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THE ROMAN SYNOD OF DECEMBER 800 AND THE ALLEGED TRIAL OF LEO III

A THEORY AND THE HISTORICAL FACTS

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Dedicated to Professor Paul W. Gates

A ROMAN SYNOD convoked by Charlemagne met on December 1st of the year 800 for the purpose of investigating the accusations levelled against Pope Leo III. In the presence of the pope, the Frankish king presided over an assembly composed of ecclesiastics, Frankish and Roman nobles, including members of the Frankish episcopate — to wit, Arno of Salzburg, Theodulph of Orléans, Riculf of Mayence, Aaron of Angorra, the Saxons Witto and Fredugis, Alcuin's confidants — and other persons of consequence. The eldest son of Charlemagne, Charles, who together with his sisters had accompanied his father to Rome, was another participant.¹

The accounts contained in ecclesiastical and Frankish historical sources of the proceedings of the Roman Synod of December 800,² whose acts are not preserved, seem to be somewhat contradictory and confusing. Historians have repeatedly discussed and argued over the significance of these accounts. The problem is whether to accept the description of the events that took place at St. Peter's in the version of the *Liber Pontificalis* (LP), the *Annales regni Francorum* (ArF), the *Annales Laureshamenses* (AL), or in some combination of these sources.

Louis Halphen³ bases his reconstruction of the happenings on the LP and the ArF, while rejecting the report of the AL, written

* This paper is an independent sequel to the study quoted below in note 34; the 'coronation' of Charlemagne will be the subject of a third article.

¹ Cf. Abel-Simson, *Jahrbücher des fränkischen Reiches unter Karl dem Grossen* 2 (Leipzig 1883) 224-229.

² See the collection of sources by H. Dannenbauer, *Die Quellen zur Geschichte der Kaiserkrönung Karls des Grossen* (Lietzmann's Kleine Texte No. 161, Berlin, 1931). — I am indebted to Professor Heinrich Dannenbauer for a copy of his *Quellen* kindly sent to me in December 1954 in remembrance of his *Historisches Seminar* on 'The Origins of the Pontifical State' conducted at the University of Tübingen in 1931-32.

³ *Études critiques sur l'histoire de Charlemagne* (Paris, 1921) 236-238.

under the influence of the Frankish Court, as being partial to a one-sided Frankish interpretation. A similar opinion of the AL is shared by Erich Caspar,⁴ while F. L. Ganshof⁵ rejects such an assessment of the historical value of the AL. For even if the AL should not be contemporary with the events of the year 800, having been written perhaps in 803, the LP and the ArF are chronologically — so Ganshof argues — even farther removed from these events than are the AL. On these and other grounds Heinrich Fichtenau⁶ now attempts the rehabilitation of the AL as a primary source for the important happenings of the year 800. He shows that the author of the AL — probably Richbod of Treves and Lorsch — occasionally wrote in the style of the official Frankish court charter, the *placitum*; for the year 802 Richbod used the extant Frankish *Capitulare missorum generale* of 802, a fact already known for a long time. Fichtenau believes that the author of the AL ad a. 800–801 fashioned the text of the annals not only on the basis of his own familiarity with the formulaic phraseology of the Frankish *placitum*, but also on the basis of ‘official protocols’ that were accessible to him for his report on the Roman Synod of December 800 and on the negotiations leading to the coronation of Charlemagne on December 25. This assumption is — according to its own originator — a ‘bold thesis which will never be confirmed in such a manner that the scholar who clings to previously conceived interpretations will not reject it.’ ‘But,’ he adds, ‘anyone who approaches these problems with a somewhat open mind will not deny the probability of such a thesis.’

Several arguments present themselves against the alleged existence of ‘official protocols’ used by the author of the AL. Had there actually been such documents, these ‘protocols’ and the AL ought to have shown traces reminiscent of the style of the Acts of the Synod that was in session from December 1st until the 23rd, if

⁴ ‘Das Papsttum unter fränkischer Herrschaft,’ *Zeitschrift für Kirchengeschichte* 54 (1935) 259.

⁵ *The Imperial Coronation of Charlemagne: Theories and Facts* (Glasgow University Publications 79, 1949) 22–23.

⁶ ‘Karl der Grosse und das Kaisertum,’ *Mitteilungen des Instituts für Oesterreichische Geschichtsforschung* 61 (1953) 387 ff., especially pp. 317–320. — I am obliged to Professor Heinrich Fichtenau of the University of Vienna for a reprint of this valuable paper with whose results (with the exception of the ‘official protocols’) I gladly agree.

not until the 25th of December, the day of Charlemagne's recognition as *Imperator Romanorum*. But traces of the phraseology of synodal acts are not noticeable in the AL ad a. 800 and 801, whose author describes events connected with these synodal procedures in the formulaic language of the Carolingian placitum. In order to achieve this feat, he needed no recourse to 'official protocols.' Heinrich Dannenbauer⁷ characterized the narrative of the AL as 'deliberations that stem in all likelihood from the author's own erudition, and otherwise are designed to explain to himself an unknown or even incomprehensible event. Although the author of the AL is not a good witness of historical facts, especially not for their interrelationship, nevertheless he shows how circles not directly involved in the Roman events attempted to comprehend what was but imperfectly understood by them.' The attempted vindication of the AL as a primary historical source for the reconstruction of the events leading to the coronation of Charlemagne cannot stand the test of a critical analysis, and the negative estimate of Halphen, Dannenbauer, and other historians, remains unshaken by Fichtenau's thesis.

There is only one conclusion one might with some degree of justification draw from Fichtenau's proof of the occurrence of elements of the Frankish placitum in the report of the AL ad a. 800–801, namely, that the presence of Charlemagne, the highest Frankish judge, was to the author of the annals proof of the judicial nature of the synodal proceedings. While it is true, as Hefele-Leclercq⁸ state, that these acts are not extant, it can be shown that the original acts were used by the author — not of the AL but of the *Liber Pontificalis*.

I

The Life of Leo III, the longest biography in the *Liber Pontificalis*, cannot have originated before the death of Leo in 816.⁹ This

⁷ 'Zum Kaisertum Karls des Grossen,' *Zeitschrift für Kirchengeschichte* 49 (1930), 305 f.

⁸ Cf. Carl Josef von Hefele, *Conciliengeschichte* 3 (2nd ed. Freiburg i. B., 1877), 739; Hefele-Leclercq, *Histoire des Conciles* 3,2 (Paris, 1910) 1113–1116, speak of 'the Roman Synod of the year 800.'

⁹ Léon Levillain, 'Le couronnement impérial de Charlemagne,' *Revue d'histoire de l'Église de France* 18 (1932) 15.

means that the author had to rely on written material and documents on which to base his narration. The numerous gifts and buildings dedicated, sponsored, or built by Leo, and listed by his biographer, bear out this conclusion. Huelsen¹⁰ already observed the chronological order of many notices in the *Vita* referring to the activities of Leo. That the author of the *Vita* used the placitum of the Frankish 'Königsgericht' which in December 799 investigated the accusations of Leo's enemies at Rome, has recently been indicated.¹¹ The narrative in the LP of this Frankish court action of Carolingian missi is followed by a report of the Roman Synod of December 800, which is based, as we hope next to prove, on the original acts of this synod. We here print this section, and — in order to facilitate reference — we add in the left margin the Roman numerals I–XII representing the individual parts.

Vita Leonis III, in *Liber Pontificalis II*, ed. L. Duchesne (Paris 1892), 7:

- I Qui post modicum tempus ipse *magnus rex*, dum in basilica beati Petri apostoli coniunxisset et cum magno honore susceptus fuisset, *fecit* in eadem aeclesia *congregare archiepiscopos seu episcopos, abbates et omni nobilitate Francorum atque synclitu Romanorum*.
- IIa Et *sedentes pariter* tam *magnus rex* quam *beatissimus pontifex*, fecerunt *resedere et sanctissimos archiepiscopos seu episcopos et abbates*,
- IIb *stantes reliquos sacerdotes seu optimates Francorum et Romanorum*,
- III ut crimina quae adversus alium pontificem dicta fuerant delirarent.
- IV Qui *universi* archiepiscopi seu *episcopi* et abbates unianimiter audientes *dixerunt*:
- V 'Nos sedem apostolicam, *quae est capud omnium Dei ecclesiarum*, iudicare non audemus. Nam ab ipsa nos omnes et vicario suo iudicamur; ipsa autem a nemine iudicatur, quemadmodum et antiquitus mos fuit. Sed sicut ipse summus pontifex censuerit, canonicè obediemus.'
- VI Venerabilis vero praesul inquit:
'Praedecessorum meorum pontificum vestigia sequor et de

¹⁰ Christian Huelsen, 'Osservazioni sulla biografica di Leone III nel Liber pontificalis,' *Rendiconti della pont. acad. rom. di arch.* I (1923) 107–119.

¹¹ Cf. Luitpold Wallach, 'The genuine and the forged oath of Leo III,' *Traditio* 11 (1955) 39f.

talibus falsis criminibus quae super me nequiter exarserunt, me purificare paratus sum.'

- VII Alia vero die, in eadem ecclesia beati Petri apostoli,
 VIII *omnes generaliter archiepiscopi seu episcopi et abbates et omnes Franci* qui in servitio eidem *magni regis* fuerunt, *et cuncti Romani* in eadem ecclesia beati Petri apostoli,
 IX in eorum praesentia amplectens prelatus venerabilis pontifex sancta Christi quattuor evvangelia coram omnibus ascendit in ambonem et sub iusiurando clara voce dixit:
 X '*Quia de istis criminibus falsis, quibus super me imposuerunt Romani qui inique me persecuti sunt, scientiam non habeo, nec talia egisse me cognosco.*'
 XI Et hoc peractum, *omnes archiepiscopi, episcopi et abbates et cunctus clerus,*
 XII letania facta, laudes dederunt Deo atque Dei genetricis semperque virginis Mariae dominae nostrae et beato Petro apostolorum principi omniumque sanctorum Dei.

This text consists of a general Introduction (I), expressly stating that the Concilium Romanum (CR) of December 800 met upon the request of Charlemagne; it mentions the meeting-place, the ecclesiastical participants in their hierarchical order, and the lay groups in attendance. Next follows the order of seating observed by the assembly during the sessions of the synod (II): after king and pope are seated, archbishops, bishops, and abbots (or presbyters) occupy their seats (IIa), while the lower hierarchy (deacons, et al.) and the laymen present stand during the synodal meetings and debates. The accusations levelled against Leo III by his enemies are on the agenda of the synod (III). Parts IV–X contain three verbatim excerpts from the debates that ensued in the course of an unknown number of actiones. The synod closed (XI–XII) with litanies.

Off-hand this report conforms with the basic provisions of the *ordo celebrandi concilii* set forth in c.4 of the Acts of the Council of Toledo, 633.¹² Part II especially conforms with the rule that

¹² Mansi, *Collectio X* (Florence 1764) 617 f. Cf. Hans Barion, *Das fränkisch-deutsche Synodalrecht des Frühmittelalters* (Kanonistische Studien und Texte ed. A. M. Koeniger, Bonn-Köln 1931) 55 ff. on the synodal ordines, 76 ff. on the seating order of the participants, 173 ff. on the authority of synodal decisions, 253 ff. on the Carolingian national synods. Cf. Rudolf von Heckel, 'Der Ursprung des päpstlichen Registerwesens,' *Archiv für Urkundenforschung* 1 (1908), especially

the upper hierarchy is seated during the discussions of the synod, while the lower ranks of the participants, from the deacons down to mere laymen in attendance, occupy only standing room. Compare the following regulations of the *ordo*:

. . . convenientes omnes *episcopi pariter* introant et *resideant* . . . vocantur deinde *presbiteri* . . . post hoc ingrediantur *diaconi* . . . et *corona facta de sedibus episcoporum*, presbiteri a tergo eorum resideant. *Diacones* in conspectu episcoporum *stent*. Deinde ingrediantur *laici* qui electioni concilii interesse meruerunt. Ingridantur quoque et *notarii*. . . .

The actual use made of this *ordo* in the case of some Frankish synods can be shown. Paulinus of Aquileia¹³ writes of the opening of the Synod of Frankfurt, 794, convoked by Charlemagne: 'Quadam die *residentibus* cunctis in aula sacri palatii, *adsistentibus in modum coronae* . . . *diaconibus cunctoque clero*, sub praesentia praedicti principis' (scil. Charlemagne). Another application of the same *ordo* is preserved in Paulinus' report of the Synod of Friuli, 796–797: 'Igitur *resedentibus cunctis ex more* in sedilibus praeparatis, *adsistente* vero circumquaque non modica fratrum consentanea turba in ecclesia . . . ' .

The traces of the original Acts of the CR of December 800 preserved in the report of the LP can also be recognized by the comparison of our text with the extant acts of Roman synods (and others), especially the Roman Synods of 769 and 798. Compare, for instance, the structure of our text with the beginnings of the *prima actio* of the CR of 769 (Conc. I.I.80 f.):

‘. . . praesidente ter beatissimo et coangelico Stephano summo pontifice . . . in venerabili basilica salvatoris . . . (*considentibus*) etiam cum eo . . . episcopis, id est . . . ’ (An enumeration of archbishops, bishops, and presbyters follows. The last mentioned presbyter is called Theodosius, and then we read p. 81.16:)

pp. 398, 402, 404, on early synodal acts modeled on Roman 'Gerichtsakten,' and on the imitations of the Gesta of the Roman Senate in other synodal acts. Peter Classen, 'Kaiserreskript und Königsurkunde,' *Archiv für Diplomatik* 1 (1955) 86 questions this basic dependence, but the evidence is convincing as I hope to show in a future study dealing with the diplomatics of synodal acts.

¹³ MGH *Concilia* 2.1 (Aevi Karolini I.1 Hannover 1904) 131.3. Subsequently always referred to as Conc. I.1.

'*adstante* etiam Anastasio archidiacono et cunctis religiosis Dei famulis . . . atque proceribus ecclesiae et *cuncto clero*, optimatibus etiam militiae seu cuncti exercitus et honestorum civium et cuncte generalitatis populo . . .'

Parts I and II of our text are clearly parallel to this text, except that Charlemagne presided over the Synod of 800, while that of 769 was called together under the presidency of Pope Stephen III.

The identical formula observed in the Acts of 769 and 800 is found also in the Gesta of Roman Synods held in the years 495, 531, 595, 600, and 745.¹⁴ The scheme of the exordium in these synodal acta is comprised of the names of the Roman consuls and/or emperors in office, the date and place of the meeting, the pope present and presiding (*residente* or *praesidente*), the bishops and presbyters in attendance (*consedentibus* or *residentibus*), the mention of the deacons (*adstantibus diaconibus*), and other clerics (*cuncto clero*). The same structure of the exordium is clearly preserved in the report of the LP which is derived from the original Acts of the Synod of December 800.

Beatissimus as papal attribute (in IIa) is traceable to the original Acts of the Synod of 800, which — like the Acts of the CR of 769 — designated the pontiff with this epitheton in conformity with a custom usually observed in all synodal acts. See, for instance, the prima actio of the CR of 798, presided over by Leo III himself (Conc.I.1.203.15): 'Leo, sanctissimus ac ter *beatissimus* . . . universalis papa.' In this connection note that Charlemagne, the *magnus rex* (see I, IIa, VIII), is as such also referred to by Leo III in the same Acts of 798 (p. 203.21.33.37; 204.10).

The repetitious enumeration of the participants in Parts I, II, IV, VIII, XI by no means constitutes a special rhetorical emphasis; it is indicative of the style of synodal acts. Compare Part IV, 'Qui *universi* . . . *episcopi* . . . *dixerunt*,' with the CR of 769 (Conc.I.1.83.11), '*Universi venerabiles episcopi dixerunt*;' also Concilium Matisconense of 585,¹⁵ for instance, '*Universi episcopi dixerunt*.' The phrase belongs to the technical expressions of

¹⁴ Cf. von Heckel (above note 12) p. 404, also the Acts of the Roman Synod of 826, MGH Capitularia I.1 (Hannover 1883) No. 180 p. 370 f.

¹⁵ MGH Concilia Aevi Merovingici ed. F. Maassen (Hannover 1893) 164.25.

synodal acts; see the many examples¹⁶ in the Acts of the Oecumenical Councils of Ephesus and Chalcedon.

The characterization of the apostolic see in V, 'quae est *capud omnium Dei ecclesiarum*,' is paralleled in the prima actio of the CR of 769 (Conc. I.1.82.28), where the participants in the sessions of the synod are addressed as 'membra (huius) sacrosanctae Romanae ecclesiae, que *capud et principatum omnium Dei ecclesiarum* existit.' The phrase is further found in the tertia actio of the CR of 798 (Conc.I.1.204-23), at which Leo III presided: 'Venerantes procul dubio sanctae catholicae et apostolicae ecclesiae, quae est *caput ecclesiarum Dei*.' The phrase frequently occurs in the acts of oecumenical councils; see Gesta Chalcedone (ACOE II.iii.1 [1935] 40.5): 'Beatissimi atque apostolici viri papae urbis Romae, quae est *caput omnium ecclesiarum*.'

A significant parallel between the Acts of 800 and those of the CR of 769 occurs in Part X, which offers the genuine oath of innocence of Leo III by which he vindicated himself before the synod.¹⁷ The formula used in the oath, 'quia de . . . scientiam non habeo,' also occurs in the statement of Pope Stephen III concerning his lack of knowledge of certain facts investigated during the prima actio of the CR of 769 (see below).

Our division of the text above into twelve parts helps us recognize the formal structure of the original Acts of the CR of December 800 as preserved in the report of the LP. The vestiges that are typical of synodal acts are printed in italics, and those parts that may well constitute verbatim excerpts from the actiones of the synod are set off by indentation. In order to recognize the style of the Gesta preserved in our text, we may compare it with some of the Latin versions of the Gesta of the Oecumenical Councils of Ephesus and Chalcedon,¹⁸ and also with the Acts of the Roman Synods dealing with Symmachus from 499 to 502 during the reign of Theodoric the Great.

¹⁶ See Eduard Schwartz, *Acta Conciliorum Oecumenicorum* I.ii (Berlin-Leipzig 1925-6), II.ii.1-2 (1936-7), III.iii.1-3 (1935-7). Subsequently always referred to as ACOE.

¹⁷ See above note 11.

¹⁸ Cf. ACOE I.iii.52,17 ff., 99,1 ff., 119 f., etc.; II.ii.2.17,32 ff., II.iii.1.27 ff., 196 ff.; on the Symmachian councils see ed. Th. Mommsen, *MGH Auct. Antt. XIII* (Berlin 1894) 399-455. The 'Diplomatics' of synodal acts is still to be written. Von Heckel and Barion (see above note 12) have made a start.

II

Since the report of the LP of the Roman Synod of December 800 is based on the lost acts of this assembly, it may be looked upon as an addition to Albert Werminghoff's *Concilia Aevi Karolini I.1* (1904) where it should replace No. 26, the forged oath of purgation, erroneously ascribed to Leo III.

The Synod of December 800, though held at Rome, was not a Roman synod in the usual meaning of the word, because it had not been convoked by the incumbent pope; it met upon the command of Charlemagne, the head of the Frankish national church. Nor did the pope preside; the Frankish king held the chair. The basic Frankish character of the meeting is clearly noticeable in the report of the LP: the mention of the 'magnus rex' seems to have preceded that of the 'beatissimus pontifex' in the synodal acts (see above); in like fashion the *Franci* are mentioned (in I, I1b, VIII) before the Roman nobility. Thus the synod was actually in origin and guidance a Frankish synod,¹⁹ though the majority of the active participants doubtless was of non-Frankish provenience. We know that the synod was in session from December 1st until the 23rd or 25th, but the number of actiones that were required to transact its order of business is unknown. The original synodal acts with the signatures of the participants in the sessions would have been of the most decisive importance for the solution of several vexing questions. As it is, we must be satisfied with the use made of them in the report of the LP, which outranks in importance the *Annales Laureshamenses* and the official *Annales regni Francorum*, so far as the reconstruction of the historical events preceding the coronation of Charlemagne is concerned. Though the *Vita Leonis* of the LP was not written before 816 (see above our Par. I), the close resemblance of our report to the original Acts of the Synod of December 800 justifies the conclusion that the information which the report contains stands closer to the events than that of any of the

¹⁹ Caspar, *Zeitschrift für Kirchengeschichte* 54 (1935) 226 f. recognized this fact. The censures of Caspar's statement by Adelson-Baker, 'The oath of purgation of Pope Leo III,' *Traditio* 8 (1952) 61 f. are disproved by our investigation, also their denial of the synod's judicial significance (pp. 62, 67).

Frankish annals, and for this reason offers a better official picture than even the official Frankish imperial annals. Taking into account the observation of Ganshof²⁰ that the writing of official documents received special care and encouragement under Charlemagne, one may readily assume that there might well have existed at one time — in addition to the official acts of the synod — some official Frankish account of the discussions and decisions of the synod, in which the Franks were so greatly interested. But not a trace of these 'official protocols' — the designation suggested by Heinrich Fichtenau — has, as far as we at present know, survived, and nothing of its contents is observable, as was pointed out above, in the *Annales Laureshamenses*. To sum up, Halphen's original estimate of the primary position of the report of the LP for the reconstruction of the events preceding the coronation is confirmed by our findings, and Döllinger's condemnation²¹ of the partiality of the LP must be somewhat restricted so far as concerns our report.

The report in the LP obviously contains a very small fragment of the original acts of the synod that was in session for more than three weeks. Taking into consideration the controversial and complex main issue of its agenda, we may conclude that the original acts together with the supporting documents, which were read before the assembly in the course of the debates, must have formed a sizeable volume consisting of numerous documents. One of these documents read by a notary into the record during one of the earlier sessions of the proceedings undoubtedly was the Frankish placitum describing the investigation of the charges of Leo's accusers that had been conducted by Frankish missi in December 799 at Rome.²² In addition the lost acts must have contained depositions of the charges made against Leo, submitted by the attackers and the attacked; also statements by witnesses who testified for Leo; and in all probability also some of the letters by which Charlemagne summoned members of his episcopate to participate in the meeting. In order to gain some idea of the varied

²⁰ F. L. Ganshof, 'Charlemagne et l'usage de l'écrit en matière administrative,' *Le Moyen Age* 57 (1951) 1-25.

²¹ J. von Döllinger, 'Das Kaisertum Karls des Grossen,' *Münchener Historisches Jahrbuch* (1865) 332 f.

²² See *Traditio* 11 (1955) 39f.

nature of this collection of documents included in the original acts of the synod, one has only to look, for instance, at the extant Acts of the Synod of Frankfurt of June 794 (Conc.I.I.110-171) with their supporting documents, that is, the letters of the accused party, of the incumbent pope, and of Charlemagne, the synodal report of the Frankish episcopate written by Alcuin,²³ the synodica composed by Paulinus of Aquileia for the Italian episcopate, and the official Frankish capitulary, which also embodies the decisions of a Frankish Diet simultaneously held with the synodal meeting.

What we have thus far found warrants basing the reconstruction of the events preceding Charlemagne's coronation primarily on the report in the LP. In this process of reconstruction, the Frankish annals should serve only as secondary and supplementary sources, provided that their information fits — *mutatis mutandis* — into the procedural course of an accusatory trial conducted before a synodal meeting. That this may have been the *modus procedendi* of the Synod of December 800 may be assumed, since Eduard Schwartz²⁴ and Artur Steinwenter²⁵ have shown for earlier synods the reception by the Church of the procedures of the Roman accusatory trial. If this recognition is applied to the Synod of 800, we must assume that it conducted at first a one-sided court action solely placed on the plaintiffs, who presented their accusations against Leo. These charges were the main topic of the synod which the pope attended, but not as a person being formally on trial. We remember that at the opening he was seated with the Frankish king who officially presided over the meeting, as though it were a meeting of the national Frankish Church. In accordance with Roman Law, the proof of the accusations levelled against the pope rested with the plaintiffs.²⁶ The synod which was to investigate and to judge these charges denies its own competence in the case and declares unanimously:

²³ See Wallach, 'Charlemagne and Alcuin: Diplomatic Studies in Carolingian Epistolography,' *Traditio* 9 (1953) 129-140.

²⁴ 'Der Prozess des Eutyches,' *SB. Bayerische Akademie* (1929 H.5) 66; see Plöchl (below note 40) p. 228 f.

²⁵ 'Der antike kirchliche Rechtsgang und seine Quellen,' *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte, Kanon. Abt.* 23 (1934) 114.

²⁶ Cf. Steinwenter, p. 73; Rhaban Haacke in *Das Konzil von Chalkedon 2* (Würzburg 1953) 96-98; *Digest* 22.3.2 *ei incumbit probatio qui dicit non qui negat*.

'We do not dare to judge the Apostolic See which is the head of all the churches of God. For all of us are judged by it (scil. the Apostolic See) and its vicar; it (scil. the Apostolic See) however is judged by nobody as it is the custom from ancient times. But as the highest pontiff will have decided (in the case of the accusations levelled against himself) we shall obey canonically.'

The synodal assembly bases its refusal to sit in judgment over the pope on the principle of the jurisdictional immunity of the pontiff, 'prima sedes a nemine iudicatur;'²⁷ simultaneously it suggests that Leo should be his own judge. The adoption of the older doctrine of the judicial exemption of the pope has been stressed in many treatments of the pre-coronation events. But scant attention has been paid to the second principle propounded, namely, that the pope himself should judge his own case (*Sed sicut ipse summus pontifex censuerit, canonicè obediemus*).²⁸ Both principles applied by the synod are adaptations of doctrines developed by the apologetic literature that originated as an aftermath of the synodal trial of Pope Symmachus (498–514) in his conflict with the anti-pope Laurentius (498–ca. 505).²⁹ By inventing trials of popes preceding Symmachus, his age exercised pseudo-historical criticism on the outcome of the trial of Symmachus. These apocrypha are connected with the names of the popes Sylvester, Marcellinus, Liberius, and Sixtus III. Thus we read the first principle in the *Constitutum Silvestri*, c. 3 (PL 8.833D):

Et non damnabitur praesul nisi septuaginta duobus, neque praesul summus a quoquam iudicabitur, quoniam his scriptum est: Non est discipulus super magistrum (Matth. 10.24); and (PL 8.840D):
Nemo enim iudicabit primam sedem, quoniam omnes sedes a prima sede iustitiam desiderant temperari. Neque ab Augusto, neque ab

²⁷ Cf. A. Koeniger, 'Prima sedes a nemine iudicatur,' in *Festgabe für Albert Ehrhard* (Bonn-Leipzig 1922) 273–400.

²⁸ The assumptions of Adelson-Baker, *Traditio* 8 (1952) 68 that 'In the LP Leo is cited as making the suggestion' to swear 'voluntarily' an oath, misinterpret this passage; nor did Leo undertake the task on his own as is stated on p. 75. The pope clearly followed a suggestion made by the synod. See F. L. Ganshof, *Histoire du Moyen Age* 1 (Paris 1928) 455.

²⁹ See on this literature Erich Caspar, *Geschichte des Papsttums* 2 (Tübingen 1933) 107–110.

omni clero, neque a regibus, neque a populo iudex iudicabitur. . . . Et fixit canonem hunc Silvester episcopus in urbe Roma

In the Acts of the pseudo-Synod of Sinuessa (Mansi I.1257), which tried Pope Marcellinus (296–304), we read:

Nemo enim unquam iudicavit pontificem, nec praesul sacerdotem suum, quoniam prima sedes non iudicabitur a quoquam.

The second principle of the Synod of 800, namely, that the pope should be his own judge, also appears in the Synod of Sinuessa (Mansi I.1255A). Marcellinus is told: 'Tuo ore iudica causam tuam et non nostro iudicio solve conditionem.'

In the *Gesta purgationis* of Sixtus III (432–440) Emperor Valentinian III suggests that the pope himself ought to judge his own case (Mansi V.1063): 'et dedit in arbitrio . . . iudicare iudicium suum.'

The acceptance by the synod of these two basic principles is hardly accidental. It reveals the great influence wielded by the Saxon Alcuin on the course of the Roman events preceding the coronation. Before Charlemagne came to Rome on 24 November 800, he had visited Alcuin at Tours.³⁰ Shortly afterwards Alcuin thanked the king for an invitation to come to Rome; the infirmities of old age prevented him from accepting.³¹ Alcuin's ideas of Leo III and the Roman question were however well presented at the synod³² by his friends Arno of Salzburg, Theodulph of Orléans, Riculf of Mayence, and the Saxons Witto and Fredugis. It might well be that the work of these men whom Ganshof calls 'imperialist clerics' resulted in the acceptance by the synod of the principle of the judicial immunity of the pope. For this was the formula recommended by Alcuin for the solution of the embarrassing Roman problem. In the well-known letter No. 179 of August 799, he wrote to Arno of Salzburg:

Memini me legisse quondam, si rite recordor, *in canonibus beati Silvestri*, non minus septuaginta duobus pontificem accusandum esse et iudicio presentari; et ut illorum talis vita esset, ut potuissent contra talem auc-

³⁰ Cf. Abel-Simson (above note 1) 211 note 4.

³¹ See Alcuin's *Epist.* 177.

³² So also A. Kleinclausz, *Alcuin* (Paris 1948), 258.

toritatem stare. Insuper *et in aliis* legebam *canonibus* apostolicam sedem iudiciariam esse, non iudicandam.

Alcuin here refers to the same forged canonical sources that about sixteen months later formed the basis of the synodal refusal to judge Leo: the Constitutum Silvestri and the Synod of Sinuessa. Alcuin's leadership of the Frankish episcopate at the Synod of December 800 becomes evident in the influence of his friends who participated in the synodal decisions. This expression of Alcuin's personal influence on the events preceding the coronation is paralleled by the important rôle played by Alcuin in 794 at the Synod of Frankfurt — as the author³³ of the Frankish synodica against the heresy of adoptionism, and as the author of Charlemagne's letter to the Spanish clergy informing them of the decisions of the assembly. Alcuin attached great importance to the 'conventus' of December 800. In a letter to Arno of Salzburg (MGH, Epistolae IV, Ep. 218), who had attended the meeting, Alcuin eagerly requested information on the final decisions of 'such a great and illustrious synod' dealing with the affairs of the Church. He believed that the transactions of the gathering that was in session for such an extended period of time must have been of great significance to the Christian people.

The further development of the synodal proceedings according to the report of the LP finally implies that Leo declared his willingness to vindicate himself as some of his predecessors had done before him in the case of false accusations. He met the refusal of the synod to judge him by making a public statement of innocence before the assembly:

'*Quia de istis criminibus falsis, quibus super me imposuerunt Romani, qui inique me persecuti sunt, scientiam non habeo, nec talia egisse me cognosco.*'

This is the genuine oath by which Leo III vindicated himself publicly, as we have recently shown.³⁴ Leo never gave an 'oath of purgation'; the oath of purgation ascribed to him since the ninth century is a forgery.

³³ See above note 23.

³⁴ See Luitpold Wallach, 'The genuine and the forged oath of Pope Leo III,' *Traditio* 11 (1955) 37-63. The opening sentence of the forged oath is modelled on Genesis 45.16 *Auditum est et celebri sermone vulgatum.*

That Leo's statement of innocence is an actual element of the original Acts of the Synod of 800 is supported by the occurrence of the formula 'quia de . . . scientiam non habeo'³⁵ in the Acts of the Roman Synod of 769, when the deposed Constantinus II stood trial before a synodal court as a usurper of the papal see. Pope Stephen III who had called together, and presided over, this Concilium Romanum, stated in the prima actio of the meeting his lack of knowledge of the happenings that led to the election of the accused usurper. We read in the acts:³⁶ 'Sanctissimus ac ter beatissimus Stephanus summus pontifex et universalis papa dixit:

Ego de hac causa nullam habeo scientiam quia . . .'

There remains the problem of the identity of the predecessors after whose example Leo cleared himself of the charges made against him. Was he thinking of Stephen III? He might have thought of certain popes of whom the Liber Pontificalis³⁷ reports 'purgation' (*purgatur*) as a means of denying criminal charges: Damasus I, Sixtus III, Symmachus, and Pelagius I. But in none of these cases do we know for certain that the 'purgation' consisted in the swearing of an oath.

³⁵ The occurrence of *scientiam habere* in statements of innocence made by two popes is reminiscent of *scientiam* as understood in Roman law, that is the knowledge a person has of certain facts. *Scientiam habere* is found, for instance, in Justinian's Digesta 37.1.10 and 14.4.1,3, but each time in a context different from our two cases. The assumption, however, that two popes actually expressed their innocence through a term of Roman law, at first appears to be untenable in view of the generally accepted fact that the Digest was unknown in the Latin West from the beginning of the seventh to the late eleventh century. The question whether an exception from this *opinio communis* might not be probable, as far as Italy is concerned, must remain undecided at present, although abridgments of Justinian's Code, the Institutes, and Novels, were extant in Italy during the periods in question. In addition, the Ducate with Rome (as also the Exarchy of Ravenna, Southern Italy, and Sicily) were in 769 nominally still under the rule of the Emperor at Byzantium, and therefore Justinian law was presumably the valid law of the territory.

³⁶ Conc.I.1.82.9-13. The Synod of 769 is referred to by Nicholas I in a letter of 23 October 867, addressed to Hincmar of Reims and the Frankish episcopate, as the example of a Frankish synod held at Rome; see MGH, Epistolae VI (Karolini Aevi IV, Berlin 1925) 607. But even the official participation of Frankish representatives did not make the meeting of 769 a synod of the Frankish Church. Nicholas was only trying to entice the recalcitrant Frankish clerics to attend a Roman Synod planned by him.

³⁷ Cf. MGH Gesta Pontificum, ed. Th. Mommsen (Berlin 1898) Nos. 39, p. 84; 46, p. 96; 53, p. 121; for Pelagius see LP I 303.

The case of Pelagius cannot be called a precedent for Leo's oath. The description of the rite used in this instance (LP I 303) — walking up to the ambo and carrying the Gospels — probably influenced the wording in the *Vita Leonis* (LP II 7). This merely literary connection does not at all warrant a conclusion on the nature of the statement made by Pelagius, who — to be sure — did not swear an oath.³⁸

Nor can the trial of Symmachus in 501³⁹ be considered a precedent for Leo's case. Symmachus was tried by a synod in an accusatory trial with a *libellus accusatorius* properly listing the charges of his accusers. Leo, however, was never officially indicted *per accusationem*, nor was he officially tried by the synod. The acts of the trial of Symmachus may nevertheless be studied to advantage by the student interested in our problem, since they unfold the judicial machinery of a trial before a synod.

There never was a formal trial of Leo by the synod, nor an official indictment. His oath of innocence was given *within* the framework of a synodal meeting that conducted an accusatory trial⁴⁰ of his accusers. Nevertheless the statement through which he cleared himself before the synodal assembly is not exactly an extrajudicial oath. His oath was a part of synodal transactions and therefore possessed some judicial quality, because the public proceedings of every synod have a certain judicial significance.⁴¹ This basic nature of synodal decisions was not unknown to Charlemagne and his entourage: the Capitularies incessantly demand their observation holding out severe punishment to transgressors. Though it is true that Leo's oath of innocence was not

³⁸ Edgar Loening, *Das Kirchenrecht im Reiche der Merowinger* (Strassburg 1878) 499 note 1; the conclusions of Adelson-Baker, *Traditio* 8 (1952) 66 f. based on the assumption that Pelagius swore an oath are untenable.

³⁹ Cf. Erich Caspar, 'Das Verfahren gegen Leo III. Dezember 800,' *Zeitschrift für Kirchengeschichte* 54 (1935) 255-257, who points out the distinctions between the trial of Symmachus and Leo's case.

⁴⁰ Cf. Willibald M. Plöchl, *Geschichte des Kirchenrechts I* (Wien-München 1953) 228 f.: 'Im Gerichtsverfahren galt grundsätzlich der Akkusations-Prozess, ein Prinzip, das aus dem römischen Recht übernommen wurde. . . . Der Prozess selbst lehnte sich an das römisch-rechtliche Verfahren an. . . . Der römisch-rechtliche Prozess wurde als das subsidiäre Recht im kirchlichen Gerichtsverfahren angesehen;' see also p. 381, and above notes 24, 25, and 26.

⁴¹ Cf. Plöchl, *op. cit.*, I.134 ff., 297-299; and Hans Erich Feine, *Kirchliche Rechtsgeschichte I* (Weimar 1954) 49 f. See above note 19.

the result of a formal judicial decision, the judicial nature of the oath cannot be denied. At this point it might be helpful to remember that an oath has a greater authority than a judgment according to the Digest 12.2.2, though we must keep in mind what has been stated in our Note 35 (above) on the disputed knowledge of the Digest in the Latin West.

The presence of Charlemagne, the highest Frankish judge, who had convoked the synod, and — though the pope was present — nevertheless presided at the opening, again testifies to the judicial nature of the synodal proceedings. But this position then occupied by the Frankish king was not unusual. Already in 794 he had convoked the Synod of Frankfurt⁴² (simultaneously held with a Frankish Diet), which condemned the heresy of Spanish adoptionism, and the Byzantine worship of images, which had been decreed in 787 by the Seventh Oecumenical Council held at Nicaea. At Frankfurt Charlemagne presided, and not the two papal legates of Pope Hadrian I who were present. Quite significantly, the king also participated in the debates of the synod which he opened. After the reading — upon royal request — of a letter by Elipand of Toledo concerning the adoptionist theories, Charlemagne rose from the *sella regia* and addressed the assembly at length (*prolixo sermone*) on the theological question.⁴³ And then Charlemagne actively participated in the synodal decisions which, for this reason, are introduced in the Frankfurt Capitulary (Conc.I.1 No.19G) cc. 4, 6, 7, 9, 10, 16, with the words 'decreed by the Lord King and the Holy Synod,' *'definitum (or statutum) est a domno rege et sancta synodo.'* This participation of Charlemagne in the decisions of the Frankfurt Synod plainly indicates the judicial character of its proceedings. We doubt that the Frankish King actually voted with the episcopate on the various issues under debate. He certainly had more than merely a vote at the meetings: his was the decisive voice, and the assembly complied with

⁴² See above note 23.

⁴³ Conc.I.1.131, quoted by Paulinus of Aquileia in the report he wrote against adoptionism in the name of the Italian episcopate assembled at Frankfurt: *'Quid vobis videtur? Ab anno prorsus praeterito et ex quo coepit huius pestis insania tumescente perfidiae ulcu diffusius ebullisse, non parvus in his regionibus, licet in extremis finibus regni nostri, error inolevit, quem censura fidaei necesse est modis omnibus resecaere.'* This is the only extant literal fragment of any of the many speeches delivered by Charlemagne.

his wishes. Thus we read in the Capitulary of Frankfurt cc. 55-56: 'Dixit enim dominus rex — omnis synodus consensit;' and 'Commonuit (scil. Charlemagne) etiam — omnis namque synodus secundum ammonitionem domni regis consensit.'

A similar procedure can be safely assumed for Charlemagne at the Roman Synod of December 800. At Rome Charlemagne's position largely resembled that of Roman emperors⁴⁴ who not only claimed the exclusive right to convoke councils, but also participated in the debates of the meetings, although they did not vote with the assembled episcopate on the synodal decisions.

Charlemagne doubtless determined the proceedings and the course taken by the Synod of December 800, since we know that his relentless leadership imposed itself so strongly on the affairs of the Church. This was true even in the case of those Frankish synods which he did not attend, yet whose acts were submitted to him for approval and support.⁴⁵ How much more must he have exerted his will on a synod over which he personally presided! The prerogatives of Charlemagne as the head of his own national church were openly recognized and acknowledged by Frankish synods. The Synod of Tours, 813, for instance, could unabashedly express at the end of the official gesta its willingness to submit the acts to the approval of, and the possible changes suggested by, Charlemagne — 'quomodo deinceps piissimo principi nostro de his agendum placebit' (Conc.I.1.293); the assembly openly states that it is ready to act in accordance with the king's nod and wish — 'ad nutum et voluntatem eius parati sumus.' A recent⁴⁶ portrait of the pious Charlemagne in the service of the Church neglects to state that Charlemagne unreservedly used and governed the institutions of the Church for the advancement of his secular government.

The official Frankish report of the events in the *Annales regni Francorum* (ArF) and the narrative of the *Annales Lauresha-*

⁴⁴ Cf. generally Francis Dvornik, 'Emperor, popes, and general councils,' *Dumbarton Oaks Papers* 6 (1951) 1-23; Hans Barion, *Das fränkisch-deutsche Synodalrecht des Frühmittelalters* (Bonn-Köln 1931) *passim*.

⁴⁵ Cf. Karl Voigt, *Staat und Kirche von Konstantin dem Grossen bis zum Ende der Karolingerzeit* (Stuttgart 1936) 321.

⁴⁶ Étienne Delaruelle, 'Charlemagne et l'Église,' *Revue d'histoire de l'Église de France* 39 (1953) 166-199.

menses (AL) are compatible with the present interpretation of the papal report. At the outset, neither of these sources speaks of a formal trial of Leo III by the Synod of December 800. Not the pope, but his accusers stood before the synod which interrogated them about the criminal charges brought forth against the pontiff. In the course of this examination, which — in accordance with the custom observed in the proceedings of synods — was conducted in all likelihood by the leading metropolitan present, and not by Charlemagne,⁴⁷ the king recognized that the motive of the accusers was not justice, but envy or hatred of the pope (AL: . . . cum cognovisset rex, quia non propter aliam justitiam sed per invidiam eum condemnare volebant, tunc . . .). Thus the evidence offered by the accusers against Leo was deemed insufficient. The accusers could not make their case, or as the official ArF puts it: 'nullus probator criminum esse voluit.' At this juncture the synod decided to invoke the doctrine of the judicial exemption of the pope; simultaneously it suggested that it would abide by Leo's own decision of the case, or in other words: Leo was told to be his own judge. The same decision of the synod is reported in the AL: 'non tamen per eorum iudicium,' and the pope agreed to vindicate himself before the synod after the example of earlier pontiffs. Contrary to the advice Alcuin had given to Arno of Salzburg, Leo at another session of the synod gave an oath stating:

'Since I have no knowledge of these untrue charges which the Romans, who unjustly persecute me, have laid on me, I acknowledge that I have not committed the like.'

This solution of the embarrassing problem actually meant a partial victory of Leo's enemies who had expected his resignation without an oath. Alcuin⁴⁸ had learned of their plans against Leo from the overtures they made to Charlemagne during August 799 when the king was at Paderborn. To achieve the deposition⁴⁹

⁴⁷ Adelson-Baker, *Traditio* 8 (1952) 62 maintain that Charlemagne himself 'questioned' the assailants of the pope; none of the sources warrants this assumption which, in addition, is contradicted by the above mentioned synodal procedures.

⁴⁸ Epistle 179, addressed to Arno of Salzburg.

⁴⁹ That the deposition of Leo was requested by his enemies is also known from the *Annales regni Francorum* ad a. 801 where we read of those who had deposed the pontiff in 800: 'eos qui pontificem anno superiore deposuerunt.'

of the pope they had openly charged him with adultery and perjury. These charges were supposed to elicit from Leo a very heavy oath for the purpose of clearing himself of falsely attributed crimes. Contrary to expectation, these 'enviers' (aemulatores) of Leo — as Alcuin called them — did not succeed in gaining the support of Charlemagne in their conspiratorial machinations. During the investigation of their charges by the synod the Frankish king very acutely recognized that they were motivated by envy, not by justice.

CONCLUSION

The original Acts of the Roman Synod of December 800 were used in the *Liber Pontificalis*. The report of the meeting in the *Vita Leonis* must be looked upon as a primary historical source for the reconstruction of the important events preceding the recognition of Charlemagne as Emperor on Christmas Day 800. The accounts of the official Frankish and papal reports of the synod do not contradict one another. The synod investigated the charges of the accusers of Leo III, who was never indicted nor tried by the assembly which he personally attended. Properly speaking, a public trial⁵⁰ of Leo never took place. The pope's condemnation by synodal decision was hardly intended by Charlemagne.⁵¹ The synod suggested to the pontiff that he be his own judge. Thereupon Leo cleared himself by swearing an oath of innocence during a session of the synod on December 23; two days later Charlemagne was recognized⁵² and acclaimed as Emperor of the Romans.

⁵⁰ Walter Ullmann, *The Growth of Papal Government in the Middle Ages* (London, 1955), 97 and 117 f., still speaks — like other historians before him — of Leo's 'trial,' and maintains that Charlemagne sat in judgment over the pope. Neither of these contentions is borne out by the sources.

⁵¹ So also Johannes Haller, *Das Papsttum 2* (Stuttgart, 1951) 18 f.

⁵² See Percy Ernst Schramm, 'Die Anerkennung Karls des Grossen als Kaiser,' *Historische Zeitschrift* 172 (1951), especially p. 488.