Rafał Marek

Some Remarks about the Legislative Provisions of the Pavia Council of 1022

Abstract:

The resolution of the council of 1022 represents an early, however not isolated, attempt of Church reform in the 11th century. Its provisions, albeit quite vague and not (at least directly) implemented in Italy, are a legal expression of cooperation of two universal powers of Latin medieval world: the empire and the papacy. This corresponds with „Gelasian” model of social and political order. Regulation had reactive character and the scope of it was limited, as it addressed celibacy and illicit alienations of ecclesiastical property in order to endow the offspring of clerics. Still, the synodal statute was not received as a binding law and we have no traces of its use by bishops or secular judges. Lack of proper measures of promulgation and enforcement of law were essential here.

Key words: celibacy, ecclesiastical property, synod, Pavia Council

1. Introduction

Harald J. Berman rightly notices, that at the beginning of the 11th century societies of Latin Europe did not use any kind of „system of law”. It is true that extensive compilations of canon law existed and some texts of Roman law were available, still they did not constitute any systematized body. The notion of „system” is not to be understood according to Berman as a mere presence of law or „legal order” as such, especially not as a law blended with social custom and viewed as a part of it. Formulas like secundum consuetudines legum Romanorum are exemplary here. One may even say

1 PhD candidate, Faculty of Law and Administration, Jagiellonian University.
3 Ibidem, p. 50.
that a kind of new Christian customary law was formed. It was informal, consensual and existed through patronage, protection and favor.

Additionally, canon law provisions could not be considered as a systematized, autonomous order or system as long as they were not differentiated from moral precepts and theological reflection. Canons were understood as an addition and practical development of Christian revelation, conserved and transmitted in the Bible and the Apostolic Tradition.

To create a legal system it was necessary to separate law and reflection about it from other social phenomena and structures. According to Berman, only at the end of the 11th and the beginning of the 12th century Latin Church recovered or developed a new independent legal status. Still, certain general declarations aimed at systematization and unification are already visible in Burchard’s work and in the statutes of early 11th century councils.

In the early 11th century the Church was understood not as a strictly outlined juridical structure but as the salvific community of sacramental life and orthodoxy. Canon law was considered as expression and subsidiary part of orthodox faith in a wider sense. H.J. Berman notices that until the second half of the 11th century both rulers and the church hierarchs did not try to fundamentally change essentially local and feudal nature of legal orders of various realms of the western part of the Christianitas.

In addition, the 11th century post-Carolingian realms did not see law as a fully autonomous instrument of formation of social relations, according to precepts of catholic moral doctrine and as a tool of their rationalization. In addition, they lacked instruments to provide effective judicial control of social phenomena. If any new and dynamic legislation appeared, it was not efficiently systematized. Its enforcement was limited

---

6 See for example a document of predominantly liturgical character, that is Ordo Romanus VIII (6th cent.), where the procedure of bishop’s election is described as a part of the ordination, not as a separate legal institution: „II. Item quomodo episcopus ordinatur. Dum a civitate et loco episcopus fuerit defunctus, a populo civitatis eligitur alius; et fiet a sacerdotibus cleric et populo decreta et veniunt ad domnum apostolicum” – J.P. Minge, Patrologia Latina, Paris 1841–1855, vol. 78, col. 1001D; hereafter: MPL. Also canons of 1031 Bourges synod – G.D. Mansi, Sacrorum Conciliorum Nova et Apmplissima Collectio, 30 vols., Florence-Venice 1758–98, vol. XIX, col. 502 ff.; hereafter: Mansi – are instructive here as they contain not only disciplinary but also liturgical provisions (canon I: ut Sancti Martialis nonem et memoria inter Apostolos proponatur).
7 See H.J. Berman, op.cit., p. 50–51.
8 Ibidem, p. 51.
9 The Synod of Seligenstadt in 1022 (Mansi, XIX, 393, 396 A-B) is exemplary here: dissensio legum is to be removed together with disparitas nostrarum singularium consuetudinum. Various canonical provisions and customs are to be integrated and unified through dispute and conciliar mode of decision making (396A-B: „honesta consensione redigeretur in unum”). Still, any closer instructions how to obtain this uniformity and coherence are absent.
10 H.J. Berman, op.cit., p. 52.
Some Remarks about the Legislative Provisions of the Pavia Council of 1022

or almost absent, as static elements and prevalence of consensual notion of social order were dominant\textsuperscript{12}. For example, the council of Bourges of 1031\textsuperscript{13} provides isolated reactive measure towards eradication of simony or similar illegal payments (canons III, XII), however – without procedural mechanism of enforcement. This canons serve more as moral admonitions than operative legal provisions.

Manlio Bellomo rightly notices\textsuperscript{14} that *iudices* or „lawyers” did not engage in interpretation of legal text or in any strict hermeneutic procedure aimed at determination of binding legal norm deduced from text of law. They construed arguments devised to promote certain case or to solve theological or moral controversy\textsuperscript{15}. Various and numerous utterances of Church Fathers were used as argumentative tools to reinforce dialectical and theological statements. Hermeneutics were fluid and prone to subjectivism and opportunistic approach\textsuperscript{16}. In addition to such lack of uniform methodology, clergy as such seems to be focused on correct performance of various religious rites, not on exegesis of canon law\textsuperscript{17}.

The aforementioned views are generally correct. Still they require certain adjustment thanks to closer look at the regulations of the Pavia council of 1022.

2. The doctrinal and argumentative part of the Pavia document

Already the first line of Pavia document points towards the „Gelasian” or „dualistic” order of *Christianitas*, that is the cooperation between the pope\textsuperscript{18} and the emperor as the head of the universal Christian empire. Therefore both have [c]ommunis honor, communis dolor\textsuperscript{19}. It is good to mention here that *Chronicon Cameracense*\textsuperscript{20} informs us about a council in Aachen, celebrated also in 1022. Also here the „secular” problems are discussed together with ecclesiastical matters. Such synods were solemn and ritual manifestation of the proper order of government of the *Christianitas*, as it was envisioned in the 11th century\textsuperscript{21}. All of them attempted to follow the path of Church cooperating with normative holy emperor, that is Constantine the Great.

\textsuperscript{13} *Conc. Bituriciense*, Mansi XIX, col. 502 ff.
\textsuperscript{14} M. Bellomo, *op.cit.*, p. 45.
\textsuperscript{15} See F. Kern, *op.cit.*, p. 74–75.
\textsuperscript{17} Cf. *ibidem*.
\textsuperscript{18} As the head of church hierarchy and the main dispensator of divine grace (*potestas ligandi et solvendi*, constantly mentioned in papal juridical formularies of the first half of the 11th century and canon law collection of this time).
\textsuperscript{19} All quotations of Pavia document are made after Mansi, XIX, col. 343 ff (*Concilium Ticinense*) if not stated otherwise.
\textsuperscript{20} Lib. III, Cap. XXXV, Mansi XIX….: “Sub his diebus, cum forte imperator Henricus in Aquisgrano palatio tam de ecclesiasticis quam et de saecularibus pertractaret, in ipsa interim ecclesia provincialis synodus ab episcopis celebrata est”.
\textsuperscript{21} Cf. W. Ullmann, *op.cit.*, p. 14–15. Similar character of the council of Mainz of 1023 is visible e.g. in the *vita sancti Gothardi* c. 12: „Aribo archiepiscopus Moguntinus illo anno Imperatorem ad Pentecosten Moguntiam invitavit, ubi etiam concilium generale coegit, in quo multa collapsa correxit” (Mansi, XIX, col. 411).
M. Frassetto notices that the references to general obligation of celibacy and commandment of sexual purity play "marginal" role in the Pavian document\textsuperscript{22}.

It is true, that the composition of the \textit{decretum} and \textit{edictum} corresponds with the main matter of its regulation, which is to serve two purposes: 1) the main and direct one – prevention of illicit alienations, 2) the subsidiary one – enforcement of strict clerical celibacy.

Still, Frassetto’s view should be corrected, as the Pavian document devotes quite a lot of attention to the moral substantiation of its provisions in context of celibacy. The analyzed document contains explicit references to Christian doctrine. The indispensable need of grace of God is applicable also to the reformative legislative attempt of \textit{potestas imperialis} and \textit{papalis auctoritas} convened together in Pavia ("quia unde per Dei gratiam erigimur, inde promerentibus peccatis nostris deicimur"). Influence of St. Augustine’s theology is visible here. Until under God’s benevolent guidance (\textit{propito Deo}) ecclesiastical law of the Fathers, also concerning celibacy, was preserved ("patrum nostrorum regulis et synodalibus obedievimus informatis Deo") the Church “blossomed” ("florente Ecclesia floruimus")\textsuperscript{23}. The pope also stresses liberty of the Church\textsuperscript{24}, granted to it by pious rulers ("Christianissimi reges et imperatores ditaverunt ecclesias et omni libertate eas donaverunt"). Those monarchs obliged themselves to be defenders of the Church ("defensores esse pro ecclesia coram omnibus"). For the current problems remedy is sought in the return to old discipline\textsuperscript{25}. Thus papal \textit{praefatio} states: "ad viam revertendum, sic enim legitur: Beati immaculati in via"\textsuperscript{26}.

Rhetorical hyperbole is also included, as the text stresses that the strongest opponents of God’s will\textsuperscript{27}, with the worst moral conduct ("pravis moribus maculant"), are those, who dare to call themselves the priests of God. Still, they treat their Churches, for which they were ordained, like instruments and objects useful only as sources of economic gain and social status. This attitude only makes them worse – "bonis eius (sc. Ecclesiae) incrassantur et incrassati recalcitrant"\textsuperscript{28}.


\textsuperscript{23} This remark corresponds with the tendency to glorify ancient Church. This will be also characteristic for later "papal" writers, like Humbert de Silva Candida. Institutions of the Holy Fathers, as the basis of proper ecclesiastical discipline and the higher legal order of the \textit{Christianitas}, were also invoked in a general manner and as a corroboration of provisions addressing the papal election in the legislative act of the emperor in a privilege issued by emperor Henry II for the Pope Benedict VIII (Mansi XIX, col. 331: "quod ad hanc electionem per constitutionem sanctorum patrum sanctorum patrum antiqua admisit consuetudo").


\textsuperscript{25} About such notions of return and correction of perceived abuse of old law see e.g. F. Kern, \textit{op.cit.}, p. 149–151.

\textsuperscript{26} Here the text contains a kind of a gloss to the word \textit{via}: "id est in lege Domini". Thus \textit{via} used in a quote from Psalm 118 means God’s eternal law revealed to the Church. Who went off the God’s road (ecclesiastical law), cannot have divine grace ("si beati in via non ergo beati extra viam"). Therefore a kind of dialectical "legal argument" was derived from the biblical verse.

\textsuperscript{27} That is clergy’s celibacy as the context allows us to deduce, however closely related to economic issues.

\textsuperscript{28} Literally "to kick up like a horse". This seems to be an allusion to promiscuity and licentiousness.
The document stresses that the church property had been donated by pious rulers („reges et imperatores Christum seuti”) and other devout faithful. However „bene parata” male sunt conservata”. Thus the contemporary generation is wretched, erroneous and lacks proper discipline both in personal matters and in the administration of church goods. All the contemporary problems are caused by violation of moral rules, by sin or moral evil (malum), by lack of care about the good condition of the whole Church and clergy (conservatio).

The pope laments the destruction and dissipation of ecclesiastical property: „praedia enim et possessiones aut tollunt aut minuunt”. Clergy who have illegitimate offspring use apparently permitted legal deeds or fabricated documents („quibusdam titulis et scriptis colludio fabricatis”) to illicitly appropriate („a nomine et iure ecclesiae alienant”) substantial ecclesiastical property of economic importance („ampla praedia, ampla patrimonia”) for their families, especially children. They disregard canonical obligation to live as celibataries („sint ab omnis muliere legibus exclusi”) 30. Benedict VIII makes here an allusion to primo datis et receptis legibus, to old (that is Old Testament) and new law (nova et veteris legis statuta), that is the New Testament together with patrum auctoritas.

Papal praefatio gives insight into local legal practice used by the accused clergy. Fures ecclesiae, that is clergymen having children with free women in spite of canonical prohibition, invoke legal argumentation stating that the offspring follows the legal status of their mother – „quorum filios (...) liberos esse dicunt, quia usuale est apud eos sonare, filii matrem sequuntur”.

Still, the pope argues that this rule cannot be applied to the clergy („id non de filiis clericorum, sed de filiis laicorum intelligendum esse”), thus he contradicts „fraudulent” attempts to use the Roman law to the detriment of the Church. Papal argument also demonstrates, however not explicitly, that the pontiff considered himself as capable of changing legal order towards supremacy of papal canon law over lay law, no matter if it was of Roman or of „barbarian” origin 32.

To support his pro-celibacy measures the bishop of Rome invokes a provision of old Church law: „lege enim Niceana quicumque ex clero cum qualibet muliere habitaverit vel eam turpiter cognoverit vel filium vel filiam genuerit, deponitur”.

---

29 One can see here another, albeit vague, reference to normative era of ancient Church after the conversion of Constantine the Great, when privileges, donations and construction of churches and sanctuaries was widespread and supported by imperial lex and solidi.

30 Papal complaints of economical character are not unsubstantiated. Endowment of priests’ offspring with ecclesiastical property caused pauperization of local churches, as it is witnessed by Adam of Bremen. When discussing enforcement of Pavian law in his Church caused increase in disposable church income, as there was no more need to provide for the wives of the canons; M. Frassetto, op.cit., p. 241–242.

31 The characteristic wording used in the document („iudices autem non iudicantes, immo iudaizantes”) is an allusion either to formalistic approach of the Pharisees to law or more generally, to the concept of Judaica perfidia.

32 Compare this with wording few lines below: „Si ergo promulgatis prius legibus in potestate [it is worth noticing that the term auctoritas was not employed here] fuerat ecclesiae de sui iudicare”.

33 That is canon 3, later this Council is characterized as regula canonum matrix.
It is surprising that both Greek text of the canon and Latin translation by Dionysius Exiguus differ from the text quoted in the praefatio. Still, the papal’s “quotation” is in fact a kind of interpretation or paraphrase of the old canon. Such “modified quotation” serves two purposes. It introduces new universal legal provision for the whole Church and provides it with proper formal rooting in a venerable canon law of the first Ecumenical Council.

Thus a new regulation is formally accommodated to the static model of canon law and seems to be just a repetition of the precepts of the Church Fathers. Here we have a practical expression of the fact that changes in the order of the Church had to be justified by presenting them as a removal of a perceived disobedience to the canons of the Fathers. The clergy remembered a venerable ruling of Pope Stephen I (254–257): „Nihil innovetur nisi quod traditum est”.

Such static model of constant repetition, recall and renewal of handed down and divinely inspired doctrine and discipline was deeply entrenched both in the West and in the East. Additionally, praefatio invokes laws of Emperor Justinian: „Lege autem Iiustiniana aequo deponitur et curiae civitates, cuius est clericus traditur”.

This imperial law serves here to accentuate both universal character of 1022 provisions and their basis not only in canons but also in venerable legal wisdom written down by orthodox and pious emperor venerated as a saint together with Constantine the Great, especially in the Eastern Church.

The direct aim of papal argument is to accentuate that illegitimate offspring of the clergy („omnes igitur filii et filiae omnium clericorum, qui sunt de familia ecclesiae, de quacumque libera nati fuerint, vel uxore vel concubina, quia neutrum nec licet, niec licuit nec licebit, servi suae erunt ecclesiae in saecula saeculorum”) cannot

---

34 MPL 3, 1010 A; cf. J. Nelson, op.cit., p. 347 and views of Landulf Senior and Arnulf about „sanctified” past and static order of prayer and discipline established by Saint Ambrose, expressed in their works prepared as a defence and polemic with the Gregorian party in the Italian Church.

35 J. Nelson, op.cit., p. 351. Instrumental use of the 3rd canon of Nicea announces new understanding of papal legislative power, coherent with the strong statement of Dictatus Papae about wide papal power to establish new laws according to the exigencies of time and needs of the Church; cf. M. Frassetto, op.cit., p. 240. Still, in Pavia this legislative independence of the pope expressed itself as being in full cooperation and agreement with the emperor, who is still seen as a sacral figure – visual expression of such order of Christianity is presented in the images in the Seeoner Pontifikale (Staatsbibl. Bamberg Msc. Lat. 53; fol. 2v, http://bsbsbb.bsb.lrz.de/~db/0000/sbb00000131/images/, 11.06.2017) and especially in the Sacramentary of Henry II (Sakramentar Heinrichs II. – BSB Clm 4456, fol. 11r; 11v, http://daten.digitale-sammlungen.de, 11.06.2017), and their byzantine counterpart in the Menologion of emperor Basil II.

36 Cf. Novell. 123, c. 14: „Si vero post ordinationem presbyter aut diaconus aut subdiaconum uxorem duxerit, expellatur a clero, curiae civitatis illius, in qua clericus erat, cum propriis rebus tradantur”. According to Monumenta Germaniae Historica. Constitutiones et acta publica imperatorum et regum, ed. L. Weiland, vol. I, Hannover 1893, Const. I, p. 73 note 2 (hereafter: MGH) this imperial law is applied incorrectly. Still it is more probable that instead of making a simple error, the Pavia document uses this law out of its context as a mere additional argument based on the authority of Justinian’s codification. It is no coincidence that the imperial part of the document calls Justinian’s law aequitas.

37 Strict prohibition of sexual activity of the clergy is expressed here with no prospect of future dispensation, as it would be contrary to the orders of Holy Fathers of the earlier generations and the incumbent pope.
be free and that such children share the servile status of their father. Such status is reasonable and acceptable as it is established *ecclesiae propter utilitatem et necessitatem*. Thus the needs of the Church repeal local customs and legal practice.

The pope speaks in favor of the doctrine of strict correspondence between violation of ecclesiastical property and blasphemy: „*Est enim sacrilega, quae rerum divinarum furtum facit*“. Such wording corresponds with latter utterances of Humbert de Silva Candida and his very wide definition of sanctified ecclesiastical good elaborated in *Libri Tres adversus Symoniacos*.

The whole papal *praefatio*, spacious and filled with rhetorical figures, can be interpreted as a type of papal admonition and theological substantiation for the short and quite precise legislative provisions supplemented and a bit changed by their imperial paraphrase, which will be discussed below.

3. Papal *decretum* and imperial *edictum*

Pavian provisions are an example of early transformation of notion of *reformatio* or *correctio* understood in moral or ascetical way (especially in monastic communities) into universal and general legal norms, which were to be enforceable among ranks of secular clergy. The papal part of the resolution, *Decretum domni papae B(enedicti)*, begins with general obligation of celibacy and sexual abstinence for the whole clergy: „*[u]t nullus in clero mulierem attingat*“. Then a specifying enumeration follows („*[n]ullus presbyter, nullus diaconus, nullus subdiaconus, nullus in clero*”) and the prohibition is repeated in a more extensive manner with short additional substantiation („*cum nulli quoque laicorum scire liceat mulierem praeter uxorem*“). Placement of such statement here allows one do deduce that either a spiritual marriage of the clergy with the Church as a Bride of Christ is meant (thus they already have wives and should remain faithful) or the clergy as the higher order of the Church has to follow stricter laws of sexual abstinence that the lay people.

Imperial text is a bit shorter and more synthetic. It is probable that a lawyer tried to make it more comprehensive to avoid casuistry and limit fraudulent actions

---


40 Formal analogies in other pieces of imperial legislation are visible. In not much later *Edictum de mancipiis ecclesiarii* of Conrad II (MGH Const. I, p. 85) the „executory clause“ or disposition for the officials in case of disobedience of the buyers of Church goods is constructed in similarly general manner: „*[s]i vero aliqua persona his parere noluerit, vestra [that is of high imperial officials] iudicaria potestate eam distringite donec obediat*“.

41 Presence of „*sapientes et iudices*“ in the entourage of the emperor is mentioned in the law on marriage of 1019, given in Strasbourg, MGH Const. I, nr 32, p. 64. Those „wise people“ could be of Italian origin and belong to Pavian administrative personal acquainted with Roman and Lombard law, just as various Italian dignitaries (episcopi, archiepiscopi, nobles multi, vassali, marchiones et comites Italientes – *ibidem*). See also about the *palatium* in Pavia as the main center of Italian administration and a kind of model for the organization of 10th and 11th century papal chancery: R. Elze, *Das „Sacrum Palatium Lateranense“ im 10. und 11. Jahrhundert*, Studi Gregoriani 1952, IV, S. 27–54.
mentioned by the pope. Instead of enumeration, a synthetic clause is used: „[n]ullus in omni gradu ecclesiae uxorem vel concubinam habere praesumat nec in una domo cum muliere audeat habitare”.

Only nine years later canon V of the council of Bourges of 1031 promulgated obligatory celibacy of all the grades of higher clergy. The words of canon V („sicut lex canonum precipit”) may be a reference to, *inter alia*, the Pavian regulations, as the Bourges council promulgates celibacy in very general terms („ut nullus presbyter, diaconus, subdiaconus”) and mentions both wives and concubines.

Therefore the Pavian *decretum* and *edictum*, supporting itself with ancient papal pronouncements, talk about celibacy not as a directive but as a general rule applicable in „all or nothing fashion” for the whole clergy without any exceptions or grades of application.

According to 1022 provisions, clergymen who enter into marriage or concubinage are to be deposed („*quod si fecerit, secundum ecclesiasticam regulam deponatur*”). An additional sanction of rather vague character is noticeable. The culprit is to be judged by *humanas leges* (imperial law) and to have no „admiration” in the society („nullus admirationis locum in plebe”). Such wording seems to be a reference to married clergy of high social standing, like the cathedral priests of the Church of Milan. *Edictum* adds here a remark about *Justiniani Augusti aequitate* and includes provision of Novel 123 mentioned in the papal praefatio.

As a kind of supplement to obligatory celibate, attempts at separation of the clergy from the secularized lifestyle and engagement in lay social and economic activities were undertaken also in Germany. Council of Seligenstadt of 1022 attempted at stricter separation of the clergy *ab negotiis saecularibus* through physical measures which could be almost impossible to enforce. The cap. XII of the synodal canons says: „*statutum est etiam, ut aedificia laicorum, quae ecclesiis adiuncta sunt, auferantur et nulla in atrio ecclesiae ponantur, nisi tantum presbyterorum*”. It seems quite probable that the council sought to eliminate accumulation of commerce and trade around the churches, however I think it is also possible that the synod tried to remove houses of women who were in illicit relationships with clergymen from the vicinity of local churches. Thus Seligenstadt provisions correspond with the statements of Pavia diet of the same year.

---

42 Mansi XIX, col. 503–505.
43 Canon XIX of the Bourges synod of 1031 devoted to combating or discouraging nicolaism was also formulated in a general manner, which reminds us of Pavian approach to legislation.

44 Thus a precept applicable in „more or less fashion” with a margin of individual discretion whether to live alone or to marry. Landulf Senior supported such alternative by proclaiming that not everyone has appropriate divine grace to live in celibate, thus such burden cannot be imposed as a general norm of canon law. However, Atto of Vercelli (see his *Capitulare*, I, MPL, vol. 134, col. 27 and *De pressuris ecclesiasticis*, MPL vol. 134, col. 54) and Rather of Verona were supporters of clergy’s celibacy. They can be considered as predecessors of Humbert de Silva Candida, Peter Damian and reforming popes of the second half of the 11th century (see e.g. J. Noble, *op.cit.*., p. 357–358). Still, the Pavian provisions also correspond with their postulates. Strict celibacy not only of professed monks but of secular clergy as a whole was also stressed by the reforming movement of Benedictine monasteries (*ibidem*, p. 358).
45 Mansi XIX, col. 398. It seems that the council thought just about lighter, for example wooden, edifices.
The second canon of the *decretum* established strict celibacy of bishops. The imperial law adds adjective *nullus* to the word *episcopus*, probably to ensure that the law is to be obeyed by every member of the church hierarchy and to stress that the rule has no exceptions or is not going to be applied with mitigation. To describe illicit relations with women the papal text uses rather vague euphemisms *habitabit* and *habeat*. The imperial text has simple and more concrete *lectum habere*. However this change seems to serve just as a mere rhetorical ornament.

Disobedient bishop is to be either exiled or deposed – „*[q]uod si fecerit (…) honore (…) abicietur”* – as he made himself unworthy of the ecclesiastical dignity (*se ipse fecit indignum*). The cooperation of *nostrae regulae* (that is canon law) and *mundanae leges* (that is imperial law) as a living continuation and *renovatio* of the Christian empire is also mentioned, thus reminding of the initial wording of the document: *communis honor, communis dolor*.

The third paragraph stipulates that sons of unfree clergy (*servi ecclesiae*) are to become slaves or serfs of respective local churches together with „everything” they acquired (*cum omnibus adquisitis*) thus not only with the ecclesiastical property illicitly transferred to them by their fathers. Therefore restitution and a kind of penalty and deterrent is combined here. The imperial text is identical, just *suae ecclesiae* is added in the second part of the sentence to make the application of law easier and avoid disputes.

The papal *decretum* has *[f]ilii et filiae*. Still the word *filiae* is omitted in the imperial version. This corresponds with Roman notion that male gender comprises also females. Extensive enumeration mainly to show universality of law and prevent any doubt or court dispute follows: „*omnium clericorum omniumque graduum de familia* [46] ecclesiae, ex quacumque libera[47] muliere, quocumque modo sibi coniuncta fuerit, geniti, cum omnibus bonis per cuiuscumque manus adquisitis servi proprii suae ecclesiae nec umquam ab ecclesiae servitute exibunt”. The imperial law adds also as a kind of restitutory clause: „*[e]t omnia, quae ipsi per manus et per scriptiones alicuius liber adquisierint, ecclesiae sicut sua propria reddimus*. Very general wording (*omnium, omnibus, ex quacumque muliere* etc.) to avoid any doubt and attempts of evasion trough interpretation and dialectics is characteristic. The imperial recension of the 3rd paragraph of the Pavia law seems to be unclear, as it does not state clearly if only children or also wives of priests are to be enslaved or changed into ecclesiastical serfs[48].

Canons II and III seem to have their ancient precedent in the canon X of the 9th council of Toledo of 655[49].

---

46 Imperial text has more precise *servorum*.
47 *Libera* was omitted in *edictum*.
49 U.R. Blumenthal, *The prohibition of clerical marriage in the eleventh century* [in:] *Chastity: A study in perceptions, ideals, opposition*, red. N. van Deussen, Leiden – Boston 2008, p. 63. The 9th Council of Toledo of 655 (Mansi XI, col. 29 A–C, canon X) established the first legal sanction against the offspring of clergy. Before this pronouncement dominant opinion was that children as such should not be held responsible for the sins of their parents. However the 9th synod of Toledo decided that such „illicit children"
Canon IV does not address clergy buy lay people, as it prohibits any judge or official (*nullus iudex*) from granting liberty (*liberos esse iudicaverit*) for children of clerics, who are slaves or servants of the Church. Disobedient functionary will be anathematized and judged by imperial power, as they „took away from the church what he had not given“ („quia ecclesiae tulit quod non dedit“) that is the offspring of the clergy. The imperial law adds here as a sanction of *facultatum publicationem* of the judge who refuses to apply new law and condemns such judge to perpetual exile, therefore imitating provisions of Roman law.

Canon V of *decretum* prohibits all the ecclesiastical slaves of serfs („nulli servorum ecclesiae, sive in clericatu, sive in laicatu“) from acquiring ecclesiastical goods by any legal mean (*ullo modo*) trough free intermediaries

In case of disobedience the culprit is to be punished (*caesus, tamdiu carceratus*) and ownership of the alienated goods is to be returned to the respective Church. Imperial redaction of the law provides additional sanction which can be considered as a sign of still rather blurry border between ecclesiastical and imperial jurisdiction, at least in cases of ecclesiastical servi: „[s]i enim ad nostrum spectaret iudicium, ut fugitivus addiceretur“.

According to the canon VI of the papal *decretum*, a person who accepted a document (*chartam*) or acted as a proxy or intermediary in fraudulent transaction to the detriment of the Church is obliged to pay a fine or compensation to the local Church (*finem ecclesiae faciat*)

If the culprit do not pay the necessary amount of money, they are to be considered as cursed or excommunicated („maledictus inter fures ecclesiae et sacrilegas habeatur“).

The imperial text adds certain „technical“ or procedural clauses, as it declares the document containing the legal deed null and void („invalidas et nomen vacuum fraudulenter ecclesiae servus scriptiones accepit“). The scripture is to be returned in order to avoid future litigation („ut omnium litium iacula sopiantur“). The person who prepared the document for the slave was also obliged to pay fine to the affected Church.

The last canon of the *decretum* addresses judges and notaries. It prohibits them from preparing (in case of *tabelliones*) or allowing to be prepared or respecting as binding (in case of judges) charters (*chartae*), which are to be used to illicitly transfer

---

50 Conrad’s II *Edictum de mancipiis ecclesiarum* (1027–1035, MGH Const. I, p. 85) has similar economic motives as the Pavian law, especially its section V. The aim of this *edictum* is to restitute ecclesiastical slaves and animals sold for too low price. Thus both laws attempted to prevent deterioration of ecclesiastical domains trough wrongful alienation.

51 *Edictum* under number VII adds here: *et securitatem*, which designates either additional warranties or merely a receipt.

52 In the imperial version: chapter number VI.
ecclesiastical property and thus to endow clerical offspring. The law establishes penalty of excommunication (anathemate ferientur). Judges or notaries who disobey the new law are to be expelled from their offices\textsuperscript{53}. In addition, edictum establishes severe penance of mutilation: „manum amputamus dexteram”. Such sanctions correlate with the final corroborative clauses of the imperial edictum\textsuperscript{54}.

One cannot find any direct repetition or quotations from the Pavian law of 1022\textsuperscript{55}. Still, some traces of inspiration can be noticed in local legislation. Apart from the already mentioned instances, the Aquitanian council of Bourges of 1031 contains regulations similar to the provisions promulgated at Pavia in 1022, which were directed against establishment of the so called „hereditary priesthood” or „dynasties of priest” due to clerical marriage and prevalent understanding of churches together with their property as sources of wealth for the family of the priest and a kind of assurance of social position of his relatives (especially offspring) due to control over ecclesiastical landed property.

Thus canon VII\textsuperscript{56} stipulates that sons of presbyters, deacons and subdeacons („filii presbyterorum, sive diaconorum, sive subdiaconorum”), if they were born after their father was ordained („in sacerdotio vel diaconatu vel subdiaconatu nati”), shall not become priests („clerici non fiant; nullo modo ulterius ad clericatum suscipiantur”). The council recalls that status of such offspring is diminished by secular (that is Roman) law, as they are not allowed to inherit and to act as court witnesses („nec apud saeculare lege hereditari possunt, neque in testimonium suscipi”). The mention of succession points towards similar economic concerns as in Pavian regulation.

It is also noticeable that this canon uses quite general wording and tries to precisely define which categories of clergy are addressed in order to avoid any misunderstanding and to obtain proper enforcement of the canon in case of penal church proceedings. To curb any evasion of the new law, the canon states that the offspring cannot be promoted into the clerical ranks by „any mean” (nullo modo). Roman law, according to Breviarium Alarici or Theodosian Code, is used as a justification of the new regulation and can be considered as a kind of application of Roman law precepts according to the rule Ecclesia vivit lege Romana. Still, Roman law is not directly applied here but used as a subsidiary basis for justification to establish new canon law provision aimed at eradication of local social customs, feudalization and strong secular relationships of the clergy.

Moreover, canon XI of the council of 1031 also reminds us of Pavia regulations of 1022. It states that if the offspring of clergy or slaves („qui ex filiis clericorum vel in servis”) were ordained, they are to be deposed by archdeacons („ab archidiaconis

\textsuperscript{53} I think that the clause „neque honorabitur in palatio” (that is in the imperial jurisdictional and political centre, where the source of power resides and the „rule of law” is substantiated) should be understood in that way.

\textsuperscript{54} „Nec factiosi huius decreti scientiam dissimulabunt, quae omnium libris inscripta, per ora omnium evolabit: nec impune putabunt audendum quod publica damnatum severitate cognoverint”.

\textsuperscript{55} B. Schimmelpfennig, \textit{op.cit.}, p. 12, notices, that the Pavia provisions were explicitly (ausdrucklich) repeated in a Goslar council of 1023. Still this statement is unclear to me. See also Ch.-J. Hefele, H. Leclercq, \textit{Historie des conciles}, Paris 1912, vol. 4/2, p. 918–924, esp. p. 920.

\textsuperscript{56} Mansi XIX, col. 504.
deponantur”). Additionally, the council states that bishops shall excommunicate publicly (audiente populo) those who offer them sons of presbyters, deacons or subdeacons to be ordained. Thus we see another local legislative attempt to curb the establishment of de facto hereditary priesthood.

The imperial response to the praefatio of pope Benedict states that papal decisions were undertaken pro ecclesiae necessaria reparatione, therefore they express papal solicitude for the whole Christianity. The emperor characterizes himself as a son of the Roman Church (ut filius laudo), therefore he is obliged to cooperate with the pope through complementary „secular” legislation. Still the following wording – quae(...) instituit et reformavit paternitas tua(...) confirmo et approvo(...) ea me inviolabiler servaturum adiuvante Deo promitto – serves as a rather obvious sign of the notion, that the emperor has a quasi-hierarchical status in the Church as a subject equipped with wide legislative and almost unlimited executive power in correspondence with papal auctoritas, or a competence to form provisions of ecclesiastical law, which lack proper ecclesiastical procedure of enforcement. Therefore the papal decree shall be transposed into publica iura or leges humanae. Such corroborative procedure is ordered and guaranteed by the emperor and his auctoritas. It is interesting that the term auctoritas is used here not in the theological or Gelasian sense but in the more technical meaning, appearing in some laws of the Theodosian Code.

4. Conclusions

The wording present in the edictum (humanis inseri et inscribi legibus volumus) can be interpreted as a legislative attempt to join the new imperial laws addressing the clergy with the body of old imperial law of universal character. This is an attempt to continue late Roman imperial politics of regulating ecclesiastical discipline in cooperation with bishops. Such approach fits into more general doctrine of renovatio imperii.

Moreover, formal reaffirmation of papal decretum by the emperor included in edictum of 1022 is similar to Visigoth lex in confirmatione concilii. Did the council of 1022 try to imitate old Visigoth ideas? It is more likely that the council tried to revive Roman notion of symphonia or consonantia, mentions of which had been preserved e.g. in monuments of the Roman law known in the West. Such interpretation better

57 Similar confirmatory formula was also added to resolutions of Goslar enacted in 1019, MGH Const. I, no. 31, p. 62 ff: „Addunt nihilominus: presentis compactionis decretum Romani imperii maiestate sanctum, nullo penitus in perpetuo iure solvendum, maxime cum in beneplacito universalis papae prospectum vegetet sanctae ecclesiae”. Compare also the wording in the Subscriptio, MGH Const. 1, const. 34, p. 77, where formula „Ego H. gratia Dei augustus hanc constitutionem legis perpetuae (...) Deo auctore statui, firmavi et semper valere decrevi et optavi”.


suits the tendencies of universalism and restitution of Christian empire encompassing the *Christianitas* as a whole.

Additionally, certain similarities with Byzantine ideas about duties of the emperor and the apex of the church hierarchy cannot be excluded. However, the Eastern emperor was not considered by Benedict VIII as a ruler able to provide any help in the process of restoration of the Church, even Italian dioceses. The Byzantine monarch was no longer seen as the ruler of universal Roman empire. He was merely the emperor of the Greeks (*Graecorum imperator*). Moreover, the ecclesiastical communion was weakened already by patriarch of Constantinople Sergius II by the order to remove papal name from the diplomas. This process of alienation between the two „sister churches” was continued by Benedict VIII by insertion of the *filioque* clause to the Latin text of the Nicene Creed and cooperation with emperor Henry II, perceived in ecclesiastical rhetoric as the sole ruler of the universal Christian empire.

It is worth mentioning that papal *praefatio* corresponds with contemporary trend of providing reason for the reformatory provisions trough lamentation of current state of ecclesiastical affairs. Also the council of Bourges of 1031 stresses that the local Church is „depraved” or utterly corrupt („depravata erat S. Bituricensis mater Ecclesia”). Apart from their rhetorical character, such formulas can be seen not as mere persuasive device but as a general directive of application of particular provisions in favor of church discipline in case of doubt.

Another aspect of the Pavian introductory formula („*communis honor communis dolor*”), that is joint and consensual mode of proceedings, is also visible. At the end of the papal allocution it is accentuated that the approval of the emperor and bishops („nostris consacerdotibus, fratiribus et coepiscopis nostris”) is ensured – „*hac nostri forma decreti (...)* confirmabitur”. Other synods contain similar clauses. For example, the acts of the already mentioned Bourges council of 1031 recall the consent of bishops, abbots and „pious laymen” to new legislative measures. Collegiality was also recalled in the opening of the statutes of the council of Seligenstadt in 1022. However, the *propria auctoritas* of the pope or of an archbishop is also mentioned. This hierarchical *auctoritas* of a bishop corroborates the privilege of the pope issued

---


62 *Ibidem*.

63 *Ibidem*.

64 „*E*go *Aymo* archiepiscopus (...) cum consenso coepiscoporum seu abbatum et reliquorum fidei-lum, qui ibidem praesentes adfuerunt, decrevi*”.

65 Mansi XIX, col. 396 A-B: „*In Dei nomine, ego *Aribro* Moguntinae sedis archiepiscopus (...) cum ca-teris confratribus nostris et coepiscopis (...) synodum in Salegunstadt conduximus (...); (...) quate-nus cum communi fratrum praedictorum consilio atque consultu*”.

77
for French Church, so that it may be enforced and respected – „inconvulsum et inlibatum permaneat”.

Still, stronger „episcopalism”, coherent with some parts of Pseudo-Isidorian Decretals, is also visible in the chapter XVI of the council of Seligenstadt. It prescribes that no one (nullus) can travel to Rome without permission (licentia) of proper bishop or his vicar.

Therefore, it is noticeable that an accent placed on universally binding papal legislative power coexist with principles of collegial decision-making process. This tension announces upcoming conflicts between reform-minded popes and local (especially German and Lombard) bishops.

In addition to their legislative aspect, church councils were understood as liturgical undertakings. Their reformatory mission is inspired by the Holy Ghost. Various saints accompany the bishops and serve as intercessors. The holy men are present in their miraculous relics – visible parts of the sanctified and glorified Mystical Body of Christ. The council of 1022 follows the same sanctifying procedure as Saint Augustine’s relics were exposed for veneration during the proceedings. Thus the saint in his holy remains was present as a protector and intercessor. Moreover, in the final clause of papal praefatio of 1022, the benediction of God and intercession and protection of the Apostles Peter and Paul, two crucial figures for the dogmatic understanding of papal office and primacy in the Church, are invoked.

In addition to such explicit sacralisation of the proceedings, special intercessory prayers used to be recited. Other liturgical elements, like censing, candles or prayers ad orientem are also prominent and specifically mentioned in synodal acts.

Tangible presence of canon law during the proceedings is also noticeable. Manuscript containing church canons was present during the proceedings together with holy relics, accompanied by intercessory prayers and penance. The legal outcome of the council is explicitly sanctified and merged with ecclesiastical admonitions about penance and believe in the necessity of God’s grace to establish proper order in the Church. Abuses are always condemned as sins or heresies. It is noticeable that the Pavian document lacks the description of synodal proceedings and is of more legal and polemical nature. However, there is no reason to doubt that also the synod of 1022 had prominent liturgical and sacral component.

Considering all the aforementioned rituals sanctifying the normative outcomes of synods, it is good to ask if Pavian pronouncements were enforced and considered

---

66 Mansi, XIX, col. 398.
67 To bring an appeal from the decision of local bishop, I do not think that this provision addresses pilgrimages or commercial travellers.
69 Cf. e.g. Mansi, XIX, col. 400–401.
70 „Tunc diaconus codicem canonum in medio proferens, capitula de conciliis agendis pronunciet” (Mansi XIX, col. 402). Thus the canons are recalled in a kind of „liturgical readings” and integrated into liturgical action.
71 See e.g. J. Leclercq, Simoniaca Haeresis, Studi Gregoriani 1947, I, p. 523–530.
as sanctified papal and imperial law binding every member of the Christianitas? Expulsion of clerical spouses in Hamburg suggest an attempt to enforce the 1022 rules, still this enforcement did not obtain permanent results.\footnote{Adam of Bremen, \textit{Gesta Hammaburgensis ecclesiae pontificum}, 2.61. scholion 43, \textit{Monumenta Germaniae Historica. Scriptores}, ed. H.G. Pertz et al., Hannover 1826, vol. VII, p. 328; hereafter: MGH SS. It seems quite probable that any systematic and coherent application of the new law in Hamburg and further control of obedience to its precepts was abandoned for the sake of social peace. This was caused by the fact that the main culprits were canons – prominent members of the cathedral clergy. Cf. J.A. Brundage, \textit{Law, Sex and Christian Society in Medieval Europe}, Chicago 2009, p. 218.}

Moreover, the text of the Pavian provisions is known to us only from one 12th century manuscript, pages of which are partially damaged by fire. The contents of this book were not considered as important or useful for judicial practice. This supports the theory that resolutions of 1022 had minimal effect or even no application at all.\footnote{Cf. H. Wolter, \textit{op.cit.}, S. 283, 284, note 261; also H. Fuhrmann, \textit{op.cit.}, S. 158.}

The only sign of an attempt to apply the Pavian law can be deduced from the „report” of Leo of Vercelli about „revindications”, which he enforced in his diocese. However, an attempt to demonstrate some vestiges of application of 1022 regulation by Leo through looking for textual similarities in the report and in the Pavian document\footnote{S. Hirsch, H. Pabst, H. Bresslau, \textit{Jahrbücher des Deutschen Reichs unter Heinrich II}, Berlin 1877, S. 345.} is rather unconvincing.

Such lack of any certain signs of application of 1022 rules points towards importance of personal charisma and political influences of anyone attempting to enforce reforming legislation in the period of early church reform in the 11th century. Both Henry II and Benedict VIII died soon after the Pavian resolutions were prepared and Pavian 

\textit{palatium} was looted and destroyed. It is necessary to remember that Benedict VIII should not be considered as a „puppet pope” of the Tuscan faction, so the joint legislative initiative of 1022, especially when seen in connection with other synods of the same time and the spread of ecclesiastical foundations, was intended to serve as a beginning of a project of disciplinary reform.\footnote{G. Tellenbach s.v. \textit{Benedetto VIII} [in:] A. Menniti Ippolito et al., \textit{Enciclopedia dei papi}, Roma 2008, http://www.treccani.it/enciclopedia/benedetto-viii_(Enciclopedia-dei-Papi)/, 14.02.2017, together with a general remark made by Thietmar, \textit{Chronicon} VI. 61 MGH SS III, p. 835: „a papa Benedicto qui tunc prae caeteris antecessoribus suis dominabatur”.} The 1022 provisions tried to be an instrument, yet not fully autonomous, of the formation of social order. Still the instruments to ensure effective promulgation and enforcement of it were not yet elaborated.

\footnote{The provisions of Pavia synod are a kind of unimplemented precursor to the legislation of the most active „German Pope” that is Leo IX (M. Frassetto, \textit{op.cit.}, p. 240 with further references). It is also possible that the regulation of Gregory VII about the incontinence and obligatory celibacy of the clergy was inspired by Pavian resolution of 1022 (\textit{ibidem}, p. 240.).}
Kilka uwag na temat postanowień Synodu w Pawii z roku 1022


Słowa kluczowe: celibat, własność kościelna, synod, Synod w Pawii