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Indulgences in Fifteenth-Century Polemics and Canon Law

In 1453 Juan de Torquemada, Dominican theologian and cardinal, completed his „Summa de ecclesia“, submitting it for correction to Nicholas V, the reigning Roman pontiff.¹ This *magnum opus* offered a defense of both the ecclesiastical institution and papal supremacy in it. The cardinal was answering both the heretics of his day, especially the Hussites, and the conciliarists who had dominated the later sessions of the Council of Basel (1431–1449). Torquemada answered the partisans of general councils particularly by claiming for the pope supremacy in the power of jurisdiction in the external forum. This canonistic distinction of jurisdiction in the external forum of causes from jurisdiction in the internal forum of conscience („forum scilicet conscientiae, & forum causarum“) and both from the power of orders allowed him to claim that Peter and his successors had always held this supreme position as his vicars by Christ’s own ordinance.²

The exposition of papal jurisdictional power in the „Summa de ecclesia“ includes a claim that plenitude of power („plenitudo potestatis“) was given by Christ to Peter and his successors, and that it contained all things necessary and expedient for the good of the Church, the Christian republic.³ Torquemada listed fifteen aspects of the plenitude of power. One of these was the pope’s ability to grant plenary indulgences from the Church’s treasury. Only he, as Christ’s vicar, could grant these remissions to any one of the faithful throughout the world for legitimate reasons. Local bishops, according to canon law, could grant their subjects only more limited indulgences, usually for 100 or 40 days, because these prelates merely had a share in papal responsibility for the Church („in partem sollicitudinis“).⁴ Torquemada also introduced the

1 Juan de Torquemada, *Summa de ecclesia*, Venetiis 1561, fols. 1v–2r. Thomas Kaeppli, *Scriptores Ordinis Praedicatorum medii aevi*, 4 vols., Roma 1970–1993, vol. 3, p. 37 no. 2730.

2 Torquemada, *Summa* (see note 1), I, c. 96, fols. 109–110r; II, c. 80, fols. 212v–213r. Thomas M. Izbicki, *Protector of the Faith. Cardinal Johannes de Turrecremata and the Defense of the Institutional Church*, Washington DC 1981, esp. chapters 2, 3 and 4. On the origins of the distinction between orders and jurisdiction, see Robert Louis Benson, *The Bishop-Elect. A Study of Medieval Ecclesiastical Office*, Princeton 1968.

3 Torquemada, *Summa* (see note 1), II, c. 52, fol. 166r: „sequitur quod apud illum plenitudo resideat potestatis extendens se ad omnia necessaria, & expedientia salutis reipublicae Christianae“. Robert Louis Benson, *Plenitudo potestatis. Evolution of a Formula*, in: *Studia Gratiana* 14 (1967), pp. 195–217.

4 Torquemada, *Summa* (see note 1), II, c. 52, fol. 168r: „Tertiodecimo plenitudo potestatis Romani pon. ostenditur in dispensatione thesauri ecclesiae: quoniam ipse solus utpote Christi principalis Vicarius & dispensator dat plenariam indulgentiam, & omni homini fideli de toto mundo ... Papa habet plenitudinem pontificalis potestatis quasi rex in regno, sed episcopi assumantur in partem sol-

issue of indulgences into his discussion of the right relationship of pope to council. Among the arguments presented by Torquemada for refutation was the promulgation of indulgences by three Church councils. The Council of Pavia-Siena (1423/24) and the Council of Basel supposedly granted indulgences. The former, Basel's supporters argued, had given remissions for defense of the faith. The latter had used indulgences to finance its effort to bring the Greeks back into ecclesiastical union.⁵ More important among these arguments was one that the Council of Constance (1414–1418), which had restored union to a divided Church, had granted indulgences *sede vacante*, after all three claimants to the papacy had resigned or been deposed.⁶

The cardinal answered these arguments. Inevitably he gave the most attention to Constance. His papalist polemics dealt especially with the decree *Haec sancta*. Much of the conciliarist case was founded on its statement that the council, representing the Church, received supreme power from Christ in matters of faith, schism and reform of the Church „in head and members“. Torquemada employed in this context the argument he had evolved at Basel to undermine *Haec sancta*, saying the Council of Constance was valid only when all three obediences of the Great Western Schism had assembled, after that decree had been issued. Even when the council became valid and there was a *sede vacante* situation, the conciliarist argument was invalid because Constance's indulgence was not plenary, a complete pardon only a true pope could issue. The prelates assembled at Constance did not presume to do that which belonged on to the pope as the visible head of the Church, the only one with plenitude of power.⁷ Torquemada cited the crusade indulgence issued by Innocent III

licitudinis quasi iudices singularis ciuitatis praepositi. Et ideo potest facere indulgentias prout uult causa tamen existente legitima, sed in episcopis est taxata secundum ordinationem papae.“ Agostino Marchetto, In partem sollicitudinis ... non in plenitudinem potestatis. Evoluzione di una formula di rapporto Primato-Episcopato, in: Rosalio José Castillo Lara (Ed.), *Studia in honorem A. M. Stickler*, Roma 1992 (*Studia et textus historiae iuris canonici* 7), pp. 269–298.

5 Torquemada, *Summa* (see note 1), III, c. 42, fol. 323r: „Quarto idem arguitur ex concilio senensi quod legitur dedisse indulgentiam plenariam. Quinto idem arguitur ex concilio Basiliensi quod non modo rotam audientiae causarum erexit sed etiam indulgentiam plenariam dedit pro negotio graecorum.“ Basel's negotiations with the Greeks are summarized in Ivan Mariano, *The Council and Negotiations with the Greeks*, in: Michiel Decaluwé/Gerald Christianson/Thomas M. Izbicki (Eds.), *Companion to the Council of Basel* (in press).

6 Torquemada, *Summa* (see note 1), III, c. 42, fol. 323r: „Tertio sic. concilium uniuersale Constantiense uacante sede confirmauit archiepiscopum Lugdunen. dedit etiam indulgentias, & super irregularitate dispensasse legitur quae uidentur reseruata apostolicae sedi.“

7 Torquemada, *Summa* (see note 1), III, c. 43, fol. 323v: „Secundo dato quod concessa fuisset indulgentia per concilium postquam fuerat congregatum ex omnibus tribus obedientiis ratio adhuc non militat quia indulgentia illa non fuit plenaria quae reseruatur Rom[ano] pon[tifici]. Hoc enim non praesumpserunt praelati constantiae congregati scientes quod cum ea quae sunt multitudinis alicuius distribuere singulis de multitudine solum competit ordinaria potestate ei qui multitudini praeest, distribuere uero thesaurum ecclesiae papae soli competit qui toti ecclesiae praeest, & non multitudini,

at the Fourth Lateran Council, the canon *Ad liberandam* (X 5.6.17), to support the essential papal role in granting a plenary indulgence.⁸ The cardinal added that even so glorious a council as that at Constance did not dare issue a plenary indulgence, knowing that power belonged to the pope alone. At most, the fathers at Constance could grant indulgences for no more than 100 days by the authority of the cardinal legates appointed by John XXIII, the Pisan claimant to the papacy, to preside at the council.⁹ Constance's indulgences also were issued in hope of approval by a future pope.¹⁰

Indulgences had occasionally occupied the fathers at Constance. Two reform proposals were presented that included restraint on indulgences issued by the Roman curia, both those tied to the crusade and those directly related to the year of Jubilee. However, no conciliar decree was issued. Instead, individual concordats between Martin V and the nations addressed this issue, allowing each of them to have the terms it most desired in this and other potentially contentious areas.¹¹

Torquemada dismissed the arguments from the acts of the other councils briefly. Pavia-Siena, he said, issued no indulgences. Instead it had recommended the granting of pardons to inquisitors and others who participated in suppressing heresy. The latter category included those who captured heretics and turned them over to a bishop or

ut sanctus Thom. in 4 d. 20 dicit. "On the evolution of the „three obediences“ argument and its adoption by Pope Eugenius IV, see Thomas M. Izbicki, „The Hand of Power for the Feeding of Christ's Sheep": The Pope and the Episcopate in Juan de Torquemada's Early Polemics, in: Jean Ehret (Ed.), *Primato, pontificio ed episcopato dal primo millennio al Concilio Ecumenico Vaticano II. Studi in onore dell'Arcivescovo Agostino Marchetto*, Città del Vaticano 2013, pp. 217–233; Thomas M. Izbicki, *Papalist Reaction to the Council of Constance. Juan de Torquemada to the Present*, in: *Church History* 55 (1986), pp. 7–20.

8 Torquemada, *Summa* (see note 1), III, c. 43, fol. 324r. Ane L. Bysted, *The Crusade Indulgence. Spiritual Rewards and the Theology of the Crusades*, c. 1095–1216, Leiden 2015 (*History of Warfare* 103), pp. 132–135.

9 Torquemada, *Summa* (see note 1), III, c. 43, fol. 324r: „Ecce quod synodus tam uniuersalis tam gloriosa sicut illa non praesumpsit dare indulgentias sciens quod ad sponsum, & ad thesaurarium, & praesidentem huiusmodi dispensatio tantum modo conueniebat. unde praelati constantiae existentes non plenariam sed multo minorem dabant, scilicet centum dierum uel quadraginta, & hoc auctoritate legatorum dominorum cardinalium praefati Ioan. 23. qui ex antiqua consuetudine dant centum dies indulgentiarum licet concilio ascripto fit.“ Collective indulgences occasionally were issued by bishops resident in Avignon; see Christopher R. Cheney, *Illuminated Collective Indulgences from Avignon*, in *id.*, *The Papacy and England 12th–14th Centuries. Historical and Legal Studies*, London 1982, pp. XVI, 353–373.

10 Torquemada, *Summa* (see note 1), III, c. 43, fol. 324r.

11 Phillip H. Stump, *The Reforms of the Council of Constance (1414–1418)*, Leiden 1994, pp. 67–72, 373–375, 406f.; Robert W. Shaffern, *The Penitents' Treasury. Indulgences in Latin Christendom, 1175–1375*, Scranton 2007, pp. 45–56, 79f., 85; James A. Brundage, *Medieval Canon Law and the Crusader*, Madison 1969, pp. 145–155. A proposal at Constance about collective indulgences can be found in München, Staatsbibliothek, MS clm 5338, fols. 47v–57r, according to Stump.

inquisitors, as well as those who expelled heretics from their territories or banned them, or invoked the aid of the secular arm against them. These concessions were granted by Martin V, who was the accepted Roman pontiff, following the solution of the Great Western Schism.¹² Torquemada's comment on Basel was that it had done many presumptuous things which should be execrated rather than imitated by future councils.¹³

The issue of indulgences was more divisive at the Council of Basel, especially when the assembled fathers were attempting to finance a council of union with the Greeks to be held far from Eugenius' potential supporters in Italy.¹⁴ This issue was in play by August of 1435, when Basel's envoys proposed a conciliar indulgence to the pope. Eugenius' reply about indulgences and other issues the envoys had raised, as recorded officially by Poggio Bracciolini, was a request for time to consult with the cardinals about such important matters. This reply was reported to the council on September 2, 1435, revealing that this proposal would not move forward with ready support from the Roman curia.¹⁵ Eugenius, the fathers knew, already was granting indulgences, at least one with the council's approval. He was unlikely to relinquish his power to grant indulgences to the assembly at Basel.¹⁶

12 Torquemada, *Summa* (see note 1), III, c. 43, fol. 324r. For the Concilium Papiense-Sienense 1423/24, see Alberto Melloni/Davide Dainese (Eds.), *The General Councils of Latin Christendom. Editio critica*, 2 vols., Turnhout 2013 (*Corpus christianorum. Conciliorum oecumenicorum generaliumque decreta* 2), vol. 2, pt. 1, p. 649: „Quidcunque ut favoribus opportunis circa hec eisdem ordinariis et inquisitoribus assistatur, constitutioni Bonifacii VIII disponenti super investigatione capcione custodia et punitione hereticorum et fautorum fiendis et procurandis per dominos et rectores temporales locorum, addere cupiens statuit hec sancta synodus quod quicumque capientes hereticos et in potestatem ordinariorum vel inquisitorum hereticos pravitate effectualiter ponentes vel eos quos detinere seu capere non possent, de eorum territoriis omnino expellentes aut bannientes seu etiam requisiti brachium seculare contra tales prestantes eam indulgentiam consequantur que dari consuevit personaliter proficientibus in subsidium terre sancte.“

13 Torquemada, *Summa* (see note 1), III, c. 43, fol. 324r: „Ad quintum quod inducitur de Basiliensi. Concilio supra respondimus quod cum in illo multa praesumptuosae in totius ecclesiae perturbationem attentata fuerunt magis memoria illorum execranda uenit quam ex eo exempla sumenda.“

14 The issue of indulgences first emerged in the debates with the Hussites in early 1433, when Giles Charlier defended the practice; see Joannes Dominicus Mansi, *Sacrorum conciliorum nova ... collectio*, vol. 29, Venetiis 1788, cols. 921–926, esp. col. 922. Ernest F. Jacob, *The Bohemians at the Council of Basel*, in: Robert W. Seton-Watson (Ed.), *Prague Essays*, Oxford 1949, pp. 81–123, esp. pp. 101–103.

15 Mansi, *Sacrorum* (see note 14), col. 459; Johannes Haller (Ed.), *Concilium Basiliense. Studien und Quellen zur Geschichte des Concils von Basel*, 8 vols., Basel 1896–1936 (reprint Nendeln 1976), vol. 3, p. 494.

16 Eugenius granted indulgences more frequently than had Martin V; see John A. F. Thomson, *Popes and Princes 1415–1517. Politics and Polity in the Late Medieval Church*, London 1980, p. 87. Basel already had decided in 1434 to ratify Eugenius' bull of indulgence *Excellentissimum*, favoring those who worthily celebrated the feast of Corpus Christi; see Mansi, *Sacrorum* (see note 14), cols. 438f.

In the context of Basel's reforming intentions, the promulgation of an indulgence may appear to be an example of mere financial motivation, the sort of thing many expected of the Roman curia, not of a reforming council; but a council of union could not be achieved without finances.¹⁷ The papal claim to the authority to issue plenary indulgences, moreover, cannot have been unknown to the assembly, especially to its canon lawyers.¹⁸ This claim had been made clearly by Pope Clement VI in the Bull *Unigenitus Dei filius* of January 27, 1343, a text which proclaimed „by plenitude of apostolic power“ („apostolicae plenitudine potestatis“) the Jubilee indulgence for the year 1350. That text appeared occasionally among the Extravagantes which circulated outside the official collections of canon law (Extrav. Commun. 5.9.2); and it built, in turn, on Boniface VIII's much more crucial bull *Antiquorum* (Extrav. Commun. 5.9.1), which for the first time conceded plenary indulgences to those who devoutly visited Rome's major basilicas during a Jubilee year. Clement promised recipients of his Jubilee indulgence „fullest pardon of all their sins“ („plenissimam omnium peccatorum suorum veniam“).¹⁹ The fathers at Basel, at least the canonists among them, even if they did not know *Unigenitus*, probably knew *Antiquorum*. (English delegates might have known it through Lyndwood's „Provinciale“, compiled for the province of Canterbury).²⁰

Of these texts and later ones about Jubilee indulgences issued by the popes, only *Antiquorum* was widely distributed and received extensive commentary.²¹ The commentary was written by Johannes Monachus, cardinal and canonist. He had dis-

17 Johannes Helmrath, *Das Basler Konzil 1431–1449. Forschungsstand und Probleme*, Köln 1987 (Kölner historische Abhandlungen 32), pp. 52f.

18 The most prominent canonist at Basel in this period was Cardinal Giuliano Cesarini, the president of the council; see Gerald Christianson, *Cesarini, the Conciliar Cardinal. The Basel Years*, St. Ottilien 1979 (Kirchengeschichtliche Quellen und Studien 10).

19 Diana Wood, *Clement VI. The Pontificate and Ideas of an Avignon Pope*, Cambridge 1989 (Cambridge Studies in Medieval Life and Thought. Fourth Series 13), pp. 32–34. Sixtus IV confirmed the Jubilee Indulgence and cancelled some others he had granted; see Extrav. Commun. 5.9.4–5. A forged bull of Jubilee, *Cum natura humana*, circulated in the Netherlands under the name of Clement VI; see Charles M. A. Caspers, *Indulgences in the Low Countries, c. 1300–c. 1520*, in: Robert N. Swanson (Ed.), *Promissory Notes on the Treasury of Merits. Indulgences in Late Medieval Europe*, Leiden-Boston MA 2006 (Brill's Companions to the Christian Tradition 5), pp. 65–99, esp. p. 80 n. 43.

20 William Lyndwood, *Provinciale, (seu Constitvtiones Angliæ,) continens constitutiones provinciales quatuordecim archiepiscoporum Cantuariensium, viz. à Stephano Langtono ad Henricum Chichleium*, Oxford 1679 (reprint Farnborough 1968), pp. 231f. *Indugentiae*, a long discussion of indulgences offered to those who knelt wherever they were upon hearing the Sanctus bell, including a reference to the Jubilee indulgence promulgated in *Antiquorum*.

21 According to Jacqueline Brown, in a communication to the author on July 13, 2014, there remain at least 66 copies of *Antiquorum*, 27 of them glossed, but only 11 of *Unigenitus*. Città del Vaticano, Biblioteca Apostolica Vaticana (= BAV), Vat. Lat. 12571, includes a summary of Clement's bull with references to other papal letters about the Jubilee. The text of *Unigenitus* is preceded by John XXII, *Porro*, regulating the concession of indulgences by bishops.

cussed the Jubilee with Pope Boniface („sicut ego ex ore ipsius audiui“), who said he was commemorating the centenary of the Incarnation and granting a once in a lifetime concession.²² Johannes named the conditions required for a valid indulgence: the authority of the one granting it, the worthiness of the recipient, the pious purpose of his or her acts, and the usefulness of the remission. He also referred to the fittingness of the time in which the grant was made.²³ For present purposes we will focus on the authority to grant indulgences, which the canonist said belonged to the Roman pontiff. In general, Johannes said, a grant was not valid unless legitimately conceded by the pope.²⁴ This ability to regulate grants of indulgences was part of the pope's plenitude of power, the papacy functioning like the head of a natural body. Just as all the senses were channeled through the head, in the Mystical Body, the Church, the pope had this fullness of power by divine command.²⁵ The Church Militant represented on earth the Church Triumphant, under divine rule.²⁶ There was no room in the Church Militant for two heads. The one head, whom all Christians on earth were supposed to obey, was the Roman pontiff, the vicar of Christ on earth. Only through his unifying role could all members be brought together as one body.²⁷

A rare gloss on *Unigenitus*, found in a Vatican manuscript, made little reference to larger issues of papal power. It simply made a reference to Boniface VIII's bull

²² Extravagantes communes aptis elucidate summariis multis adiunctis ... in Sextus decretalium liber a Bonifacio VIII. in concilio Lugdunensi editus ..., Basel: Johannes Amorbach and Petrus Froben, 1511, fol. 36ra. The gloss also notes that the Jubilee was not to compete with the „transmarine“ or crusade indulgence. Unlike *Antiquorum*, another Jubilee bull of Boniface VIII, *Ad certitudinem*, was not glossed by the canonists. See, however, Città del Vaticano, Archivio Segreto Vaticano (= ASV), Instr. Misc. 313 (ca. 1300).

²³ Extravagantes communes (see note 22), fol. 35va: „Requiritur enim auctoritas in concedente: idoneitas in recipiente: pietas in fine: utilitas in opere et quantum quod addi potest / congruitas in tempore.“

²⁴ Ibid., fol. 35ra: „Habentes. Per hanc ratificationem et confirmationem / non ratificatur nisi legitime concessa.“ Johannes did allow for the possibility of a *minister minus discrete*, but even then faith in the sacrament would prevail („sed propter fidem sacramenti“); see *ibid.*, fol. 35rb.

²⁵ Ibid., fol. 35rb: „Primo ergo requiritur auctoritas in concedente que triplici est et principaliter residet in summo pontifice. Sicut enim videmus in corpore naturali unicum est caput in qua positi sunt omnes sensus sic in corpore mystico quod est ecclesia est ponere caput unum habens plenitudinem potestatis. Hoc enim sic esse voluit ordinatio diuina.“ Diana Webb, Pardons and Pilgrims, in: Swanson (Ed.), *Promissory Notes* (see note 19), pp. 241–275, esp. pp. 247f.

²⁶ Extravagantes communes (see note 22), fol. 35va. Johannes invoked the orderliness of the New Jerusalem in the book of Revelation and the hierarchies in the theology of Pseudo-Dionysius.

²⁷ Ibid., fol. 35va: „Si autem in ecclesia militante esset ponere duo capita de pari se habentia / quorum unum alteri minime subderetur / non esset ratio celestis ordinis congruenter in ea posita. Sed tunc ratio celestis ordinis proprie et perfecte in terra ponitur / si cuncti gradus et prelationum et principatum sub vno capite collocentur / et ei obediant et subdantur: huius autem est solus romanus pontifex vicarius christi et successor Petri.“ Johannes then cited the standard Petrine text „Tu vocaberis Cephas“ (John 1,42).

Antiquorum when discussing the change from a Jubilee once in a century to one held every 50 years.²⁸ The gloss on *Unigenitus* also mentioned bulls of Eugenius IV and Nicholas V about the date of the Jubilee.²⁹ Nearly two centuries after *Antiquorum* first appeared, Johannes Franciscus de Pavinis added to the commentary of Johannes Monachus a note discussing the changes made by later popes. He made a particular point of writing about *Unigenitus*, which reduced by half the period between Jubilees. He also mentioned further changes made by Martin V, Paul II and Sixtus IV, including the revocation of certain plenary indulgences by Sixtus.³⁰

The canonists present at Basel would also have known the canon *Cum ex eo* (X 5.38.14) of the Fourth Lateran Council (1215).³¹ The Lateran Council, in the minds of many canonists, was dependent on the pope, especially because the manuscripts of the „Liber extra“ said „Papa Innocentius III in concilio generali“ (e. g. X 1.1.1) as the heading of each canon. *Cum ex eo*, number 62 among the Lateran canons (1215), was something of a catch all. It began with the proper treatment of older relics and the authorization by the papacy of new ones. (That claim to papal power was related to the increasing papal monopoly on the canonization of saints.³²) There followed regulations for alms seekers, including remission of punishments for sins committed by donors and remedies against abuses by bishops who granted indulgences. The bishop or bishops involved in the dedication of a church could not grant more than a year of release. Nor could they grant more than 40 days for celebrating the anniversary of the dedication. Only the pope could grant more to those who had confessed (*confessis*). The council added that no episcopal letter could be more open-handed, since even the pope, who had plenitude of power, was moderate in his grants: „We order that the letters of indulgence, which are granted for various reasons at different times, are to fix this number of days, since the Roman pontiff, who possesses plenitude of power, is accustomed to observe this moderation in such things.“³³

²⁸ Clement VI, *Unigenitus cum glossis*, BAV, Vat. Lat. 12571, fol. 681r–683r v. *Unigenitus*. The author owes access to this material to Jacqueline Brown.

²⁹ *Ibid.*, fol. 681r v. *Iubileus*, fol. 682v in marg.

³⁰ *Extravagantes communes* (see note 22), fol. 37ra.

³¹ For local grants of 40 days by the suffragan bishop of Utrecht, see Caspers, *Indulgences* (see note 19), p. 80.

³² Roberto Paciocco, *Canonizzazioni e culto dei santi nella christianitas (1198–1302)*, Assisi 2006 (*Medioevo francescano*. Saggi 11).

³³ Antonio García y García (Ed.), *Constitutiones Concilii Quarti Lateranensis una cum commentariis glossatorum*, Città del Vaticano 1981 (*Monumenta iuris canonici*. Series A, *Corpus glossatorum* 2), pp. 101–103; Norman P. Tanner (Ed.), *Decrees of the Ecumenical Councils*, 2 vols., Washington DC 1990, vol. 1, p. 264: „hunc quoque dierum numerum, indulgentiarum literas praecipimus moderari, quae pro quibuslibet causis aliquoties conceduntur, cum Romanus pontifex, qui plenitudinem obtinet potestatis, hoc in talibus moderamen consueverit observare.“ Bysted, *The Crusade Indulgence* (see note 8), pp. 130f. Boniface VIII said no grant of indulgences by bishops was valid if it violated the Lateran canon; see c. *Indulgentiae* (VI 5.10.3).

In „*Compilatio quarta*“, c. *Cum ex eo* appeared under the title „On Penances“ (*De poenitentiis*; 4 Comp. 5.14.5).³⁴ In the Gregorian Decretals, it was placed under the title „On Penances and Remissions“ (*De poenitentiis et remissionibus*; X 5.38.14), in which form it reached the whole Church. Alexander III's letter *Quod autem*, which limited concessions of „remissions“ tied to dedications of churches and bridges to the subjects of an individual bishop also appeared under this title as X 5.38.4.

Discussion of the provisions of *Cum ex eo* began with glosses on the Lateran constitutions and culminated in the major commentaries on the „*Extra*“. The „*Casus Parisienses*“ on the Lateran decrees simply said that indulgences related to dedications of churches could be given by bishops.³⁵ The Ordinary Gloss on *Cum ex eo* remained focused on the limits of episcopal indulgences. Bernard of Parma, the compiler, inquired whether an indulgence for the dedication of a church exceeding a year was valid. Bernard was willing to consider the possibility that such an indulgence issued by a bishop was valid because the decree did not say that grants made without a papal mandate would not prevail.³⁶

Later commentators on *Cum ex eo* wrote at greater length. Geoffrey of Trani, in his „*Summa super titulis decretalium*“, summarized the limits set on indulgences, with bishops able to give them in their dioceses and archbishops in their provinces. Indulgences for events like the dedication of a church were limited to a year and those for anniversary events to 40 days.³⁷ Geoffrey noted there were varying opinions about indulgences, but he said the text accurately stated the Church's ability to grant these concessions through its power to bind and loose.³⁸ Innocent IV, although writing as a private doctor, moved the discussion to the realm of papal power. The Roman pontiff had the principate in jurisdiction, Innocent said, although he did not mention plenitude of power. He claimed that the bishops, „lesser prelates“, could grant indulgences only because they had their power from the pope, who had it from God. Thus he could restrict their exercise of that power if it was abused.³⁹

³⁴ Emil Friedberg (Ed.), *Quinque compilationes antiquae nec non Collectio canonum Lipsiensis*, Leipzig 1882 (reprint Graz 1995), p. 149.

³⁵ García y García, *Constitutiones* (see note 33), p. 474: „Preterea cum dedicatur ecclesia, indulgentia non extendatur ultra annum, et deinde in diem anniuersarii xl. dies non excedat.“

³⁶ Ordinary Gloss at X 5.38.14 v. *A pluribus*. A later addition to the Gloss cited c. *Indulgentiae* to prove that such a grant was cancelled.

³⁷ Geoffrey of Trani, *Summa perutilis et valde necessaria do. Goffredi de Trano super titulis decretalium* ..., Lyon 1519 (reprint Aalen 1968), fols. 240va–b.

³⁸ Ibid., fol. 240vb: „Et licet quidem ex hoc diuersemode sentiant et interpretentur istas indulgentias ego tamen simpliciter intelligo sicut sonat vt secundum quod promittunt indulgentiam et remittunt. Nam qualitercunque satisfaciet ecclesie non refert et absolutus est quem ecclesia absoluit et ligatus quem ligat. vt de pe. di. i. verbum.“

³⁹ Innocent IV, *Commentaria apparatus in V libros decretalium*, Frankfurt 1570 (reprint Frankfurt 1968), fol. 546rb: „In talibus ... hanc restrictionem facere potuit Papa, quia minores praelati omnes

Henricus de Segusio (Cardinalis Hostiensis) had taught at Paris,⁴⁰ where he was in touch with the latest theological opinion. The cardinal said little about indulgences in his „*Summa super titulis decretalium*“. He did argue, commenting on the title *De poenitentiis et remissionibus* that prayers availed for release of souls from Purgatory.⁴¹ The cardinal presented the argument that the power of the keys did not extend to Purgatory.⁴² He replied that alms reached these souls, as did the „suffrages of ecclesiastical charity“ („suffragia ecclesiastice caritatis“).⁴³ Although these souls had migrated from the Church Militant and had not yet fully joined the Church Triumphant, the Church was one, all of it desiring to aid devout souls, leading them to salvation.⁴⁴ It would be accurate to say this remission of pains belonged to the forum of God, whom it pleased to accept the supplications of the Church Triumphant and the suffrages of the Church Militant.⁴⁵

Hostiensis' commentary on the Gregorian Decretals included an exegesis of *Cum ex eo*. Among the issues addressed was the relative ability of pope and bishop to grant indulgences. Hostiensis, a papalist, identified the power to grant indulgences with a special grant of power by Christ to Saint Peter. Thus the pope, Peter's successor, could issue constitutions involving the power to bind and loose, including loosing the pains of Purgatory.⁴⁶ Citing William of Auxerre, he listed seven requirements for granting an indulgence. The first of these was the power to bind and loose, which belonged only to prelates.⁴⁷ Bishops who gave indulgences for longer periods than

habent hanc potestatem ab eo, & ipse solo a Deo. 21. di. quamuis. et 22. di. c. i. Item potuit ratione principatus iurisdictionis quam habet super omnes. 21. Di. in nouo. Et hoc facit ex iusta causa, quia hac potestas abutebatur.“ Innocent added that the decree did not restrict what was done in the forum of penance, confession.

40 Kenneth Pennington, Henricus de Segusio (Hostiensis), in: id., *Popes, Canonists and Texts 1150–1550*, Aldershot 1993 (Variorum collected studies series 412), article XVI.

41 *Summa domini Henrici cardinalis Hostiensis*, Lyon 1537 (reprint Aalen 1962), fols. 282rb–283ra.

42 Ibid., fol. 289ra: „dicunt quidam quod sic quod non est tenendum quia potestas clauium non extenditur ad tales cum non sint de foro ecclesie sed foro Dei ...“.

43 Ibid., fol. 289ra.

44 Ibid.: „vna enim est ecclesia, cuius pars militat in terris, alia triumphat in celis et tota ecclesia desiderat animas deuotas adiuuari et saluas fieri. de peni. di. i. hii duo.“.

45 Ibid., fol. 289ra. Hostiensis added nothing could be done for the souls condemned to Hell, and the souls in Heaven did not need the aid of the living.

46 Henrici de Segusio Cardinalis Hostiensis *Decretalium commentaria*, 5 vols., Venetiis 1581 (reprint Frankfurt 2009), vol. 5, fol. 104ra–b: „Respondeo ex illo priuilegio speciali beati Petri apostoli. xxiii. q. i. quodcunque, sicut enim Papa potest facere constitutiones ligantes, & soluantes, prout patet in sacris ordinibus constitutis, qui ligantur, ne matrimonium contrahant quod alias sine peccato facere possent, & in illis, qui portant ligna saracenis ... sic multo fortius potest facere, & indulgentias soluantes ...“.

47 Ibid., vol. 5, fol. 104r: „Primum est potestas ligandi, atque soluendi, quae est apud praelatum, & non alium.“.

the Lateran canon permitted were guilty of „fraud against the power of the apostolic see“ („in fraudem potestatis apostolicae sedis“) and were to be gravely punished.⁴⁸ *Cum ex eo* set the rules for bishops, who previously had done what they thought fit, each being like a pope in his own diocese.⁴⁹ The cardinal restricted the impact of a collective indulgence to the subjects of each bishop involved, excluding anyone not subject to one of the participants in making such a grant.⁵⁰ His opinion rested, in part, on the fact that bishops only had power „in partem sollicitudinis“. Asking what happened *sede vacante*, whether the Church was without a head, Hostiensis reminded his readers that Christ was „proper and general“ head of the Church („imo habent caput ecclesie proprium & generale. scilicet. Christum“) at all times.⁵¹ He argued, however, for a large role for the College of Cardinals during the vacancy of the Apostolic see and even a share for it in papal plenitude of power, „perhaps“ saving the things belonging to the Roman pontiff's dignity and prerogatives.⁵²

By the early fourteenth century, the Bolognese canonist Johannes Andreae summarized the canon law as it had developed under the impetus of the papacy. His „Novella“ on the „Liber extra“ summarized much of the canon law governing indulgences, writing after Boniface VIII had inaugurated the Jubilee year but before Clement VI issued *Unigenitus*. Johannes summarized the limits *Cum ex eo* imposed on the power of bishops to grant indulgences.⁵³ The canon showed that a superior could restrain the power of an inferior in the granting of indulgences, but not in the administration of penance.⁵⁴ The Bolognese jurist discussed the possibility that the bishops of a province might combine with their metropolitan to grant two years of indulgence to the subjects of each diocesan bishop involved in this grant. He concluded that this would violate the letter of the Lateran canon.⁵⁵

⁴⁸ Ibid., vol. 5, fol. 103va.

⁴⁹ Ibid., vol. 5, fol. 104va: „[Non verentur] indifferenter, & in infinitum, nam ante hanc constitutionem dabant annum, & annos, & quantum ad hoc unusquisque episcoporum in sua diocesi Papa erat.“

⁵⁰ Ibid., vol. 5, fol. 104va: „nullus enim ipsorum potest dare indulgentiam, nisi subdito ...“. Hostiensis added that a metropolitan could grant an indulgence to all the faithful in his province.

⁵¹ Ibid., vol. 5, fol. 104vb.

⁵² Ibid., vol. 5, fol. 105ra: „saluis forsan his, quae ratione excellentiae, dignitatis, & eminentiae, ac praerogativae summi Pontificis sedi tantum apostolicae reseruantur ...“. On Hostiensis' oligarchic tendencies when discussing the College of Cardinals, see Brian Tierney, *Foundations of the Conciliar Theory. The Contribution of the Medieval Canonist from Gratian to the Great Schism*, Leiden ²1998 (Studies in the History of Christian Thought 81), pp. 136–140.

⁵³ Johannes Andreae, Ioannis Andreae ... in quantum decretalium librum nouella commentaria ..., Venetiis 1581 (reprint Torino 1963), fol. 129va.

⁵⁴ Ibid.: „quod prohibitio huius capituli eo modo etiam est intelligenda. scilicet. Quod inferioribus praelatis restrinatur potestas in indulgentiis publicis, non in foro poenitentiali ...“. Johannes added that the power to absolve came directly from God alone.

⁵⁵ Ibid.

The fathers at Basel, nonetheless, ignored the opinions of the canonists when they moved to issue an indulgence supporting a council of union. This proposal did not go forward without controversy. A response on behalf of Eugenius was submitted by Cardinals Juan Cervantes and Niccolò Albergati on February 17, 1436. In this document, Eugenius offered to issue an indulgence *auctoritate apostolica* for the work of union. This would conform to the practice of past popes and observed by the universal Church when plenary indulgences were granted.⁵⁶ Public debate began on March 23, 1436, when the four deputations at Basel agreed to present the issue in a general congregation on March 30 for approval. Disagreement was expected; and the Twelve, the steering committee of the council, already was considering the possibility that some of the fathers would be unwilling to preach the indulgence.⁵⁷ The council was willing to grant a delay until April, on the request of Cardinal Cervantes to permit Cardinal Albergati to arrive in Basel. However, no further reason for delay was accepted. A sign of future contention was the intervention of two of Pope Eugenius' agents, the archbishop of Taranto and the bishop of Padua, urging delay.⁵⁸

After Albergati had arrived, discussion resumed on April 11. The form of indulgence proposed was approved, with a provision excluding all other ideas for its wording. The session also tried to require Cardinals Cervantes and Albergati to attend the formal session at which the decree on the indulgence would be ratified and published.⁵⁹ Facing opposition to Basel's issuing a decree, Cardinal Cesarini argued that Basel could proclaim an indulgence just as the Council of Siena had done.⁶⁰ Cardinal Louis Aleman argued for papal concurrence with the decree.⁶¹ The archbishop of Taranto and the bishop of Padua argued in reply for the interest of the pope. The latter even contradicted the argument based on the Council of Siena, saying Pope Martin was the one who granted the indulgence in support of defenders of orthodoxy. Both bishops brought up the issue of the site of a council of union, arguing for a place in Italy, a sign of coming contention over the site of the future assembly. None of these arguments prevailed.⁶² A general congregation heard a report of this decision of April 13, and letters from Constantinople supporting such a decision were read into the council's records.⁶³

The council issued its plenary indulgence formally at the fourteenth session on April 14, 1436 without waiting for papal approval. The decree follows in the official

56 Georg Hofmann (Ed.), *Epistolae pontificiae ad concilium Florentinum spectantes*, 3 vols., Rome 1940–1946 (Concilium Florentinum Series A), vol. 1, p. 48.

57 Haller (Ed.), *Concilium Basiliense* (see note 15), vol. 4, p. 91.

58 *Ibid.*, pp. 95f., 98f.

59 *Ibid.*, pp. 104f.

60 *Ibid.*, pp. 106f.

61 *Ibid.*, p. 107.

62 *Ibid.*, pp. 107f.

63 *Ibid.*, pp. 108f.

records of the council the agreement made with the Greeks in 1435 about holding a council of union, a safe conduct for all who would accompany the emperor and patriarch to that council, and supporting documents of Emperor John VIII Palaiologos and Patriarch Joseph II.⁶⁴ The Basel decree *Vox illa iucunditatis* described itself as „in favor of a subsidy to be administered for leading back the Greeks“ („in favorem subsidii procurari pro reductione grecorum“), also offering „full pardon of all sins“ („plenariam omnium peccatorum veniam“) to „the Christian people“ („plebs christiana“) in support of reuniting those „separated from your fellowship“ („a tuo consortio“) for many long years. This opportunity for joyful reunion was described as the coming of a year of Jubilee.⁶⁵ The text claimed the assent of the Greek ambassadors at Basel for the churches gathering „at the site of the universal synod“.⁶⁶ This union was a remedy for those afflicted by „the most-cruel Turks and Saracens“ („a saevissimis turcis et saracenis“).⁶⁷ The indulgence was to pay not just the expenses of the Eastern attendees but also to support the defense of Constantinople in case of an attack by the Turks in the absence of the emperor.⁶⁸ The council sought a subsidy not just toward recovery of the Holy Land (the crusade indulgence) but to save vast numbers of souls by supporting the expenses of the Greeks as they were brought back into union.⁶⁹

The council defended its decision in the synodal letter *Cuperet*, addressed to Cardinals Giuliano Cesarini and Juan Cervantes, issued in May of 1436. The letter described the indulgence as granted without papal approval because of the urgency of the situation in the East. Furthermore, the assembly appealed to precedent, pointing once again to the decree of the Council of Siena urging the conferral of indulgences on those who participated in suppressing heresy. The letter also argued that the plenary indulgence had been granted „with the holy council approving“ („sacro approbante Concilio“).⁷⁰ On May 25, 1436, the council agreed to grant agents for the indulgence

⁶⁴ Melloni/Dainese (Eds.), *The General Councils* (see note 12), vol. 2,2, pp. 981–997, esp. pp. 991–997.

⁶⁵ Ibid., p. 991. At p. 995, *ibid.*, the decree promises „plenariam remissionem“.

⁶⁶ Ibid., p. 993: „Audistis pridem sollemnes ambassiatores serenissimi imperatoris et patriarchae constantinopolitani, ab hac sancta synodo accersitos, Basileam advenisse, et tandem, Deo propitio, conclusisse nobiscum modum huius sanctae unionis perficiendae, assensu sanctissimi domini Eugenii papae accedente, ut videlicet ad locum synodi universalis tam nostri quam sui archiepiscopi et episcopi, ipseque imperator, et patriarcha constantinopolitanus, alique orientalis ecclesiae patriarchae accedant.“

⁶⁷ Ibid., p. 992.

⁶⁸ Ibid., p. 993.

⁶⁹ Ibid., p. 994: „Hic enim non solum ad recuperandam terram intenditur, sed etiam millia millium animarum, pro quibus mediocre subsidium petitur, unde impensae grecis promisse, sine quibus tam sanctum opus perfici nequit, inveniri possint.“ Basel's *forma indulgentiae* appears with a *forma absolutionis* in Bernkastel-Kues, St. Nikolaus-Hospital, MS 164, fols. 102r–105r, esp. fol. 105r.

⁷⁰ Mansi, *Sacrorum* (see note 14), cols. 282–288, esp. cols. 285–287.

full liberties in doing their work even if opposed by nuncios of the pope.⁷¹ By 1438, the Council of Basel had collectors in place to receive the revenues from the indulgence supporting the council of union. In that year it decided to appoint a group to examine their accounts.⁷²

Basel did not stop with the plenary indulgence for support of the council in Avignon. It extended a plenary indulgence to incorporated participants *sede vacante* after the deposition of Eugenius IV in 1439.⁷³ Basel also issued indulgences of a year „in the accustomed form of the Church“ („in forma ecclesie consueta“) to those who visited the city's churches, praying for the success of the council and the election of a successor to Eugenius. At the coronation of Felix V, the newly crowned pontiff, Cardinal Aleman and, in the vernacular, the master of the cathedral fabric granted indulgences to those who were present.⁷⁴

These intentions were not at issue between pope and council, nor was the existence of the treasury of merits. However, the council was claiming a power the papacy regarded as its own. Basel granted these graces by opening the spiritual treasury using the authority it claimed as the Church's representative, power which Christ had granted at his Ascension.⁷⁵ The decree equated the privileges earned with those received by pilgrims who went to Rome „at the time of the Jubilee“ („tempore iubilaei“), a reference by implication to *Antiquorum* and *Unigenitus*, as well as to the crusade indulgence („vel cruce signatis ad recuperationem terrae sanctae“).⁷⁶ By its own authority as the representative of the Church, the council ordered promulgation of the indulgence in all churches, including those of the mendicant orders, together with measures against diverting the money to other uses. Those who did this were threatened with excommunication.⁷⁷

Faced with this usurpation of his powers, Eugenius objected; and the council replied obliquely in its next decree about the site of the council of union with the Greeks. The Eugenian position is best understood from the „Libellus apologeticus“

71 Haller (Ed.), *Concilium Basiliense* (see note 15), vol. 4, p. 148. Cardinals Cesarini and Aleman were assigned a role in choosing these agents; see *ibid.*, vol. 4, p. 152.

72 Paul Lazarus, *Das Basler Konzil. Seine Berufung und Leitung, seine Gliederung und seine Behördenorganisation*, Berlin 1912 (*Historische Studien* 100) (reprint Nedeln 1965), p. 251 n. 40. Some records of these receipts survive; see *ibid.*, p. 251 n. 39.

73 Mansi, *Sacrorum* (see note 14), cols. 222–225, describing the grant as „plenariam remissionem omnium peccatorum suorum“.

74 Haller (Ed.), *Concilium Basiliense* (see note 15), vol. 6, p. 645, vol. 7, p. 191.

75 Melloni/Dainese (Eds.), *The General Councils* (see note 12), vol. 2,2, p. 994: „decrevit haec sancta synodus, universalem repraesentans ecclesiam sponsam Christi, affluenter aperire spirituales thesauros, quos ipse salvator ascendens in caelum sibi reliquit.“ This claim is based on the decree *Haec sancta* of the Council of Constance, which the Basel assembly restated in the synodal letter *Cogitanti* (*ibid.*, p. 814) and excerpted in a decree of its second session (*ibid.*, pp. 768f.).

76 *Ibid.*, vol. 2,2, p. 995.

77 *Ibid.*, vol. 2,2, pp. 996f.

(1436/37), which summarized the papal position in opposition to certain of Basel's decrees.⁷⁸ One of the several points made was that the council had issued plenary indulgences „by the authority of the universal Church“.⁷⁹ Eugenius claimed that he had intended to issue plenary indulgences „in the accustomed form of the Church“ and had said so through his legates but that the assembly went forward anyway with its grant. Since granting plenary indulgences was the pope's prerogative, he said, the council's power in this matter was null.⁸⁰ Eugenius also accused the assembly of deceptively claiming that the papal legate had consented.⁸¹ He also warned Christian princes not to assent to Basel's imposed taxes or its indulgences.⁸²

Eugenius stated his opinion on indulgences to the council less baldly on February 27, 1437. Replying to five petitions delivered to him on behalf of the council, the indulgence was not to be issued until the site acceptable to the Greeks had been chosen. Then the pope would gladly grant the petition for an indulgence supporting the work of union.⁸³ Eugenius, late in 1437, threatened those who diverted money from the council of union with excommunication.⁸⁴ The pope issued in 1438 an indulgence of his own on the basis of the power Christ granted Peter and his successors to dispense from the treasury of merits in support of the Council of Ferrara-Florence.⁸⁵ Giovanni Berardi and Antonio de San Vito were named collectors of this indulgence.⁸⁶

78 Joachim W. Stieber, *Pope Eugenius IV, the Council of Basel and the Secular and Ecclesiastical Authorities in the Empire (1431–1449). The Conflict over Supreme Authority and Power in the Church*, Leiden 1978 (Studies in the History of Christian Thought 13), pp. 27–29, 33f.

79 Odorico Rinaldi, *Annales ecclesiastici ab anno quo definit card. Caes. Baronius MCXCXVIII usque ad annum MDXXXIV continuati*, vol. 18, Köln 1693, pp. 147A–211A, esp. p. 150B, cited from Hathi Trust (URL: <https://www.hathitrust.org/>; 26. 1. 2017): „dant indulgentias in fine sermonis & missae auctoritate universalis Ecclesiae ...“.

80 Rinaldi, *Annales ecclesiastici* (see note 79), vol. 18, p. 155B: „sed sprete oblatione omnino S.D.N. quam fecerat per medium legatorum, de dandis indulgentiis plenariis in forma Ecclesiae consueta, uti in cedula continentur, decreverunt in publica congregatione concilium, & sessionem demum tenere, in qua auctoritate, qua funguntur, quae in hac parte est nulla, indulgentias plenarias publicarent.“.

81 Ibid.

82 Rinaldi, *Annales ecclesiastici* (see note 79), vol. 18, p. 158A.

83 Hofmann (Ed.), *Epistolae* (see note 56), vol. 1, p. 57.

84 Ibid., vol. 1, p. 108.

85 Rinaldi, *Annales ecclesiastici* (see note 79), vol. 18, p. 194B: „quod beato Petro Apostolorum principi, & aeterni clavigero, ac pastori Ecclesiae, & successoribus suis infinitum illum thesaurum, qui in Christi sanguine fidelibus datur, plena sit dispensandi attributa potestas ...“; Hofmann (Ed.), *Epistolae* (see note 56), vol. 2, pp. 51–53. The pope also offered indulgences for opposing the Turks; see Georgius Fedalto (Ed.), *Acta Eugenii papae IV (1431–1447)*, Roma 1990 (Ecclesia Catholica. Commissio Codici Iuris Canonici Orientalis Recognoscendo. Fontes 3rd ser. 15), pp. 12–14, 144, 163. Eugenius also issued an indulgence for the Florentine Duomo, which he had consecrated; see Hofmann (Ed.), *Epistolae* (see note 56), vol. 2, pp. 79f.

86 Ibid., pp. 49–51.

He also attempted to have the contributions to Basel's indulgence confiscated and delivered to papal agents.⁸⁷

By 1437 the indulgence issue had found its way into the forefront of the fight over the site of the council of union which eventually split the Basel assembly into factions. On May 7, 1437, in the twenty-fifth session, the majority voted for Basel, Avignon or Savoy as the site; but the minority opted for a city in Italy, a location more acceptable to both the Greeks and Eugenius.⁸⁸ The majority, in an additional decree, assigned revenues from the indulgence and a tithe to the city of Avignon to support the council of union. The indulgence was described as granted to the faithful „by this holy synod“ from the goods granted it by God. No concession was made by Basel's majority to the pope's claim to be the only one able to issue plenary indulgences.⁸⁹

One participant in the council, Gaufridus de Monte Electo, abbot of St-Honorat (Lérins), wrote a „Tractatus de potestate et auctoritate Concilii Basiliensis“, in 1436.⁹⁰ This tract was aimed at those who murmured against the measures taken at Basel, including the decree *de indulgentiis faciendis*. The abbot claimed power for the Basel assembly the same as or equal to that of previous general councils, describing this power as „divinely conferred“ („diuinitus attributam“).⁹¹ Gaufridus outlined the process by which the deputations reported decrees to a general congregation for approval followed by a solemn session, opened with the Mass of the Holy Spirit, in which the papal legate (Giuliano Cesarini) ordered their publication under a form claiming they were acts of a synod „legitimately gathered in the Holy Spirit“ („in spiritu sancto legitime congregata“).⁹² Atop the ability to issue decrees, grant dispensations and hear cases, the abbot claimed for the Basel assembly the right to grant an indulgence. He claimed that this ability derived from the power of the keys, which (according to

⁸⁷ Ibid., pp. 43f.

⁸⁸ Melloni/Dainese (Eds.), *The General Councils* (see note 12), vol. 2,2, pp. 998–1002; „Concilium Ferrariense-Florentinum-Romanum 1438–1445“, in *ibid.*, pp. 1185–1188. The majority decree (*ibid.*, p. 1001) also confirmed the tenth it had imposed on the Western churches to support the effort toward reunion.

⁸⁹ Ibid., pp. 1002–1004, esp. p. 1002: „quae ex indulgentiis per ipsam sanctam synodum universis christifidelibus de bonis sibi a Deo collatis pro prosecutione unionis occidentalis et orientalis ecclesiarum ad eandem christianae fidei professionem in dicto concilio ...“.

⁹⁰ Gaufridus de Monte Electo, *Tractatus de potestate et auctoritate Concilii Basiliensis* in Panormitanus, *Nobilissimus ac prestantissimus tractatus domini Nicolai de tudisco abbatis Panor. super Consilio Basiliensis editus* ..., Lyon 1506. The abbot had Angevin ties; see Heribert Müller, *Die Franzosen, Frankreich und das Basler Konzil (1431–1449)*, 2 vols., Paderborn 1990 (*Konziliengeschichte. Reihe B, Untersuchungen* 4), vol. 1, pp. 123, 258, 340, vol. 2, pp. 653, 774f., 807, 825.

⁹¹ Gaufridus de Monte Electo, *Tractatus de potestate et auctoritate Concilii Basiliensis* (see note 90), fol. Ar: „Si tamen credimus sacrum illud generale consilium eiusdem esse auctoritatis vel equalis sicut fuerunt alia generalia precedentia quod vniuersis fatetur orbis.“.

⁹² Ibid., fol. Aiiv.

Augustine) Peter had received on behalf of the Church. Through him, according to Jerome, the council had the power to bind and loose.⁹³ For this reason the general council, representing the Church, was able to grant indulgences.⁹⁴ The abbot also claimed that this power came from the general council and not the pope, ignoring *Antiquorum* and *Unigenitus* in his supporting references to canon law.⁹⁵

The Basel indulgence decree did not have a major place in the polemics written after the council and the pope broke with one another, competing for the possession of plenitude of power. A few examples of apologists pursuing this issue can be found, however, in polemics on behalf of pope and council, for example in the polemical exchanges of the canonist Nicholas de Tudeschis (Abbas Panormitanus) and Nicholas of Cusa, acting for Eugenius, at the imperial diets of 1439–1449.

Cusanus first brought indulgences into the debate at Mainz in 1441, where, according to Johann Wenck, he denied that Pope Eugenius ever consented to the council's indulgences, saying instead that Basel usurped this power.⁹⁶ John of Segovia added a report that Cusanus said the money collected would be used against the pope.⁹⁷ Cusanus did answer John of Segovia on this point, saying the bull of indulgence was one piece of evidence that the Council of Basel had regarded bringing the Greeks back into union as a higher priority than resisting the pope.⁹⁸ However, Cusanus emphasized papal plenitude of power, especially as it was exercised in moving the Council of Basel to Ferrara and then to Florence in pursuit of the goal of ecclesiastical union. This fit into a larger papalist polemic which earned Nicholas his reputation

⁹³ Ibid., fol. Aiiiir: „Item et quod sacrum consilium generale possit dare indulgentias apparet ex eo que potestas indulgendi peccata et remissiones faciendi procedit a potestate clauium que fuere date ecclesie vniuersali per Petrum designate. vt in c. quantumcunque. xxiii. q. i. et dicit Hieronymus. quod domus dei. que est ecclesia vniuersalis clauis accepit et potestatem soluendi et ligandi vt in c. omnibus. xxiii. q. i.“. For this argument about the keys and the papalist response, see Thomas M. Izbicki, A Papalist Reading of Gratian. Juan de Torquemada on c. *Quodcunque* [C. 24 q. 1 c. 6], in: Kenneth Pennington/Stamley Chodorow/Keith H. Kendall (Eds.), Proceedings of the Tenth International Congress of Medieval Canon Law, Syracuse 13–18 August 1996, Città del Vaticano 2001 (Monumenta iuris canonici. Series C, Subsidia 11), pp. 603–634.

⁹⁴ Gaufridus de Monte Electo, Tractatus de potestate et auctoritate Concilii Basiliensis (see note 90), fol. Aiiiir: „ergo consilium generale vniuersalem ecclesiam representans nulli dubium est quam possit dare indulgentias.“ Gaufridus supported the argument for representation with a string of canon law texts and the government of a city by its „rectors and outstanding persons“ („rectores et presentiores“) as its representatives. What he omitted was the Constance decree *Haec sancta*.

⁹⁵ Ibid., fol. Aiiiiv.

⁹⁶ Erich Meuthen/Hermann Hallauer (Eds.), Acta Cusana. Quellen zur Lebensgeschichte des Nikolaus von Kues, vol. 1,2, Hamburg 1983, p. 327: „Item dixit, quod Eugenius nunquam consensisset in indulgentias, sed eandem potestatem illi de Basilea sibi usurpassent.“.

⁹⁷ Ibid., p. 330.

⁹⁸ Ibid., pp. 354f.

as the Hercules of the Eugenians but also the enmity of Basel loyalists like Wenck and Vincent of Aggsbach.⁹⁹

At the Diet of Frankfurt (1442), Nicholas' presentation emphasized plenitude of power. Discussing the possibility that councils could err, as had the Second Council of Ephesus (449), Cusanus said in his oration to the diet that, if the pope could not overrule an erring assembly, then the Church would lack „a principate with plenitude of power for building [it] up“. He accused the Council of Basel of trying to deprive the pope of that power.¹⁰⁰ In his contemporaneous „Dialogue against the Amedeists“, Nicholas added an argument that only the pope had fullness of power, even in a council, while the other bishops had a „restricted“ power „in partem sollicitudinis“. ¹⁰¹ The Master in the „Dialogue“ accused the adherents of Basel of giving lip service to the pope's plenitude of power, at least when talking to the Bohemians, but feeling free to disobey Eugenius otherwise.¹⁰² Cusanus also wrote that the pope was head of the council and head of the Church as Christ's vicar „cum plenitudine potestatis“. ¹⁰³ At Nürnberg in 1444 he summarized Basel's position as saying it was against the faith for the pope to use his plenitude of power against the council.¹⁰⁴

Panormitanus raised the issue of indulgences on the conciliar side at the same 1442 Diet of Frankfurt.¹⁰⁵ He narrated an exchange between Basel and Eugenius in which the council asked for agreement to its issuing an indulgence and imposing a tithe only to have the pope reply in the negative through an envoy.¹⁰⁶ The canonist placed this issue in a larger context, claiming plenitude of power for the general council. In his tract presenting Basel's case at Frankfurt, he claimed supreme power for the council as the Church's representative. The Church had the power „in fundamento“, but the pope only had it as the Church's minister („in principali ministro“).¹⁰⁷ Panormitanus used the term „plenitude of jurisdiction“ when describing the council's

⁹⁹ This did not mean, however, that Nicholas was a doctrinaire papalist in all his writings; see Thomas M. Izbicki, *An Ambivalent Papalism. Peter in the Sermons of Nicholas of Cusa*, in: Joseph Marino/Melinda W. Schlitt (Eds.), *Perspectives on Early Modern and Modern Intellectual History. Essays in Honor of Nancy S. Struever*, Rochester-New York 2001, pp. 49–65.

¹⁰⁰ Nicholas of Cusa, *Writings on Church and Reform*, trans. by Thomas M. Izbicki, Cambridge MA 2008, pp. 244–247.

¹⁰¹ *Ibid.*, pp. 286f. See also Meuthen/Hallauer (Eds.), *Acta Cusana* (see note 96), vol. 1,2, p. 482.

¹⁰² Nicholas of Cusa, *Writings on Church and Reform* (see note 100), pp. 310–313.

¹⁰³ Meuthen/Hallauer (Eds.), *Acta Cusana* (see note 96), vol. 1,2, p. 459.

¹⁰⁴ *Ibid.*, p. 477.

¹⁰⁵ For a summary of that Diet of Frankfurt, see Stieber, *Pope Eugenius IV* (see note 78), pp. 237–242.

¹⁰⁶ Panormitanus, *Quoniam veritas*, ed. by Hermann Herre and Ludwig Quidde, *Deutsche Reichstagsakten*, vol. 16: *Deutsche Reichstagsakten unter Kaiser Friedrich III.*, München 1928, pt. 2, pp. 439–538, esp. pp. 443, 445. The reply is summarized as „quod non intendebat prestare favorem ad executionem indulgentiarum ac impositionem decime“.

¹⁰⁷ *Ibid.*, pp. 472, 506. Peter, he said, invoking the authority of Augustine, represented the Church when he received the keys; see *ibid.*, pp. 501, 505.

powers, tantamount to claiming „plenitudo potestatis“.¹⁰⁸ He dismissed the claims of Eugenius – and Cusanus – as part of a larger arrogation to the papacy by statute of powers once given by Christ to all the apostles. Among his examples of this process of arrogation was the claim to the sole power of granting indulgences.¹⁰⁹

Writing after the Council of Basel had adjourned in 1449, Antoninus, a Dominican observant, theologian and archbishop of Florence, composed an extensive „Summa moralis“, a four volume compendium which included extensive discussions of indulgences and papal power.¹¹⁰ Using both canon law and Scholastic theology, Antoninus summarized existing ideas about remission of punishment (*poena*), the papal ability to draw upon the treasury of merits to grant indulgences, the power of the keys, applicable even in Purgatory, and the place of this power in the schema of orders and jurisdiction as jurisdiction in the external forum.¹¹¹ Only the pope could confer remission on any believer. Antoninus specified that these grants pertained to papal plenitude of power, described as „plenary authority“.¹¹² Bishops, even bishops-elect not yet consecrated, could grant indulgences to their own subjects as acts of jurisdiction. Antoninus, however, made specific reference to *Cum ex eo*, which limited grants tied to the dedication of a church or its anniversary.¹¹³

Antoninus gave detailed attention to the Jubilee indulgence, a plenary indulgence available only on rarest occasions. The archbishop expressed uncertainty about the origins of the Jubilee. He was able, however, to cite Johannes Andreae and other doctors as saying Boniface VIII set the frequency of Jubilee years at one in a century.¹¹⁴ He then referenced decisions by Clement VI and Gregory XI setting the schedule as one Jubilee every fiftieth year, because very few human beings could hope to reach

¹⁰⁸ Ibid., p. 520: „si non habuisse hanc potestatem a deo minime potuissent hanc jurisdictionis plenitudinem in ecclesia exercere“.

¹⁰⁹ Ibid., p. 521: „facit etiam, quoad hodie statutum est quod indulgentias concedendas.“.

¹¹⁰ Antoninus of Florence, *Summa theologica*, 4 vols., Verona 1740 (reprint Graz 1959); Kaepeli, *Scriptores Ordinis Praedicatorum medii aevi* (see note 1), vol. 1, pp. 80–87 no. 3407; vol. 4, pp. 27–31.

¹¹¹ Antoninus of Florence, *Summa theologica* (see note 110), vol. 1, cols. 597–599, 606; vol. 3, cols. 1214–1216, 1250.

¹¹² Ibid., vol. 1, col. 599: „Primum est auctoritas plenaria, quam habet Papa erga omnes.“ Antoninus added that legates had this power only while representing the pope. See also *ibid.*, vol. 1, col. 602: „Demum videndum est de indulgentia plenaria, quae datur solum a summis Pontificibus ...“.

¹¹³ Ibid., vol. 1, cols. 599f., esp. col. 600: „In anniversario dedicationis tantum quadraginta dies, extra *De poen. et remiss.* cap. *Quum ex eo*, in fine“.

¹¹⁴ Ibid., vol. 1, col. 610: „Quando habuerit initium talis indulgentiae Jubilei, nondum inveni. Sed Joannes Andreas & quidam alii doctores referunt Bonifacium VIII. instituisse de consilio & consensu cardinalium indulgentiam plenariam, seu concessisse de centenaro in centenarium accedentibus ad urbem & visitantibus certis diebus quasdam urbis ecclesias ...“.

Antoninus then listed S. Giovanni in Laterano, S. Pietro in Vaticano, S. Maria Maggiore and S. Paolo fuori le Mura as these major churches.

their one hundredth year.¹¹⁵ Antoninus went on to mention the Jubilee declared by Pope Nicholas V for 1450; but he warned against believing a false letter, attributed to Nicholas „sed fictive inventa“, granting spiritual benefits.¹¹⁶ Antoninus argued that Jubilees were instituted to inspire devotion. Too many Christians were lukewarm and slow to do what would reduce the penalties for the innumerable sins human beings committed. The pope, the vicar of Christ, successor of Saint Peter, was able to grant the Jubilee indulgence to confirm the faith and arouse devotion. Moreover, these grants of indulgence could be tied by the pope to visits to particular churches in Rome on certain days.¹¹⁷ This was a practice instituted by the popes, but Antoninus was able to cite biblical texts supporting the idea of Jubilee.¹¹⁸ Thus he saw indulgences as deeply rooted in revelation.

Antoninus also looked at the pope's ability to affect souls in Purgatory. Drawing on the „Summa“ of Augustinus Triumphus, he argued that the power to bind and loose extended to Purgatory. Souls not yet in heaven could be affected by papal plenitude of power. The archbishop also cited the legend that Gregory the Great raised the emperor Trajan and baptized him as further proof that the souls of the dead could be affected by papal acts of jurisdiction.¹¹⁹ In addition, Antoninus denied that indulgences could be used to release unbaptized infants from Limbo. They had neither free will nor the sacrament of baptism in life; and so, lacking faith, they could not benefit from an indulgence.¹²⁰

Torquemada, also writing after Basel's defeat, saw claims to being able to grant indulgences as inherent in the competition for supreme authority in the Church, which the discussion of the issue in his „Summa“ shows. His argument for papal plenitude of power and thus supremacy in Church government endured. It was used by the Dominicans who defended Rome in the polemics directed against the so-called *conciliabulum* of Pisa, convoked in 1511 by cardinals opposed to Pope Julius II and supported by the king of France and Emperor Maximilian. Thomas de Vio (Cajetan), Master General of the Order of Preachers, confronted the issues in his anti-conciliar polemics. Jacques Almain, the Sorbonne's chosen champion to defend the ecclesiastical politics of King Louis XII, raised the issue of indulgences. He said, as part of his argument for conciliar supremacy, that indulgences were granted from the Church's treasury. Thus the council, representing the Church, could grant these spi-

115 Ibid., col. 610: „Postea Clemens, & exinde Gregorius considerantes paucissimos homines attingere ad centissimum, reduxerunt numerum centum annorum ad numerum quinquagenarium, ad quem perveniunt, qui in mundo vetera sunt.“

116 Ibid., cols. 610f.

117 Ibid., col. 610.

118 Ibid., cols. 611f.

119 Ibid., vol. 3, cols. 1214f.

120 Ibid., vol. 3, col. 1215: „sed sine gratia non potest quis esse particeps indulgentiae“.

ritual favors, as was part of the power to bind and loose.¹²¹ Cajetan noted Almain's argument in his „Apology“, but he denied the council can be separated from the pope in the exercise of power. Without the pope, the council was headless and helpless in the power of jurisdiction, including in granting indulgences.¹²² This did not stop conciliarists from arguing that Church in council could grant indulgences. John Mair, Almain's teacher, argued that the pope granted these favors from the Church's treasury and so the council could grant them too.¹²³

At the outbreak of the Reformation, Dominicans were involved in early critiques of Martin Luther's teachings.¹²⁴ Two of the Friars Preachers resident in Rome played significant roles in these refutations of Luther, unintentionally helping to alienate him from the papacy and its established doctrines. One was Cajetan, promoted to the College of Cardinals in 1517. The other was Silvestro Mazzolini (Prierias), Master of the Sacred Palace, the official theological adviser to Pope Leo X when complaints about Luther's opinions reached Rome. Prierias was the author of the compendious „Summa summarum“ or „Summa sylvestrina“ (1514/15), treating the practical aspects of theology. He was a member of the observant wing of the order and a critic of Cajetan's theology, treating the cardinal, a Dominican Conventual, as too free in his interpretation of the „Summa theologiae“ of Thomas Aquinas.¹²⁵

The title on indulgences in the „Sylvestrina“ offered a detailed exposition of accepted doctrine, based on both theology and canon law, including the „Summa theologiae“ of Thomas Aquinas and *Cum ex eo*. According to received opinion, an indulgence required the authority of the one granting it, charity on the part of the recipient and piety, the love of God and neighbor, as the cause of this remission.¹²⁶ The authority to grant indulgences involved the ability to dispense from the treasury of merit.¹²⁷ This authority belonged to ecclesiastical power as an aspect of the power of jurisdiction. In a diocese, this power belonged to the bishop alone. He could

121 James H. Burns/Thomas M. Izbicki, *Conciliarism and Papalism*, Cambridge 1997 (Cambridge Texts in the History of Political Thought), pp. 155f.

122 *Ibid.*, pp. 234f., 255f.

123 *Ibid.*, pp. 308f.

124 Scott H. Hendrix, *Luther and the Papacy. Stages in a Reformation Conflict*, Philadelphia 1981, pp. 44–70; David V. N. Bagchi, *Luther's Earliest Opponents. Catholic Controversialists, 1518–1525*, Minneapolis 1991.

125 Michael Tavuzzi, *Prierias. The Life and Works of Silvestro Mazzolini da Prierio, 1456–1527*, Durham NC 1997, pp. 75–78, 91–97, 134 no. 22.

126 Silvestro Mazzolini, *Summa summarum*, Bologna 1515, fol. 336ra, accessed via MDZ/Digitale Bibliothek (URL: http://reader.digitale-sammlungen.de/en/fs1/object/display/bsb11060515_00001.html; 26. 1. 2017).

127 *Ibid.*, fol. 335vb: „requiritur auctoritas dispensandi huiusmodi thesauri“; *ibid.*, fol. 337rb: „quia vt dicit s. Tho. potestas faciendi indulgentias consequitur iurisdictionem“. A bishop-elect, if already a priest, had the jurisdiction to grant indulgences; see *ibid.*, fols. 336vb, 338rb.

grant indulgences to his subjects but not to those of other bishops.¹²⁸ The „Summa summarum“ claimed for the pope sole power to grant plenary indulgences without his making reference to the Jubilee or the bulls of Boniface VIII and his successors about this indulgence. Prierias identified this monopoly specifically with papal plenitude of power.¹²⁹ He admitted limits to papal power in areas like forgiveness, in which the pope could not do what only God could, including releasing from the pain of divine condemnation.¹³⁰ Prierias, drawing on an opinion of Antoninus of Florence, also said that the pope could not simply decide to empty Purgatory, which would be indiscrete and irrational.¹³¹

When Martin Luther prepared the „Ninety-Five Theses“ in 1517, he drew on his previous writings about indulgences, distilling them into brief statements. Among the issues he raised were the nature of the pope’s power and the extent of his ability to grant indulgences, whether to the living or the dead:

5. The pope has neither the will nor the power to remit any penalties beyond those imposed either at his own discretion or by canon law.

20. Therefore the pope, in speaking of plenary remission of all penalties does not mean „all“ in the strict sense, but only those imposed by himself.

41. Papal indulgences should only be preached with caution, lest people gain a wrong understanding, and think that they are preferable to other good works: those of love.

53. There are enemies of Christ and the pope who forbid the word of God to be preached at all in some churches, in order that indulgences may be preached in others.

73. It is foolish to think that papal indulgences have so much power that they can absolve a man even if he has done the impossible and violated the mother of God.

83. Again: Why should funeral and anniversary masses for the dead continue to be said? And why does not the pope repay, or permit to be repaid, the benefactions instituted for these purposes, since it is very wrong to pray for those souls who are now redeemed?¹³²

128 Ibid., fol. 336va: „Et ideo solus episcopus proprie prelati ecclesie dicitur ideoque ipse solus quasi sponsum anulum ecclesie recipiat. Ideoque solus habet plenam potestatem in dispensatione sacramentorum et iurisdictionem in foro causarum quasi persona publica ...“. On a bishop’s inability to grant indulgences to others’ subjects, see *ibid.*, fols. 336vb–337rb.

129 Ibid., fol. 336va: „Secundum docto. in c. quod autem et in c. cum ex eo. de pe. et re. indulgentiam procedere potest primo solus papa, quia solus papa assumptus est in plenitudine potestatis. d. c. cum ex eo. et 24 q. i. quodcunque“; *ibid.*, fol. 338rb: „Indulgentia plenaria solum a summis pontificibus datur.“ Prierias went on to say papal legates could dispense plenary indulgences during their time representing the pope.

130 Ibid., fols. 335rb, 338va.

131 Ibid., fols. 337rb–va: „Ex quo infert archie. et s. Tho. quod papa non potest ad libitum euacuare purgatorium: quia hoc esset indiscretum et irrationabile.“

132 John Dillenberger (Ed.), Martin Luther. Selections from His Writings Edited and with an Introduction. Garden City NY 1961, pp. 489–500. David V. N. Bagchi, Luther’s Ninety-Five Theses and the Contemporary Criticism of Indulgences, in: Swanson (Ed.), Promissory Notes (see note 19), pp. 331–355, esp. pp. 353–355. Luther also preached an early sermon criticizing indulgences, see Timothy J.

The „Theses“ set off a chain reaction of polemics, and canon law soon entered into the disputes they aroused. Luther himself used the canons in his Explanations of the „Ninety-Five Theses“. Arguing against the idea of a treasury of merits from which the pope could draw and the automatic release of souls from Purgatory through indulgences, he used the „Constitutiones Clementinae“ (Clem. 5. 9.2) to say intercession did not mean this.¹³³ Luther argued, instead, that the pope’s plenitude of power „is of itself sufficient for the remission of penalties and cases reserved by himself“. The most a priest or the pope could do to distribute merits was by absolving excommunicates.¹³⁴

Prierias’ polemics against Luther began when word of this controversy reached Rome, with the Master of the Sacred Palace placing emphasis on papal power as an issue. An example of Prierias’ polemic against Luther is his „Dialogus de potestate papae“, a fictitious dialogue between Martin and Sylvester. Prierias set down four foundations, identifying the Church *virtualiter* with the Roman church, and thus *virtualiter* with the Roman pontiff, the head of the body after Christ Himself. The Church, and thus the Roman see and the pope, were unable to err in faith. Anyone who rejected their doctrine was a heretic. The friar added a corollary: „Whoever says of indulgences that the Roman church could not do what it does *de facto* is a heretic.“¹³⁵

The statements of Martin in the dialog are drawn from the „Ninety-Five Theses“. After Martin recited Thesis 21, denying the pope could remit penalties in Purgatory, Sylvester replied that denying the pope’s power extends to Purgatory was bad thinking about „the actions and doctrine of the Church“ and thus was heretical.¹³⁶ The idea of the Church’s treasury was defended on the basis of papal authority, beginning with Gregory the Great. To support this stand, Prierias cited not papal decrees but the works of Thomas Aquinas.¹³⁷ The pope’s power in that matter, Prierias said, was tied both to the key of orders to forgive faults and to the key of jurisdiction to remove punishments for a good reason (*causa*).¹³⁸ Prierias had Sylvester jab at

Wengert, Martin Luther’s Preaching an Indulgence in January 1517, in: Lutheran Quarterly 29 (2015), pp. 62–72.

133 Jarold J. Grimm (Ed.), Luther’s Works, vol. 31: The Career of the Reformer, vol. 1, Philadelphia 1957, pp. 170f.

134 Ibid., pp. 229f.

135 Peter Fabisch/Erwin Iserloh (Eds.), Dokumente zur Causa Lutheri (1517–1521), 2 vols., Münster 1988–1991 (Corpus Catholicorum 41–42), vol. 1, pp. 55f., esp. p. 56: „Corollarium: Qui circa indulgentias dicit, ecclesiam Romanam non posse facere id quod de facto facit, haereticus est.“

136 Ibid., vol. 1, p. 70: „Silvester: Negare potestatem papae non [sic] se extendere ad relaxandum penas in purgatorio per viam indulgentie, est male sentire de facto et doctrina ecclesie circa fidem aut mores, ideo hereticum est.“

137 Ibid., p. 92: „auctoritate ecclesie romane Romanorum pontificum, que maior est, inter quos sanctus Gregorius primus (teste divo Thoma) indulgentias dedit Rome in stationibus ...“

138 Ibid., pp. 94f., esp. p. 95: „Igitur potestas pontificis per clavem ordinis omnem culpam, et per

Martin and other „detractors of God’s vicar“ („detrahentes Dei vicario“) for denying papal power.¹³⁹ At one point he said that he wanted to bring the foes of papal power, corporal and spiritual, to naught.¹⁴⁰

Prierias’ influence was reflected in Leo X’s bull *Exsurge domine* (1520). The bull invoked Jesus, Peter and Paul, urging them to rise in defense of the Church. It pointed to the condemnations of Wyclif, Hus and Jerome of Prague at Constance, as well as the bloodshed by Germans in the wars with the Bohemians. Among the errors of Luther which Leo condemned were:

- 17. The treasures of the Church, from which the pope grants indulgences, are not the merits of Christ and of the saints.
- 25. The Roman Pontiff, the successor of Peter, is not the Vicar of Christ over all the churches of the entire world, instituted by Christ Himself in blessed Peter.
- 26. The word of Christ to Peter: „Whatsoever you shall loose on earth“ etc., is extended merely to those things bound by Peter himself.
- 27. It is certain that it is not in the power of the Church or the pope to decide upon the articles of faith, and much less concerning the laws for morals or for good works.

The bull also condemned Luther’s ideas about heresy, the power of councils and the condemnation of Hus.¹⁴¹ Small wonder that Luther burned a copy of *Exsurge* together with volumes of canon law and works by his German opponents John Eck and Jerome Emser.¹⁴²

Leo X sent Cajetan to Germany to deal with the rising tide of dissent. This legation culminated in the cardinal’s confrontation with Luther at the 1518 Diet of Augsburg. Cajetan’s own theology of indulgences was not entirely main stream, admitting that they were not mentioned in Scripture and the early Fathers. He did quote the canon *Cum ex eo*, along with Alexander III’s *Quod autem*, to support the practice, but he also said some indulgences were granted „without discretion“ (*indiscrete*).¹⁴³ Cajetan, however, when face to face with Luther, resorted to canon law to justify the very practice of granting these remissions. Luther said the cardinal cited *Unigenitus* in

clavem iurisdictionis, cuius est indulgere, omnem penam ex causa potest abolere“. See also *ibid.*, p. 98, and vol. 2, p. 89; Grimm (Ed.), *The Career of the Reformer* (see note 133), vol. 1, p. 261.

139 Fabisch/Iserloh (Eds.), *Dokumente zur Causa Lutheri* (see note 135), vol. 1, pp. 78, 83f., 182f. (Epitome).

140 *Ibid.*, vol. 1, p. 106.

141 Translation cited from Papal Encyclicals Online (URL: <http://www.papalencyclicals.net/Leo10/l10exdom.htm>; 26. 1. 2017).

142 James Atkinson, *The Trial of Luther*, New York 1971, pp. 94f. Luther’s books were burned in Rome; see *ibid.*, p. 97.

143 Bagchi, *Luther’s Ninety-Five Theses* (see note 132), pp. 347–349; Bernhard Alfred R. Felmborg, *Die Ablasstheologie Kardinal Cajetans, 1469–1534*, Leiden 1998 (*Studies in Medieval and Reformation Thought* 66).

support of the identification of the merits of Christ with the treasury from which indulgences were granted. Luther thought Cajetan was confident he never had seen the text, since it was an outlier in the collections of sacred canons and that its authority would be embraced by the German friar.¹⁴⁴ Cajetan went on to cite *Unigenitus* in his own tract on indulgences, completed in late 1518, in which he adopted a more conservative stance on the issue than he had previously. The text of Pope Clement appeared in an argument that an indulgence was a form of absolution and thus valid.¹⁴⁵ Cajetan cited Panormitanus to show that granting indulgences involved both orders and jurisdiction exercised by the pope, archbishops and bishops.¹⁴⁶ His argument for the use of both ecclesiastical powers was based partially on the decrees *Quod autem* and *Unigenitus*.¹⁴⁷ The cardinal also argued that the pope could grant indulgences from the treasury of the merits of Christ and the saints. Once again he cited *Unigenitus* as showing these grants were made „auctoritate apostolica“. ¹⁴⁸ The cardinal, however, still argued against indiscrete and superfluous indulgences („indiscretas et superfluas indulgentias“), citing *Cum ex eo* to support his argument.¹⁴⁹ (Cajetan had said many of the same things in the *opuscula* he wrote connected to the Diet of Augsburg).¹⁵⁰

By 1521 the issue of papal power had become so central to the growing Reformation that Cajetan wrote a tract „On the Divine Institution of the Pontificate of the Roman Pontiff“. As part of his extensive defense of the papacy, he claimed that papal power extended to opening and closing the gates of heaven. He also included the claim, carefully qualified, to papal power in Purgatory, a reference to the ability to grant indulgences:

„This authority, thirdly, also extends to purgatory. Note the Christ did not give Peter a judicial power over purgatory, even though he gave him the keys of the kingdom of heaven for opening and closing on behalf of those in purgatory ... But with reference to the keys of the kingdom of heaven, he excepted no one short of his final destiny from the Church's ability to open and close the kingdom of heaven, but said it absolutely and without restriction ... while therefore

¹⁴⁴ Fabisch/Iserloh (Eds.), *Dokumente zur Causa Lutheri* (see note 135), vol. 2, p. 89: „securus praesumebat, me non videsse Extravagantem, fretus fortassis eo, quod non omnes codices eam habent“.

¹⁴⁵ Ibid., vol. 2, p. 147: „opponitur communi tam theologorum quam canonistarum doctrina, canonizata a Clemente VI. In Extravagante *Unigenitus* de poen. et re“.

¹⁴⁶ Ibid., vol. 2, pp. 150–152.

¹⁴⁷ Ibid., vol. 2, p. 152.

¹⁴⁸ Ibid., vol. 2, p. 172, quoting Clement's decretal at length.

¹⁴⁹ Ibid., vol. 2, p. 162. He also cited *Unigenitus* to prove these grants had to be made for a good cause.

¹⁵⁰ Charles Morerod, *Cajetan et Luther en 1518*. Edition, traduction et commentaire des opuscules d'Augsbourg de Cajetan, 2 vols., Fribourg 1994 (*Cahiers Oecumeniques* 26), vol. 1, pp. 147, 288–295, vol. 2, pp. 437f., 448, 522–541.

judicial power is limited to those on earth, the keys of the kingdom of heaven extend to all short of their final destiny."¹⁵¹

The extent to which the controversy with Luther had become a fight over papal power is illustrated by the polemics of another sixteenth-century Dominican, Ambrosius Catharinus Politus. Catharinus was unusual in his order for supporting the doctrine of Mary's Immaculate Conception.¹⁵² He was, however, a papalist and a prolific writer against Luther and the other Reformers.¹⁵³ Catharinus claimed for the pope plenitude of power over all Christians.¹⁵⁴ Among those he criticized for opposing the papacy was Panormitanus, who had included among his errors claiming for councils plenitude of power yet saying they could err in faith.¹⁵⁵ Catharinus focused on the power of the pope to grant indulgences. He said those who denied this power did not understand its foundation in Christian tradition. Writing especially in defense of the belief that there was a treasury of the merits of Christ, Mary and the saints from which indulgences were drawn, the friar cited the authority of Thomas Aquinas, Bonaventure and other theologians. His favorite texts for support of the doctrine, however, were *Unigenitus* and other papal decrees.¹⁵⁶ Catharinus argued that the treasury of merits was „in the hand of the pope“, who could grant remission to the living and the dead.¹⁵⁷ To deny the applicability of indulgences to the dead was to fragment „the unity of the body of Christ“ („scinditur corporis Christi unio“).¹⁵⁸

¹⁵¹ Jared Wicks (Ed.), *Cajetan Responds. A Reader in Reformation Controversy*, Washington DC 1978, p. 114; Friedrich Lauchert (Ed.), *Thomas de Vio Caietanus O. Pr. De divina institutione pontificatus Romani pontificis* (1521), Münster 1925 (*Corpus Catholicorum* 10), pp. 51f.

¹⁵² Thomas M. Izbicki, *The Immaculate Conception and Ecclesiastical Politics from the Council of Basel to the Council of Trent. The Dominicans and Their Foes*, in: *Archiv für Reformationsgeschichte* 96 (2005), pp. 145–170.

¹⁵³ Josef Schweizer, *Ambrosius Catharinus Politus (1484–1553): ein Theologe des Reformationszeitalters. Sein Leben und seine Schriften*, Münster 1910 (*Reformationsgeschichtliche Studien und Texte* 11–12).

¹⁵⁴ Ambrosius Catharinus Politus, *O. Pr. Apologia pro veritate*, ed. by Josef Schweizer, Münster 1956 (*Corpus Catholicorum* 21), p. 164: „Plenitudo enim potestatis Papae iure divino est super omnes.“

¹⁵⁵ *Ibid.*, p. 238: „Sexto, errare concilium posse in his quae fidei sunt, concedit et simul plenitudinem potestatis habere.“ Catharinus went on to accuse Luther of claiming a council could define articles of faith and yet err. For Luther's use of Panormitanus in his „*Explanations of the Ninety-Five Theses*“, see Grimm (Ed.), *Career of the Reformer* (see note 133), vol. 1, pp. 265f.

¹⁵⁶ Ambrosius Catharinus Politus, *O. Pr. Apologia pro veritate* (see note 154), p. 246: „probatum evidentissime per decretalem Clementis extravag. *Unigenitus cum similibus aliorum pontificum*“. Catharinus added that the decretal was composed from the words of Scripture; see *ibid.*, p. 247.

¹⁵⁷ *Ibid.*, p. 251: „Hic thesaurus est in manu Papae, de quo per indulgentias dispensando satisfacere potest tam pro vivis quam pro defunctis et auferre ab eis hoc pacto poenas, quas vel paterentur seu pati deberent, vel nunc etiam patiuntur in purgatorio; et existimo eas valere tantum, quantum pronuntiatur.“

¹⁵⁸ *Ibid.*, p. 250.

Catharinus dismissed the idea that the pope could empty Purgatory, since a just cause had to exist for conferring remission of punishment.¹⁵⁹ Catharinus' concern for indulgences as an aspect of plenitude of power exercised within the unity of the Church contributed to the polemics which thrust Luther ever farther from Rome by accusing him of erring about issues of pardon, jurisdiction and obedience.

¹⁵⁹ Ibid., p. 252.