



Concilium and Consilium

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NOTES AND SUGGESTIONS

[Under this caption it is proposed to print in each number of the REVIEW, hereafter, three or four or five brief contributions in which historical investigators may communicate new discoveries, new criticism of sources, new arguments, new conclusions, or suggestions for further research or thought. It is hoped that the addition, to the "body articles", of this new department or group of briefer communications—peltasts reinforcing the conventional hoplites of research, corvettes supporting the traditional three-deckers—may make the general array more mobile and effective, and may encourage in the historical profession a free and intimate interchange of results and opinions. But it is also hoped that all who favor us with such notes will compose them with great brevity.]

CONCILIVM AND CONSILIVM.

IN the July number of the AMERICAN HISTORICAL REVIEW a question was raised by Professor A. B. White, in his article on "Concentration of Representatives" and again in his review of *The King's Council*, which it seems to me should not pass without an answer. This is in regard to the terms *concilium* and *consilium*, as used in the thirteenth century, and the ideas suggested by them. It is maintained that "*Consilium* was, in addition to its old meaning of counsel, from the beginning of Henry III.'s reign, used regularly for the smaller assembly, the ancestor of the Privy Council, whereas in nearly every case in which a large assembly of barons was referred to, whether in chronicle or official record, *concilium* was used" (AM. HIST. REV., XIX, 740; also 868). I readily acknowledge the omission of *The King's Council* to treat this point specifically, although the omission was not from ignorance. To present some of the facts in evidence, it is true that in the language of the Church the form *concilium* was as a rule preferred to designate all ecclesiastic assemblies of formal character, whether these were general or local, oecumenical, plenary, provincial, or regional; while *consilium* in addition to its sense of counsel or advice was used in the documents of the Church for secular councils of state and town (see Potthast, *Regesta Pontificum*; Wilkins, *Concilia*; and Du Cange, *Glossarium*). To a noticeable extent the writers of England, in both chronicles and records, were affected by this example and sought to make similar distinctions between councils of state, although the institutions were by no means parallel. Matthew Paris and others refer to the great assemblages summoned by the king in phrases such as *gen-*

erale concilium and *concilium congregatum*; sometimes indeed they bring the two forms into contrast as *per consilium et assensum concilii nostri*. But they give also so many instances clearly to the contrary, to say nothing of expressions of double or ambiguous meaning, that we may reasonably hesitate to accept the statement of a positive rule in this regard. The following examples show that *consilium* was used, interchangeably with *concilium*, to denote the council in its larger and more dignified form, and by some writers was the term preferred. In the authoritative edition of Bracton's *Note Book* I find *generale concilium* given only once; elsewhere it is always *consilium*, even when the council was manifestly great, as when at Merton in 1234–1235 the barons pronounced their *nolumus* against change in the laws of England—*convocato consilio provisum est* (Maitland, no. 1117, etc.). As early as the expression “council in parliament” becomes a current phrase, denoting the king's council in its most expanded form, it appears regularly as *consilium*, not *concilium*, in *parlamento* (*Rot. Parl.*, I. 15, 125, 150, etc.). The interchangeability of the two forms of the word is shown in the following passage referring to the ecclesiastical council of Lyons in 1274, *de consilio Lugdunensi . . . fuit concilium maximum celebratum* (*Flores Hist.*, III. 33). At the same time with less frequency *concilium* instead of *consilium* was used in the sense of counsel as well as for council in its less formal aspect. More than once Matthew Paris gives the word a double meaning, as for instance, *significarunt cardinales inito prolixiori concilio . . . ut convocaretur concilium generale* (IV. 30, also 372). In the records of the Exchequer we find *concilium ad scaccarium* as well as *consilium ad scaccarium* (*King's Council*, p. 41). In the rolls of the *curia regis* there are upon the same membrane *Placita coram Consilio Domini Regis* and *Placita coram W. Ebor' Archiepiscopo et Concilio Domini Regis* (*Abb. Plac.*, p. 118; a reference which I have verified from the roll). Other passages of the kind are *coram ipso domino rege et concilio suo* (*Ann. Burton*, p. 253), *a regali concilio* (*Dunst.*, p. 68), *rege et concilio suo ignorantibus* (*ibid.*, p. 221, also 274).

If it be thought that these are only exceptions which prove the rule, there is still a stronger side of the argument. For if the distinction of *concilium* and *consilium* had been well grounded in the thirteenth century, we should expect the same usage to be carried forward into the fourteenth century, when the existence of two institutions, namely Parliament and the council, was clearly recognized. But instead in all the official records of the latter time the spelling *consilium* gains ground almost to the exclusion of the other. The

Parliament itself, or rather the inchoate House of Lords, among other modes of designation continues to be known as *consilium in parlamento* (*Rot. Parl., passim; Ancient Petitions*, etc.). A statute is sanctioned *de consilio praelatorum, comitum et aliorum fidelium regni nostri de consilio nostro existentium* (*Statutes of the Realm*, I. 51). Writs for the summons of barons and knights are issued *de militibus eligendis et mittendis ad consilium, de consilio summoniendo*, etc. (*Parl. Writs*, I. 26, 65). The expression *commune consilium*, which has been cited as suggesting only the process of taking counsel, is shown to mean council as well as counsel in the passage *Rex . . . in pleno parlamento suo et de communi consilio suo statuit* (*Rot. Parl.*, I. 78); later there is *clericus communis consilii* (*King's Council*, p. 368). On the other hand *concilium* survives in the connection *de concilio Regis iuratus, secretum, concilium*, etc. (*ibid.*, pp. 74, 88, 105). The later records of the council itself, whenever they are in Latin and also when at length English words like "counsellor" and "councillor" appear, fail to bear out the assumption that there was any philological difference between *consilium* and *concilium*, much less that *magnum consilium* of the fourteenth century was an evolution apart from *magnum concilium* of the thirteenth century. When the entire history of the council is held in view, the evidence seems obvious and overwhelming that instead of two words connoting two ideas, which have been taken as forecasting two institutions, we have only variants of the same word employed diversely, it is true, at certain times by individual clerks. One reason why the letter *s* so far superseded the *c* is found in the tendencies of the vertical style of handwriting, which multiplied the upright letters and the upright forms of letters rather than the round letters. It may be noticed incidentally that the round *s* (like a Greek sigma) is not always perfectly distinguished from the *c*, but the Gothic style ran more and more exclusively to the upright *s* (like an *f*).

Finally there is a reason why the clerks of the thirteenth century were unable to separate the two ideas with any degree of clearness. This was because the king's council itself was not as yet defined in respect of its larger form apart from its smaller form. Only for purposes of taxation, according to Magna Carta, art. 14, was it stated that all the barons should be summoned and how they should be summoned. Since the levy of a tax therefore was properly by authority of a general council, it is pertinent to the argument to notice that in regard to the carucage of 1217 it was said *assisum fuit per consilium regni nostri* (*Rot. Lit. Claus.*, I. 348). For other functions there was no standard of size, how large the council should be,

or as to formality, in what manner it should be assembled. Often it was small, but from its narrowest circle it expanded to its widest through every degree of dimensions. Nor can we be sure, as Mr. White says further, "that a council in connection with which a date was named, indicating limited duration, the temporary presence of many magnates, was *concilium*; advice, deliberation, or the counseling body that was in continuous session, the thing made up of the king's *consilarii*, was *consilium*". So far as evidence is given it appears that a small council or a select number of lords might be summoned by writ (*Cal. Close Rolls*, 12 Edw. III., p. 517). Moreover whenever trials were held, in order to secure the attendance of all participants, in the nature of things it was necessary to appoint a day. It is likely that the instance cited (*AM. HIST. REV.*, XIX. 741, note) of a council, *i. e.*, *concilium*, three weeks after Michaelmas refers to a conciliar session such as was frequently held either in conjunction with or immediately after the fall session of the Exchequer. In this case as well as other cases that are mentioned in the same foot-note there is nothing either in the words or the context to indicate whether the council at the moment was great or small, nor could anyone say at what point a small council became great. This argument it would be unnecessary to give so fully, were it not a common fallacy to define institutions too closely by their names, and to press names and phrases into a meaning beyond their contemporary sense. As Maitland has said, "There is for us a besetting sin of antedating modern ideas."

JAMES F. BALDWIN.

KENTUCKY RESOLUTIONS OF 1798

IN 1821 Mr. Jefferson wrote to J. Cabell Breckinridge recounting his recollection of the genesis of the Kentucky Resolutions. In this letter, he gives the impression that a consultation had taken place between John Breckinridge, father of the person to whom the letter was written, Wilson Cary Nicholas, one of Jefferson's two most trusted lieutenants, and himself. He thought the determination to protest against the Alien and Sedition Laws proceeded somehow from that conclave. "Those gentlemen", Jefferson wrote, "pressed me strongly to sketch resolutions for that purpose, your father undertaking to introduce them to that [the Kentucky] legislature, with a solemn assurance, which I strictly required, that it should not be known from what quarter they came. I drew and delivered them to him." Later on, in this same letter, Jefferson asserts that his