new structure—an empire based on religion—can be seen in the legal establishment of the pope as the “head of all the holy churches,” and the designated corrector of heretics. Future chapters will reveal further stages in the gradual growth of this mighty religio-political structure to its pinnacle in the height of the medieval Papacy. But here we shall trace briefly the outlines of the foundations and witness the laying of the cornerstone in the time of Justinian.

I. Worldly Advance Matched by Spiritual Decline

1. ROME'S UNIQUE CONNOTATIONS AS A CITY.—The ancient city of Rome, founded according to tradition in the eighth century B.C., was for several hundreds of years but of local, minor importance. By the second century B.C., however, she stood upon the threshold of her supremacy of the Mediterranean world; and for five hundred years thereafter she was the

unrivaled metropolis of the last and mightiest of the four prophesied world empires, the seat of its government, and the heart of the then-known world. In pagan days Rome was accounted as everlasting, bearing the proud title of "Eternal City." This idea continued into the time of the Christian emperors, down to the end of the fifth century. Said the historian Ammianus Marcellinus (395), "She shall live so long as men shall exist."¹

Roma Aeterna, the "Eternal Rome," lent its name to the wide domain, where its noted sons held sway over subject peoples, be it at the muddy waters of the Euphrates, in the dark and somber forests of the Teutons, or in the highlands and moors of Britain. And when Rome no longer produced men of outstanding capacity, others of foreign extraction, the emperors of Byzantium and later of Germany, proudly carried the name of Rome at the head of their list of titles.

But still another power, of a different sort, and even more significant, rose to pre-eminence at a period when Rome's fortunes were at their lowest ebb. And this power carried the name of Rome into a different realm, gave it a new significance, raised it to new heights and world-wide fame. This power was the little church of Rome to which Paul addressed his epistle, and which in the course of time should become the seat of a vast ecclesiastical empire.

2. CONSTANTINE'S REIGN THE CHURCH'S TURNING POINT.—Of course, the Roman church in the early days, in the periods of pagan persecution, never dreamed of attaining such a position, but an amazing reversal in imperial attitude toward Christianity in general, and toward the developing Roman Catholic manifestation in particular, took place between the time of Constantine, in the fourth century, and Justinian, in the sixth. Previous to Constantine's edict of toleration in 313, Christians had been at various times cruelly persecuted under pagan edicts. But between the fourth and sixth centuries a succession of

¹ Ammianus Marcellinus, *History*, book 14, chap. 6, sec. 3, in the Loeb Classical Library, *Ammianus Marcellinus*, vol. 1, p. 37.



TRIUMPHAL ARCH AND JUDICIAL BASILICA OF CONSTANTINE

Noble Triumphal Arch of Constantine Erected at Entrance to Roman Forum Commemorating Victory Over Maxentius at the Battle of Saxa Rubra, or Milvian Bridge, Which Soon Brought Persecution of Christians to an End—a Witness to the Overthrow of the Persecuting Power and Dominion of Pagan Rome (Upper); The Basilica of Constantine (Lower)

laws, not only recognizing Christianity and favoring it, but also making it the state religion, gave legal support to the increasingly presumptuous claims to primacy made by the Roman bishop.

The accession of Constantine found Christianity proscribed and persecuted. The imposing arch of Constantine, built to commemorate the emperor's victory over Maxentius, is still a mute witness to the fourth century as the turning point in the rise of Constantine and the fortunes of the Christian church. The two centuries after this almost unbelievable transition were sufficient to entrench Catholic Christianity in the fundamental law of the empire, and by the time of Justinian, Roman primacy was established so firmly that through succeeding centuries the bishop of Rome progressed from spiritual leadership and temporal rule to the unparalleled power of the Papacy. The leading steps by which this was achieved must now be surveyed to obtain the setting for the emergence of the papal power.

3. MUTUAL RELATIONSHIPS OF EAST AND WEST.—The exigencies of frontier defense had long drawn the concern of the empire toward the troubled East. Diocletian had divided the administration, East and West, with a colleague. Then Constantine, who rarely visited Rome, made his capital in 330 in the "new Rome"—Byzantium by the Bosphorus, now rebuilt and renamed Constantinople. This became a new center of what seemed a second empire in the East, particularly after the system of two emperors was resumed, as under Arcadius and Honorius, with the Western capital placed in Ravenna. Writers naturally refer to the empires of the East and the West; yet, technically, such language is inexact. The empire was, and continued to be, one and undivided. Though there were two emperors, there was only one empire—two persons, but only one power. This point is necessary to an understanding of developments of the time that we are tracing.

"This removal of the capital of the Empire from Rome to Constantinople in 330, left the Western Church, practically free from imperial power,

to develop its own form of organisation. The Bishop of Rome, in the seat of the Caesars, was now the greatest man in the West, and was soon forced to become the political as well as the spiritual head.”²

Civil as well as religious disputes were frequently referred to the bishop of Rome for settlement. And the Eastern emperors increasingly recognized his high claims in order to gain his assistance. Thus gradually became established the principle of primacy that ultimately created the medieval Papacy. This was the process.

Growing more and more imperial, the Roman church lost its early purity and simplicity. Her bishops grew more lordly and her system of government more Roman. Ecclesiastical power became the object of her eager ambition. Opulence poured in upon the priesthood. And their intellectual superiority over that of the invading barbarians still further increased their ascendancy. In time, as education declined, they also became the custodians of learning and teaching, reading and preparing treaties and state documents, which advantage they did not fail to capitalize.

4. THE BISHOPS WIELD POLITICAL POWER.—Not content with supporting Christianity by favoring laws, Constantine and his successors had added to her spiritual authority the splendor of political power by inviting the bishops to participate in the administration of civil affairs, and by entrusting to their care interests connected with public order and welfare. And this generosity of the Roman emperors was eclipsed by the sovereigns of the new monarchies arising upon the ruins of the old empire. A series of fresh accessions to the prerogatives and powers of the clergy followed. They were summoned to the councils of kings and political assemblies. The most honorable rank was assigned them, and they exercised an influence in all departments of civil government. The influence of this new sovereignty was felt far and wide. And in the midst of the disorders of the time, the church created a bond of union

² Flick, *op. cit.*, pp. 168, 169; see also M. Creighton, *A History of the Papacy*, vol. 1, pp. 7, 8; Henry Edward Manning, *The Temporal Power of the Vicar of Jesus Christ*, pp. xxviii, xxix; Döllinger, *The Church and the Churches*, pp. 42, 43.

between nations opposed in character and interests, becoming the rallying point for society.

The weakness of the falling empire but added worldly strength to the aspiring church. As historians constantly assert, the dying empire bequeathed to the church her spirit and power, and furnished her method and organization, until at length both reappear with startling similarity in papal Rome.

5. DIGNITY OF IMPERIAL CITY EXALTS ROMAN BISHOP.—The barbarians beheld in the secularized church the faith they themselves professed, and the representation of that empire which they still revered while at the same time subverting it. The earthly majesty and power of this worldly institution impressed them. Daily the bishops grew in influence in the midst of a shaken and reeling world, and naturally, because of his metropolitan position, the bishop of Rome became increasingly the leader.

As the civil power of Rome waned before the barbaric invaders, this Christian bishopric seemed the sole survivor of the old institutions. It remained while all else failed. Gradually it became the one enduring power among the nations into which the fragments of the old Roman dominion were rapidly being crystallized.³ To these newly evangelized peoples the church of Rome was naturally the mother church, and the bishop of Rome the chief of all Christian bishops. Latin episcopacy was thus enthroned in the old Roman metropolis.

II. Leo I Attempts to Materialize Augustine's Kingdom Claims

1. DECLARES RIGHT TO VACANT ROMAN THRONE.—The Western empire perished through internal weakness and barbarian inroads. National misfortune and imperial favor were the twin causes of ecclesiastical Rome's successful early advance. Alaric the Goth was reluctant to begin his siege of Rome, the eternal embodiment of universal power and past terror to the barbarians. But he found himself, he declares, impelled by

³ Joseph Cullen Ayer, *A Source Book for Ancient Church History*, p. 476.

some hidden and irresistible impulse to accomplish the enterprise—which is significant. When the city succumbed, in 410, there was no great imperial leader to defend it, the throne of the West having been removed to Ravenna. But no barbarian chief really aspired to the role of emperor.

In 452 Rome again trembled, this time before the approach of the Huns under Attila. But the Roman bishop Leo (I) the Great (440-461) prevailed upon him to retire from Italy.⁵ And three years later, when Genseric, leading the Vandals, became master of the capital, Leo's intercession again spared the lives of the Romans. Thus this Roman bishop came to be recognized as a powerful protector, capable and energetic.

These barbarian chiefs did not venture to set themselves up as Roman emperors, and fill the "vacant shrine of the *imperium*." And Leo began to feel that the time had come to materialize the claims of Augustine regarding the temporal millennial kingdom of Christ, and with his avowed vested powers of loosing and binding openly to declare his right to the vacant throne as the fitting seat of Christ's universal kingdom. In this way the Roman church pushed its way into the place of the Western empire, of which it is "the actual continuation."⁶ Thus the empire did not perish; it only changed its form. The pope became Caesar's successor. This was a long stride forward.

2. PRIMACY BASED ON CLAIMS TO PETER'S POWERS.—Earlier in the fourth century, the Roman bishop's precedence among equals, formerly accorded to him, had first been demanded on a new ground that was reiterated time after time until the Roman bishop received supremacy of dominion.⁷ The second Ecumenical Council at Constantinople (381), in Canon 2, had confirmed the various metropolitans—such as those of Alexandria, Antioch, and Ephesus—in their respective spheres;⁸ but it

⁴ Sozomen, *op. cit.*, book 9, chap. 6, in *NPNF*, 2d series, vol. 2, p. 423.

⁵ Ayer, *op. cit.*, p. 476.

⁶ Adolf Harnack, *What Is Christianity?* pp. 269, 270.

⁷ Robert Hussey, *The Rise of the Papal Power*, p. 1.

⁸ Hefele, *op. cit.*, vol. 2, p. 355.

also decreed (Canon 3) that "the Bishop of Constantinople shall hold the first rank after the Bishop of Rome."⁹

Innocent I (d. 417) had maintained that Christ had (a) delegated supreme power to Peter and (b) made him bishop of Rome, and that as Peter's successor he was entitled to exercise Peter's power and prerogatives, and Boniface I (d. 422) had spoken similarly.¹⁰ At the Council of Ephesus, in 431, the legate of Pope Celestine had proclaimed publicly before all Christendom:

"There is no doubt, and it is noted by everybody, that the holy and most blessed Peter is the leader and head of the apostles, a pillar of the faith, and the foundation of the Catholic Church, and that he received from our Lord Jesus Christ, the Redeemer of the human race, the keys of rulership with which power is given to absolve and to bind sins; who [Peter] till our time and forever lives and exercises judgment in his successors."¹¹

Some twenty years later Leo saw the force implied by this claim, and entrenched himself behind it. He first outlined clearly the extreme limits of the claims of the medieval Papacy to universal rule of the church. Thus the church of Rome moved on toward the spiritual dictatorship of Christendom. More, perhaps, than any other, Leo laid the early foundations of that imposing edifice that towered among the nations for more than a thousand years, when papal bulls instead of imperial decrees began to rule the world.¹²

3. LEO ENVISIONS HEADSHIP OF THE WORLD.—Leo's concepts are well set forth in Sermon 82, "On the Feast of the Apostles Peter and Paul," before his Roman congregation. Declaring that these were the men through whom the light of the gospel first shone on Rome, he says:

"These are they who promoted thee to such glory, that being made a holy nation, a chosen people, a priestly and royal state, and the head of

⁹ *Ibid.*, p. 357. In another translation (*NPNF*, 2d series, vol. 14, p. 178) canon 3 reads, "The Bishop of Constantinople, however, shall have the prerogative of honour after the Bishop of Rome." This rendering would not confer rank and authority, but only honor.

¹⁰ Flick, *op. cit.*, pp. 181, 182; Elliott, *op. cit.*, vol. 3, p. 154.

¹¹ Translated from Actio 3 of the Council of Ephesus, in Jean Hardouin, *Acta conciliorum*, vol. 1, col. 1477.

¹² Flick, *op. cit.*, pp. 182-185; see also Archibald Bower, *The History of the Popes*, vol. 1, pp. 247, 248.

the world through the blessed Peter's holy See thou didst attain a wider sway by the worship of God than by earthly government. For although thou wert increased by many victories, and didst extend thy rule on land and sea, yet what thy toils in war subdued is less than what the peace of Christ has conquered."¹³

Contending that the spiritual extension of the Roman Empire was the carrying out of the divine scheme of Rome as the "head of the world," he continues:

"For the Divinely-planned work particularly required that many kingdoms should be leagued together under one empire, so that the preaching of the world [another Latin text can properly be translated here, "preaching of regeneration"] might quickly reach to all people, when they were held beneath the rule of one state. And yet that state, in ignorance of the Author of its aggrandisement though it rule almost all nations, was enthralled by the errors of them all, and seemed to itself to have fostered religion greatly, because it rejected no falsehood. And hence its emancipation through Christ was the more wondrous that it had been so fast bound by Satan."¹⁴

This sermon became, in turn, a text upon which his successors loved to expand, exulting in the firm foundation laid and the actuality of the establishment of the new Jerusalem that had come down from heaven. And it was a foundation that survived the centuries.

That success attended Leo's scheme to make the seven-hilled city the center of the Christian world, is evident from the imperial authority secured from Valentinian III, in 445, for his *Western* supremacy.

"Since therefore the merit of St. Peter, who is the first in the episcopal crown and the dignity of the Roman city and the authority of the sacred synod, has established the primacy of the Apostolic See, let no unlawful presumption try to attempt anything beyond the authority of that see. . . . By this perpetual sanction we decree that neither should a Gallic bishop nor one of other provinces be permitted to undertake anything against the old customs without the authority of the venerable man the pope of the eternal city, . . . so that whoever among the bishops when summoned to the court by his Roman superior neglects to come, let him be forced to attend by the moderator of the province."¹⁵

¹³ Leo the Great, Sermon 82, chap. 1, in *NPNF*, 2d series, vol. 12, p. 195.

¹⁴ *Ibid.*, chap. 2, p. 195.

¹⁵ Translated from Valentinian III, *Novellae*, title 16, in *Codex Theodosianus: Novellae Constitutionis imperatorum Theodosii II, Valentinian III* (edited by G. Haenel), cols. 173-176. (According to a variant text, this reads: "Let no presumption try to attempt anything unlawful.")

4. LEO PROTESTS EQUALITY OF CONSTANTINOPLE.—When, however, the general Council of Chalcedon (451) asserted, in Canon 28, the equal dignity and privilege of the see of Constantinople with the see of Rome,¹⁶ Leo indignantly protested, writing letters to the emperor and others, declaring it a deviation from the canons of Nicaea.¹⁷ He wrote to the bishops assembled at Chalcedon that the bishop of Rome was officially “*guardian of the Catholic faith, and of the traditions of the fathers,*”¹⁸ thus asserting guardianship of the unwritten as well as the written rules of faith. But the time of full recognition of Rome’s headship over all the churches had not yet come.

In Leo’s time we have encountered a legal sanction for the pope’s superior jurisdiction in a decree of Theodosius and Valentinian. There had previously been another important edict, that of Gratian and Valentinian II in 378 or 379. Let us now examine the successive steps in the legal recognition of the pope’s supremacy by imperial edicts.

III. Legal Sanctions for Roman Primacy Obtained

Under the reign of Constantine, Christianity had become the religion of the *emperor*; under Theodosius, sixty years later, it had become the religion of *empire*, but legal sanction for the papal claims of primacy were yet to be secured.

1. PROGRESSIVE EDICTS ESTABLISH HEADSHIP.—There were four separate edicts, by different emperors—for imperial edicts were then laws of empire—conferring or confirming the increasing privileges, immunities, and authorities, until the bishop of Rome became the virtually unchallenged head of all churches. These four edicts are:

- a. The edict of Gratian and Valentinian II, in 378 or 379.
- b. The edict of Theodosius II and Valentinian III, in 445.
- c. The imperial letter of Justinian, in 533—becoming effective in 538.

¹⁶ Hefele, *op. cit.*, vol. 3, pp. 411, 412.

¹⁷ *Ibid.*, pp. 435-438. These are epistles nos. 104-106, in *NPNF*, 2d series, vol. 12, pp. 74-79.

¹⁸ Leo, Epistle to the bishops at Chalcedon, in Hardouin, *op. cit.*, tom. 2, col. 688.

d. The edict of Phocas, in 606.

2. GRATIAN GIVES RIGHT OF SETTLING APPEALS.—Concerning *a*, the Roman primacy began to be recognized in a limited way by the edict of the Emperor Gratian (who laid aside the formerly pagan dignity of Pontifex Maximus) and Valentinian II, in 378 or 379. This edict, probably issued at the request of a Roman synod, not only confirmed Damasus (d. 384) as bishop of Rome, in opposition to a banished rival claimant, but also provided that certain cases in the churches of the West should be referred or appealed to the pope and/or a council of bishops.¹⁹

This gave various bishops, scattered over the West, occasion to write to the Roman bishops for decision on controverted points, which they answered by decretal epistles and ecclesiastical mandates and decisions. The earliest of these decretals still extant is a letter of Pope Siricius to Himerius of Tarragona in 385.²⁰

"The decretals [commence] with the letter of Pope Siricius to Himerius of Tarragona in 385. Such decretal letters were issued to churches in most parts of the European West, Illyria included, but not to north Italy, which looked to Milan, and not to Africa, which depended on Carthage. . . . It would even appear that a group of some eight decretals of Siricius and Innocent, Zosimus and Celestine, had been put together and published as a sort of authoritative handbook before the papacy of Leo (441-461)."²¹

Thus the authority of the bishop of Rome was greater than that implied in the sixth canon of the Council of Nicaea (325), which recognized the equal authority of the then-leading patriarchates of Rome, Alexandria, Antioch, and Ephesus.²²

An edict of Gratian, Valentinian, and Theodosius I, in 380 or 381 against heretics added imperial recognition of the Petrine theory, on which the Roman bishops based their claim as judge

¹⁹ William K. Boyd, *The Ecclesiastical Edicts of the Theodosian Code*, pp. 67, 68; Caesar Baronius, *Annales Ecclesiastici*, entry for year 381, sec. 6, vol. 4, col. 453; J. C. L. Gieseler, *A Text-Book of Church History*, vol. 1, p. 380; see translation in Isaac Newton, *Observations Upon the Prophecies of Daniel*, pp. 95, 96; for the Latin text, see Mansi, *op. cit.*, vol. 3, cols. 627-629.

²⁰ C. H. Turner, "The Organisation of the Church," *Cambridge Medieval History*, vol. 1, p. 151.

²¹ *Ibid.*, p. 182.

²² See Hefele, *op. cit.*, vol. 1, pp. 388-404.

of the Christian faith, although the Roman bishop was not recognized as sole judge of faith, the Alexandrian bishop being named in connection with Damasus.

"1. *The Emperors Gratian, Valentinian, and Theodosius to the people of the City of Constantinople.*

"We desire that all peoples subject to Our benign Empire shall live under the same religion that the Divine Peter, the Apostle, gave to the Romans, and which the said religion declares was introduced by himself, and which it is well known that the Pontiff Damasus, and Peter, Bishop of Alexandria, a man of apostolic sanctity, embraced; that is to say, in accordance with the rules of apostolic discipline and the evangelical doctrine, we should believe that the Father, Son, and Holy Spirit constitute a single Deity, endowed with equal majesty, and united in the Holy Trinity."²³

3. WESTERN CLERGY SUBJECTED TO ROMAN BISHOP.—In *b*—the memorable edict of the Western Emperor Valentinian III, in 445—the subordination of the *Western* clergy to the Roman bishop's primacy is recognized as grounded on Peter's merit.²⁴ This was induced, it is thought, by the Roman bishop Leo. It upholds against a bishop of Gaul the authority of the Holy See, and suggests that the peace of the churches would be preserved if all would acknowledge their ruler. The context shows that it refers to the West, for the dispute was over a Western subordinate, as the expressions "Western Churches" and "both Gauls" indicate. But in this support given the Roman bishop is laid the foundation of future expansions. Thus Ranke says:

"Thenceforth the power of the Roman bishops advanced beneath the protection of the emperor himself; but in this political connection lay also a restrictive force: had there been but one emperor, a universal primacy might also have established itself; but this was prevented by the partition of the empire."²⁵

4. JUSTINIAN ESTABLISHES HEADSHIP OF ALL CHURCHES.—As to *c*—the Justinian decree of 533—it was after the partitioning of the Western empire, that, under the victorious armies of

²³ *The Code of Justinian*, book 1, title 1, 1. This translation is taken from Scott's English version, *The Civil Law*. See also Ayer, *op. cit.*, p. 367.

²⁴ See page 500. The translation of the edict is given in full in Isaac Newton, *op. cit.*, pp. 123-125.

²⁵ Ranke, *The History of the Popes*, vol. 1, p. 8.

Justinian, considerable areas of the West acknowledged him as their overlord. In this period the legal establishment of the bishop of Rome as head of all the churches—now including the East—was accomplished. Then the tide of barbarian conquest rolled again over Italy, effacing the imperial control and leaving the West permanently in the hands of the barbarian masters, and to the pope the exercise of the spiritual primacy and power conferred on him under law by Justinian. This will be more fully treated in section 4 of this chapter, but reference must first be made to the fourth edict of our series.

Under *d*, the edict of Phocas in 606²⁸ merely reiterated and confirmed the Roman bishop's pre-eminence over the rival bishop of Constantinople. But Phocas' reign and authority was confined to the affairs of the East, rather than of the West.

IV. Justinian—Legalizer of Ecclesiastical Supremacy of Pope

Justinian I (527-565), greatest of all the rulers of the Eastern Roman Empire, was a barbarian by birth, but received an excellent education at Constantinople. In about 523 he married the famous actress Theodora. He guided the destinies of the Roman Empire for thirty-eight years, dying at eighty-three. Justinian was nicknamed "the Emperor who never sleeps," because of his tremendous activities and excessive hours of toil. Believing that as a theologian he was superior to any of the prelates of the church of his time, he spent long hours poring over the ponderous tomes of the fathers. But he is perhaps best known to history as a legislator and codifier of law. No reign, however, was filled with more important and varied events and undertakings, which were recorded by Procopius, secretary to Belisarius and Byzantine historian.

The sixth century has well been called the age of Justinian—his reign, like a dividing line, marking the terminus of the ancient world. He is likened to a colossal Janus bestriding the way of passage between the ancient and the medieval worlds.

²⁸ See page 528.

His was an age of transition and innovation, influencing the whole future of Christendom. That it was the acknowledged beginning of a new epoch is recognized by many writers.

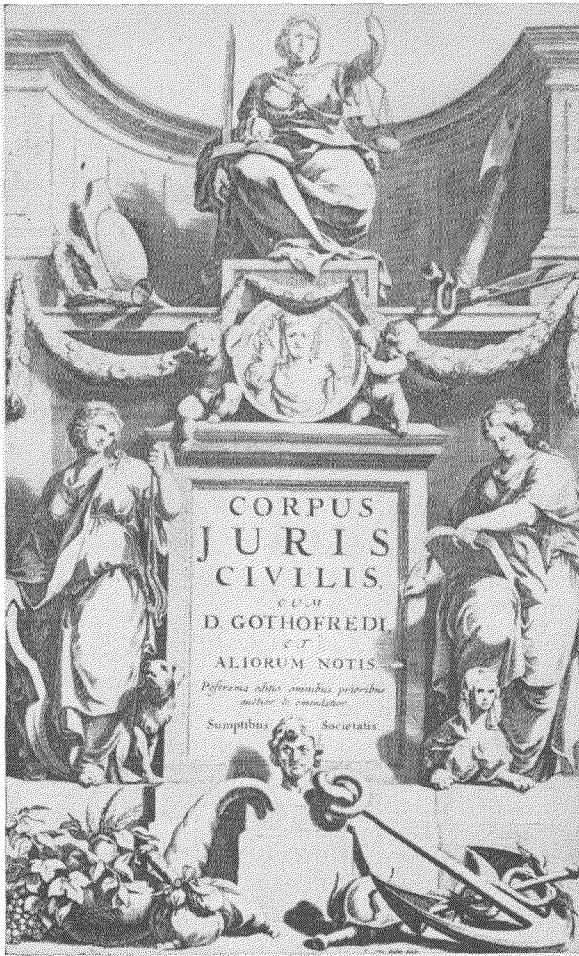
1. CONQUESTS LEAVE POPE IN UNDISPUTED HEADSHIP.—Justinian's first great burden was the full restoration of the glory of that former empire which the barbarians had divided, and the recovery of those rights over the West which his predecessors had maintained. This was largely realized through his conquests in Africa, Italy, and Spain. As a result, Justinian became the acknowledged and legitimate overlord of barbarian kings who had established themselves in Roman territory.²⁷ He was armed not only with the heritage of *past authority*, as sole remaining emperor in the Roman world, but now with actual *military supremacy* by reconquest in the West.

His achievements profoundly affected the whole future of Europe, and his intervention altered the entire status of the bishop of Rome. His victories were gained over people who to a large extent adhered to the teachings of Arius. Being subjugated by the sword, they foreswore Arianism and became followers of the doctrine of Athanasius, thereby enhancing the power of the bishop of Rome as they came automatically under his authority. And they found it to their interest to yield to the ecclesiastical leadership of the Roman pontiff. So the misfortunes of the times, however calamitous to others, were in all respects favorable to the papal ambitions.

2. SCOPE OF JUSTINIAN'S FAMOUS "CIVIL CODE."—Justinian's second and far more important achievement was the codification of the vast and confused mass of Roman law. This was accomplished by 534, and resulted in the Code, or Codex, the Digest, or the Pandects, and the Institutes, which together formed the *Corpus Juris Civilis* (Body of Civil Law). And "no body of law reduced to writing has been more influential in the history of the world."²⁸

²⁷ Charles Diehl, "Justinian. The Imperial Restoration in the West," *The Cambridge Medieval History*, vol. 2, pp. 4-20.

²⁸ Ayer, *op. cit.*, p. 541; see also Diehl, "Justinian," *The Cambridge Medieval History*, vol. 2, chap. 1; George Finlay, *Greece Under the Romans*, chap. 3, sec. 6, pp. 290 ff.



EPOCHAL COMPILATION OF JUSTINIAN AND THE EMPEROR'S PORTRAIT

Title Page of a Famous Gothofredus Edition of Justinian's *Corpus Juris Civilis*, Containing His Code and (Right) Portrait in Mosaic of the Famous Byzantine Emperor Who Recognized the Bishop of Rome as "Head of All the Holy Churches." This Mosaic Likeness of the Emperor, Made in 547 at Ravenna, on the Walls of San Rafello, Still Stands

The Code was a gathering of imperial constitutions from the time of Hadrian (d. 138) to Justinian's day. Begun in 528, it received imperial confirmation on April 7, 529. But this first Code was imperfect. The second, or revised Code, was duly completed, and in December, 534, was given all the authority

The *Corpus Juris Civilis* (the Body of Civil Law) was made up of (1) The Code or Codex, (2) the Pandects, or Digest, (3) the Institutes, and (4) the Novels, or Novellae.

of law, to the absolute suppression of the first. The *Novellae* were new constitutions, new laws or amendments, put forth from time to time to meet the shortcomings of the Code. These were added throughout Justinian's lifetime, and a few came from his successors. The *Pandects* or the *Digest* of the best rulings of the ancient jurists, completed and published with unlooked-for speed, was dated December 16, 533. The *Institutes* were a manual of civil law arranged for students of law, based on the commentary of Gaius, receiving final ratification in December, 533. Multiplied by the pens of scribes, these were transmitted to the magistrates of Europe, Asia, and Africa. By 554 they were generally recognized as law.²⁹ Said Gibbon:

"The *Code*, the *Pandects*, and the *Institutes* were declared to be the legitimate system of civil jurisprudence; they alone were admitted in the tribunals, and they alone were taught in the academies of Rome, Constantinople, and Berytus."³⁰

3. JUSTINIAN PROVIDES THE LEGAL BASIS.—Justinian's third great achievement was the regulation of ecclesiastical and theological matters, crowned by the imperial Decretal Letter seating the bishop of Rome in the church as the "Head of all the holy churches," thus laying the legal foundation for papal ecclesiastical supremacy.

This last achievement of Justinian's reign was brought about not entirely by his imperial will and his decrees, but by circumstances which seemed to lead naturally and logically to such a development. Justinian had established the seat of government for the western part of his empire at Ravenna, thereby leaving the "eternal city" largely to the jurisdiction of its bishop. Further, the silent extinction of the consulship, which dignity had been revered both by Romans and barbarians, which he accomplished in the thirteenth year of his reign, likewise had the same tendency—that of establishing the influence of the bishop of Rome. Thus the entire conduct, policy, and

²⁹ T. C. Sanders, *Institutes of Justinian*, p. xxxiii.

³⁰ Gibbon, *op. cit.* chap. 44, vol. 4, p. 465.

exploits of Justinian, who reigned in such an important era of history, focalized in one point so far as the church was concerned—namely, the advancement of the see of Rome. Hence his name properly belongs with Constantine, Theodosius, and Charlemagne as one of the greatest advancers of the papal church.

4. LEGALIZED ESTABLISHMENT OF THE PAPACY.—In tracing the full *legalized establishment* of the Papacy to the acts and reign of Justinian, there is solid and abiding ground on which to stand. As stated, one of the first tasks that Justinian imposed upon himself, after ascending the throne in 527, was to reform the jurisprudence of the empire. With reference to this, Gibbon has said:

“The vain titles of the victories of Justinian are crumbled into dust; but the name of the legislator is inscribed on a fair and everlasting monument. Under his reign, and by his care, the civil jurisprudence was digested in the immortal works of the CODE, the PANDECTS, and the INSTITUTES; the public reason of the Romans has been silently or studiously transfused into the domestic institutions of Europe; and the laws of Justinian still command the respect or obedience of independent nations.”³¹

But the real significance of that achievement, as bearing upon our quest in tracing the emergence of papal supremacy, is further set forth by Gibbon:

“Justinian has been already seen in the various lights of a prince, a conqueror, and a lawgiver: the theologian still remains, and it affords an unfavourable prejudice that his theology should form a very prominent feature of his portrait. The sovereign sympathized with his subjects in their superstitious reverence for living and departed saints; his Code, and more especially his Novels [Novellae], confirm and enlarge the privileges of the clergy.”³²

The full significance of this statement should not be lost. In Justinian's Code are incorporated edicts of former emperors in favor of the Roman church, and in the celebrated Novellae, or new laws, the canons of the former general councils are turned into standing laws for the whole empire.³³

³¹ *Ibid.*, p. 441.

³² *Ibid.*, chap. 47, vol. 5, p. 132.

³³ J. E. A. Gosselin, *The Power of the Pope*, vol. 1, pp. 79-84.

In so doing, Justinian improved the advantage afforded by his reconquest of Italy to achieve his design of *a universal conformity in religious matters* that would exclude heresy and schism, as well as strengthen his own authority over the Western kingdoms. His object was to secure a unity of the church which should embrace both East and West. He considered there was no surer way of reducing them all to one religion than by the advancement of the authority of ecclesiastical Rome, and by acknowledgment of the head of that church as the promoter of unity among them, whose business it should be to overawe the conscience of man with the anathemas of the church, and to enforce the execution of the heavy penalties of the law. From about 539, the sovereign pontiff and the patriarchs began to have a corps of officers to enforce their decrees, as civil penalties began to be inflicted by their own tribunals.³⁴

Justinian, of course, was well aware that such a profound change could not be achieved merely by co-operation without a certain amount of coercion. The spirit of religious liberty was quite foreign to the age. Therefore we find that Justinian re-enacted the intolerant laws formerly given, and accepted them into his code; for instance, the law of Constantine, Constantius, and Constans, which stated:

"Privileges granted in consideration of religion should only benefit those who observe the rules of the Catholic Faith. We do not wish heretics to absolutely be excluded from these privileges, but that they should merely be restrained, and compelled to accept employment for which the said privileges afford exemption."³⁵

Then there is the more severe law of the year 396 given by the emperors Arcadius and Honorius, which stated:

"Let all heretics know positively that their places of assembly shall be taken from them, whether these are designated under the name of churches, or are called diaconates, or deaneries, or whether meetings of this kind are held in private houses; for all such private places or buildings shall be claimed by the Catholic Church."³⁶

³⁴ *Ibid.*, pp. 159, 160.

³⁵ The Code of Justinian, book 1, title 5, 1 (Scott's translation). (The Latin reads: "We not only wish heretics. . . .")

³⁶ *Ibid.*, title 5, 3.

In proportion as Christianity had become consolidated on the ruins of paganism, the emperors not only protected the public exercise of Christian worship but also confirmed by edicts the laws of the church on faith, morals, and discipline. Thus the general Council of Nicaea had been confirmed by Constantine; the Council of Constantinople, by Theodosius I (the Great); the Council of Ephesus, by Theodosius II (the Younger); and the Council of Chalcedon, by Marcian.³⁷

Other edicts confirmed the primacy of the Holy See, and the sanctification of Sunday and the festivals, together with the canonical penalties decreed by the church against transgression of her laws, so that there was scarcely an important article of faith or discipline not confirmed by imperial decree.³⁸ Temporal penalties had been imposed on heretics, the laws of Theodosius being especially heavy and numerous. And Justinian not only inserted these contributions into his Code, but promulgated others. In the same law in which he placed the canons of the first four general councils among the civil laws of the empire, he decreed that anyone holding unauthorized church services in a private house could lose his property and be expelled from the province, and further that no heretic should have the right to acquire land, upon pain of confiscation of his property, and without hope of restoration.³⁹

V. Establishing Mandate Embodied Permanently in Code

1. CIRCUMSTANCES LEADING TO PAPAL HEADSHIP DECISION.

—It is essential to understand the precise occasion and circumstance of the imperial letter that at last recognized the bishop of Rome as head of all the churches, East and West. Justinian was about to begin his Vandal wars, and was anxious to settle beforehand the religious disputes of his capital. The Nestorian controversy⁴⁰ had created considerable disturbance. Justinian,

³⁷ Gosselin, *op. cit.*, vol. 1, p. 60.

³⁸ *Ibid.*, pp. 60, 61.

³⁹ Justinian's 131st Novella, chaps. 8, 14. See Appendix C, p. 933.

⁴⁰ The Syrian bishop, Nestorius, patriarch of Constantinople in 428, had protested the implications of the name "mother of God" given to the Virgin Mary; and this point, with others, had led to a deep split in the Eastern church. (See Albert H. Newman, *op. cit.*, vol. 1, pp. 337 ff.)

with a personal penchant for theological questions, plunged into the controversy with recourse to persecution to augment his arguments.⁴¹

By imperial decree the Nestorians were placed under a spiritual ban. In their distress some of the anathematized made appeal to Rome. The emperor then sent two Eastern prelates—Hypatius, bishop of Ephesus, and Demetrius, bishop of Philippi—as envoys to Rome to lay the case before Pope John. In the imperial letter which they bore, Justinian ruled in favor of the primacy, or precedency, of the bishop of Rome, which had been contested by the bishop of Constantinople ever since the removal of the capital to that city. In the fullest and most unequivocal form Justinian recognized, maintained, and established by imperial authority the bishop of Rome as the chief of the whole ecclesiastical body of the empire.⁴²

The imperial letter details the “heresy” of the Nestorian monks, and desires a rescript from Rome to Epiphanius, patriarch of Constantinople, and to the emperor himself, giving papal sanction to the judgment pronounced by the emperor upon the heresy. Justinian expresses his desire to present to his “Holiness” at Rome all matters that concern the church at large. Justinian also states that the patriarch of Constantinople has likewise written the pope as being desirous in all things to follow the apostolic authority of the Roman bishop.

And for the purpose of preserving the unity of the apostolic see, Justinian states that he has exerted himself to unite all the priests of the Eastern church and subject them to the bishop of Rome, and that he does not permit anything pertaining to the state of the church to be unknown “to Your Holiness,” “because you are the Head of all the holy churches.”⁴³ He was,

⁴¹ W. G. Holmes, *The Age of Justinian and Theodora*, vol. 2, pp. 702, 703.

⁴² The text of portions of the Code bearing on this subject, including this imperial letter, appears in Appendix C.

⁴³ This is Scott's translation, in *The Civil Law*, in the section which he numbers book 1, title 1, section or chapter 4. But the standard numbering is 1, 1, 8 in *Corpus Iuris Civilis* (as in the Krueger edition). The Latin says literally: “*Vestrae . . . sanctitati, quia caput est omnium sanctorum ecclesiarum*” (to your Holiness, because it [Your Holiness] is head of all the holy churches). For other translations see William Cuninghame, *A Dissertation on the Seals and Trumpets of the Apocalypse*, pp. 185, 186; George Cröly, *The Apocalypse of St. John*, pp. 168, 169; see also Richard Frederick Littledale, *The Petrine Claims*, p. 293.

of course, already the actual head in the West. Justinian concludes by declaring the doctrine held by the bishop of Rome to be the standard of the faith and the source of unity to all the Christian world.

The emperor's letter to Pope John must have been written before March 26, 533, for, in a letter of that date "to Epiphanius, bishop of Constantinople, Justinian speaks of it as having already been written, and repeats his decision to Epiphanius, that all things touching the church shall be referred to the pope of ancient Rome, since he is "head of all the most holy priests of God," and adds that "by the decision and right judgment of his venerable see [heretics] are held in check."⁴⁵

2. ENACTMENT ESTABLISHED IN HEART OF CIVIL CODE.—Pope John's answer to Justinian, which is recorded in the Code,⁴⁶ is our source for the emperor's letter, for it quotes it entire, repeating the language of the emperor, applauding his homage to the Holy See, acknowledging the title—"head of all churches"—conferred on him by the imperial mandate, and commending Justinian's reverence for the "See of Rome," in that he had "subjected all things to its authority." John refers to Justinian's having "promulgated an Edict" against heretics, which was "confirmed by our authority." Thus the transaction was fully understood by both pope and emperor.

Justinian's momentous document to Bishop John II, of Rome, was not left to the dubious fate of the royal archives. Together with John's reply, and the imperial letter to Epiphanius, it was put into the Code, and cast into the form of law. Thus it obtained the stamp of public authority as a law of empire. And this designation of the pope as supreme head of the churches was repeated in various ways in the Civil Code.

⁴⁴ Referred to in Baronius, *op. cit.*, entry for year 533.

⁴⁵ Code of Justinian, book 1, title 1, 7, in *Corpus Iuris Civilis* (Krueger ed.; not in Scott's translation); see also Croly, *op. cit.*, p. 170. For a translation of the beginning of this letter, see Appendix C, p. 932.

⁴⁶ Some have doubted the authenticity of these letters, but reputable authorities use them. (See Flick, *op. cit.*, pp. 179, 180.) The fact that both letters are found in the standard modern critical edition of the *Corpus Iuris Civilis*, that of Mommsen and Krueger, is ample evidence that the best modern scholarship accepts them as genuine.

Its authenticity is sustained by the Preface to the ninth Novella, reading:

“Not only has the former Rome been allotted the origin of laws, but also there is no one who doubts that in her is the peak of the highest pontificate.”⁴⁷

And the 131st Novella states:

“Hence, in accordance with the provisions of these Councils, we order that the Most Holy Pope of ancient Rome shall hold the first rank of all the Pontiffs, but the Most Blessed Archbishop of Constantinople, or New Rome, shall occupy the second place after the Holy Apostolic See of ancient Rome, which shall take precedence over all other sees.”⁴⁸

Thus the supremacy of the pope over all Christians received the fullest sanction that could be given by the secular master of the Roman world. From this time, then, is to be dated the secular acknowledgment of the Papacy's claims to ecclesiastical primacy, which became effective generally in 538, by the freeing of Rome from the Ostrogothic siege.

It was thus that Justinian purchased the influence of Rome. Whatever the motive, the deed was done. And it was authentic and unquestionable, sanctioned by the forms of state, and never abrogated—the act of the first potentate of the world.⁴⁹ Thus the pen that wrote that imperial letter gave legal sanction to another Rome that was to have spiritual dominion for even longer than imperial Rome, and was later to climb to the peak of civil as well as religious domination.⁵⁰

3. LEGAL TRANSACTION COMPLETE AND AUTHORITATIVE.—

The title of the pope to supremacy over the church was later questioned in the East by the Patriarch of Constantinople, after the death of Justinian, and was in turn reaffirmed by Phocas in 606, as will be noted in chapter 22. But the establishing edict of Justinian was never rescinded. The importance attached to

⁴⁷ Translated from Novella 9 (collection 2, title 4) of Justinian, in *Corpus Iuris Civilis* (Krueger ed.), Scott's translation, which often seems more of a paraphrase than a translation, is unsatisfactory here.

⁴⁸ Novella 131 of Justinian, 9th collection, title 6, chap. 2 (numbered title 14, chap. 2 in Scott's translation, here quoted).

⁴⁹ Croly, *op. cit.*, pp. 340-342.

⁵⁰ See pp. 398, 399, and chapter 27.

Justinian's Code in this study does not rest so much upon the great body of civil legislation contained therein as upon the incorporation of purely ecclesiastical edicts and regulations, and as a result the latter was given imperial and political sanction. And as the influence of Justinian's Code can be traced in the legislation of many European nations, this intertwining of religious and political power by law remained constant practically till the time of the French Revolution, when it was dethroned in Europe and when the Code of Napoleon a few years thereafter made a distinct separation between the ecclesiastical and the secular spheres.

The time of Justinian is therefore incontrovertibly the time of the beginning of the era of the ecclesiastical supremacy of the Papacy. The placing of the letter to the pope in civil law, thereby embodying his primacy in that law, was a remarkable—yes, an incontrovertible—way of accrediting the pope, and of making prominent his new power and dignity.

It should be stressed that the Justinian transaction has all the requirements of completeness, authority, and publicity. Ecclesiastical dominion was conferred not only over the Western church but also over the Eastern—these two grand divisions theoretically embracing the territory of the old Roman Empire—and it was enforceable as far as Justinian's authority extended, for it had all the sanction that could be given by the imperial will, all the formality which belonged to imperial law, and all the authority comprehended under imperial supremacy.

4. REMOVAL OF GOTHIC IMPEDIMENT IN 538.—The beginning of the era of the headship of the Roman bishop over all the churches was not marked by some overmastering event in papal advance, or by an assumption of supreme ecclesiastical control; at that time the pope was hampered by the fact that Arian Ostrogoths were ruling Italy. Rather, it was only by the removal of the impediment of the Ostrogothic control, as their besieging forces were cleared away from Rome, that the Roman pontiff was free to exercise the jurisdiction now legally pro-

vided for through the imperial Code of Justinian. At that time the reinforcing second army of Justinian broke the Gothic siege of Rome, relieving the beleaguered Belisarius, and leaving thenceforth no power save the Papacy that could be said to hold sway through many centuries from the seven hills of the Eternal City.

One year and nine days had been consumed in the siege of Rome by the Goths, ending in March, 538.⁵¹ Thus the ancient seat of empire was preserved for the Papacy, for although Totila, king of the Goths, had resolved to make of Rome, which "surpassed all other cities," but "a pasture land for cattle," Belisarius wrote to dissuade him, and so he refrained from destroying it.⁵² The war against the Goths continued, for Ravenna did not immediately fall—five or six years passing before the remainder of the Gothic empire collapsed;⁵³ but the grave of the Ostrogothic monarchy in Italy was dug by the defeat of this siege,⁵⁴ the remaining resistance collapsing by 554.⁵⁵ And with the failure of this siege, says Finlay, "commences the history of the Middle Ages."⁵⁶

Bishop Silverius of Rome (536-c. 538) had been elected under the Gothic influence, and while Belisarius was besieged in Rome by the Goths under Witiges (Witigis, or Vitiges), Silverius was accused of favoring the Goths.⁵⁷ So in 537 Silverius was banished by Belisarius; and the deacon Vigilius, favorite of Theodora, was then elected pope.⁵⁸

It is not to be concluded that Vigilius came into office wielding more influence than his predecessors. The time when Roman pontiffs were to be temporal princes playing power

⁵¹ Procopius, *History of the Wars*, book 5, xxiv, in The Loeb Classical Library, *Procopius*, vol. 3, pp. 235-237; Diehl, "Justinian," *The Cambridge Medieval History*, vol. 2, chap. 1, p. 15; Gibbon, *op. cit.*, chap. 41, vol. 4, pp. 323-325; George Trevor, *Rome: From the Fall of the Western Empire*, p. 53.

⁵² Horace K. Mann, *The Lives of the Popes in the Early Middle Ages*, vol. 1, part 1, pp. 17, 18.

⁵³ Diehl, "Justinian," *The Cambridge Medieval History*, vol. 2, p. 18.

⁵⁴ Hodgkin, *op. cit.*, vol. 4, pp. 251, 252; Gibbon, *op. cit.*, chap. 41, vol. 4, pp. 323, 324.

⁵⁵ Diehl, "Justinian," *The Cambridge Medieval History*, vol. 2, pp. 18, 19.

⁵⁶ Finlay, *Greece Under the Romans*, p. 295.

⁵⁷ James C. Robertson, *History of the Christian Church*, vol. 2, pp. 297, 298.

⁵⁸ Hussey, *op. cit.*, p. 146; Schaff, *History*, vol. 3, p. 327; Charles Diehl, "Justinian's Government in the East," *The Cambridge Medieval History*, vol. 2, p. 46.

politics among the rulers of Europe, and demanding allegiance and submission from kings, was far in the future, and even then the Papacy was to have its ups and downs. In 538 the prestige of the popes was at a low ebb under the dominating spirit of Justinian.⁵⁹ It is likely that Justinian never thought of Vigilius as anything more than the docile head of a "department of religion" in his imperial government, and intended to keep the reins the more firmly in his own hands by subjecting the whole church to the jurisdiction of a court favorite.

But the imperial acceptance of the Roman pontiff's assertions of primacy—already largely conceded in the West—had denied the claims of all rivals, and given him official status. Now Vigilius, owing his pontificate to imperial influence, and bolstered by this new legal recognition of the pope's *ecclesiastical* supremacy, marked the beginning of a long climb toward *political* power which culminated in the reigns of such popes as Gregory VII, Innocent III, and Boniface VIII. The temporary nature of Justinian's union of East and West, and the subsequent decrease in the concern of the Byzantine emperors with Western church affairs, only left the pope with a freer hand to develop that power. The change in the character of the Papacy from Vigilius on, and the final result of that change, have been well described: "From this time on the popes, more and more involved in worldly events, no longer belong solely to the church; they are men of the state, and then rulers of the state."⁶⁰

This transaction engendered new energy in Rome. As the Papacy began to assume more of a political character, and entered the path which led on toward temporal dominion, the voice of the Roman bishop took on a new authority throughout all Christendom. The growth of that irresistible tyranny before which Europe would often bow during the subsequent thousand years, was now begun. By enshrining in the imperial law the

⁵⁹ Diehl, "Justinian's Government," *The Cambridge Medieval History*, vol. 2, chap. 2, pp. 46, 47.

⁶⁰ Charles Bémont and G. Monod, *Medieval Europe*, p. 121.

long-claimed primacy of the pope, Justinian placed the cornerstone of that towering ecclesiastical structure that was to cast its shadow through succeeding centuries over the whole of Europe, and that was to intercept the guiding light of the Scriptures by its elaborate ceremonies in all their ancient heathen splendor—its ecclesiastical calendar crowded with thinly concealed pagan festivals, its pilgrimages, saint worship, and adoration of the virgin—and by its insistence on obedience to Rome, as the supreme duties of life.