

The Punctuation of Ems and the rights of the bishops of the Holy Roman Empire in the Age of Enlightenment: the case of the ecclesiastical principality of Liège (1786 - 1789)

❖ *Introduction*

Hello everyone,

First and foremost, allow me to thank the organisers of this conference for their hard work and their invitation to discuss a segment of my research on the revolutionary constitutional law of the Principality of Liège at the end of the 18th century.

Today, I would like to focus on a particular event in the political and religious history of the Holy Roman Empire between 1786 and 1789: the Congress of Ems. Many here are familiar with the numerous conflicts that arose between the Pope and the Emperor, starting in the Middle Ages, regarding sovereignty within the Holy Roman Empire and over Christendom in general. By the 18th century, this conflict was far from resolved. The Congress of Ems and the Josephinist reforms in the Low Countries are examples of this ongoing struggle. The purpose of this presentation is to examine the opposition of the Prince-Bishop of Liège, César-Constantin de Hoensbroeck, to the reform project of the Congress of Ems, as articulated in the Punctuation of Ems, and, in doing so, to highlight the legal and political stakes for Liège and the Holy Roman Empire on the eve of the French Revolution.

(Diapo suiv. 2)

It is, of course, impossible to provide an exhaustive overview of the conflict in just a few minutes. Therefore, I have structured my presentation into three parts:

- 1) A brief geographical and institutional overview of the Principality of Liège at the end of the 18th century.
- 2) The motives and objectives of the Congress of Ems.
- 3) The resistance of the ecclesiastical and imperial principalities, particularly that of Liège.

(Diapo suiv. 3)

❖ *Liège: A Polity at the Crossroads of Multiple Influences and a Vast Diocese*

The ecclesiastical and imperial principality of Liège was, by the end of the 18th century, a major commercial and intellectual crossroads between France, the Low Countries, and Germany. As a member of the Holy Roman Empire, a product of the imperial Church, and an ally of France, the Liège polity was characterised by a complex institutional and legal system where the Church and the State were in constant opposition.

The principality was divided into three estates: the clergy, the nobility, and the third estate. These estates met semi-permanently and at the prince-bishop's summons in the eponymous institution. Since the 14th century, the estates had possessed extensive powers. They enacted laws alongside the prince-bishop, solely

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administered the state's budget, decided on war and peace together with the prince, and ratified international treaties.

The clergy was divided into two sub-orders. The primary clergy consisted solely of the canons of the Saint Lambert's Cathedral in Liège. The secondary clergy comprised all other clerics in the country. The cathedral chapter had gradually assumed exclusive control over all functions typically assigned to the clergy as a whole and had become a quasi-ecclesiastical superior of the principality, leaving the prince-bishop, always chosen from its ranks, with precedence. In practice, the chapter's co-sovereignty ambitions clashed with the absolutist tendencies of the state's leaders, who could never fully eliminate the institution. Consequently, the chapter still had to be consulted before the promulgation of a law and retained the exclusive right to elect the bishop. The canons also reserved all high positions in government for themselves. Thus, the primary clergy was the only one to send deputies to the estates under the name of the primary estate.

There were no official divisions between high and petty nobility in Liège. All nobles were considered equal within the estates. Nonetheless, a handful of great families gradually captured power. By 1765, only seventeen members held the positions.

The third estate comprised twenty-three privileged cities, known as "Good Cities," chosen by the prince-bishop over the centuries. Two representatives per city were mandated to sit in the estates. However, since the 17th century, half of the urban representatives were directly appointed by the prince-bishop.

(Diapo suiv. 4)

The nobility and clergy continually opposed each other in the late 18th century. The former sought to increase its power and break the clergy's monopoly on government functions, while the latter aimed to reduce the nobility's influence in the army and administration. Consequently, most major reforms proposed by the prince-bishop and the third estate came to naught, as the Liège constitution required unanimity among the three estates for a law to take effect.

These conflicts were reflected in the governance of the principality, embodied by the Privy Council. Half of its members were cathedral canons, and its leader, the chancellor, was chosen from among the most influential canons. The other seats were distributed by the prince among the nobility and the third estate. It was constitutionally forbidden for the prince to govern without his Privy Council. The chancellor had to countersign the prince's acts for them to be valid. The council wielded immense powers: it exercised police functions, supervised local communities, served as the supreme court for administrative or jurisdictional conflicts, managed foreign affairs, and more.

These two institutions were in near-constant conflict in the late 18th century. However, in theory, they had authority only over the principality, not the much larger diocese of Liège. In practice, the conjunction of the bishop's role with that of the prince, the omnipresence of the chapter, and the occasional appointment of the

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auxiliary bishop and/or the vicar general as privy councillors meant that religious matters fell within the purview of the secular institutions.

(Diapo suiv. 5)

❖ *The Congress of Ems: Reform or Separation from the Holy See?*

On 15 February 1785, Pope Pius VI appointed Cesare Zoglio as Apostolic Nuncio to Bavaria in response to the request of Charles Theodore, Elector of Bavaria. The Elector, seeking to diminish the influence of the Electors of Trier and Mainz as well as the Archbishop of Salzburg over his territories—some of which were integrated within the archdiocesan lands—had suggested to the Holy See the establishment of a new nunciature capable of acting as a court of second instance in ecclesiastical matters. Normally reserved for archbishops, the assumption of this judicial competence by a nuncio directly mandated by the Holy See significantly increased Rome's influence in imperial affairs.

The new nuncio was also supported by the already well-established nuncios in Cologne, Bartolomeo Pacca, and in Flanders, Antoine-Félix Zondadari. Together, they aimed to break the archiepiscopal power within the Empire. The Electors' reaction was swift. Only the Duke of Bavaria accepted Cesare Zoglio's credentials, while the archbishops denied him an audience. In Brussels, the nuncio of Flanders was summoned by the Austrian minister, who reminded him of Rome's inability to interfere in the affairs of the Low Countries due to the Placet, the necessary prior approval of the sovereign for apostolic decrees. In Cologne, a nunciature on which the Principality of Liège depended, the Roman agent was similarly summoned by Archbishop Maximilian of Habsburg.

Faced with Pius VI's persistence, the four archbishops of the Empire gathered in Bad-Ems on 24 July 1786, under the presidency of the Elector of Mainz, who was also Arch-Chancellor of the Empire and head of the imperial electoral college. On 25 August 1786, with lukewarm support from Austria, the prelates agreed on twenty-three articles, soon known as the \*Punctuatio of Ems\*.

(Diapo. Suiv. 6)

The programme developed, inspired by anti-curialist sentiments, directly challenged the Roman primacy in favour of national conciliarist positions. It was primarily rooted in an older intellectual context. Charles VII, Emperor of the Holy Roman Empire from 1742 to 1745, had already supported the idea of secularising the remnants of the imperial church. He was supported in this by Prussia and the science of imperial public law, largely dominated by the Protestant body within the Empire. In response, the dignitaries of the imperial church sought to stabilise the eminently medieval foundations of the system on the new constitutional norms of the Holy Roman Empire, primarily the treaties of Westphalia. The \*Punctuatio of Ems\* followed this line of thinking.

At the beginning of 1787, the Privy Council reviewed the twenty-three articles of Ems, categorising them, a taxonomy we adopt here, into a few broad groups.

(Diapo suiv 7)

First, the project proposed to subject clerical exemptions solely to archiepiscopal consent, thereby removing the right of suspension from foreign superiors, bishops holding delegated authority, and, of course, the Holy See. For the Privy Council, it was impossible to exclude Rome from the equation, as it was the only actor perceived as neutral amidst the endless territorial conflicts between principalities. Second, the archbishops hoped to grant bishops unlimited authority to dispense with laypersons under their sole control. Once again, the Council rejected this to avoid the emergence of a trade in dispensations like that of indulgences three centuries earlier.

(Diapo suiv 8)

Third, bishops were to become the sole managers of the assets and purposes of all pious foundations, despite Roman primacy or the founders' intentions. The Prince-Bishop personally opposed this clause, as imperial law required the joint approval of the Emperor and the Pope to modify the goals and assets of a religious foundation. Removing the Holy See while retaining the Emperor would subordinate bishops to Vienna. Continuing in this vein, the archbishops proposed reforming certain provisions of canon law by abolishing, notably, the extravagantes *exsecrabilis* and *ad regimen*, which established exceptions to the conciliar legislation of Constance and the concordat of Martin V on the system of benefice allocation. Through these texts, the Holy See had secured the right, with the secular ruler's consent, to appoint the beneficiaries.

In Liège, as in many ecclesiastical principalities, the cathedral chapter held a predominant position in political life. The allocation of canonical prebends, and hence seats in the chapter, was the subject of complex negotiations between Rome, Vienna, and Liège, with the latter playing off the first two to appoint its protégés. Following the spirit of the \*Punctuatio\*, the chapter, and by extension the Liège government, would be entirely subjected to imperial will.

(Diapo suiv 9)

Finally, the archbishops proposed a complete overhaul of the ecclesiastical judicial system. From then on, cases would first be brought before the bishop and then the archbishop. The nuncio would be reduced to a mere diplomatic role. The new archiepiscopal courts would be modelled on the Imperial Chamber sitting in Wetzlar, and in the event of a final appeal to Rome, the pope would have no choice but to appoint German judges nominated by the archbishops.

The Ems theses were seen as extremely dangerous by many officials. Many doubted the Electors' power to act as arbiters of ecclesiastical matters, and more were those who condemned the proposals as nearly schismatic. In Rome, Pius VI remained silent, while the archbishops presented the \*Punctuatio\* to Joseph II.

(Diapo suiv 10)

❖ *Combating Schism: The Fracture of the Imperial Church*

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Torn between his reformist positions and his imperial obligations, the Emperor was questioned by the lay Electors, particularly Prussia, which was reluctant to see Austrian authority increase at the expense of Rome. Within the episcopal camp, resistance was organised under the auspices of the Prince-Bishop of Speyer and the Prince-Bishop of Liège. On 31 March 1787, they wrote an official letter to the Diet, directly challenging the authority of the archbishops and calling for an immediate meeting of Church dignitaries under the Emperor's presidency. The latter refused, placing both the archbishops and bishops on equal footing.

In France, the increased Austrian influence in the various neighbouring principalities, should the Ems reform be implemented, alarmed Secretary of Foreign Affairs Vergennes. The French minister in Liège was ordered to exert all his influence against Austrian pressure. In Brussels, the illegal publication by Nuncio Zondadari of the brief *\*Super Soliditate Petrae\** condemning the pamphlet *\*Quid est papa\**, which was clearly Febronian in inspiration, led to his immediate expulsion from the territory. He was welcomed by the Prince-Bishop of Liège, who offered him unlimited protection.

Beyond the conflict between Rome and the Empire, it was imperial law that directly clashed with Church law. In a letter dated Bonn, 25 June 1788, the Archbishop of Cologne wrote to the Prince-Bishop of Liège that the protection offered to the nuncio was a manifest violation of the imperial rescript of 12 October 1786, which abolished the judicial powers of the nunciatures, and that he was therefore liable to severe sanctions as a disturber of the public peace.

(Diapo suiv. 11)

The cohesion of the archiepiscopal front gradually crumbled. Mainz, soon followed by Trier, withdrew from the *\*Punctuatio\** in the face of the damage it had caused to the imperial church. Joseph II, pressured by Berlin, also rejected the text but refused the return of the nuncio to Brussels. On 14 November 1789, Pius VI broke his silence by publishing the *Responsio ad Metropolitanos Moguntium, Trevirenses, Coloniensem et Salisburgensem super nunciaturi apostolicis*. In it, he explicitly linked the Ems proposals to the anathematised theories of Febronius. The pope thus reaffirmed the superiority of the Holy See in the face of national attempts to reform the Church. This publication, however, was not solely aimed at the Empire. Shortly before, the French Revolution had also established itself as the arbiter of religious matters, making it impossible for Rome to remain passive.