CHAPTER 10

Fulgosio and Constance after Constance

“Licitum esse unicumque subdito... secundum leges naturalem moralem et
divinam occidere vel facere occidi quemlibet tirannium”

1.a The Jean Petit Tyrannicide Case

The power of the bond linking a dutiful subject and his or her superior in the
middle ages can be sensed in the apparent subterfuge which Fulgosio perpe-
trated in order to leave Constance by presenting his employers there with the
dilemma of whether to interpose themselves between the jurist and his right-
ful superiors who had apparently spontaneously recalled him to Padua. Such
was the respect for this bond between a subject and his or her lord that another
ruler or superior was reluctant to countermand it.

One very famous case at the council, however, presented delegates with
a direct challenge to this idea of a powerful bond of loyalty between subject
and ruler. The case concerned the 1407 assassination of the Duke of Orléans
and the defence of that act which had been written by a Parisian scholar, Jean
Petit.1 In his tract Petit had questioned whether there were occasions when
a subject was permitted to kill a tyrannical ruler and had thus suggested that
the bond between subject and prince was not an unconditional one but could
legitimately be broken by a subject should his or her prince become a tyrant.2

1 On the assassination, see: Bernard Guenée, Un meurtre, une société. L'Assassinat du duc
d'Orléans 23 novembre 1407, (Paris: Gallimard, 1992); and Joachim Ehlers, ‘Ludwig von Orleans
und Johann von Burgund (1407/1419)’, in: ed. Alexander Demandt, Das Attentat in der

2 The primary studies of the Jean Petit case are: Alfred Coville, Jean Petit: La question du tyran-
nicide au commencement du xv° siècle, (Geneva: Slatkine, 1974); the discussion and texts in:
Finke, ACC, IV: 255–352 together with the earlier work by Bernhard Bess, Zur Geschichte des
Konstanzer Konsils: Frankreichs Kirchenpolitik und der Prozess des Jean Petit über die Lehre
vom Tyrannenmord, (Marburg: O. Ehrhardt, 1891). Also see: Frenken, ‘Die Erforschung des
Konstanzer Konsils’, 181–205 and the recent contributions by: Malte Prietzel, ‘Die Affäre Jean
Jean Petit und das Problem des Tyrannenmords’, in: Ibid., 111–115; and Cable, ‘Haec Sancta’,
434–445.
The circumstances of Orléans’ assassination gave the question which Petit addressed its own very particular character, not least because it conflated the crimes of tyranny and treason, however in essence it tackled the moral dilemmas surrounding the assassination of a ruler by a subject. Orléans was the brother of the King of France and had been killed on the instructions of the Duke of Burgundy. Petit maintained that Burgundy’s action was defensible because it had prevented Orléans’ supposed unhealthy influence over the ailing Charles VI. Furthermore, not only was the assassination excusable, it was also laudable in that it prevented Orléans’ tyranny and treason. A subject like Burgundy thus not only could act in such a way, he had had an obligation to do so.

The repercussions of Petit’s defence of the assassination were protracted and outlived the cleric himself who died in 1411. Two years later an assembly of clergy in Paris declared Petit’s ideas to be heretical and ordered that all copies of his defence should be destroyed. The Duke of Burgundy however appealed against this verdict to John XXIII in the summer of 1414 and although the convocation of the Council of Constance intervened to delay the hearing of this appeal, the three cardinals to whom the pope had passed the case began to consider it once the council had opened.

This appeal had tight terms of reference in that the cardinals, who included Fulgosio’s friend Cardinal Zabarella, had only to consider whether or not the Paris assembly had been entitled to form an opinion unilaterally on the heretical character of Petit’s ideas and not whether that opinion was in and of itself justified. Asking whether the assembly in Paris had jurisdiction to pass judgment on such heresies was a controversial enough question given the high theological standing in which the University of Paris felt itself to stand as an institution, however it did mean that Petit’s ideas were not directly examined in the appeal heard by the three cardinals. This was a matter which was however brought before the council of Constance’s own Committee of Faith in the summer of 1415.

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4 Coville, Jean Petit, 505.