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Oration "Si putarem" of Enea Silvio Piccolomini (4 April 1444, Wiener Neustadt). Edited and translated by Michael von Cotta-Schönberg. Final Version. 2024. (Collected Orations of Pope Pius II; 5)

Michael Cotta-Schønberg

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Oration “*Si putarem*” of Enea Silvio Piccolomini (4 April 1444, Wiener Neustadt). Edited and translated by Michael von Cotta-Schönberg

(Collected Orations of Pope Pius II; 5)

Final Version

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Abstract

When the See of Freising in Bavaria fell vacant in August 1443, there were two candidates for the succession: Heinrich Schlick, brother of the imperial chancellor, the powerful Kaspar Schlick, and Johann Grünwalder, the illegitimate son of a Bavarian duke, and one of the cardinals of antipope Felix V. The matter was examined at a hearing before Emperor Friedrich III in Wiener Neustadt on 4 April 1444. Johann Grünwalder spoke for himself, and the chancellor for his brother. The chancellor's speech was largely written by his protégé, Enea Silvio Piccolomini of the Imperial Chancery. In his speech, Schlick put forward a number of political and legal reasons for appointing his brother. He also made a spirited defence of papal supremacy against the Council of Basel, and argued in favour of ending German neutrality between pope and council and of full German recognition of Pope Eugenius.

Keywords

Enea Silvio Piccolomini; Aeneas Silvius; Aeneas Sylvius; Pope Pius II; Papa Pio II; Emperor Frederick III (Habsburg); Kaiser Friedrich III (Habsburg); Kaspar Schlick; Freising Bishopric; Council of Basel; Council of Basle; Pope Eugenius IV; Pope Eugene IV; Papa Eugenio IV; German neutrality; Renaissance orations; Renaissance oratory; Renaissance rhetorics; Johann Grünwalder; Heinrich Schlick; Freisinger Bistumsstreit

Editor/translator

Michael v. Cotta-Schönberg

Mag. Art. (University of Copenhagen)
Bachelier en Philosophie (Université de Louvain)
Emeritus Deputy Director / The Royal Library, Copenhagen
Emeritus University Librarian / University of Copenhagen

ORCID identity: 000-0001-8499-4142

e-mail: typsita@gmail.com

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I. INTRODUCTION

1. Context¹

The final break between Pope Eugenius IV and the Council of Basel occurred in January 1438, when the pope transferred the council to the Italian town of Ferrara, thereby effectively closing the council in Basel. The council in Ferrara, later Florence, was a resounding success for the papacy, resulting in a – short-lived - union between the Western and Eastern Churches. Political events in Italy further strengthened Eugenius's position.

The council in Basel, however, refused to be transferred or dissolved and continued as a council not recognised by the pope. Its first reaction to the opening of the council in Ferrara was to suspend the pope, and the following year, in 1439, it deposed him as heretic and schismatic and elected a new pope, Felix V. The previous Council of Konstanz (1414-1418) had ended a schism in the Church, whereas the Council of Basel created a new one.

The state of schism opened the way for local interests to profit by playing the two popes with their papal administrations and the council against each other, but it also created confusion and intolerable uncertainties, for instance in the very important area of filling vacant church offices, when each party made its own appointment.

The European powers and churches therefore reacted negatively to the state of schism, and within a few years, they almost all recognised Eugenius as the legitimate pope.² The exceptions were a Bavarian duke and the Duchy of Savoy, unsurprisingly, since the antipope, Felix, had been the Duke of Savoy, now ruled by his son.

The German nation, however, invented its own solution. On 17 March 1438, at a meeting in Frankfurt, it declared a state of neutrality (also referred to as a *suspensio animorum*) vis-à-vis Pope Eugenius and the Council of Basel (hereafter referred to as German Neutrality). And in Mainz on 26 March 1439, it formally accepted the decrees of the Council of Basel from its legitimate period, but not without modifications and some very important exceptions, i.e., the suspension and deposition of Pope Eugenius³ (hereafter referred to as the Acceptation).⁴

Formally, the state of neutrality lasted until the German nation declared its obedience to Pope Eugenius in February 1447 and the Concordat of Vienna of 1448.

In November 1442, a *rapprochement* between the pope and the Holy Roman (German) Empire was set in motion when the emperor sent two of his counsellors, Kaspar Schlick and Ulrich

¹ Helmrath: *Basler*, pp. 192 ff.; Helmrath: *The Empire*, p. 426; Mass, I, pp. 297-315; Müller, pp. 396-404; Stieber, 216, 262-265, 310; Sudmann, pp. 130-138;

Toews, pp. 165-166; Voigt, II, pp. 308-321

² Stieber, p. 190

³ Cf. the notarial instrument in RTA, XIV, p. 110-111. Here, Germany followed France, where

King Charles VII had, in July 1438, decreed the so-called Pragmatic Sanction of Bourges, thus establishing the basis for a national Gallican Church

⁴ Stieber, p. 190

Sonnenberger, to the pope, at the time residing in Florence.¹ Both men were known to favour the cause of the pope rather than that of the Council. Their mission was, ostensibly, to request the holding of a new council, which the pope rejected.² However, an understanding was established between the pope and Kaspar Schlick that Schlick would promote the papal cause at the Imperial Court and his brother would be appointed bishop when a bishopric in the German sphere fell vacant – possibly Schlick was already at that time eyeing the See of Freising, whose bishop, Nicodemo della Scala, was ailing.³

When the envoys returned to the imperial court in January 1443, Kaspar Schlick, who had been active at the Imperial Court of Friedrich III since July 1440,⁴ was appointed Chancellor of the Empire.⁵ According to Stieber and other historians, this appointment clearly signalled a reversal of imperial policy and a move away from German Neutrality, the recognition of Pope Eugenius, and the abandonment of the Council of Basel. Hufnagel, however, believes that the King was still effectively neutral and that Schlick only somewhat later began to publicly support Eugenius's case. Only at the beginning of 1444, the imperial court began to actively but slowly prepare for the recognition of Eugenius.⁶

Among the decrees of the council accepted by the German nation in 1439 was the decree on capitular election of bishops.⁷

In a laudable effort to reform the procedures of appointing bishops to vacant sees, the council had decreed that the appointment of bishops should be based on elections by cathedral chapters, to be approved by the metropolitan,⁸ and to become effective through a papal letter of provision.⁹ However, it had also stipulated that the pope could refuse the candidate of the chapter, but only for an essential reason that must be stated specifically in the papal letter. Recourse could presumably be had to a council while it was sitting, but during ordinary times, without a council, the government of the Church had to be able to function, specifically to intervene in cases of flawed elections, e.g., in cases of proven simony.

Two conciliar decrees had not been accepted by the Germans in 1439, i.e., the decrees suspending and deposing Pope Eugenius. The Germans thereby, from the best motives, created a conundrum: if Eugenius was still the legitimate pope, then whose authority should be obeyed: that of the pope or that of the council?

The problem was especially great with regard to the provision of bishops to vacant sees. The German princes and prelates, in practice, frequently disregarded the neutrality and had recourse to Pope Eugenius, or to the council and its antipope, Felix, whoever best served their interests. However, in

¹ Hufnagel, pp. 291-294

² Stieber, pp. 248-250

³ Hufnagel, pp. 293-294, 300, 334; Stieber, p. 261-262; Voigt, II, p. 309

⁴ Hufnagel, p. 274

⁵ Hufnagel, p. 294

⁶ Stieber, p. 251. See also, however, Hufnagel, p. 297, 303, 307

⁷ The decree *Quemadmodum in construenda domo* of 13 July 1439 (Session XII). COD, pp. 469-472

⁸ The archbishop to whose archdiocese the diocese belonged

⁹ i.e. appointment

those cases where the pope and the council had each appointed their own candidate, problems arose that could become quite serious if the two candidates had powerful backers.

Such a case arose when Bishop Nicodemo della Scala¹ of Freising finally died on 13 August 1443, and the See of Freising fell vacant. Freising was an important see, located in Bavaria, but with most of its properties and castles in Austrian territory.² Its incumbent was a Prince of the Empire and member of the emperor's council, and moreover, it yielded substantial incomes and held a number of castles. It was thus a political, financial, and military entity of some importance, and to the dukes of Austria and to the emperors, as well as to the dukes of Bavaria, the appointment of its bishops was a political matter of great significance.³

There were two candidates to the see. One was Heinrich Schlick, brother of the powerful Imperial Chancellor, Kaspar Schlick. Apart from being the chancellor's brother, he does not seem to have had any special qualifications for an important episcopal office.⁴

The other was Johann Grünwalder, an illegitimate son of the Bavarian Duke, Johann of Bayern-München.⁵ He was already Vicar General of the Diocese of Freising and had been active at the Council of Basel, which he supported against Pope Eugenius. He had been appointed cardinal by Felix, the antipope, who, in this way, strengthened his ties with the House of Bavaria.

Already during Nicodemo's final illness, the chancellor had secured the emperor's support for his brother, and at the news of Nicodemo's death, he initiated a campaign for the appointment of his brother through letters addressed both to the pope, to the Council of Basel, to the Chapter of Freising, and to the Bavarian dukes.⁶ The emperor even sent an envoy, Hartung Kappel, to the Council to present his request for the appointment of Heinrich Schlick.⁷

In his letter to the pope, written for him by Piccolomini three days after Nicodemo's death in Vienna, i.e., on 16 August 1443, the chancellor informed the pope that the emperor had already written to the canons of Freising asking them to elect Heinrich Schlick, but for safety's sake, he asked the pope to fulfil his former promises and appoint his brother as Bishop of Freising: *For your Holiness knows how often you told me that when the occasion arose, you would gladly appoint my brother to a cathedral church.*⁸ Similar letters were sent to some of the cardinals.

¹ Mass, I, pp. 296 ff.

² This was not an extraordinary case, cf. Piccolomini: *Historia Austriacalis* (Sarnowsky), I, 3: [transl.] *Austria does not have its own bishopric, but the dioceses of Salzburg, Freising, Regensburg, and Passau have many cities, well-fortified castles, and extensive*

possessions in Austria (Ecclesia cathedralis in Austria nulla est, verum Salczburgensis, Frisingensis, Ratisponensis, Pataviensis oppida quamplurima et arces munitissimas latissimasque possessiones in Austria possident)

³ Hufnagel, p. 335

⁴ Voigt, II, p. 311

⁵ Mass, I, 297

⁶ Hufnagel, p. 335

⁷ Voigt, II, p. 312

⁸ WO, I, II, p. 60, letter 30: *Scit enim vestra beatitudo, quotiens mihi dixerit, quod adveniente casu libentissime fratrem meum ad aliquam cathedralem promoveret ecclesiam*

On 12 September 1444,¹ the pope, in the papal consistory,² appointed Heinrich Schlick Bishop of Freising. He did so by virtue of his general powers of reservation of episcopal offices,³ notwithstanding the conciliar decrees to the opposite effect.

The following day, on 13 September 1443, the Chapter of Freising elected Johann Grünwalder bishop. His election was quickly confirmed by the metropolitan, the Archbishop of Salzburg, who had himself been appointed by the council and not by the pope.

On 10 October 1443, Grünwalder entered Freising in triumph, was received as its bishop, and took over the administration of the diocese and its Bavarian possessions. He also managed to get possession of some of the castles belonging to the diocese situated in Austrian territories.⁴

In the middle of October, the chancellor received letters from friends at the papal court informing him that the pope had appointed his brother Bishop of Freising. He immediately had Piccolomini write a fulsome letter of thanks to the pope, promising him to be of continued service to him. He also informed the pope that Grünwalder had already been elected by the Chapter of Freising – by threats, entreaties, and rewards,⁵ and had been confirmed by the Archbishop of Salzburg, and he therefore requested that the papal letters of appointment of Henrich Schlick be sent to him as speedily as possible.⁶ Again, similar letters were sent to the cardinals.

Yielding to Austrian pressure, the archbishop afterwards refused to consecrate Grünwalder as bishop.⁷ Therefore, on 21 December 1444, Grünwalder appealed to the council.⁸ As Grünwalder had been a loyal and prominent member of the council itself and a staunch defender of its rights vis-à-vis the pope, the council was naturally inclined towards Grünwalder, as was antipope Felix, who was actively promoting his alliance with the German princes and the House of Bavaria. However, opposing the imperial candidate meant that the council, which was by this time rapidly losing support from the European rulers, risked losing the precious support of the emperor, too.

On 11 January 1444, the long awaited papal letters of appointment of Henrich Schlick finally arrived at the imperial court.

And on 21 February, the council – in a highly dramatic General Congregation – decided to postpone the matter, though a majority was clearly in favour of the appointment of Grünwalder.⁹ They did not then understand how greatly their opposition to the imperial chancellor would damage them.¹⁰

The appointment of the Bishop of Freising had by now become an important affair at the imperial court, containing at least four ingredients: the appointment of the bishop, the power struggle

¹ At this time, Eugenius IV was still in Siena. He left that city shortly afterwards and arrived back in Rome on 24 September, after an exile of 10 years

² The pope with the cardinals

³ Meuthen, p. 462

⁴ Cf. Mass, I, pp. 310-311

⁵ *Per minas, preces, et premia*: terms reused by Piccolomini in the oration of 4 April 1444

⁶ WO, I, II, pp. 99-100, letter 53

⁷ Meuthen, p. 462

⁸ Voigt, II, p. 314

⁹ Meuthen, p. 462

¹⁰ Hufnagel, p. 330

between court factions,¹ since the chancellor had important enemies at court,² relations with Bavaria, and the matter of the German Neutrality.

During the chancellor's frequent absences from court, the matter was conducted on his behalf by his protégé, Enea Silvio Piccolomini, who had joined the imperial chancery only a year before the death of Nicodemo. Both Piccolomini and Schlick had known Nicodemo well, Piccolomini as a one-time secretary³ and Schlick as a court colleague. Piccolomini must also have known Grünwalder from the time when they were both active at the council, and later at the court of the antipope, whose secretary Piccolomini was for a period.

Some German historians consider that Piccolomini did not play a very honourable role in this whole affair. Voigt talks about a "*Ränkespil*" (game of intrigues), "*Machinationen*", and "*Intriguen*",⁴ and Mass denounces it in these words: *Der Freisinger Bischofsstreit wurde zu einem trüben, von Opportunismus gezeichnetem Kapitel in der Geschichte des bekannten und späteren Papstes Pius II.*⁵ This would appear to be an exaggeration: in this whole affair, Piccolomini had simply been charged with defending the interests of his master in the imperial chancery. Obviously, there was an element of opportunism in his actions. However, fights over bishoprics were quite common at that time, and in this case, it was conducted within the strict framework of legality – though with some of that spicy invective so characteristic of Italian humanism. The great opportunists in the affair were the chancellor himself and Grünwalder. The role of Piccolomini was that of a young, talented secretary fighting for his master and deploying all the bureaucratic and literary talents at his disposal - not forgetting his connections at the papal court,⁶ though the chancellor's own connections were, in fact, much better.

Concerning the chancellor's accusations of simony and threats against Grünwalder, Voigt points out that they were never proven.⁷ But the chancellor dared raise them publicly in the middle of the imperial court and before the emperor, and given the practices of the time, they would not have appeared unlikely, though few at court might really have cared.

Both Henrich Schlick, appointed by Pope Eugenius, and Johann Grünwalder, elected by the Cathedral Chapter of Freising in defiance of the emperor's wishes, were now requesting to be invested by the emperor with the "*regalia*", i.e., the temporal rights of the diocese. The matter was

¹ Indeed, some years later, Ulrich von Eyczing accused Johann Ungnad, a high official at the imperial court and a chief opponent of the chancellor, of having "sold" the See of Freising to Johann Grünwalder, i.e., by supporting his claim and opposing the claim of the chancellor - for money. Cf. Piccolomini: *Historia Austriacis* (Sarnowsky), VI, 5: [transl.] *What shall we say about*

the Church of Freising that you sold to Johann Grünwalder, betraying that important and excellent light of your court, the chancellor Kaspar (Quid de Frisingensi ecclesia dixerimus, quam Johanni de Viridi Silva vendidisti summumque illum et excellentissimum vestrae curiae lumen Gasparem cancellarium prodidisti). Cf. Hufnagels remarks on Ungnad, p. 288

² Voigt, II, p. 316

³ 1432-1433

⁴ Voigt, II, pp. 308, 310, 320; see also Hufnagel, p. 337

⁵ Mass, I, p. 311

⁶ E.g., Cardinal Cesarini and Cardinal Berardi, through the Cardinal's secretary, Giovanni Campisio, a close friend of Piccolomini

⁷ Voigt, II, p. 311

referred to a court hearing held in Wiener Neustadt on 4 April 1444.¹ At the hearing, Johann Grünwalder spoke first, and afterwards the chancellor on behalf of his brother.²

From Quintilian and Cicero, Piccolomini knew about the classical, Aristotelian division of speeches into three genres: the panegyric, the deliberative, and the judicial.³ The oration “*Si putarem*” clearly belongs to the judicial genre as it dealt with a legal case (who is the legitimate Bishop of Freising?) and was presented at a hearing before the emperor and his council.

A draft of the speech had been written in the chancellor’s absence by Piccolomini in Latin. It was held by the chancellor after a speedy translation into German and – most probably - a co-operative revision.

In a letter of 8 June 1444 to a friend in Rome, Giovanni Campisio, Piccolomini wrote about the speech:

A short time ago, during the month of March, I came to this place [the city of Wiener Neustadt], following the court as usual, and here I saw something remarkable and worth telling. Before that, I had not heard orations in Germany like those that were once delivered before the rostra⁴ in Rome. Johann of Bavaria, one of the so-called cardinals of Felix, with the title-church of Saint Martin, arrived [at Court]. He claimed that he had been elected Bishop of Freising by the cathedral chapter and asked to be given the regalia by the emperor. But Heinrich, the brother of the chancellor, had already been appointed bishop of that diocese by Eugenius. Both of them asked for possession of the castles of the diocese situated in the lands of Austria. Johann speaks for himself and cries as he speaks. The cause of the absent Heinrich is defended by his brother, the chancellor. It seemed to me that I was seeing Ajax and Ulysses debating at the Argolian ships.⁵ If you had been present, you would have likened Johann to Ajax and the chancellor to Ulysses. Their orations were much alike, except that the [orations of cardinal and chancellor] were in German, whereas the orations of [Ajax and Ulysses], which must have been delivered in Greek, have been translated from Greek to Latin by Ovid. The oration of the chancellor was outstanding, the most elegant, and of the kind that you would expect from a Ciceronian or a Quintilian. But I admit that he was favoured both by the talents gifted to him by nature and by the experience he had gained [in the service] of emperors Sigismund and Albrecht. For he was the chancellor of both of them and had heard many eloquent men plead their case before them. Those men he now imitated. With the help of friends who interpreted [the sense of the German text] I have translated the oration that I am sending to you now for your critical

¹ Hufnagel, p. 342 ff

² Voigt, II, pp. 317 ff; Meuthen, p. 462

³ Cicero: *De inventione*, I, 7; Quintilianus: *Institutio oratorica*, III, 3, 13

⁴ Speakers’ platforms

⁵ Cf. Helmroth: *Reichstagsreden*, p. 125: *Und so werden die konziliaren Redekämpfer Panormitanus und Aleman geradezu folgerichtig zu den Kriegshelden Achill und Hektor, später im Freisinger Bistumsstreit 1444 die Kontrahenten Kaspar Schlick (für seinen*

Bruder Heinrich) und Johann Grünwalder zu Odysseus und Ajax. Der Wortkampf um die Waffen des Achill, in Rom Übungsthema der Rhetorenschulen, war von Ovid im XIII. Buch der ‘Metamorphosen’ zu einem Musterspiel rhetorischer Suasorie geworden

*appraisal. I ask you to let me have your judgement; if there are any faults, please ascribe them to the translator rather than to the speaker.*¹

As it might not be wise to have it bandied about, and especially not in Rome, that international centre of gossip, that the chancellor's speech had been co-authored by a lowly secretary, Piccolomini did not explicitly state his contribution to the speech but pretended that he had only translated it into Latin. Campisio presumably fully understood his meaning.

Nonetheless, Voigt has this – characteristically caustic – comment: *Und diese Rede hatte er in des Canzlers Abwesenheit selber verfertigt. Nur um das beifällige Urtheil Campisio's ganz als ein unbefangenes geniessen zu können, verleugnete der eitle Mann seine Autorschaft.*²

Actually, Piccolomini might have had quite another reason than vanity for sending the speech to Campisio. At the time, Campisio was in the service of an influential cardinal, Archbishop Berardi of Taranto, which meant that Piccolomini possessed a line of communication with the curia through Campisio. It had already functioned previously in the affair of Freising, and sending the oration to Campisio would quite probably be a way of informing the Curia and the pope of how the matter was progressing and, more especially, of the chancellor's spirited defence of the pope at the imperial court – and of Piccolomini's own contribution, naturally.

Piccolomini does not mention the oration or indeed the whole Freising affair in his *Commentarii*, nor are they mentioned in the biographies of Campano and Platina. Given the importance of the affair, this silence is quite remarkable: maybe Pius was, after all, embarrassed by his role in the matter or by its outcome.

The oration delivered by the chancellor was only partly successful and only in the short run. Johann Grünwalder was finally confirmed by the council on 13 November 1444³ and remained in actual possession of the see and its Bavarian possessions.

¹ Epistolarium, p. 296: *Hic dum Martio mense, qui modo preterit, ex consuetudine sequer curiam, rem miram et relatu dignam sum contemplatus. Nam quod antea non putaram apud Germanos fieri orationes sicut olim Rome pro rostris fiebant, coram cesare audiui. Uenit Iohannes Bauarus, unus ex cardinalibus (ut aiunt) Felicis; Sancti Martini cognomen tum habet. hic se per capitulum frisingensis ecclesie in episcopum dicebat electum darique sibi regalia per cesarem postulabat. iam Gasparis Slik cancellarii frater Heinricus illi ecclesie per*

Eugenium prefectus erat. Petit uterque castrorum possessionem, que in dominiis Austriae sunt. Iohannes pro se dicit et inter orandum lacrimas miscet. Heinrici causam cancellarius suscipit absentemque fratrem tuetur. uisus sum apud argolicas naues Aiaceum atque Vlixem contendentes videre. si affuisses Iohannem Aiacei, Vlixem cancellarium adequasses. haud dissimules orationes fuere, nisi quod he theutunice, illas Ouidius latinus fecit, quas constat grece fuisse. mira cancellarii fuit oratio et longe ornatior quam ex uiro Ciceronis et Quintiliani nescio ex-

pectari deberet. sed agnosco naturam illi fuisse, tum usum, quem cum Sigismundo et Alberto cesaribus habuit, nature dotis iuuisse. fuit enim illorum cancellarius multosque uiros disertos orare causam coram illis uidit, quos nunc imitatus est. eius orationem, ut te iudicante probetur, interpretantibus amicis in latinum verti tibi que transmitto. rogo tuum iudicium mihi rescribas et, si quod est vitium, interpreti potius quam oratori ascribas

² Voigt, II, p. 319

³ Meuthen, p. 462

As for Henrich Schlick, he figures in the lists of the Prince-bishops of Freising from 1444-1448, but he was never consecrated as bishop, he never gained possession of the church itself and its possessions in Bavaria, and the emperor did not invest him with the regalia.

In 1448, the emperor dropped the cause of Heinrich Schlick, who withdrew. The pope, now Nicolaus V, and Grünwalder were reconciled, and the pope confirmed the appointment of Johann Grünwalder. Schlick was given a pension of 1.000 Hungarian ducats and the Burg Rotenfels in Styria.¹ Grünwalder was formally invested with the regalia by the emperor and was hereafter recognised by everybody as Prince-bishop of Freising.²

Schlick's brother, the chancellor, retired from the court at the same time and withdrew to his possessions. A short time later, he died. The Freising affair presumably had something to do with this development,³ but on the other hand, the chancellor's ecclesiastical policies had been quite successful. Historians often speak about the "fall" of the chancellor, but Hufnagel believed that the emperor and his chancellor were effectively reconciled after a difficult period in connection with the demission of Heinrich Schlick and the imperial recognition of Johann Grünwalder as Bishop of Freising.⁴

The affair of Freising had become connected with the development of the ecclesiastical policies of the emperor, now beginning to move away from German Neutrality to full recognition of the pope approximately three years later. The chancellor's brash defence of supreme papal authority is - at this early stage - quite remarkable. His claim that the emperor, too, supports Eugenius's cause, stated openly in the imperial court, appears to have been somewhat premature and impolitic, and it may have been inserted into the text or given a more forceful expression after the delivery of the speech as a means of impressing and influencing the Curia to favour Schlick – and Piccolomini himself!

2. Themes

Apart from the introduction and the conclusion, the oration is divided into two main parts: the first deals with the political aspects of the matter, the second with the legal.

The **political arguments** for recognising Heinrich Schlick as the lawful Bishop of Freising were the following:

- It is in the emperor's own interest that episcopal sees owning castles in Austrian territories should be given to bishops loyal to the emperor.

¹ Mass, I, p. 312

² *Ibid.*

³ Voigt, II, p. 319

⁴ Hufnagel, p. 447-451

- Accepting the capitular election against the emperor's declared wishes would set a bad example for others and incite disloyal subjects to rebellion.
- By rewarding his servants, *in casu* his own chancellor, the emperor gains their loyalty and support.
- The German Neutrality between Pope Eugenius and the Council of Basel is not an impediment to the appointment of the papal candidate, Henrich Schlick, since the conciliar candidate, Johann Grünwalder himself, has neither supported nor observed the neutrality.
- In providing bishops for vacant dioceses, German Neutrality cannot always be observed, and indeed, all the German princes have at times disregarded the neutrality.
- There is no real risk of a military conflict with Bavaria over this matter, since the dukes of Bavaria, relatives of Johann Grünwalder, would not go to war for a matter of this nature.

The **legal arguments** for recognising Heinrich Schlick as the lawful Bishop of Freising, as presented in relation to God, Pope Eugenius, the Council of Basel, and the emperor himself, were the following:

- Johann Grünwalder is personally unfit for office because of his ambitious character, whereas Henrich Schlick is not ambitious and otherwise has the qualities required of a bishop.
- The election of Johann Grünwalder is invalid because of simoniacal practices and undue pressures exerted on the members of the cathedral chapter, whereas the appointment of Henrich Schlick was made by the irreproachable decision of the pope in consistory.
- The confirmation of Johann Grünwalder by the Archbishop of Salzburg is illegal because the archbishop himself had been confirmed by a council not recognised by the pope.
- Pope Eugenius is considered legitimate by the German Nation since it has not accepted his deposition by the council, and there can only be one pope.
- Thus the antipope, Felix, is a schismatic, and so are the cardinals appointed by him, like Johann Grünwalder, who is therefore excommunicate and ineligible for episcopal office.
- Though the German Nation has accepted a number of decrees of the council, including the one concerning the election of bishops by the cathedral chapters, these decrees are not binding on the pope, and moreover, the council itself has, in a number of cases, not observed its own decree. Therefore, that decree cannot prevent the pope from appointing Heinrich Schlick.

- And even if the decree is considered to be valid, it gives the pope the right to reject a capitular election for weighty reasons (like simony). In such cases, the pope must state those reasons explicitly and in writing. That he had not done so in the present case may have been for a perfectly good reason that could not very well be stated in the letter. And anyway, the omission is a trifling matter in view of the pope's supreme authority.

2.1. Who is the legitimate Bishop of Freising?

The principal theme of the oration was, of course, the question: who was the legitimate Bishop of Freising, Henrich Schlick or Johann Grünwalder?

The chancellor defends the cause of his brother firstly by demonstrating the political expedience of appointing a supporter of the emperor and by proving the legal validity of his appointment by the pope, and secondly by proving the invalidity of the election of Johann Grünwalder.

The political line of reasoning was quite sensible, as seen from the imperial court. The Bavarians, in whose territories the Church of Freising and some of its possessions were situated, could adduce similar reasons for appointing Grünwalder, but as chancellor of the emperor, Kaspar Schlick would naturally have to promote the emperor's interests.

Proving the validity of the papal appointment of Henrich Schlick and the invalidity of the appointment of Johann Grünwalder was more difficult due to the complications of the German Neutrality and Acceptation of the conciliar decrees.

The Germans had accepted the conciliar decree on the election of bishops by cathedral chapters and the confirmation of elected candidates by the metropolitan archbishops. From a German viewpoint, there was therefore no reason for the pope to make his own appointment of the Bishop of Freising. The criticism contained in the oration of cathedral chapters and the praise of the College of Cardinals would therefore have been irrelevant.

Thus, it was difficult to prove the validity of the papal appointment of Heinrich Schlick to an audience, which had accepted the conciliar decree on capitular elections, in this case ignored by the pope.

However, the conciliar decree, as stated in the oration, contained an exception: the pope could annul a capitular election for grave reason and on the condition of stating the reason specifically and in writing. The invalidity of the election or of the confirmation by the metropolitan would be a perfectly good reason.

It was therefore quite important for the chancellor to prove the invalidity of Grünwalder's election and of the subsequent confirmation by the metropolitan, the Archbishop of Salzburg. He endeavoured to do so by accusing Grünwalder of winning the election through simony (vote-buying) and threats, something that would clearly invalidate the election. These claims on the part of the chancellor may or may not have been true, but in any case, they were never proven.

Secondly, the chancellor argued that the confirmation by the archbishop was invalid since the archbishop himself had been confirmed by the Council of Basel, something that was in contravention of the neutrality, forbidding recourse both to pope and council. This argument would not have been quite convincing since some church authority would evidently have to confirm the appointment of the archbishop: this case was therefore one in which neutrality could not be observed – as Piccolomini himself states. The argument that the council itself was no longer a lawful council would, after all, not be acceptable to the Germans who had recognised it.

Thirdly, the chancellor argued, Grünwalder's election was not valid because he was a schismatic. The Germans had, in fact, accepted that Pope Eugenius was the legitimate pope. Since there could only be one pope, the council's Pope Felix was a schismatic, and so would Felix' cardinals be, including Grünwalder. This argument is quite logical and should have been convincing.

However, the ecclesiastical situation in Germany was by now hopelessly confused.

The Germans had declared their neutrality and had accepted the conciliar decrees, yet they continued to recognise Pope Eugenius as the legitimate pope and tried valiantly to obtain some compromise between pope and council. But their efforts were in vain, and the pope and the council both considered and declared the other party's claim to be illegitimate.

The conundrum was so great that the whole argumentation in the case became just so much legal - and probably to most of the audience quite tedious - wrangling. No evident course presented itself to the emperor, who, quite characteristically, and possibly sagely, resorted to procrastination and half-measures.

2.2. German neutrality

By this time, the emperor and the imperial court had started the move towards full recognition of Pope Eugenius.

In his speech, the chancellor gives a strong defence of papal supremacy and the need for the Germans to recognise the pope as the rest of the Christian world had done.

It is doubtful, however, whether the chancellor expressed himself so strongly in the speech as delivered as he does in the final version of the oration, sent to the papal court by Piccolomini.

Still, the oration may be seen as the first public testimony to the shift of the imperial court from neutrality to full recognition of the pope.¹

2.3. Qualities required of candidates for episcopal office

After the suspension of the pope in January 1438, the council had begun to appoint bishops in stead of the suspended pope, and it therefore became necessary to establish procedures for such appointments and to consider the qualities required in bishops. As a ranking conciliar official and a member of the Committee of Twelve, the council's coordinating body, Piccolomini in 1438 gave an oration to the council fathers, "*Si ea quae justa*" [4], demanding quite rigorous procedures in the selection of candidates for episcopal office and exacting high moral standards and personal qualities of bishops. He had also touched on such qualities in his sermon on Saint Ambrose, "*Si quis me roget*" [5], given to the council earlier in the same year.

The "*Si putarem*" echoes these earlier orations and especially emphasises that ambition is unacceptable in those men who would be bishops. Whether Henrich Schlick had character enough to be ambitious is unknown and uncertain, it was his brother's ambitions that pushed him forward, as the chancellor openly states. But the portrayal of Grünwalder as an ambitious person, pursuing episcopal office with great determination, was difficult to refute, though the emperor and his court would probably not have cared too much, ambition being a fundamental ingredient of court life and public careers.

2.4. Rewarding high officials

To the modern mind, the concept that the brother of a high-ranking government official should be appointed to an office as a way of rewarding that official seems quite nepotistic and smacks of corruption. But conditions were different then, and the chancellor quite unabashedly demanded the appointment of his brother as a form of imperial recompensation for his own – and even his father's - services. He even claimed that such an appointment would reassure the emperor's courtiers that the emperor was keen to reward them, thus ensuring their loyalty.

2.5. Piccolomini's conversion from conciliarism to papalism

Much has been made of Piccolomini's conversion from the cause of the council to the cause of pope Eugenius. It was, however, nothing out of the ordinary; more or less everybody did the same at some point. And two luminaries of the period, Cardinal Cesarini and Cardinal Cues, one a mentor

¹ Hufnagel, p. 308

and the second a later colleague and friend of Piccolomini, had done so, as Grünwalder himself would eventually do. And though opportunism may have played its part, it is difficult to see that Piccolomini would have been more opportunistic than the others who underwent the same conversion.

Since there seems to be no doubt of the genuine authorship or co-authorship of Piccolomini with regard to the oration of 4 April 1444, the statements in that oration may be taken as indicative of Piccolomini's own attitudes at that date.

In the oration, the speaker says:

Therefore, not only has Eugenius not merited to be deposed, but if he was not already pope already, he – most of all – is the one who should be entrusted with the Roman See and the government of Saint Peter's ship. And I know that you, Caesar, do not feel otherwise, though some men whisper differently in your ears, men who should care not for their own advantage but for yours, and who should advise you not to maintain the neutrality but to obey the pope, whom the whole multitude of believers follow. They should tell you to do as the other Christian kings and not as the Bavarians. [Sect. 38]

And in his conclusion, he quotes the famous text from the *Decretals of Pseudo-Isidore*:

The Lord made the Apostolic See the hinge and head, and it is not dependent on anybody else. And just as the door is ruled by the hinge, thus, as the Lord has ordained, all the churches are governed by the authority of this Holy See. [Sect. 41]

Only a year later, Piccolomini was formally reconciled with Eugenius and officially passed into the papal camp.

So, the oration "*Si putarem*" of 4 April 1444 may be reasonably considered the *terminus ante quem* of Piccolomini's conversion to the papal cause.¹

What is the *terminus post quem*?

A letter from Piccolomini to his colleague and friend in the imperial chancery, Kappel von Hartung, may provide the answer. Wolkan gives the date as April 1443. In the letter, Piccolomini describes a discussion between himself, Hartung von Kappel, and another person from the court. Whereas the other two criticized German Neutrality and defended papal supremacy over the Council, Piccolomini defended the opposite standpoint. He wrote:

¹ Emily O'Brien wrote: *According to its most basic definition, Aeneas was unquestionably a papalist by 1445: he had renounced the doctrine of conciliar supremacy and had condemned the Council of Basel's claim to legitimacy.*

There is also no question that he began at that point to defend papal sovereignty in various capacities against conciliar demands (O'Brien, p. 62). As seen, Piccolomini's conversion to papalism took place at least a year before.

His later orations and writings must be seen in this light and as expressions of the official positions he had to present and defend as an imperial diplomat and a representative of the emperor and the Holy Empire

Concerning the second point [i.e., papal supremacy] I presented a completely contrary viewpoint, saying that in all disagreements between the pope and the council, the judgement of the council should be preferred.¹

In a later letter of 23 October 1443 to Juan Carvajal, envoy of Pope Eugenius but not yet a cardinal, he started to vacillate. Carvajal had asked him for his opinions on a number of points that, according to Carvajal, militated in favour of Pope Eugenius. On all the specific points, Piccolomini presented his own vigorous counterarguments. But, quite significantly, he ends the letter with the words:

Him I will accept [as pope] ... whom the universal Church agrees on, provided he has the acceptance of Germany, which forms the major part of the Christian world. Personally, I am in doubt; mentally, I am ready to listen to the common judgement [of Christianity], and in matters of Faith, I shall not trust myself alone.²

In conclusion, during the year from April 1443 to April 1444, Piccolomini finally, if not publicly, converted from the conciliar cause to the papal. This conclusion is supported by a passage in Piccolomini's letter of retraction to the rector of the University of Cologne of 13 August 1447, in which he wrote that he had converted to the papal cause three years before being appointed Bishop of Trieste on 19 April 1447: *Ego equidem annis tribus ante pontificatum mihi delatum conversus sum.*³ It is worth noting that the oration "*Si putarem*" was delivered on 4 April 1444, almost exactly three years before the appointment to Trieste.

What was the role of the affair of Freising in that conversion, and what were his motives?

Evidently, the Freising matter forced Piccolomini to reconsider his ideas concerning the pope and the council. He could not very well be loyal to the emperor and his chancellor, beginning to move towards full recognition of the pope, if he maintained his own previous conciliarist position.

He was surrounded by people believing in the papal cause, and a number of his admired mentors and friends, from cardinals to colleagues, had passed over to and were now firmly on the papal side, which in itself must have given him cause for reflection, see sect. 38.

He disposed of texts, i.e., the *Decretals of Pseudo-Isidore*, that seemed clearly to prove papal supremacy. These texts were early mediaeval forgeries, but he evidently did not know.⁴

He was also severely disillusioned by the council and by antipope, Felix. The dealings of the council with the issue of reunion with the Greek Church had been grotesque and lamentable.⁵ The council had failed to accept the recommendations of the Twelve concerning the appointment of bishops

¹ EPI, 2: 46, 1: *Ad secundum vero conclusionem emisi omnino contrariam, dicens, in omni re, de qua papa conciliumque contendent, preponendam fore sententiam concilii*

² EPI, 2: 91, 13: *Hunc geram ... quem universalis ecclesie consensus dederit, dum Germania, que orbis christiani maior pars est, heret. Dubius sum, parato tamen animo sum communi sententiae*

auscultare. Nec mihi in rebus fidei soli credam

³ WO, II, p. 57

⁴ See e.g. Canning, p. 51

⁵ See Piccolomini's letter to Piero da Noceto of 21 May 1437 (EPI, 1: 24).

that Piccolomini had himself written and presented in 1438/1439. The council's failure to respect the interests and advice of the emperor both in the matter of the schism and in the matter of the Freising affair itself had been a serious disappointment. And the failure of the council and of antipope Felix to promote Piccolomini's interests by granting him benefices, he bitterly resented.

On the other hand, he had, for a number of years, passionately believed in the conciliar cause and defended it in speech and writing.

So, he was in doubt and did not really know what to do.

In this state of mind, he resolved to follow the "judgement of the Universal Church", as he wrote to Carvajal. This is the basis of the advice given to the emperor, in sect. 38 of the "*Si putarem*", to follow the examples of the rest of the Christian world and the other princes. And this is what he did himself.¹

So, there is no reason to doubt Piccolomini's sincerity when, a year later in Rome, he says to Pope Eugenius:

*I confess that when I realised the error of the council, I did not immediately fly to your side, as many did. Instead ... I aligned myself with those who were considered neutral, so as not to switch from one extreme to another without time for reflection. Therefore, I stayed three years with the emperor, where I heard more and more of the dispute between the council and your legates, till finally, there remained not a shadow of doubt that the truth was on your side... Now I stand before you, and, because I sinned in ignorance, I beg your forgiveness."*²

However, notwithstanding the quite plausible sincerity of Piccolomini's switch to the papal side, this was also an opportunistic move.³

Piccolomini, undoubtedly on the advice of his master, mentor, and friend, Chancellor Schlick, had by now concluded that his best chances of a career were not at the imperial court, where his position as a penurious person without important family connections and with only scant knowledge of German would most likely remain that of a clever secretary and talented writer of Latin letters. In the Church, by contrast, a splendid career would be open to him, though at this point his ambition would not have gone further than becoming a bishop. As a bishop, he could become an important imperial or papal official. And his sexual desires (and powers!) that had previously, to his honour, held him back from an ecclesiastical career were now rapidly diminishing.

It is hard to believe that such considerations were absent from Piccolomini's mind as he grappled with the great questions of the Church.

¹ See Baldi: *Il cardinale*, p. 31: *Gli avvenimenti sembrano fatti per incidere, per segnare una vera e*

propria "svolta" nella vita del Piccolomini

² CO, I, 13 (Meserve, I, pp. 56-57). Oration "*Prius sanctissime prae-sul*" [7]

³ See Voigt, II, pp. 247-307

So, when all in all, his conversion to the papal cause was at the same time a sincere response to developments in the Church and a splendid career move. One does not exclude the other.¹

3. Authorship

To what extent the available text is identical with the speech as given in German by the chancellor is unclear. The chancellor was an excellent speaker himself, who knew quite well how to write and deliver an oration.² But being absent from court for extended periods during this time, he would have appreciated or even requested Piccolomini prepare a draft since he had apparently charged Piccolomini with the Freising matter. It was written in Latin during his absence and would quite likely have been revised by him (when he returned to the court³) in connection with its translation into German. And after the oration was delivered, Piccolomini would almost certainly have gone over the Latin text once again and polished it as he saw fit. Among other changes, he would have written a new introduction (with clever quotes from Ennius, Jerome, and Cicero) based on the tears of Grünwalder, since he could not very well have foreseen Grünwalder's crying during his own speech when he drafted the chancellor's.⁴

The text contains a number of repetitive statements, obscurities, and inconsistencies at variance with Piccolomini's usually quite stringent structuring of his orations. This may indicate that the text was put together quite hastily and afterwards revised in cooperation with the chancellor, whose – necessary – input would have been integrated into the text as best possible. After the delivery of the speech, Piccolomini gave it a polish, focusing on style but presumably not too much on content and structure since, after all, the oration had already been presented at a proper judicial court hearing. However, some elements, i.e., the assertion that the emperor supported Eugenius, may have been added or given greater emphasis with the papal court in mind.⁵

To conclude, in structure and content, the text presented below is probably close to the speech as given by the chancellor, but certain elements may have been added or deleted, and the style and vocabulary would have been given a final polish.

How much of the text derives from Piccolomini and how much from the chancellor is difficult to determine. A number of expressions and quotations are quite clearly Piccolomini's and were used

¹ As was the case with the political and personal interests of his admired mentor, Kaspar Schlick, about whom Hufnagel writes (p. 277): *Wie wir schon sahen und oft noch bemerken werden, hatte Schlick eine seltene Fertigkeit politische Konstellationen oder seine*

Missionen zugleich in persönlichen Interesse auszubeuten

² Hufnagel, p. 258. Piccolomini's admiration for the chancellor's delivery of the oration may therefore have been genuine

³ This was a procedure they also followed in connection with the

chancellor's official, Latin correspondence, see Hufnagel, p. 421

⁴ On the question of the authorship, see also Hufnagel, pp. 343-344

⁵ Hufnagel, p. 344

by him in previous and later orations. Others seem to reflect the chancellor's personal experience, e.g., events dating from the period of the two previous emperors.

The uninhibited glee at presenting a clinching argument, for instance, concerning Heinrich Grünwalder's status as a schismatic, would quite possibly have been a sentiment shared by the two fathers of the text.

4. Date, place, format, and audience

Voigt gives the date as March 1444,¹ and Genzsch and Meuthen more precisely as 4 April 1444.² The later date has been retained in the present edition.

The oration was delivered during a hearing in the emperor's presence at the imperial court in Wiener Neustadt.

It is clearly a formal oration, and it is designated as such in Piccolomini's own letter to Giovanni Campisio (*mira cancellarii fuit oratio*).

5. Text³

5.1. Manuscripts⁴

The oration was not included in the Collected Orations of Pius II from 1462.

Presently, it is known to be extant in three manuscripts:

- **Leipzig / Universitätsbibliothek**
951, ff. 230r-237v (**L**)
- **München / Bayerische Staatsbibliothek**
clm 70, ff. 277v-285v (**B**)*

¹ Voigt, II, p. 317

² Meuthen, p. 462

³ For the textual transmission of Pius II's, see COR, 1: ch. 5

⁴ Manuscripts for which an orthographical profile is given in COR, 11, are marked with an asterisk

clm 14134, ff. 282v-289v (**A**)

5.2. Editions

The oration was not known to Mansi in the 1750s when he published his collection of Pius' orations, and it appears not to have been published previously.

5.3. Present edition

For principles of edition (incl. orthography) and translation, see COR, 1: ch. 9-10.

Text:

The text is based on all three listed manuscripts, with the clm 14134 (**A**) as the lead manuscript.

Pagination:

Pagination is from the two clm manuscripts, in red from A, and in blue from B.

6. Sources¹

In the oration "*Si putarem*", altogether 47 direct and indirect quotations from various sources have been identified.

Biblical	13
Classical	13
Patristic and mediaeval	15
Contemporary	6
All	47

¹ For an analysis of Piccolomini's use of sources, see COR, 1: 8

The biblical and classical quotations are equal in number, surpassed somewhat by patristic and mediaeval quotations (mostly from Jerome and Decretum Gratiani).

Biblical sources

Old Testament

Deuteronomy	1	
Kings, 1.	1	
Psalms	2	
All		4

New Testament

Matthew	2	
John	1	
Luke	3	
Peter, 1.	3	
All		9

All OT+NT		13
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Classical sources

Aesop	2	
Cassiodorus	1 ¹	
Cicero	4 ²	
Ennius	1	
Horatius	1 ³	
Juvenalis	3	
Vergilius	1 ⁴	
All		13

Patristic and mediaeval sources

Decretum Grariani	7	
Hieronimus		7 ⁵

¹ Hist. tripartita

² De officiis 1; Pro Quinctio Roscio Comoedo 1; Tusculanae di-

sputationes 1; De finibus bonorum et malorum 1

³ Satirae

⁴ Aeneis

⁵ Epistolae

Martinus de Braga	1	
All		15

Contemporary sources

Council of Basel	6	
All		6

Among the quotations from the *Decretum Gratiani* are some quotations from the *Decretals of Pseudo-Isidore*. These decretals were a forgery of early ecclesiastical documents and letters, dating from the second quarter of the 9th century, that had found its way into the ecclesiastical decretals of the Middle Age and through them into the *Decretum*.

In the oration, the chancellor claimed to have a copy of the decretals in his own chambers. This claim is somewhat surprising. It is more likely that Piccolomini had had access to them during his time in Basel and made a copy of important passages for use in his own later writings. Obviously, neither the chancellor nor Piccolomini – or anybody else at that time - were aware that the decretals were a forgery.

They were also used by Piccolomini in his sermon to the people of Haspach, *Non est apud me dubium*, sect. 93, two years later.

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7. Sigla and abbreviations

A = München / Bayerische Staatsbibliothek / CLM 14134

B = München / Bayerische Staatsbibliothek / CLM 70

L = Leipzig / Universitätsbibliothek / 951

Abbreviations

CAR = Eneas Silvius Piccolomineus (postea Pius II): *Carmina*. Edid. Adrian van Heck. 1994.

CB = *Concilium Basiliense*.

COD = *Conciliorum oecumenicorum decreta*, ed. G. Alberigo. 1952.

¹

<http://www.pseudoisidor.mgh.de/>

COM = Pius II: *Commentarii rerum memorabilium quae suis temporibus contigerunt*. [1464].

COR = *Collected Orations of Pope Pius II*. Edit. and transl. by Michael v. Cotta-Schönberg. 12 vols. 2019-2020. [Final Version 2024-2025].

CRDM = Piccolomini, Enea Silvio: *Collected Reports of Diplomatic Missions, 1447-1455*. Edit. and transl. by Michael von Cotta-Schönberg. 2021.

CUG = Cugnoni

DBI = Dizionario Biografico degli Italiani.

DGCB = Piccolomini, Enea Silvio: *De Gestis Concilii Basiliensis Commentariorum Libri II*. Ed. and transl. by Dennis Hay and W.K. Smith. London, 1967.

DIA = Enea Silvio Piccolomini: *Libellus Dialogorum*. A cura di Simona Iaria. 2015. (Edizione Nazionale dei Testi Umanistici; 12).

DLE = Piccolomini, Enea Silvio: *De Liberos Educatione* [1450]. In: *Humanist Educational Treatises*. Ed. and transl. by C.W. Kallendorf. 2002, pp. 126-259.

DRBG = Piccolomini, Enea Silvio: *De Rebus Basiliae gestis Commentarius*. [1450]

DV = digital version.

DVI = *De Viris Illustribus and other biographical Writings* of Enea Silvio Piccolomini. Edit. and transl. by Michael von Cotta-Schönberg. 2021.

EPI = *Collected Letters of Enea Silvio Piccolomini*. Ed. and transl. by Michael von Cotta-Schönberg. 10 vols. 2023 ff. [Freely available in a digital edition in HAL Archives].

EUR = Piccolomini, Enea Silvio: *Europa*. [1458].

- Enee Silvii Piccolominei postea Pii II *de Europa*. Ed. A. van Heck. Città del Vaticano, 2001. (Studi e testi; 398).
- Aeneas Silvius Piccolomini: *Europe (c. 1400-1458)*. Transl. by Robert Brown. Washington, DC, 2013.

HA = Eneas Silvius Piccolomini: *Historia Austriacalis*. Teil 1: Einleitung von Martin Wagendorfer. 1. Redaktion ed. von Julia Knödler. Teil 2: 2./3, ed. Martin Wagendorfer. 2 vols. Hannover, 2009. (Monumenta Germaniae Historic. Scriptores Rerum Germanicarum. Nova Series; 24).

HB = Aeneas Silvius Piccolomini: *Historia Bohemic*. Herausg. J. Hejnic & H. Rothe. 2 vols. Köln, 2005. (Bausteine zur slavischen Philologie und Kulturgeschichte. Neue Folge. Reihe B; 20).

HE = Enee Silvii Piccolominei *Epistolarium seculare*. Complectens De duobus amantibus, De naturis equorum, De curialium miseris. Cur. A. van Heck. Città del Vaticano, 2007. (Studi e testi, 439).

KO = Koberger

ME = Enea Silvio Piccolomini: *Briefe. Dichtungen*. Übers. Max Mells. 1966.

MPL = Migne. Patrologia Latina.

RE = Reject Aeneas, Accept Pius. Selected Letters of Aeneas Silvius Piccolomini (Pope Pius II). Edit. Th. M. Izbicki. Washington, 2006.

RTA = Deutsche Reichstagsakten.

SC = Scanned image.

ST = Piccolomini, Enea Silvio: *Les misères des gens de cour. Le songe de Fortune*. Trad. Serge Stolf. 2015.

VO = Voigt, Georg: *Enea Silvio de' Piccolomini als Papst Pius der Zweite und sein Zeitalter*. 3 vols. 1856-1863.

WI = Widmer, Berthe (ed.): *Enea Silvio Piccolomini, Papst Pius II. Ausgewählte Texte aus seinen Schriften*. 1960.

WO = Wolkan, Rudolf: *Der Briefwechsel des Eneas Silvius Piccolomini*. 3 Bd. Wien, 1909-1918. (Fontes rerum Austriacarum, II. Abteilung, 61, 62, 67, 68).

II. TEXT AND TRANSLATION

Oratio Casparis Schlick habita coram rege pro fratre suo in episcopum Frisingensem promovendo latine versa per Aeneam Sylvium^{1 2}

[1] {282r} {277v} Si putarem apud te, gloriosissime Caesar³, meliorem lacrimis atque ploratibus quam justitiae locum esse, tunderem jam pectora palmis et aduncis genas lacerarem {282v} unguis, lacrimarer, plorarem et advolutus genibus tuis ingentes singultus traherem magnisque tum fletibus, tum suspiriis obsecrarem, ut mei germani causam susciperes commendatam. Sed novi ego rectitudinem animi tui. Novi constantiam, gravitatem, religionem. Scio quod apud te nil magis quam justitia, quam veritas, quam ratio valet. Ideo praetermissis lacrimis, quae mulieres quam⁴ viros decent, absentis germani mei causam non fletu, sed veritate tuebor. *In hoc*, inquit Ennius⁵, *loco plebs regi antestat: licet lacrimari plebi, regi honeste non licet*⁶. *Ut regi sic episcopo*, dicit Jeronimus. Quo fit, ut⁷ adversarium nostrum valde demirer, qui ante solium tuum quasi muliercula quaedam lacrimatus est. Sed mos reorum est⁸, ut postquam se tueri aliter⁹ nequeunt, venari misericordiam lacrimis studeant. Iudices vero, qui, ut Cicero dicit, legum similes esse debent, non humidos¹⁰ oculos, sed consona verbis facta respiciunt. Idem quoque - sicuti arbitror - et tu, Caesar, facies in hoc iudicio Frisingensis pontificatus: non rigatas lacrimis genas, sed plena justitiae verba considerabis.

¹ **B**; Title written in margin by later hand **A**; Oratio Casparis Slick **L** [written in margin in same hand as the main text]

² Oratio ... Sylvium : Persuasio ut Germanus Cancellarii Episcopatum Frisingensem nancisci possit et de scismate et neutralitate. Ca-

spar Slick illustrissimo principi Friderico de gratia Romanorum regi semper Augusto **A**

³ princeps **L**

⁴ quoque **A**

⁵ in hoc ... Ennius : inquit enim Ennius in hoc **L**

⁶ honeste non licet : non licet honeste **L**

⁷ omit. **B**

⁸ reorum est : est reorum **L**

⁹ se tueri aliter : aliter se tueri **L**

¹⁰ humiles **L**

Oration of Kaspar Schlick held before the king, on the appointment of his brother as Bishop of Freising. Translated into Latin by Aeneas Sylvius

0. Introduction

[1] Most glorious Emperor, if I thought that you put tears and crying above justice, I would now beat my breast with my fists and scratch my face with crooked nails; I would be crying and sobbing; and, prostrate before you, I would be wailing and sighing in order to make you look favourably upon the cause of my brother. But I know your integrity, your steadfastness, your seriousness, and your piety.¹ I know that you prefer nothing to justice, truth, and reason. Therefore, omitting the tears that become women more than men, I shall defend the cause of my absent brother not with tears but with truth. For, according to Ennius,²

*The mob has one advantage o'er its king:
For it may weep while tears for him are shame.*

If a king may not weep, neither may a bishop, adds Jerome.³ Therefore, I marvel greatly at our opponent crying before your throne as a weak little woman. It is, indeed, customary, for defendants who cannot defend themselves in other ways to seek mercy through tears. However, as Cicero⁴ says, judges should be like the laws and not consider tearful eyes, but the harmony between words and deeds.⁵ This is what I believe that you, Caesar, will do in the present trial concerning the See of Freising: you will not consider faces wet with tears but words full of justice.

¹ "religio"

² Ennius, Quintus (ca. 239 – ca. 169 BC): Roman writer, often considered the father of Roman poetry

³ Jeronimus: *Epistola ad Heliodorum* (60), 14. MPL, XXII, col. 598. Translation quoted after JL

⁴ Cicero, Marcus Tullius (106-43 BC): Roman statesman and author

⁵ Quotation not identified

[2] Agimus nunc quisnam Frisingensi praesit ecclesiae: meus frater an Johannes Bavarus, quem de Viridi¹ Silva nuncupant. Hic ante me locutus est. Dicit electum se per capitulum, confirmatum per archiepiscopum, concilii² decreta in suum favorem sonare, quae natio nostra Maguntiae suscepit. Clipeum quoque sibi ex neutralitate conficit. Petit arces ecclesiae sibi tradi et assignari regalia. Idem et frater meus expostulat, quem non canonicorum confusio, sed grave et solidum apostolicae sedis iudicium delegit. Te nunc utri³ faveas videre oportet. Causam suam Johannes tamquam in foro peroravit. Ego, qui unus tuorum consiliariorum⁴ dicor tibi sum juratus, non velut in iudicio causidicus, sed ut consularis⁵ in senatu et germani partes defendam, et quid te facere par sit ostendere conabor. Atque ne longius vager, duo mihi in hac causa videntur consideranda, quae ambo in fratris mei favorem consonant: quid liceat, et⁶ quid expediat. Expedientiam prius videbimus, de licito cum iustitia cognoscemus.

¹ nitida B

² consilii L

³ viri L

⁴ tuorum consiliariorum :
consiliariorum tuorum L

⁵ consiliaris B

⁶ *omit.* L

[2] The issue before us today is who should become Bishop of Freising: my brother or Johann of Bavaria, whom they call Grünwalder. He spoke before me and said that he had been elected by the cathedral chapter¹ and confirmed by the archbishop² and that his case is supported by the conciliar decrees accepted by our nation in Mainz.³ He also used the neutrality [of the German nation] as a shield. He requested that the fortresses of the Church [of Freising] be entrusted to him and that he be given the *regalia*.⁴ My brother requests the same: he has not been elected by bewildered canons but by the considered and solid judgement of the Apostolic See. You must now choose whom to favour. Johann pleaded his cause as if he were speaking in public. I, who am one of your sworn counsellors, shall not be speaking as a lawyer at a trial but as a consular member of the senate. I shall defend my brother's cause and endeavour to show what you may reasonably do. And going directly to the matter, there are two issues to consider in this case: that which is expedient, and that which is right. Both are in my brother's favour. First, we shall be looking at that which is expedient, and then at that which is right, i.e., just.

¹ The Cathedral Chapter of Freising

² Friedrich IV. Truchsess von Emmerberg (d. 1452): Archbishop of Salzburg from 1441 to his death

³ The Acceptation of Mainz, 1439

⁴ I.e., the secular rights and possessions of the diocese of Freising

[3] Quis est, qui neget tua plurimum interesse, ut ecclesiis de¹ arbitrio tuo² provideatur, quae inter tua dominia possident³ arces? Quis suadebit in tuis territoriis, ut praelatum recipias, qui tibi vel infidelis vel despectus⁴ vel contentiosus existat. Nil horum Johanni ascribo; tu tuos vicinos nosti.

*Inter finitimos, inquit Juvenalis, semper fuit aequa similtas,
immortale odium, et numquam sanabile {278r} vulnus.*

Cavendum estne *mus nutriatus in pera vel agnus in⁵ sinu*? Castra Frisingensis ecclesiae in limitibus sunt tuae ditionis. Nisi probatae fidei sit episcopus, magnum incidere discrimen potes. Illud planum est: si hunc, qui te alium petenti⁶ fuit electus, admiseris, portam aperies omnibus capitulis, ut tuis partibus postergatis non qui tibi morigerus, sed qui eorum conformis sit moribus eligatur⁷. Nec in Frisinga umquam nec in Patavia vel alibi praelatus ex tua sententia fiet, sed tibi et tuis posteris episcopi⁸ dabuntur invitis, {283r} quosque praecipue nolletis⁹, recipere consiliarios et vestris arcanis admittere¹⁰ compellemini. Hoc veritus antecessor tuus Albertus, antequam Sigismundo succederet, septem annis in ecclesia Pataviensi lites tenuit, nec umquam cessit, nisi postquam ex sua sententia concordatum est.

¹ ex B, L

² *omit.* L

³ possides A

⁴ despectus *corr.* ex suspectus L

⁵ *omit.* L

⁶ potenti L

⁷ eligant L

⁸ *omit.* B

⁹ velletis B

¹⁰ *omit.* B

1. Political arguments

1.1. It is in the emperor's interest that churches with castles in his territories be given bishops loyal to him

[3] Who will deny that it is highly important for you to have the final say in the appointment of bishops to dioceses possessing fortresses within your domains? Who can claim that you should accept a prelate in your own territories who is disloyal, contemptuous, or quarrelsome? I do not say that Johann is like that; you know your neighbours yourself!

*But between neighbours, says Juvenal, there burns an ancient and long-cherished feud and undying hatred, whose wounds are not to be healed.*¹

We must beware of *the mouse nourished in the purse or the lamb in the bosom*?² Some castles of the Church of Freising are in districts under your jurisdiction. If the bishop is not a man of proven loyalty, you run a great risk. One thing is evident: if you accept that another man than the one you requested is elected, you will open the gate for all cathedral chapters to ignore your interests and elect someone who does not comply with your wishes and who behaves like themselves. Never will a prelate be appointed in Freising, Passau, or elsewhere who is acceptable to you, but bishops will be appointed against your wishes and those of your descendants – and you will be forced to accept as counsellors men whom you certainly do not want and let them in on your secret affairs. Fearing precisely this, your predecessor Albrecht, before he succeeded Sigismund, for seven years opposed [an appointment to] the See of Passau, and he did not desist before an acceptable agreement was reached.

¹ Juvenalis: *Satirae*, 15.33-34: *Between the neighbouring towns of Ombi and Tentyra there burns an ancient and long-cherished feud and undying hatred, whose wounds are not to be healed. (Inter finitimos vetus atque*

antiqua sanabile vulnus, inmortale odium et numquam sanabile vulnus)

² Decretum, C.13.1.1: *a mouse in a purse, a fire in a bosom, and a serpent in the lap reward their hosts badly (mus in pera, ignis*

(sic!) in sinu, serpens in gremio male suos remunerant hospites). The Decretum also mentions the traditional proverb: *The one who harbours a snake in his bosom will be bitten by it (Qui serpentem in sinu suo nutrit, percutietur ab eo)*

[4] Tu dux, tu rex, tibi Bavari duces vassalli sunt. Ecclesia Frisingensis ex te feudum recipit. Tu advocatus ejus¹ es, bona illius² in tuis territoriis jacent. Erisne minor Alberto? Tunc justitiam negliges³, cum ille defenderit injustitiam? Quis risus, quisne⁴ contemptus erit, si tu meum germanum deseras, quem juvare coepisti. Rogasti canonicos Frisingenses, ut fratrem meum tibi episcopum darent⁵. Rogarunt⁶ et duces Bavariae pro aliis. Canonici singulos duces rogatum misere, sibi ut liberam electionem dimitterent. Te, qui major es, et cujus interest⁷ magis, neglexerunt, nec dignum **(231r)** putarunt⁸, ad quem suos mitterent oratores. Quid⁹, si post tantum contemptum illi obtineant¹⁰, quis te timebit amplius, quis te non parvifaciet, si¹¹ te, quem reges et nationes formidare deberent, paucorum presbyterorum contemnit ambitio. Noli despiciere¹² Caesar, meum fratrem¹³. Non est magna sibi jactura¹⁴ succumbere, tibi damnum est, tibi dedecus. Te respice, tibi consule. Tua est haec causa. Nam quo pacto¹⁵ principes atque¹⁶ provincias sub potestate tenebis, si unius capituli conatus te dejicit¹⁷. Albertum tibi rursus commendabo¹⁸, nec aliena tibi, sed tui sanguinis exempla proponam. Nec alterius ecclesiae, sed hujus Frisingensis facta revolvam.

¹ illius B

² ejus B

³ negligas B

⁴ quis B, L

⁵ commendarent B

⁶ rogaverunt B, L

⁷ *em.*; intereat A; intereant B, L

⁸ putaverunt L

⁹ quis B

¹⁰ *omit.* B

¹¹ sed B

¹² respicere A, L

¹³ Caesar meum fratrem : fratrem meum, Caesar B

¹⁴ sibi jactura : jactura sibi B, L

¹⁵ quo pacto : quomodo B

¹⁶ ac B

¹⁷ deiecit B

¹⁸ commemorabo B

1.2. Accepting the capitular election against the emperor's wishes would set a bad example for others

[4] It is you who are duke and king, and the Bavarian dukes who are vassals. The Church of Freising is a feudal domain at your disposal. You are its protector,¹ and its properties are situated in your domains. Shall you be less than Albrecht? How can you neglect justice when he prosecuted injustice? How they will laugh at you and scorn you if you desert my brother, whom you started out by supporting! You asked the canons of Freising to nominate my brother as bishop. The dukes of Bavaria made requests for other [candidates].² The canons sent messages to each duke asking them to permit them a free election. But you, who are greater than them and whose interest in the matter is the greatest, they ignored, and they did not find it worthwhile to send envoys to you. If, after this enormous insult, you let them have their own way, who will fear you anymore? And if you, whom kings and nations should fear, are scorned by a small band of ambitious priests, then who will respect you in the future? Do not spurn my brother, oh Emperor: if you give in, it is not a disaster for him, but for you, it would be a great loss and shame. Look to your own affairs and take care of your own interests: this cause is yours! For how can you keep princes and provinces under your rule if you are overcome by the machinations of one cathedral chapter. Once again, I recommend that you look to Albrecht: it is not examples from strangers that I counsel you to follow, but examples from your own family. And I am not talking about a church belonging to somebody else, but about the Church of Freising!

¹ "advocatus"

² Both the letters of the dukes and the emperor would have been in contravention of the conciliar decree *Quemadmodum in construenda* of 13 July 1433 (Session XII), p. 471: *This Holy Synods begs*

and earnestly exhorts the kings and princes ... not to write letters to the electors ... and even less to make threats and representations, and do any thing else to make the election less free (haec sancta synodus ac instantissime

exhortatur reges et principes ... ne electoribus litteras scribant ... multoque minus comminationes, impressiones, aut aliud faciant, quo minus libere ad electionem procedatur)

[5] Hic Johannes, qui¹ nunc se dicit electum, jam annis duobus atque viginti per capitulum exitit postulatus. Non libuit Alberto, patruo tuo, hunc esse pontificem, sed adversus eum Nicodemum, quem sedes apostolica promoverat, verbis factisque juvit. Astitit sibi et genitor tuus clarissimae memoriae, dux Ernestus²: quorum opera factum est, ut ejecto Johanne Nicodemus reciperetur³ episcopus. O vivaces principum spiritus! O animas imperio dignas. O mentes intrepidas! Licet sane semperque licebit illorum commendare memoriam, qui nullis exterriti minis adversus omnium conatus jus suae familiae servarunt illaesium. Sciebant namque principes oculatissimi, nil pejus esse⁴ contemptu rempublicam gubernantibus. Namque post neglectum derisio et conculcatio provenit. Nemo se ovem faciat, nisi se velit {278v} lupi morsibus laniari. Non expedit principem semper esse benignum, quietum, facilem, mitem. Adhibenda est quoque severitas, virilesque vultus, et oculi truces ostendendi sunt, ne lenitate principis majestas vilescat⁵ imperii.⁶ Ranae, cum sibi trabem, quam Jupiter dederat regnare, perpendissent, truncum ascenderunt, conculcarunt⁷ perminxeruntque.

¹ *omit.* B

² Ernestus A, B, L

³ capietur B

⁴ pejus esse : esse pejus B, L

⁵ vanescat B

⁶ imperium B

⁷ conculcaverunt B, L

1.2.1. Princes must govern with determination

[5] This Johann, who now claims to have been elected, was nominated as bishop by the same chapter 22 years ago. But your uncle Albrecht would not accept him as bishop, and against Johann he put forward Nicodemus, who had been appointed by the Apostolic See, and helped him in words and deeds.¹ In this, he was supported by your sire, Duke Ernest of noble memory, and due to their actions, Johann was rejected and Nicodemus accepted as bishop. Oh, vigorous princely spirits! Oh, souls worthy of ruling! Oh, fearless minds! We remember and should, indeed, always remember them for not being cowed by threats and for keeping the rights of their family safe against the machinations of all. For these clear-sighted princes knew that to rulers nothing is worse than contempt: after indifference follow scorn and humiliation. Nobody should make a sheep of himself unless he wants to be torn apart by the teeth of the wolf. A prince should not always be benevolent, quiet, easygoing, and mild. Sometimes he must show severity, a manly face, and fierce eyes, so that the leniency of the prince does not debase the majesty of lordship. When the frogs had inspected the log that Jupiter had given them as ruler, they mounted it, trod on it, and pissed all over it.²

¹ Nicodemus also had the support of the Bavarian Duke, Heinrich XVI der Reiche, cf. Mass, I, 296-297

² Aesop's Fable of King Log (Phaedrus : Ranae regem petunt)

[6] Quid fabulas refero. Satis exempli dant Athesini¹, qui postquam jugum tuum impune se abjecisse viderunt, Tridentinam urbem, adversus quam nihil habebant querelae, nisi quia tibi parebat, invaserunt, obsederunt, expugnaverunt.² Praetereo contumaciam Tergestinatorum: unicus ex Carniola castellanus, quia te non punire rebelles animadvertit, jussibus tuis obviare conatus est. Quid in hac ecclesia {283v} Frisingensi? Numquid plerique castellani, qui fidem tibi juramento³ promiserant, ausi sunt abs tuo scito Johannem admittere, tamquam plus illum rogatum quam te animatum timuerint⁴. Sed gaudeo Carniolensem illum expugnatum captumque fore, gaudeoque⁵ jam aliquos ex tuis perjuriis laqueum incidisse teque jam tandem⁶ virum esse cognovisse. Non tamen hoc, sat⁷ est, nisi perseveres rebellesque omnes usque ad unum punias⁸, quia *non est pietas aut misericordia, Hormisda teste, uni parcere et omnes per malum exemplum in discrimen adducere, et qui peccantibus parcat, peccandi fomitem subministrat*. Nec tutus est princeps, in cujus dominiis⁹ delicta remanent¹⁰ impunita. Suscipe igitur masculum¹¹ animum, Caesar, vindica neglectum tuum. Praestet tibi magnanimitas propria, quod Frisingensis capituli superbia denegavit, quia expedit tibi ne victus videaris. Quae¹² res liquide¹³ monstrat te mei germani causam tueri debere.

¹ Archesini L

² expugnaveruntque B

³ juratam B

⁴ timuerunt B

⁵ gaudeo B, L

⁶ omit. L

⁷ satis B, L

⁸ punies B

⁹ dominio B

¹⁰ manent L

¹¹ masculinum B, L

¹² ecce L

¹³ liquido A, L

1.2.2. Bad examples from the emperor's own time

[6] But why quote fables when we have examples enough from the people of Etsch: when they saw that they had thrown off your yoke with impunity, they attacked, besieged, and conquered the City of Trient, though they had no complaint against that city except that it obeyed you. I pass over the defiance of the people of Trieste: when just one castle commander from Krain saw that you did not punish rebels, he tried to oppose you in every way. Now, what about the Church of Freising? Did not several castle commanders,¹ who had sworn loyalty to you, dare to admit Johann without your knowledge, as if they feared his request more than your anger? But I rejoice that that man from Krain has been defeated and captured, that other oathbreakers have been hanged, and that people now know you to be a man. But this is not enough, Caesar: you must pursue and punish the rebels to the last man, for, as Hormisdas says, *it is neither piety nor mercy to lead all into danger by sparing one, and the man who spares sinners provides a motive for sin.*² A prince in whose territories crimes go unpunished cannot be safe. Therefore, be a man, Caesar, and avenge the slight done to you. Let your strength and determination give you what the arrogant Chapter of Freising has denied you, for it is not desirable that you should appear to have been defeated. Which clearly goes to show that you should favour the cause of my brother.

¹ I.e., of castles situated in Austria

² Decretum, D.45.17 (col. 166):
quae ista bonitas, quae ista mise-

*ricordia est, uni parcere et omnes
in discrimen adducere.* Pope Hor-

misdas is not mentioned in the
text

[7] Sed est et alia ratio, quae meum fratrem adversario praefert: nam et in tuis dominiis nutritus est, et sub tuis auspiciis educatus fidem tibi habet, devotionem, amorem¹, et² vitam pro tua salute poneret³, emori potius vellet⁴, quam aliquid tibi discrimen⁵ accidere. Quod si magnopere tibi⁶ non est famulatus, quia non fuit occasio, extant⁷ obsequia mea, quae non tibi dumtaxat, sed antecessoribus etiam tuis, Sigismundo atque Alberto Caesaribus, ab ineunte aetate usque in hoc aevi fideliter praestiti. Nulla regio Christianorum est, quam ego vel Sigismundum vel Albertum servitus non obiverim. Adversus Teucros in armis fui, teloque confossus humerum paene interii. Adversus Hussitas arma gestavi. Nunc apud Anglos, nunc apud Italos legationes peregi. Non Hispani, non Galli, non Poloni me nesciunt, apud quos saepe nunc hoc nunc illud imperii negotium gessi. Quod si mei labores non magnae utilitatis fuerint, assidui tamen et fideles fuerunt. Juvet igitur Henricum, quia⁸ meus germanus⁹ est. Prosint ei et facta paterna, nam et genitoris nostri tum apud Italos, tum apud {279r} Bohemos insignis memoria est.

¹ devotionem amorem : amorem
devotionem B

² *omit.* A, L

³ ponere A

⁴ velle A

⁵ aliquid tibi discrimen :
discrimine aliquid tibi B

⁶ magnopere tibi : tibi
magnopere B, L

⁷ *em.*; estant A, B, L

⁸ qui B

⁹ frater B

1.3. Heinrich Schlick is devoted to the emperor

[7] But there is another reason for you to prefer my brother to our adversary: my brother has been raised in your territories and brought up under your patronage. Therefore, he is loyal to you, he is devoted to you, he loves you, and he would rather give his life for you and would rather die than that you should incur any danger. He may not have served you much since he has not had the opportunity, but then there are my services not only to you yourself but also to your predecessors, emperors Sigismund and Albrecht,¹ rendered faithfully since my early youth until the present day. There is no Christian country that I have not visited in the service of Sigismund and Albrecht. When I fought against the Teucrians,² a spear pierced my shoulder, and I almost died.³ I have also fought against the Hussites. I have been on missions to England and to Italy. The Spaniards, the French, and the Poles all know me, for I often negotiated with them concerning imperial affairs. My labours may not have been of great importance, but they were unremitting and loyal. So, may it help Heinrich that he is my brother. And may he also be supported by the deeds of his father, for the memory of our sire, too, is vivid both in Italy and Bohemia.

¹ Kaspar Schlick had the distinction of being imperial chancellor to three emperors, Sigismund, who first appointed him to this office in 1433, Albrecht II, and Friedrich III

² 1428. Teucrians = Turks. Note that Piccolomini, in this oration from 1444, still uses the term *Teu-*

cri for the Turks, a term that he would later reject. Teucra and Teucrians were classical names for Troy and Trojans (used by one of Piccolomini's favourite authors, Virgil). Using Teucrians for Turks was the same identifying the Turks as descendants or relations of the Trojans, beloved

and admired ancestors of the Romans, whereas the Turks were, at the time of Piccolomini, rapidly becoming the great enemy of Europe and absolutely not to be loved and admired

³ 1429. Cf. Hufnagel, p. 256

[8] Nec te putes ob meam causam minus dignum promovere, namque si Paulum de moribus episcopi disserentem legeris, meumque fratrem et intus et mente noveris, quidquid¹ in sacerdote requiritur, in eo reperies. Est in eo sobrietas, castitas, hospitalitas, eruditio litterarum, sermo pergratus, domum optime dispensat, nulli molestus. *Ornatus ejus*, ut Jeronimus jubet, *justitia, prudentia, temperantia, fortitudoque sunt*. Caeremonias ecclesiasticas tam novit quam manus articulos suae. Horas canonicas numquam negligit, scit quia sors Christi esse. Et cum propheta dicit, *pars mea dominus*, vitamque talem ducit, ut *omni poscenti*, sicut apostolus jubet, *rationem* de sua tum fide tum *spe* reddere sit *paratus*. Erga superiores oboediens, erga inferiores benignus est. Scit, quia *non decet episcopos in clero dominari, sed gregem {284r} domini spontaneum pascere*. Scit quia quod Aaron et filii fuerunt, hoc episcopi et presbyteri debent esse. Quod si huic, sicut coepisti, faveris et mecum extolles pontificio dignum, et obsequia mea praemiabis in ipso, nec me tantum alacrem facies, sed omnes, qui tibi serviunt, hac gratitudine demulcebis, quia nil est, quid palatinos comites magis oblectet² quam domini liberalitas. Nec res ulla tam firmat solium principis quam memoria beneficiorum et retributio.

¹ quidquam B

² delectent B

1.4. By rewarding his servants, the emperor will gain their loyalty and support

[8] Do not consider my brother as less worthy of preferment because of me.¹ For if you read Paul on how a bishop should behave and know my brother intimately, you will find in him all that is required in a priest. For he is sober, chaste, hospitable and learned. He speaks kindly, manages his household well, and is mean to nobody. As Jerome says, *his apparel is prudence, justice, temperance, fortitude*.² He knows the ecclesiastical ceremonies like the fingers on his hands. He never misses a canonical hour, and he knows that he belongs to the lot of Christ.³ With the Prophet he says: *God is my portion*,⁴ and the life he leads is such that he is always, as the Apostle says, *ready to satisfy every one that asketh you a reason of that faith and) hope which is in you*.⁵ He is obedient to his superiors and kind to his inferiors. He knows that bishops should *not be lording it over the clergy*,⁶ but *feed the flock of God willingly*.⁷ He also knows that *bishops and priests should be like Aaron and his sons*.⁸ If you favour him, as you began by doing, and together with me praise him as worthy of episcopal office and reward my services in him, then you will not only make me happy, but you will make all who serve you grateful, for nothing pleases courtiers⁹ more than the generosity of their lord. And nothing strengthens the throne of princes as much as the recollection of favours and rewards

¹ I.e., Henrich Schlick should be preferred as a candidate for episcopal office because of his own qualifications office, not just because he is the chancellor's brother

² Jeronimus: *Epistola ad Nepotianum* (52), 13. MPL, XXII, col. 538

³ Cf. Jeronimus: *Epistola ad Nepotianum* (52), 5. MPL, XXII, col. 531

⁴ Psalms, 72, 26. Quoted by Jeronimus: *Epistola ad Nepotianum* (52), 5. MPL, XXII, col. 531

⁵ 1. Peter 3, 15. Quoted by Jeronimus: *Epistola ad Nepotianum* (52), 7. MPL, XXII, col. 533

⁶ 1. Peter, 5, 3: *neque ut dominantes in cleris*. Quoted by Jeronimus: *Epistola ad Nepotianum* (52), 7. MPL, XXII, col. 534

⁷ 1. Peter, 5, 2: *pascite qui est in vobis gregem Dei providentes non coacto sed spontanee*. Quoted by Jeronimus: *Epistola ad Nepotianum* (52), 7. MPL, XXII, col. 534

⁸ Jeronimus: *Epistola ad Nepotianum* (52), 7. MPL, XXII, col. 534

⁹ "palatinos comites"

[9] Hoc in loco nihil est, cur adversarius possit nobiscum contendere, qui nedum tibi nusquam servivit, sed in tuam nuper contumeliam has ingressus provincias castella, quae tuis in¹ manibus erant, fraudulenter eripuit et quasi nihil ad te Frisingensis ecclesia pertineret, nec te vocato nec salutato possessionem castrorum invasit. Sed praedixerat hoc alias in Frisingensi capitulo, nec evanescere dicta sua volebat. Nam cum plerique, priusquam electio fieret, consulendum te suaderent: “Quid vos,” inquit, “concanonici² mei, de Caesare facitis verbum. Non dominus ecclesiae³, sed servus est imperator. Nos jubere debemus, illum parere necesse est.” Servabat itaque postea verbum suum. Non enim ut servus ad dominum, sed ut princeps ad subditum venit, ingressusque tuum territorium⁴ tanti te fecit quanti apud herum esse mancipia novimus. Quod si talia in principio fiunt, quid tunc futurum reris, si, quod superi avertant, ecclesiam integram hic assequatur. Cum petes⁵ inimicis transitum claudi, tunc aperiet, et claudet, cum aperiri⁶ jubebis. Namque si ejus sententiam capis⁷, non tibi ecclesiae arces obsecundare, sed tua potius oppida sibi⁸ patere⁹ fas esse¹⁰ putat. Quod quantum tibi¹¹ expediat ex¹² tuo¹³ et horum, qui assunt, procerum¹⁴ iudicio derelinquo. Ego illud dico, quod si verbum tuum servare, si tuum honorem tueri, si statui tuo consulere, si dignitatem imperialem manutenere, si domus Austriae decus praeservare, si spem bonam curialibus tuis praebere, si contemptum vitare et¹⁵ his, qui tibi tuisque praecessoribus¹⁶ fideliter servierunt, {279v} gratis esse, ut semper fuisti¹⁷, volueris, nullum mihi dubium facio quin tua ex munificentia tuisque favoribus et auxiliis hanc Frisingensem ecclesiam meus frater assequatur.

¹ tuis in : in tuis L

² canonici B

³ hic *add.* L

⁴ tuum territorium : territorium tuum L

⁵ potes B; petis L

⁶ aperi B, L

⁷ cupis B

⁸ oppida sibi : sibi oppida L

⁹ placere B, L

¹⁰ *omit.* A, L

¹¹ sibi B

¹² et L

¹³ ex tuo *omit.* B

¹⁴ *omit.* B

¹⁵ ex A

¹⁶ praecessoribus B, L

¹⁷ voluisti B

[9] In this matter, our adversary can certainly not measure up to us: after all, he has never served you. On the contrary, he has recently acted against your best interests by entering your lands and fraudulently seizing those castles that were in your hands – as if the Church of Freising was no concern of yours. He took possession of the castles without as much as calling upon you and coming to greet you. He had actually announced this in the Chapter of Freising, and he did not want his words to go unnoticed. For before the election, when several [of the canons] tried to persuade him to consult with you, he said: “Fellow-canon, why do you talk so much of the emperor. The emperor is not the lord of the Church but its servant. It is us who should command, and he who should obey.” Afterwards he did as he had said, for he came not as a servant to his lord but as a prince to his subject, and entering your lands, he took as little notice of you as we know a master did of his slaves. If it begins this way, what do you think will happen in the future, were he – Heaven forbid – to get control of the whole diocese? When you request that passage be denied your enemies, he will grant passage, and when you demand that passage be granted, he will deny it. If you understand him, he does not think that it is right for the fortresses of the Church to support you, but rather that your cities should lie open to him. How much this will benefit you, I leave to your own judgement and that of the nobles who are present. What I am saying is that if you want to keep your word, to defend your honour, to protect your state, to maintain the imperial dignity, to preserve the honour of the House of Austria, to give good hopes to your courtiers, to avoid contempt,¹ – as you have always been – to those who have served you and your predecessors loyally, then I do not doubt that my brother will obtain the Church of Freising as a result of your generosity, your favour, and your help.

¹ An example of the classical rhetorical device of *accumulatio*,

which Piccolomini used frequently

[10] Sed audio, quod quidam objiciunt, jamque in auribus meis quaedam murmura perstreptent. Teneo jam cogitatus istorum¹. Scio quid ajunt. Movit nonnullos, ut video², quod adversarius de neutralitate disseruit. Solvendus est hic nodus. Torrentes, qui ex alpibus praecipitantur, priusquam in mare ferantur, quod eorum est finis, obvia quaeque foramina obstruunt et occurrentes foveas quaslibet implent. Ita et nos faciemus, nec neutralitati nec aliis objectionibus locum relinquemus, quamvis quid ad Johannem neutralitas stupeo quidem, Caesar, nec satis admirari sufficio, quod te de fracta neutralitate Johannes accusat, qui semper neutralitati repugnavit. *Capreorum oculos*, ut inquit Jeronimus, *talpa*³ {284v} *condemnat*.

*Quis caelum terris non misceat⁴ et mare caelo?
Si fur displiceat Verri⁵, homicida⁶ Miloni,
Clodius accuset moechos, Catilina⁷ ⁸ Cethegum,
in tabulam Syllae, si dicant discipuli tres?⁹
si¹⁰ loripedem rectus derideat Aethiopem albus.*

Turpissimum est sua in aliis reprehendere vitia.

¹ eorum B

² ut video *omit.* B, L

³ culpa B

⁴ miserat B

⁵ ferri L

⁶ homicidia B

⁷ Cathelana A; Cathelina B

⁸ homicida Miloni ... Catilina *omit.*

L [A and B not derived from L]

⁹ ferendum esse *add.* B, L

¹⁰ in A

1.5. Three problems

1.5.1. Problem of neutrality

[10] But I hear some object to this, and their murmurings keep sounding in my ears. I know what they think and what they say. I see that some are impressed by the arguments of my adversary concerning neutrality. This knotty problem must be solved. Before the streams falling from the Alps reach the sea, which is their end, they fill all the holes and pits they meet on their way. We shall do the same and not leave any room at all for neutrality or any other objections. As for Johann and neutrality, I am astonished, Caesar, that he should accuse you of breaking neutrality since he has always himself opposed it.¹ As Jerome says: *The mole berates the eye-sight of goats.*² And

*who will not confound heaven with earth and sea with sky,
if Verres denounces thieves, or Milo cut-throats?
If Clodius condemns adulterers, or Catiline upbraids Cethegus?
Or if Sulla's three disciples inveigh against proscriptions.³
Let the straight-legged man laugh at the club-footed,
the white man at the blackamoor.⁴*

It is utterly disgraceful to blame others for one's own faults.

¹ Johann Grünwalder had actually not only been a staunch supporter of the council but also a particularly adamant opponent of

German Neutrality, both in speech and writing, cf. Mass, I, p. 306

² Quotation not identified

³ Juvenalis: *Satirae*, 2.25-28

⁴ Juvenalis: *Satirae*, 2.23

[11] Non bene, ut video, Jeronimum legit adversarius noster, cujus ad Nepotianum haec sunt verba: *Non confundant¹ opera sermonem tuum, ne cum in ecclesia loquaris tacitus quilibet respondeat: cur ergo haec, quae facere² dicis, ipse³ 4 non facis? Delicatus magister est, qui pleno ventre de jejunio disputat.* Nota⁵ sunt Johannis opera. Nemo nescit, quam acer hic neutralitatis fuerit impugnator. Primus hic omnium principum oratorum ante Felicem comparuit oboedientiamque nomine clari principis Alberti, ducis Bavariae, praestitit. "Et gaude," inquit Felici⁶, "plus quam centum milia virorum in tuam hodie oboedientiam deduxi." Nec multo post⁷ cardinalatus insignia suscepit. Nicodemum episcopum, quia neutralis erat, schismaticum appellabat⁸, magnoque nixu⁹ depositionem ejus quaerebat. Maguntiae plura¹⁰ contra neutralitatem locutus est. Basileae decretum fieri maximo studio contendit, quo neutralitas damnaretur. Cujus voluntati, si mos gestus fuisset, et omnes electores et tu, Caesar, declarati fuissetis haeretici. Nunc vir bonus, quia neutralitatem sibi¹¹ commodo¹² putat¹³, ne adversus neutralitatem aliquid agas, blandus admonet. O viri constantiam! O fortem¹⁴ animum! O stabiles hominis sententias! Siccine decet optimum¹⁵ variare.

[12] Hic Maguntiae, cum neutralitas juberet¹⁶ pileum poni cardinalatus, "Emoriar¹⁷ prius," inquit¹⁸, "quam hoc insigne deseram. Nam et color iste purpureus jubet, ut pro fide non timeam fundere sanguinem." Nunc cogente nullo galerum deposuit, armaque sua non jam¹⁹ pileata, sed mitrata depingit. Quo facto vel episcopatum cedere cardinalatum debere censet, vel se vult neutralem ostendere, ut episcopatum {280r} valeat assequi. Credo equidem, nec vana opinio est, oboediturum hunc Eugenio, si se propter hoc obtinere putaret ecclesiam, quem non se fidei²⁰, sed fidem sibi coarctat. Sed missum istum²¹ faciamus, quia neutralitatis auxilio non est dignus, qui neutralitatem est insecutus, sicut a²² lege juvari non debet, qui peccat in legem.

¹ confundunt L

² omit. A, L

³ omit. B

⁴ dicis ipse : ipse dicis L

⁵ non B

⁶ em.; Felix A, B, L

⁷ plus B

⁸ appellat B

⁹ nixii B

¹⁰ plus B, L

¹¹ si B

¹² commoda B

¹³ putas B

¹⁴ blandem B

¹⁵ ipsum B

¹⁶ jubere A

¹⁷ emorior B

¹⁸ prius inquit : inquit prius B

¹⁹ non jam : jam non B, L

²⁰ videi A

²¹ ista B

²² omit. A

[11] It seems to me that our adversary has not read Jerome very well, where he says to Nepotian: *Let not your actions belie your words, so that when you begin to speak in a church someone may mentally reply: "Why do you not practice what you profess? Here is a lover of delicacies who preaches on fasting while his own stomach is full."*¹ Johann's actions are well known. Everybody knows how fiercely he opposed neutrality. He was the first ambassador of a prince who appeared before Felix, offering obedience in the name of the noble Prince Albrecht, Duke of Bavaria. "Be glad," he told Felix, "for today I have brought more than 100.000 men into your obedience." Shortly afterwards, he received the insignia of a cardinal.² Because Bishop Nicodemus adhered to neutrality, Johann called him a schismatic and tried by every means to have him deposed. In Mainz, he said much against neutrality. In Basel he worked hard for a decree condemning neutrality. If he had prevailed, all the [prince] electors and you yourself, Caesar, would have been declared heretics. Now, however, the good man considers that neutrality is to his advantage, and therefore he smoothly admonishes you not to act against it. Oh, what a steadfast man! What a strong soul! What lasting opinions!³ Would a good man change like that?

[12] When in Mainz he was requested, in the name of neutrality, to put away his cardinal's hat, he answered: "I would rather die than give up this symbol of my office, for this purple colour signifies that I should not hesitate to shed my blood for the Faith." Now, under no pressure whatsoever, he has put away the hat, and his arms are no longer surmounted by a [cardinal's] hat but by a [bishop's] mitre. He has done this either because he believes that a cardinal's office is inferior to that of a bishop, or because he wants to demonstrate that he now adheres to neutrality so that he may obtain episcopal office. I do believe that he would even declare obedience to Eugenius if he thought that he could get the Church [of Freising] in that way, for he does not bend himself to the Faith, but he bends the Faith to himself. But enough of this: an opponent of neutrality cannot merit being helped by it, just as *a man may not be helped by the law if he breaks it*.⁴

¹ Jeronimus: *Epistola ad Nepotianum* (52), 7. MPL, XXII, col. 533. Also used by Piccolomini five years before, in his *Oration "Si ea quae justa" [4]*, sect. 23

² Mass, I, p. 307: *Der Dank liess auch nicht lange auf sich warten*. Grünwalder was appointed cardinal by Felix on 12 October 1440

³ Piccolomini drips irony, in the form of exclamations

⁴ A variant of a well-known legal maxim

[13] Ad electores veniendum est, quia cum his neutralitatis pacta percussa sunt, cavendumque censeo, ne fratri meo favens his displiceas. Sed pone hunc vanum timorem, quoniam nequeunt in eo te¹ reprehendere, quod ipsi faciunt. Decanus eorum, Maguntinus archipraesul, ab utraque parte provisiones suscepit. Nam et Rupertum², Stephani ducis Bavariae filium, per³ Felicem promotum in Argentinensem pontificem et suum suffraganeum suscepit. In ecclesia Curiense, quod Eugenius mandavit, est⁴ executus. Coloniensis archiepiscopus Paderburgensem ecclesiam per concilium sibi commissam recepit. Nolo per singulos discurrere, ne longior fiam. Illud tibi⁵ persuasum volo, nullum ex principibus tuis esse, qui non vel isti vel illi parti contra neutralitatem obtemperaverit. Nec tu, Caesar, immunis es, qui Salzburgensem archiepiscopum auctoritate concilii⁶ confirmatum in tuis dominiis⁷ {285r} admisisti, quod nisi tibi ab⁸ Eugenio vis imputari hunc, meum germanum in recompensationem juvabis.

[14] Sed non sunt ista, ut melius loquamur, neutralitati contraria, neque idcirco fractor est aliquis foederum, quod episcopum per istam vel illam⁹ partem promotum admiserit. Neutralitas namque tunc servanda est, dum nostris animabus praelati sufficiunt¹⁰ ordinarii. Ubi vero¹¹ necessaria est auctoritas major, frangenda potius neutralitas est¹² quam animarum salus negligenda. Certum est, quia non potest metropolitanus episcopum promovere nisi electum. At ubi vel neglecta electio est¹³ vel de persona inhabili facta, supernum tribunal¹⁴ est adeundum vel apostolicae sedis vel concilii, sicut in ecclesia nunc Frisingensi contigit¹⁵, in qua veluti, sicut¹⁶ post dicemus, Felicis cardinalis electus non¹⁷ potuit ab ordinario confirmari, opusque omnino fuit huic ecclesiae per superiorem provideri, si eam vacare diutius non decebat. Cum ergo vel sine pontifice¹⁸ dimittenda est¹⁹ ecclesia vel neutralitas infringenda, quis non videt duobus praepositis malis, quod minus sit eligendum, sicut in *Officiis* Cicero et omnis philosophorum praecipit schola. Quod si contra neutralitatem aliquid faciendum est, nemo te arguet, invictissime Caesar, si tuos potius quam alienos duxeris adjuvandos. Johannes vero, qui cardinalis est a Felice creatus, et, ut ipse inquit, per metropolitanum a concilio²⁰ confirmatum comprobatus, nullo pacto potest salva neutralitate juvari. Itaque, si violanda neutralitas est, ut est in hoc casu, in tuorum potius favorem quam in aliorum commodum frangi debet.

¹ in eo te : te in eo B

² Ropertum codd.

³ ab utraque ... per *omit.* L [A and B not derived from L]

⁴ et B

⁵ tamen B, L

⁶ consilii L

⁷ dominis A

⁸ vel B

⁹ istam vel illam : illam vel istam L

¹⁰ sufficient B

¹¹ autem B

¹² potius neutralitas est : est potius neutralitas L

¹³ electio est : est electio L

¹⁴ tribunali A

¹⁵ contingit B, L

¹⁶ *omit.* B, L

¹⁷ nonne B

¹⁸ sit *add.* A

¹⁹ sic A

²⁰ Nicolao B [*sic!* – this indicates that manuscript B was written after the accession of Pope Nicholas V in 1447]; consilio L

1.5.2. Problem of the imperial electors

[13] We now come to [the issue of] the [prince] electors. Since it was they who made the pact of neutrality, I believe you should consider whether you might offend them by favouring my brother. However, this unfounded fear you may put aside, for how can they criticise you for doing what they themselves do? Their dean, the Archbishop of Mainz, accepts provisions¹ from both sides. Thus he accepted Felix' promotion of Ruprecht,² son of Duke Stephan of Bavaria,³ as Bishop of Strassbourg and his own suffragan bishop. And - quite the opposite - in the case of the Church of Chur, he complied with the decision of Eugenius. For his part, the Archbishop of Cologne accepted the Church of Paderborn, given to him by the council.⁴ I shall not go into all the individual cases, for that would take too long. But I wish you to be aware of the fact that all your princes have actually accepted [the provisions] of both parties, in contravention of neutrality. And so did you, Caesar, when you admitted the Archbishop of Salzburg, confirmed by the authority of the council, to your territories. So, unless you want Eugenius to censure you for that, you should, in compensation, help my brother.

[14] But – to speak in a more positive vein - these things do not really run counter to neutrality, and therefore nobody is breaking the pact if he accepts a bishop appointed by one side or the other. For neutrality can only be kept when the ordinary prelates suffice in pastoral matters.⁵ But when there is need for a higher authority, it is better to break neutrality than to neglect the welfare of souls. It is certain that a metropolitan bishop⁶ cannot appoint a bishop unless he has been elected first.⁷ But where the election has been carried out improperly or an ineligible person has been elected, it is necessary to have recourse to a higher tribunal, either that of the Apostolic See or that of the council. This is what has happened now in the case of the Church of Freising. As we shall explain later, a cardinal of Felix, though elected,⁸ could not be confirmed by the archbishop,⁹ and therefore it was necessary that a superior instance should provide a bishop for this diocese if it should not be vacant for a long period. For there were only [two possibilities], either to leave the diocese without a bishop or to break neutrality. Who does not see that out of two evils, the lesser one should be chosen, as Cicero says in his *De Officiis*¹⁰ and the whole school of philosophers teaches. And in case neutrality cannot be observed, nobody will blame you, Unvanquished Emperor, if you prefer to support your own people rather than strangers. As Johann was made a cardinal by Felix and was, as he himself says, approved by the metropolitan,¹¹ who had himself been confirmed by the council, there is absolutely no way in which his case can hold – at least not if neutrality should be observed! But if neutrality must be disregarded, as in this case, then it should be broken in favour of your own people rather than for the benefit of others.

¹ i.e., ecclesiastical appointments

² Ruprecht (1420–1478): Bishop of Strassburg

³ Stefan von Pfalz-Simmern-Zweibrücken (1385-1459): Count

Palatine and Duke of Pfalz-Simmern-Zweibrücken

⁴ See Voigt, II, pp. 308-309

⁵ “animabus nostris” = our souls

⁶ An archbishop

⁷ i.e. by the cathedral chapter

⁸ i.e. by the cathedral chapter

⁹ The Archbishop of Salzburg

¹⁰ Cicero: *De officiis*, 3.1.3: *ex malis eligere minima oportere*

¹¹ The Archbishop of Salzburg

[15] Sed est alia quoque difficultas, cui nos respondere oportet. Dicit quidam: “Nisi Johanni faveas, Bavaros {280v} duces adversus te arma moturos. Itaque licet inclyta domus Austriae agros suos tueri sit potens, non tamen expedit tantum¹ tribuere Caspari², ut ejus causa suscipi bellum debeat, quia utilior est Bavarorum principum amicitia quam Casparis famulatus. Nec Caspar, si bonus vir est, hoc ex te poscere debet, quia praeponi publica privatis decet.” Hoc ego, clementissime Caesar, nequaquam negaverim. Scio namque familiam illam Bavarorum tum nobilissimam tum potentissimam non solum prodesse imperio posse, sed antiquis temporibus multifariam profuisse, in qua diu sedens imperium magnas res gessit. Cujus splendori³ atque gloriae si comparari voluerim, ranae potius fuerim comparandus, qui volens aequari bovi, sicut fabulae ferunt, intumescendo crepuit. Sed neque tam ambio neque tam mei sum nescius, ut me Bavaris comparem aut eis quovis pacto quaeram obesse. Obnoxius sum illi familiae, quoad vivam, servire nec ingratus adversus eam⁴ inveniar umquam.

[16] Sed audiant, obsecro, circumstantes, attendite consulares⁵! Quis est, qui mei causa suscipere bellum suadeat Caesari? Certe non ego nec meus germanus. Intelligite, obsecro, viri praestantes⁶! Audi me, Caesar, et agnosce melius, quod dico: non⁷ mea vel mei⁸ fratris, sed tua est haec causa⁹. Tu neglectus es, non ego! Tibi rebellio facta est¹⁰, non mihi. Non meo fratri, sed tibi jurarunt castellani. Non mihi, sed Australi {285v} familiae obnoxia est ecclesia Frisingensis, cujus¹¹ castra in tuis dominiis, non in meis sunt, quae, si praeter tuum scitum recipiuntur, non mihi, sed tibi tuaeque domui fit injuria, quam si vindicando suscipis bellum, non propter me, sed propter te tuamque domum venis in arma. Ego vero, mi Caesar, in Danubium potius volo praecipitari quam tibi vel minimo esse detrimento, absitque scelus hoc, ut propter me tibi Bavari succenseant duces. Ego quia jurejurando sum tibi astrictus, ut honorem tuum vendices, et tum¹² Austriae tum imperii sacri privilegia tuearis, admoneo. Quod quantum expediat, et tu pro tua prudentia nosti, et astantes barones manibus palpant.

¹ expedit tantum : tantum
expedit L

² Gaspar... *et passim* A

³ splendore B

⁴ *omit.* B

⁵ consules B

⁶ patres A, L

⁷ *vel add.* B

⁸ *omit.* B

⁹ sed ... causa : causa haec tua est
B

¹⁰ facta est *omit.* B

¹¹ eius A, L

¹² cum A

1.5.3. Problem of war with Bavaria

[15] But there is another difficulty that we must address. Someone may say that “the Bavarian Dukes will go to war against you if you do not favour Johann. Though the illustrious House of Austria is certainly strong enough to protect its territories, Kaspar is not so important to you that you should go to war for his sake. The friendship of the Bavarian princes is more useful to you than the service of Kaspar. And if Kaspar is a good man, he will not demand this of you, for public matters are more important than private ones.”¹ This I certainly do not deny, Gracious Emperor. For I know that the most noble and powerful family of the Bavarians can be useful to the empire today and has actually been of great benefit to it in former times when, for a long period, it held the imperial office and achieved great things. If I wanted to equal its splendour and glory, I would be like the frog in the fable, which wanted to be as big as an ox and swelled so much that it burst asunder.² But I am not so ambitious or so ignorant of my own [status] that I want to measure myself with the Bavarians or cause them any problems whatsoever. Rather, I am obliged to be of service to that family as long as I live and never be found to be ungrateful towards it.

[16] But listen, you who are present, and pay attention, counsellors!³ Who would claim that the emperor should go to war on my behalf? Certainly not me nor my brother! Be assured of this, excellent men! Hear me, Caesar, and please understand what I am saying: this cause is not mine nor my brother’s, but your own. It is you who have been slighted, not I. It is you they rebel against, not me. The fortress commanders swore their oaths to you, not to my brother. The Church of Freising is subject not to me but to the Family of Austria; its castles lie in your domains, not mine, and if they are taken over by someone else without your knowledge, it is not me but your House that is being wronged. If you go to war to maintain your rights, then you take up arms not for me but for yourself and for your House. As for me, Caesar, I would rather be thrown into the Danube than cause you any harm whatsoever! Far be from me the crime that the Bavarian dukes should become your enemies for my sake. It is because I am bound to you by oath that I urge you to vindicate your honour and to defend the sacred rights⁴ both of Austria and of the Holy Empire. How expedient this [course of action] is, you yourself know, in your wisdom, and it must also be quite evident to the barons present here.

¹ Actually, threatening letters had been sent to the emperor by Duke Albrecht III of Bavaria, the nephew of Grünwalder, and to some of the imperial courtiers. Pic-

colomini himself thought that such letters had been requested by the chancellor’s enemies at court, cf. Voigt, II, p. 316

² From a Fable of Aesop

³ “consulares”

⁴ “privilegia”

[17] Ceterum quia de bello Bavarorum mentio incidit¹, non est ab re pauca in hac materia dicere. Mihi tam verisimile sit Bavaros principes propter Johannem arma movere quam te, Caesar, propter Casparem bella sustinere. Quis nescit Bavaros ea semper usos modestia, ut² nullum proelium sine causa susceperunt. Quis graves illos ac maturos principes armari contra dominum putet? Quis laudare Bavaros velit, si propterea tibi bellum indicerent, quod usurpata per adversarium nostrum castella recuperare curaveris. Sciunt Bavari nihil ad se³ pertinere de castris, quae in tuis dominiis sunt. Et sicut ipsi ex suo arbitrio Bavariam regunt⁴, sic te Austriam, Stiriam, Carinthiam et Carniolam gubernare debere cognoscunt. Nec {281r} eos latet te, quia Romano imperio praesides, super Bavaros jurisdictionem habere, ad eos vero nihil de tuis dominiis pertinere.

[18] Nec te moveat, quod aliqui dotatam per Bavaros ecclesiam Frisingensem dictitent, quia non Bavari⁵ ut Bavariae duces castra, de quibus nunc agimus, ecclesiae tradiderunt, sed tamquam Stiriae atque Carinthiae vel Carniolae domini, in quorum jure tu successisti, qui nunc his⁶ provinciis praees. Est praeterea Frisingensis ecclesia imperium principatus et ab imperio feudum suscipit, nec praeter⁷ te, qui Romanae reipublicae gubernacula suscepisti, alium quemquam decet de his castris cognoscere. Norunt ista Bavari, et quia⁸ tui vassalli sunt, tibi que majori ex parte juramento astricti scelus se perpetrare cognoscerent, si propter Johannem tibi vellent irasci. Absit dedecus hoc ab illa clarissima sublimique domo, ut quae semper imperii propagatrix fuit, jam hostis inveniatur. Absit hic vanissimus timor. Nec propterea moveri Bavaros arbitremur⁹, quia sic adversarius dixerit. Non enim ex capite suo, sed ex prudentum virorum sententia movetur Bavaria.

¹ mentio incidit : incidit mentio L

² et L

³ nihil ad se : ad se nihil B, L

⁴ regnant B

⁵ Bavaria B

⁶ istis L

⁷ propter B

⁸ qui B

⁹ arbitramur B; in arma *add.* L

[17] But as we are now speaking about war with the Bavarians, I have some other things to say about this issue. I think it is just as unlikely that the Bavarian princes would go to war for the sake of Johann as that you, Caesar, would go to war for the sake of Kaspar. As everybody knows, the Bavarians have always been reluctant to fight without proper cause. Who believes that these serious and mature princes would take up arms against their lord?¹ Who would commend the Bavarians for declaring war on you if you only intend to take back those castles that have unlawfully been taken over by our adversary? The Bavarians know that they have nothing to do with the castles situated in your domains. And as they themselves rule Bavaria as they see fit, they know that you must rule Austria, Steiermark, Kärnten, and Krain, as you see fit. And they know quite well that you are the one who governs the Roman Empire and thus has jurisdiction over Bavaria, whereas they have no rights at all with regard to your domains.

[18] And you need not be concerned just because some people keep saying that the Church of Freising was endowed by the Bavarians, for the Bavarians did not give the castles in question to the Church in their capacity as dukes of Bavaria, but in their [former] capacity as Lords of Steiermark, Kärnten, and Krain. Today, you have succeeded as ruler of these areas, and as such you have taken over their rights. Moreover, the Church of Freising is a principedom of the Empire, holding [its domains as] a feudal grant from it. So, apart from you, who govern the Roman Empire, nobody has the right to dispose of these castles. The Bavarians know this, and as your vassals, they acknowledge that, being bound to you by oath, they would be committing a grave offence should they become your enemies because of Johann. May this shame be far from that noble and exalted House that they should now become enemies of the Empire whose champions they have always been. So, away with this idle fear! And we do not believe that the Bavarians will be moved by the words of our adversary, for Bavaria is not moved by his will² but by the considered judgement of wise men.

¹ i.e., the emperor

² "suo capite"

[19] Rogo igitur atque obsecro, Caesar, ne quid de illis consanguineis tuis sinistra¹ concipias², qui multo paratiores sunt in auxilium tuum, si quando volueris, quam in damnum vel³ injuriam arma conferre. Non potest nobilitas non amitari nobilitati⁴, nec virtus potest virtuti non affici. Illos tibi jus, sanguis⁵ conciliat. Justitia retinet, fides praestita stringit. Nil est, quod horum arma formides: non minus te illi indigent quam tu eis. Utere jure tuo et nullum timeas, dum recte agis. Perfice quod coepisti⁶, quia⁷ maledictus est qui *ponens manum ad aratrum retro respicit*. Nec imitari *lynxes* nos decet, quibus, Jeronimo teste, *natura insitum est, ne post⁸ {286r} tergum respicientes priorum meminerint*. Regum verba stabilia esse constareque, sed facta principum a vertice in calcem debent⁹. Variare autem et in¹⁰ horas mutare sententias cum omni hominum generi turpissimum sit, tamen¹¹ principantibus foedissimum est. Ideoque tua maxime interest, Caesar piissime, ut quod in fratre meo coepisti, in finem usque perducas. Diximus jam quid¹² expediat.

[20] Nunc quid liceat absolvemus. Et quia sub justo locavimus licitum, jam de justitia disputabimus. Haec est *naturae tacita quaedam conventio in auxilium inventa multorum*. Hanc jurisconsulti *constantem atque¹³ perpetuam esse voluntatem¹⁴ diffiniunt, quae¹⁵ unicuique suum jus¹⁶ tribuit*. Cicero idem inquit, *sed in jure distribuendo communem servari utilitatem* praecipit. *Nam et justitia est¹⁷ cum damno unius servari¹⁸ rempublicam*. Nos ista¹⁹ nunc praetereamus, discussoque partium jure, quid liceat, videamus.²⁰ Quattuor loca sunt, Caesar, in quibus causa haec potest subire²¹ iudicium: coram Deo, coram Eugenio, coram concilio, et coram Germaniae principibus neutralitatem servantibus²².

¹ sinistre B, L

² accipias B

³ in *add.* B

⁴ *omit.* B

⁵ jus sanguis : jus sanguinis B

⁶ fecisti B

⁷ cum B, L

⁸ opus B

⁹ verba stabilia ... debent *omit.* B

[NB: A and L not derived from B]

¹⁰ *omit.* B

¹¹ tum A, L

¹² quoque B

¹³ tum B

¹⁴ utilitatem B

¹⁵ qui B

¹⁶ suum jus : jus suum B

¹⁷ et A

¹⁸ servare B, L

¹⁹ ita B

²⁰ provideamus B

²¹ potest subire : subire potest B, L

²² observantibus B, L

[19] So, I ask and beg you, Caesar, do not entertain such dark thoughts about your [Bavarian] relatives. They are much more inclined to come to your aid when you wish it than to take up arms to harm or wrong you. Nobility must have friendship with nobility, and virtue must like virtue. The bond of blood will reconcile them to you. Justice keeps them with you, and the sworn oath binds them to you. You should not fear their armies at all. Indeed, the Bavarians need you more than you need them. Stand up for your rights, and fear nobody when you act rightfully. Finish what you have begun, for cursed is the *man putting his hand to the plough and looking back*.¹ And we should not imitate the lynxes, whose nature, according to Jerome, it is *to forget what they have just seen when they look behind them*.² The words of a king must be firm, and the actions of a prince must be consistent “from top to bottom.”³ Changing opinions all the time is shameful for men in all walks of life, but for rulers, it is absolutely disgraceful. Therefore, it is in your own great interest, Most Pious Emperor, to bring what you have begun to do for my brother to a happy conclusion.

We have now said what is expedient.

2. Legal arguments

[20] Now we shall look at that which is permissible. And since permissible in this context means just and legitimate, this is what we shall be speaking about. *Justice is a tacit covenant*⁴ of nature established for the aid of many.⁵ Lawyers define it as *the constant and permanent will to respect the rights of everybody*.⁶ Cicero says the same thing when he states that *in administering justice the Common Good must be safeguarded. For it is just to safeguard the state even if one individual may be harmed thereby*.⁷ We shall not dwell on this but move on to discuss the rights of the [two] parties and then look at what may be done legitimately.

There are four instances that may judge in this matter: God, Eugenius, the Council, and the German princes observing neutrality.

¹ Luke, 9, 62: *nemo mittens manum suam in aratrum et aspiciens retro aptus est regno Dei*

² Jeronimus: *Epistola ad Chryso-gonum*, 9, 1. MPL, XXII, col. 342: *Verum tu, quod natura Lynces insitum habent, ne post tergum respicientes meminerint priorum*

³ See Cicero: *Pro Quinctio Roscio Comoedo*, 7.20: *ab imis unguibus usque ad verticem summum*

⁴ I.e., contract

⁵ From Martin of Braga (ca. 550): *De Formula Honestae Vitae*. In the Middle Ages, this work was attributed to Seneca

⁶ Quotation not identified

⁷ Not identified as a direct quotation, but see Cicero: *De finibus bonorum et malorum*, 3.19.64: *ex quo illud natura consequi, ut com-*

munem utilitatem nostrae anteponamus. ut enim leges omnium salutem singulorum saluti anteponunt, sic vir bonus et sapiens et legibus parens et civilis officii non ignarus utilitati omnium plus quam unius alicuius aut suae consulit

[21] De deo primum dicamus. Hic si foret in terris nec chirographis nec testibus indigeremus, quia nil est, quod ejus majestati non sit apertum. {281v} Fingamus tamen coram ipso causam isto¹ modo versari. Quid, obsecro, diceret ille rector orbis et hominum sator², qui nullam in episcoporum creatione vel corruptelam vel labem intervenire vult, qui omnes petentes³ putat indignos, cui nil magis quam ambitio displicet. Videor videre Deum ipsum in haec verba prorumpentem:

[22] “Quis fastus, quis ambitus te ducit, Johannes, ut vivere nolis⁴, nisi ecclesiae Frisingensi praeficiaris⁵ episcopus? Cur te efficis tanti? Cur tibi tantum arrogas? Tu ne Ambrosio melior, aut Gregorio sanctior, vel doctior Augustino? Illi fugiebant vocati, tu repulsus accedis. Illi plorabant retenti, tu defles exclusus. Illi abire rogabant, tu manere precaris. Tuam⁶ ne mihi⁷ ambitionem reris⁸ incognitam, qui postquam sacerdotis officium suscepisti, nil aliud quam ut episcopus fieres studuisti? Vacante dudum hac ipsa ecclesia, quam propter defectum tibi notum non poteras eligi, postulari magnis muneribus impetrasti. Sed noluit tuae cupiditati favere Martinus, virumque simplicem et omni carentem vitio⁹ Nicodemum tibi praeposuit. Nec tu mei vicarii iudicio¹⁰ quievisti¹¹, ut¹² qui te majorem putabas. Nisi postquam vires¹³ atque justitiam simul tibi¹⁴ obstare vidisti, vicariatum Nicodemi suscepisti, sed immemor illorum beati Leonis verborum: *Qui se scit aliquibus esse praepositum, non moleste ferat aliquem sibi esse praelatum.*

¹ istam A

² sacer A

³ potentes B; petentes *corr. ex*
potentes L

⁴ noles B

⁵ praeficiaris B

⁶ tu L

⁷ *omit.* B

⁸ rerum B

⁹ ambitione B

¹⁰ Nicodemum ... iudicio *omit.* B

[NB: A and L not derived from B]

¹¹ inquivisti B

¹² et B

¹³ fieres B

¹⁴ *omit.* B

2.1. In relation to God

[21] Let us first talk about God. If He were here on Earth, we would need neither documents nor witnesses, for nothing is hidden from His majesty. So, let us imagine that this trial is conducted before Him [as judge]. What would He say, the ruler of the world and the progenitor of the human race, who wants that there should be no corruption nor faults in the appointment of bishops¹ and who thinks that all who desire to be bishops are for that very reason unworthy [of this office]. For nothing displeases him more than ambition. I seem to hear God speak like this²:

[22] “What arrogance and what ambition is it that drives you, Johann, since you can only live if you become Bishop of Freising? Why are you so full of yourself? So presumptuous? Are you better than Ambrose,³ holier than Gregory,⁴ or more learned than Augustine?⁵ They fled when they were called,⁶ but you come when you have been rejected. They lamented that they were not let off, but you weep because you have been turned away. They asked to go away; you beg to stay on.⁷ Do you really think that I am unaware of your ambition? Since you took the office of priesthood, you have desired nothing else but to become a bishop. When this Church became vacant,⁸ you could not legitimately be elected as its bishop because of a defect known to yourself,⁹ but still you managed to be elected through great donations.¹⁰ But Martin¹¹ would not favour your greedy ambition, and instead he appointed Nicodemus,¹² a simple man without ambitions, as Bishop [of Freising]. But believing yourself to be greater than my own Vicar,¹³ you ignored his judgement. You only accepted to become the deputy of Nicodemus when you saw the forces opposing and that justice was against you.¹⁴ But you did not remember those words of Saint Leo¹⁵: *A man who knows that he has been set above others should not take it badly that others have been set above himself.*¹⁶

¹ Cf. Piccolomini’s oration “*Si ea quae justa*” [4] of 1438/1439 to the Council of Basel on the subject of the appointment of bishops

² God speaking directly on this hearing at the Imperial Court, trial, is an instance of the classical rhetorical device of personification (*personificatio*)

³ Ambrosius, Aurelius (c. 340-397). Archbishop of Milan to his death. Doctor of the Church. Saint

⁴ Gregorius I (ca. 540-604): Pope 590 to his death

⁵ Augustinus, Aurelius (354-430): Bishop of Hippo. Theologian. Doctor of the Church. Saint

⁶ In his sermon on the feastday of Saint Ambrose in 1438, “*Si quis me roget*” [2], sect. 9, Piccolomini had described the desperate attempts of Ambrose to avoid becoming a bishop, in a passage beginning with the words: *But*

ambition, so prevalent in the present age, had not yet blemished the Church, and bishoprics were not yet sold for money (Sed nondum ea, quae nunc viget, ambitio macularat ecclesiam, nec adhuc pecunia vendebantur episcopatus)

⁷ This is an instance of the classical rhetorical device of opposition (*antithesis*)

⁸ 1422

⁹ A slur on the illegitimacy of Johann Grünwalder. However, Pope Martin V had already granted him a dispensation before the capitular election in 1422, cf. Mass, I, p. 297

¹⁰ i.e., simony

¹¹ Martinus V [Oddone Colonna](1369-1431): Pope from 1417 to his death. His election at the Council of Constance effectively ended the Western Schism (1378-1417)

¹² Nicodemo della Scala (-1443): Descendant of the Scaliger Family of Verona and Vicenza. Appointed Bishop of Freising by Martin V in 1422 though the cathedral chapter had elected Johann Grünwalder. Counsellor of Albrecht II and Friedrich III. One-time employer (1432-1433) and friend of Piccolomini, who made him one of the speakers in his *Pentalogus* of 1443-4, see Mass, I, p. 308. On his appointment to Freising, see Mass, I, pp. 297-298

¹³ The pope as vicar of God and Christ

¹⁴ Mass, I, p. 298

¹⁵ Leo I (c. 400-461). Pope from 440 to his death. Saint. Strong proponent of supreme papal authority

¹⁶ Decretum, D.23.6., *Letter of Pope Leo I to Anastas. Thessal.* Quotation used in other letters and orations by Piccolomini

[23] Oboedientiam, quam a subditis exigebas, episcopo tuo nolebas dependere, sed illum nunc una, nunc alia via ex alto dignitatis gradu, ut sibi sufficereris, praecipitare curabas. In Hungaria, cum regem Albertum adversus Teucros sequeretur, extinctum eum¹ febribus confinxisti. In Basilea, quia Felici non oboediebat, procedi adversus eum provocasti², et nisi boni viri tibi obstitissent, et illum deponi et te³ sibi subrogari⁴ fecisses. Is postquam obiit, rogati abs te sunt patres concilii⁵, ut postergatis decretis⁶ ecclesiae Frisingensi motu proprio te praeficerent. Jamque duarum deputationum suffragia nactus eras, et in tertia res agebatur, cum regius supervenit orator tuis conatibus obviaturus. Nec tu {286v} propterea fractus animo, sed audacior magis itineri te commisisti tamque⁷ celeriter Frisingam petivisti, ut non tam festinus olim Octavianus germanum visurus aegrotum ex Italia in Thraciam⁸ pertransiverit⁹. Fuisti mox in capitulo. Scio, quibus es artibus usus. Scio, quot¹⁰ promissa fecisti, quot munera dedisti¹¹, quot¹² minas protulisti, ut electio in te caderet. O, qualem electionem, quam puram, quam mundam! Fallere alios potes; me, qui omnia video, non decipies. Tu pontifex eris, tu meus vicarius, tu meus unctus¹³? Abi, recede, fuge, non patent ambitiosis penetralia mea.

[24] Veniat Henricus potius, qui tanto est dignior, quanto se magis putat indignum. Hunc ego saepius ex caelesti regia objurgantem cum fratre audivi: "Mitte me, frater, in pace. Satis est mihi Prutensis¹⁴ ecclesia. Absit, ut pontificio praesim¹⁵, {282r} qui presbyterii¹⁶ non sum dignus officio." At tu, Johannes, nedum episcopatum, sed et papatum mereri te censes. Mihi vero¹⁷ acceptior est Henrici verecundia¹⁸ et¹⁹ simplicitas quam data perspicacitas tua." Vides jam, Caesar, quomodo apud illud infallibile²⁰ Dei tribunal superiores essemus.

¹ cum A

² procurasti B

³ tibi B

⁴ subrogatum B

⁵ sunt patres concilii : patres concilii sunt B, L

⁶ omit. L

⁷ tamquam B, L

⁸ detheciam B; Phenam L

⁹ pertransierit B

¹⁰ que A

¹¹ omit. B

¹² quae A

¹³ tu meus unctus omit. B [NB: A and L not derived from B]

¹⁴ in Pructensi B; in Pruszensi L

¹⁵ praesum B

¹⁶ presbyteri A, L

¹⁷ autem B, L

¹⁸ verecunda L

¹⁹ omit. A, L

²⁰ quam ... infallibile : ante B [NB: A and L not derived from B]

[23] The obedience you demanded from your subjects you would not show your own bishop. On the contrary, you endeavoured in various ways to remove him from his high office so that you could be appointed in his place. When he was in Hungary,¹ following King Albrecht against the Teucrians,² you falsely gave out that he had died of fever. In Basel, you caused proceedings to be initiated against him because he did not obey Felix,³ and unless good men had intervened, you would have managed to get him deposed and be appointed in his stead.⁴ When he died,⁵ you petitioned the council fathers to set aside [their own] decrees and appoint you Bishop of Freising on their own initiative and authority.⁶ You had already gained the votes of two deputations, and the matter was under discussion in the third,⁷ when the King's envoy⁸ arrived to counter your efforts. Undaunted, you departed and went to Freising as quickly as possible – though not as speedily as Octavian once hastened from Italy to Thracia to visit his sick brother.⁹ Anyhow, quite soon you appeared in the cathedral chapter. I know what tricks you used. I know what promises you made, how many gifts you gave, and how many threats you made in order to be elected.¹⁰ Oh, what an election, how pure, how spotless!¹¹ But though you may be able to fool others, you cannot deceive me, for I see all. You would be bishop, you would be my vicar, you would be my anointed!¹² Away with you, depart, and flee, for my innermost chambers are not open to ambitious people like you.

[24] Rather, let Heinrich come: the more unworthy he considers himself to be, the more worthy he is. From Heaven, I have often heard him begging his brother, "Leave me in peace, brother. My parish in Prussia¹³ is enough for me. I should not become a bishop, for I am not even worthy of being a priest." But you, Johann, you think that you deserve to be bishop, nay, pope! I would much rather have Heinrich's modesty and simplicity than your cleverness."

Now you see, Caesar, how we would prevail at the infallible tribunal of God.

¹ 1439

² i.e. Turks

³ Felix V = Amedée VIII (1383-1451) : Count, later Duke of Savoy. In 1439, elected antipope under the name of Felix V by the Council at Basel, after its dissolution by Pope Eugenius IV

⁴ On the conflict between Nicodemus and Grünwalder, see Mass, I, p. 307

⁵ 13 August 1443

⁶ "motu proprio", i.e. without a capitular election

⁷ The council was composed of four "deputations": the Deputa-

tion on Faith (fidei), the Deputation on Peace (pacis), the Deputation of Reform (reformatorii), and the Deputation on Common Concerns (pro communibus). Every decision made by three of these four "deputations" would be ratified in a general congregation. The council was therefore quite close to approving Grünwalder's election when the royal envoy arrived

⁸ Hartung von Kappel, see Voigt, II, p. 312

⁹ Source not identified

¹⁰ The capitular election took place on 13 September 1443. Grünwalder held his solemn entry in Freising, as its new bishop, on 10 October 1444, see Mass, I, pp. 310

¹¹ Piccolomini dripping irony

¹² Possibly meaning: you would be bishop, you would be pope, indicating unbridled ambition – or just meaning anointed bishop and God's vicar in his own diocese, cf. the following section

¹³ Bunzlau, see Voigt, II, p. 311

[25] Sed est nunc coram hominibus iudicium agitandum, apud quos saepe plus gratia quam veritas valuit, quod etsi apud alios formidarem, in¹ te tamen nullatenus pertimesco, quia et mundas manus et cor purum te semper habere perpendi. Nondum tamen ad tuum iudicium venio. Eugenii prius sententiam videamus, cui si velit adversarius acquiescere, et nos etiam quidquid sanctissima illa sedes dictaverit pronis animis amplectemur. Nec jugum, quod Christi vicarius imposuerit, excussa cervice rejiciemus², quamvis ejus sententiam quis meo germano formidabilem putet, cum is eum promoverit. Scit Eugenius, quia nec tu, Caesar, pro meo fratre umquam scripsisti. Nec frater ipse pro se umquam instetit. Scit quia nulla pecunia nullaque labe res gesta est. Non dicerem aliud coram Eugenio, nisi verba haec: "Henricum, germanum meum, vox tua pronuntiavit episcopum: *opera manuum tuarum ne despicias.*" Nec plura locutus dicendi locum quam vellet amplissimum Johanni dimitterem. Sed non arbitror illum in hoc certamen venturum, quia nec pecunias ibi, nec minas sibi prodesse confidit.

[26] Quod si apud Basiliense concilium res agi deberet³, si jus nostrum illic probare non valeremus, quoniam Eugenium negant pontificem fore, parti tamen adversae nec⁴ jus ullum nec juris colorem competere, demonstraremus. Sciunt enim Basilienses, quia non valet electio vel minis procurata vel pecuniis empta, quodque arcendi sunt ab omnibus dignitatibus ambitiosi et simoniaci. Nec nobis arduum esset electionem istam ex multis capitibus infirmare. Post hoc de confirmatione dissertaremus, quae etiam si valisset⁵ electio, per metropolitanum confirmari non potuit. Archipraesul namque Salzburgensis concilium supra se habet, nec negare concilium potest⁶, quia si non est concilium, nec ipse archiepiscopus est, qui ab eo⁷ confirmationem suscepit.

¹ aput B

² rejiciamus B, L

³ debere A

⁴ me A

⁵ valuisse A

⁶ nec negare ... potest *omit.* A

[NB: B and L not derived from A]

⁷ qui ab eo : ab eo qui A

2.2. In relation to Pope Eugenius

[25] But now we must plead our case before men. They are often moved more by bias than by truth. However, though I might fear that it in others, I absolutely do not fear it in you, since I know very well that your hands are clean and your heart is pure. But I am not yet coming to your tribunal since we shall first hear Eugenius' judgement. If our adversary accepts it, then we too shall wholeheartedly accept the decision of the Holy See. Certainly, we shall accept any yoke that the Vicar of Christ would put on our shoulders – though who believes that my brother should fear Eugenius judgment when it was Eugenius himself who appointed him? Eugenius knows that you, Caesar, never wrote to him on behalf of my brother¹ and that my brother never put himself forward. He also knows that his cause is not compromised by money or procedural faults.² So, before Eugenius, I would only say this: “By your own voice, you pronounced my brother Heinrich bishop: *despise not the works of thy hands.*”³ And with no further words,⁴ I would give Johann as much opportunity to speak as he might wish. But I do not think that he would come to do battle in that place, for there,⁵ neither money nor threats will help him.

2.3. In relation to the Council of Basel

[26] But let us presume that the case was submitted to the Council of Basel. If we were not able to obtain its [confirmation of] our rights because they deny that Eugenius is pope, then we would prove that our counterpart has no right in this matter or anything that resembles it. For the Basileans know that an election is not valid if it is obtained by threats or bought with money, and that all ambitious and simoniacal men should be denied office.⁶ It would certainly be easy for us to prove that this election is invalid on many grounds. After that, we would discuss the confirmation:⁷ even if the election was valid, the metropolitan could not confirm it because the Archbishop of Salzburg depends on the authority⁸ of the council, and therefore he cannot deny the council. But since the council is not a [legitimate] council, the archbishop is not a [legitimate] archbishop, having received the confirmation of his election from the it.

¹ The point may be that the emperor had not tried to influence the pope and his cardinals before their election of the chancellor's brother, cf. the conciliar decree *Quemadmodum in construenda* of 13 July 1433 (Session XII), COD, p. 471. If this is so, the chancellor conveniently forgets to mention the letters that he himself sent both to the pope and to the cardinals

² The understanding between the chancellor and the pope that the chancellor would favour the papal

cause against the council's at the imperial court and that the chancellor's brother would be given a bishopric was, however, so much of a quid-pro-quo that at least German historians consider the chancellor's cause to have been tainted by intrigue, self-interest, and opportunism, see Voigt, II, pp. 308 ff.; Mass, I, pp. 310-311

³ Psalms, 137, 8: *O despise not the works of thy hands*

⁴ Vergilius: *Aeneis*, 7.599

⁵ At the pope's tribunal

⁶ Cf. the conciliar decree *Quemadmodum in construenda*, of 13 July 1433 (Session XII), p. 471: *Quod si aliter aut ... per simoniacam pravitatem electionem fieri contigerit, electio sit ipso jure irrita et inanis*

⁷ Heinrich Grünwalder had obtained confirmation of the capitular election from the metropolitan, the Archbishop of Salzburg

⁸ “supra se habet”. Because his own election as archbishop was confirmed by the Council

[27] Quaeris quare nequiverit haec confirmatio fieri. Paucis, attende, docebo. Quattuor praelati post obitum Nicodemi apud concilium¹ electi fuerunt, hisque data potestas est preces, quas pro Henrico porrexisti, et electionem, quae fieret, examinandi {287r} magnaue contioni² referendi, ut ibi Frisingensi provideretur³ ecclesiae. Haec commissio electionis confirmationem⁴ concilio reservavit Salzburgensisque manus pontificis alligavit. Nulla est igitur confirmatio. Quid plura? Perdidit et jus suum Johannes, si quod habuit, qui non confirmatus administrationi⁵ sese immiscuit. Nec interest nullum confirmari⁶ et numquam confirmari. Quod si plenarium esset Basiliense concilium, nec⁷ de pontificio quaestio foret, dicerem patribus congregatis: "Quoniam vos pacto alligatam⁸ vultis apostolicam sedem, ne praeter electionem possit ecclesiis cathedralibus providere, cur⁹ vos, qui {282v} legem¹⁰ sanxistis, jam legem in hac ecclesia Frisingensi volueritis abrogare? Vos electionem¹¹ in ecclesia Maurianensi¹² conturbastis. Vos episcopum Argentinensibus¹³ praeter electionem dedistis. Vos¹⁴ papae vestro Felici tres dignitates seclusis electionibus reservastis. Vos¹⁵ adversario nostro¹⁶, qui nunc tantopere vestra decreta commendat, Frisingensem praeposituram electione postposita contulistis.

¹ apud concilium *omit.* L

² condicioni A

³ provideret A

⁴ confirmationis L

⁵ administratione B

⁶ confirmare B

⁷ ne A

⁸ allegatam B

⁹ cum B, L

¹⁰ *omit.* B

¹¹ *omit.* L

¹² Maiurinensi B; Monirianensi L

¹³ Argentinensem B, L

¹⁴ nos L

¹⁵ nos L

¹⁶ vestro B

[27] You ask why Heinrich's election could not be confirmed. Hear what I shall briefly say. After the death of Nicodemus, four prelates were chosen by the council with the remit to examine the petition that you yourself¹ made on behalf of Heinrich and the election to be held, and to report back to the General Assembly, which would then decide who should be made Bishop of Freising. By appointing this committee, the council reserved the confirmation of the election to itself and thereby bound the hands of the Archbishop of Salzburg. Thus, there is no [proper] confirmation. What more? Johann lost all rights if he had any when, without having been [properly] confirmed,² he intruded himself into the administration of the diocese. For there is no difference between not having been confirmed and never being confirmed.

If the council in Basel was a general council and there was no doubt about who was the pope, then I would say to the assembled Fathers: "If you want the Apostolic See to be obliged only to appoint bishops who have been elected by the cathedral chapter, then why do you want, in the case of the Church of Freising, to abrogate the law that you passed yourselves? You also interfered with the election to the Church of Maurienne.³ You gave Strassbourg a bishop without an election. And you have reserved three episcopal appointments without election for Felix. And now you have, with no regard for the election, bestowed the episcopal office of Freising upon our adversary, who is most happy with your decision."⁴

¹ I.e., the emperor through his envoy

² I.e., by the council itself

³ Louis de la Palud was appointed Bishop of Maurienne by the council in 1441

⁴ Piccolomini reasonably points to the inconsistency of the council

with regard to its own decrees concerning capitular election, see Voigt, II, pp. 308-309

[28] Cur legem, quam tulistis, ipsi non toleratis? Cur non liceant summo pontifici, quae¹ vobis licere contenditis? Quid praeterea vos urget, ut meliores per canonicos quam per² apostolicam sedem creari episcopos arbitremini? Videantur episcopi capitulares et apostolici seorsum. Hi litterati, prudentes, modesti, facundi, liberales, conversaturi, illos non describam, vos eos videtis. Ego paucos novi, qui per internuntios non loquantur. *Pares cum paribus* veteri proverbio facillime congregantur. Nec canonici alios sibi pastores eligunt, nisi suorum participes morum. Possunt exinde capitula per principes cohaereri, nec verum est³, datam esse canonicis per vestrum decretum eligendi potestatem, sed principibus esse promissam. Vix enim canonici reperiuntur aliqui, quos non oporteat vel exulare vel ex arbitrio principum eligere. Apostolicae vero sedis electio tanto dignior est quam capituli, quanto⁴ per viros est facta⁵ sublimiores⁶ quantoque est ab omni metu liberior Romani pontificis auctoritas. Sed transeamus ista, quae nec locus nec tempus requirit. Vides jam, Caesar⁷ religiosissime, causam nostram apud Deum esse defensam, apud Eugenium nihil habere dubietatis, apud concilium tam validam esse quam adversarii.

[29] Nunc coram tua serenitate et astantibus tibi⁸ principibus perorandum est. Quo in loco, nisi me fallit affectio, luce clarius ostendetur jus adversario nostro nullum competere germanumque meum verum esse ecclesiae Frisingensis episcopum. Adhibe jam aures, Caesar, et vos consedentes, attendite. Non vobis enigmata legum proponam⁹, sed res tum oculis videndas tum manibus palpandas enarrabo. Mortuo Nicodemo, quem jam pluries nominavimus, pridie quam Frisingensis celebraretur electio, frater meus in collegio cardinalium, quod tunc erat Senis, per summum pontificem, Eugenium papam quartum, ecclesiae Frisingensis pronuntiatus fuit episcopus. Die sequenti Johannes adversarius est electus, si dici potest electus, qui minis, precibus, pecuniis est electus.

¹ qui A

² *omit.* A

³ *omit.* B

⁴ quantos A

⁵ *omit.* B

⁶ *et add.* A

⁷ quae nec ... Caesar *omit.* L [A
and B not derived from L]

⁸ *omit.* A

⁹ enigmata legum proponam :
legum proponam enigmata B

[28] Why can you not live with the law¹ that you passed yourselves? Why must the Supreme Pontiff not do what you claim to have the right to do yourselves? And what makes you believe that bishops elected by canons are better than bishops appointed by the Apostolic See? Let us look at the capitular bishops² and the apostolic³ bishops separately. The apostolic bishops are learned, wise, modest, fair-spoken, generous, and civil. The capitular bishops I shall not describe; you are familiar with them. I know only a few who do not have to speak through intermediaries.⁴ According to an old proverb, *birds of a feather flock together*, and, indeed, canons only elect such shepherds as share their ways. [After the election], the chapters have to obtain the assent of the princes. It is not true that your decree gives the canons the final say in the election, for that has been promised to the princes.⁵ Only very few canons ought not be rejected or chosen according to the wish of the princes. But the choice made by the Apostolic See is much more worthy than election by chapters because it is made by much higher-ranking men and because the authority of the Roman Pontiff is free of all fear. But let us pass over this matter, for this is neither the place nor the time.

Anyway, you now see, oh Pious Emperor, that God favours our cause, that there is no doubt about it in relation to Eugenius, and that in relation to the council it is just as valid as our adversary's.

2.4. In relation to the emperor

[29] So, now we must address Your Serenity and the princes who are present. Unless sentiment deceives me, it will become quite evident that our opponent does not have justice on his side and that my brother is the true Bishop of Freising. Lend me your ears, Caesar, and listen carefully, you who are present.⁶ I shall not trouble you with legal subtleties but speak simply so that you may see [the truth] with your own eyes and touch with your own hands. At the death of Nicodemus, whom we have now mentioned several times, and before the election was held in Freising,⁷ my brother was declared Bishop of Freising by the Supreme Pontiff, Pope Eugenius IV, in the College of Cardinals, then residing in Siena.⁸ The day afterwards, our adversary, Johann, was elected bishop⁹ - if you can call someone elected who won the election by threats, pleas, and money.

¹ E.g., the conciliar decree *Quemadmodum in construenda* of 13 July 1433 (Session XII)

² I.e., bishops elected by canons in cathedral chapters

³ I.e., bishops appointed by the pope

⁴ Presumably because their general competence or (Latin) language skills are insufficient

⁵ This is not mentioned in the conciliar decrees as such. Piccolomini

may be referring to the Concordat of Worms of 1122, whereby religious investiture of bishops was reserved for ecclesiastics, but the princes retained the right of investing bishops with the regalia, i.e., the temporal rights of their dioceses. In general, princes managed to exercise great influence in the appointment of bishops and have such influence recog-

nised in their concordats with the popes

⁶ "consedentes": you who are sitting with him

⁷ On 13 September 1443

⁸ 12 September 1443

⁹ The speaker carefully points out that the papal appointment did in fact precede the capitular election

[30] Nunc harum electionum, quae sit potentior¹, judicemus. Meum germanum pontifex Romanus elegit. In collegio cardinalium meus germanus electus est. Fratrem meum viri doctissimi et² tum sanctimonia vitae, tum litterarum scientia commendatissimi {287v} cardinales elegerunt. Tu scis, Caesar, qualis senatus est cardinalium, quanta³ ibi⁴ prudentia est, quantum lumen, quanta munditia. Non⁵ ibi praeter examen res ulla geritur. Nihil illic⁶ temere, nihil inconsulte tractatur. Maturi viri sunt, grandaevi, experti. Nil⁷ agunt *quod post factum poeniteat effecisse*. Meum germanum horum collegium creavit episcopum. {283r} At Johannem quinam⁸ - obsecro - delegerunt⁹? Nolo cuiquam detrudere: qui sunt canonici Frisingenses tute noscis¹⁰. Nullum vitupero, nullum accuso. Illud libere possum dicere, quia non est ecclesiae Frisingensis capitulum¹¹ Romano collegio comparandum. Quod si cadere in me possit¹² electio Romani pontificis et cardinalium electionem sine possessione potius eligam quam cum possessione Frisingensis capituli iudicio posci¹³. Non sunt tam arrogantes canonici¹⁴ Frisingenses, ut¹⁵ se velint cardinalium coetui pares ostendere. Sit igitur haec una ex praerogativis mei germani, quia¹⁶ per digniores quam adversarius est electus.

¹ pocior B, L

² omit. B

³ quantus B

⁴ in B

⁵ nam B

⁶ omit. B

⁷ nichil B

⁸ sunt add. B

⁹ omit. B

¹⁰ scis B

¹¹ ecclesiae Frisingensis

capitulum : capitulum ecclesiae

Frisingensis B

¹² in me possit : possit in me B

¹³ postea B

¹⁴ omit. B

¹⁵ quod B

¹⁶ qui B

2.4.1. The papal appointment of Heinrich Schlick carries more weight than the capitular election of Johann Grünwalder

[30] We shall now consider which of these two elections carries the greatest weight. My brother was chosen by the Roman Pontiff. He was elected by the College of Cardinals. He was elected by learned cardinals of great holiness and erudition. You yourself know, Caesar, what the senate of cardinals is like, how great the wisdom there is, how great the light, how great the purity. There, everything is treated with careful consideration. Nothing is done randomly or thoughtlessly. The cardinals are elderly, mature, and experienced men. They do nothing *that they will afterwards regret*.¹ That is the college that made my brother bishop.

But what kind of men - I ask - elected Johann? I will not criticise anybody; you yourself know very well who the canons of Freising are. I blame nobody; I accuse nobody. But this I can freely say: the Chapter of the Church of Freising may not be compared to the Roman College. For myself, I would much prefer being chosen by the Roman Pontiff and the cardinals and not getting actual possession² to being elected by the Chapter of Freising and getting actual possession. But, of course, the canons of Freising are not so arrogant that they pretend to equal the assembly of cardinals.

So, let this be one of the advantages of my brother: he was elected by worthier men than our adversary.

¹ Cicero, *Tusculanae Disputationes*, 5.28.81: *nihil facere quod poenitere possit*

² Possession, i.e., of the office and the properties of the diocese

[31] Nunc ad unicum partis adversae fundamentum perveniamus. Decretum esse Basiliensis concilii dicunt, quod ecclesiis pastore carentibus per viam electionis praecipit provideri reservationesque tollit, adversus quod non licet Romano pontifici¹ aliquid agere, nisi ex magna causa in litteris suae provisionis exprimenda. Et quia decretum hoc per nationem nostram² receptum est, et adversarius juxta illius tenorem electus³, fratrem meum relinqui et illum admitti⁴ debere suadent. Sed auferamus clavam⁵ de manu Herculis. Veniat adolescentulus David gigantemque feriat. Non est insolubile, ut quidam rentur, hoc argumentum. Dictum est, quia *juvari lege non debet, qui legem offendit*, ut is qui Frisingensis praepositurae Johanni⁶ procuravit electionem.⁷ Sed transeo ista. Audi aliud, Caesar, praebe aures, adhibe mentem, absint nunc meditationes aliae. Pulchrum est et audientia dignum⁸, quod nunc exponam.

¹ sacerdoti A, L

² *omit.* B

³ elector B

⁴ dimitti L

⁵ clavem B

⁶ *em.*; Caspari A, L; Caesari B

⁷ *textus corruptus?*

⁸ digni A

2.4.2. The papal appointment of Heinrich Schlick is legal

... since the conciliar decrees accepted by the German nation are not binding on the pope

[31] And now we come to the only solid basis for [the argumentation] of our adversary. They say that the Council of Basel has passed a decree ordaining that vacant dioceses should be provided [with bishops] through the procedure of election, and forbidding reservations. It also stipulates that the Roman Pontiff may disregard the election, but only for very important reasons that must be stated explicitly in his letter of provision.¹ And since this decree has been accepted by my nation² and our adversary has been elected according to it, they argue that my brother must be disregarded and Johann accepted.

But let us snatch the club from Hercules' hand,³ and let there appear a young David to smite the giant.⁴ Contrary to what some are saying, this argument is not unanswerable. It is said *that those who break the law shall not be helped by the law*,⁵ like the one who procured the election of Johann as Bishop of Freising.⁶ But this I leave aside. Hear, Caesar, something different, lend me your ears and open your mind. Let other thoughts be banished, for what I am going to say now is fascinating⁷ and worth hearing.

¹ See the list of decrees in Stieber, pp. 408-409: Appendix F. The Decrees of the Council of Basel on succession to Clerical Benefices, especially their Reservation, Taxation and Confirmation by the Pope

² In Mainz, on 26 March 1439

³ Hercules: the Roman name for the Greek divine hero Heracles, who was the son of Zeus. Associated with great strength and often depicted with a club

⁴ 1. Kings 17

⁵ A variant of a legal maxim

⁶ There seems to be a problem with this passage, see the critical apparatus which has Kaspar (Schlick) or the emperor himself

⁷ "pulchrum"

[32] Non infitior decreta Basiliensis synodi¹ per nationem nostram apud metropolim Maguntinam fuisse recepta. Sed heus tu, Caesar, nulla principum² acceptatio Romano pontifici legem praescribere potest aut³ os claudere vel manus ligare, quia non ab homine, sed a Deo privilegiata est apostolica sedes. Christi vicarius est Romanus papa, ipse ovium pastor sibi non vel⁴ hoc vel illud, sed *quidquid ligaveris super terram, erit ligatum in coelo*, dominus dixit. Ejus est solvere, ejus est aperire. Ipse damnare potest⁵, ipse beare. Principes ovium loco sunt: non obligant oves pastorem suum, sed a pastore potius obligantur. Acceptaverit natio decreta, sicuti⁶ velit. Liber tamen papa remanet, nec ei praejudicium fieri potest, quominus auctoritate sua utatur. Nec propterea jus pontificium quisquam⁷ amittit⁸, quia decreta principum sunt contra eum. Possem tibi ad haec tum canones, tum sanctos doctores in testimonium adducere. Sed frustra lumen candelae ante solem ducitur meridianum. Discreta sunt principum et sacerdotum officia. *Nec alter mittere falcem in alterius messem debet. Ego faciam*, inquit Ambrosius, *quod sacerdotis est⁹, quod imperatoris est, faciat imperator*. Cum ergo in rebus ecclesiasticis non sit principum ponere {288r} legem, constat, quia per acceptationem Maguntiae factam nil obstat Eugenio, quominus ecclesiae Frisingensi dare praesulem valeat. Abstulimus jam Herculi clavam. Jam Hectori gladium eripimus¹⁰.

¹ concilii B

² pontificum L

³ ut B

⁴ *omit.* L

⁵ *omit.* A

⁶ sicut B

⁷ quisnam B; quisquis *corr. ex*

quisquam L

⁸ omittit B

⁹ *omit.* B

¹⁰ eripuimus A

[32] I do not deny that the decrees of the Synod of Basel were accepted by our nation in the metropolitan city of Mainz. But know, Caesar, that no Acceptation by princes can impose a law on the Roman Pontiff, silence him, or bind his hands, for the Apostolic See has been given its rights and privileges not by man but by God. The Roman Pope is the Vicar of Christ; he is the shepherd of the sheep, and it is to him that the Lord said - so importantly - that *whatsoever thou shalt bind upon earth, it shall be bound also in heaven*.¹ His is the task to loosen, to open up, to condemn, and to bless. The princes are his sheep; it is not the sheep that may make demands of their shepherd, but the shepherd who may make demands of the sheep. The nation may accept any decrees it pleases, but the pope remains free, and he cannot be put under obligation not to use his authority. No pope can lose his rights because princes decree anything against him. I could quote you both canons² and holy [church] doctors to this effect. But to place a lighted candle before the midday sun is quite useless.³ Princes and priests have different offices. *One should not use one's sickle to harvest another's field*.⁴ And Ambrose said that *I shall do what a priest should do. Let the emperor do what an emperor should do*.⁵

So, since princes do not have the right to make laws concerning ecclesiastical affairs, it follows that the Acceptation decreed in Mainz does not prevent Eugenius from appointing a Bishop of Freising. Thus we have taken Hercules' club away, and thus we have robbed Hector of his sword.

¹ Matthew, 16, 18

² I.e., paragraphs from Canon law, i.e., Church law

³ I.e., the matter is self-evident and needs no corroboration

⁴ Decretum, C.6.3.1. Deuteronomy, 23, 25

⁵ Historia tripartita, 9.30, p. 546. Also used by Piccolomini in his sermon on Saint Ambrose, "*Si quis me roget*" [2], sect. 29

[33] Pulchrum est armis tales heroas {283v} spoliasse, sed pulchrius erit, si eos suis telis suisque mucronibus confodiamus¹, sicut e vestigio faciam, si te, Caesar, attentum videro et vos circumstantes audire² paratos. Acceperunt principes³ nostri synodales sanctiones, jam sum fassus, non ibo⁴ infitias. Sed haec potissimum acceptatio Johannem exclusit. Itaque mortem inde suscipiet adversarius, unde vitam speravit. Aspiciamus decretorum receptionem, agentesque pingui Minerva non partem, sed totam⁵ suspiciamus⁶ acceptationem. Quis⁷ - obsecro - textus est acceptationis? Surgat aliquis, qui exponat; non expectabo, jam scimus! Omnia decreta concilii recipimus atque amplectimur, iniquiunt principes. Duo solum refutamur: suspensionis ac depositionis papae. Habeo jam quod volo, leporem teneo. Quid sibi vult haec exceptio, nisi adhuc Eugenium pro summo teneri pontifice⁸? Causam igitur coram te, Caesar⁹, agimus, qui summum pontificium apud Eugenium recognoscis, quia sic neutralitatis institutio decretorumque receptio jubet. Si papa est Eugenius, quis papae neget ecclesiis dare pontifices? Quod Deus beato Petro suisque successoribus dedit, homo non auferat. Hic episcopum meum fratrem¹⁰ creavit. Quis tam temerarius erit, ut sedis illius sanctissimae velit auctoritati resistere? "Sed ait decretum non licere primo¹¹ pontifici electionibus contraire nisi ex magna et urgenti¹² causa in litteris apostolicis exprimenda." Ex causa igitur potuit Eugenius electioni praejudicare. Taceo, quod hoc decretum sua sanctitas non recepit. "Sed causam exprimere debuit. Non expressit. Ergo non valet¹³ provisio." Quis ex tam levi causa apostolicae sedis ordinationem audeat impugnare? Quid si causa legitima incidit, quae causam exprimi non permisit? Ridiculum est tam frivolis argumentis Romani pontificis accusari¹⁴ tribunal.

¹ confodiamus A

² *omit.* B

³ parentes B

⁴ ibi L

⁵ totum B

⁶ suspiciamus L

⁷ quid B, L

⁸ pontifici B

⁹ Caspar B

¹⁰ meum fratrem : fratrem meum

B, L

¹¹ non licere primo : primo non licere B

¹² urgente L

¹³ valuit B

¹⁴ accusare B

... and since the Germans have not accepted the deposition of the pope

[33] It is, indeed, wonderful to deprive such heroes of their weapons, but it is even more wonderful to transpierce them with their own spears and swords, which I shall do directly, Caesar, if I see that you are attentive and that all of you who are present are ready to listen. I have already said and do not deny that our princes have accepted the synodal¹ decrees. But it is by virtue of this very Acceptation that Johann is excluded. Thus, our adversary finds death where he hoped to find life. Let us look at the Acceptation of the decrees, and as a Fat Minerva² we shall not look at part of it but at the whole. What - I ask - does the Acceptation state expressly? I shall not wait for someone to rise and explain it, for we already know it. The princes state that "we accept and embrace all the decrees of the Council except two, which we reject: the suspension and deposition of the pope."³ Here I have what I want, and beautifully so. For what does this exception mean other than that Eugenius is still considered to be the pope? Thus we are pleading this case before you, Caesar, who have recognised that Eugenius is the pope – for this explicitly follows from the state of Neutrality and the Acceptation of the decrees. And if Eugenius is pope, who will deny him the right, as pope, to appoint bishops? What God gave to Saint Peter and his successors, no man may take away. The pope is the one who made my brother a bishop. Who will be so foolhardy as to resist the authority of the Holy See? "But the decree does not allow the pontiff to oppose elections except for a great and urgent reason that must be stated expressly in the apostolic⁴ letter."⁵ So, for such a reason, Eugenius could actually quash the election! (I pass over that His Holiness has actually not accepted that decree.) "But he should have stated his reason."⁶ He did not do so, and therefore his own appointment is not valid." Who will presume to criticise the decision of the Apostolic See for such an insignificant cause?⁷ What if the legitimate reason was such that it could not be stated openly?⁸ It is ridiculous to accuse the tribunal of the Roman Pontiff with such frivolous arguments.

¹ I.e., conciliar

² Pinguis Minerva, see Horace: *Satires*, 2.2.3: *Crassa Minerva*, in the sense of intellectual laziness

³ Cf. the decree of Acceptation

⁴ I.e., papal

⁵ Cf. the conciliar decree *Quemadmodum in construenda* of 13 July 1433 (Session XII): *Decernitque haec sancta synodus ... ut contra*

hoc salutare decretum Romanus pontifex nihil attentet, nisi ex magna rationabili ac evidenti causa litteris apostolicis nominatim experimenda

⁶ I.e., for not accepting the capitular election

⁷ The explicitly stated reason is of course not insignificant at all, for according to the conciliar decree

accepted by the Germans its absence invalidates the papal appointment

⁸ Such as saying in an official papal letter that a son of a Bavarian Duke was illegitimate, schismatic, and simoniacal?

[34] Sed obstruamus amplius adversantium ora, jugulemus hostem jaculis suis¹. Quid adversarius tantopere decretorum receptionem commemoret? Siluisse sibi satius fuerat, nam cum plurima sint, quae Johannis electionem vulnerant, haec receptio necat, extinguit, sepelit. Vult decretum concilii habiles fore, qui eliguntur. Receptio vero principum Johannem declarat² inhabilem indignumque pontificio. Sciscite - obsecro - circumstantes, nisi quod dixi probaverim, causa excidam. Dictum est, quia receptio papam Eugenium profitetur. Papa vero sicut et Phoenix unicus³ tantum⁴ esse debet. Ergo apud nationem nostram schismaticus est et idolum potius quam papa, quisquis Eugenio vivo summi pontificatus se fastibus ornat. Quid plura: schismatici omnes sunt, qui ejus vel dignitates vel officia suscipiunt. Quodsi forsitan in aliis dubium fuerit⁵, in cardinalibus certe nulla remanet ambiguitas. Ex quo fit, ut adversarius noster, qui rubeum galerum ex Felice recepit⁶, apud te, Caesar, pro schismatico debeat⁷ reputari, quia sic ex decretorum receptione colligitur⁸. *Schismaticus* vero, sicut firmiter tenet et nullatenus dubitat {284r} Augustinus, *extra ecclesiam est, et nisi ante finem vitae resipuerit, cum diabolo et angelis ejus perpetuo {288v} debet igne cremari*. Ostendi jam tibi schismaticum esse Johannem. Si schismaticus, ergo extra communionem ecclesiae. Si excommunicatus, ergo ineligibilis. Si non eligi potuit, patet, quia nec confirmari electio potuit, quam constat nullam fuisse. Jam me tenetis, astantes, quia probatum est decretorum receptionem⁹, quam Johannes allegat, sibi potissimum esse contrariam. Ita fit saepe, ut credens se aliquis salutiferae crucis signo munire digitum detrudat in oculos.

¹ jaculis suis : suis jaculis B

² declaruit L

³ Phoenix unicus : unicus Fenix B

⁴ *omit.* L

⁵ fuerat B

⁶ accepit B

⁷ debet B

⁸ tollitur B

⁹ receptio B

2.4.3. The election of Johan Grünwalder is illegal because he is a schismatic

[34] But let us silence our opponents completely. Let us pierce the enemy with his own spears. Why does our adversary put so much emphasis on the [German] Acceptation of the decrees? Maybe it would have been better to remain silent, for there are many things that invalidate Johann's election, but the Acceptation in itself annihilates, destroys, and buries it. The conciliar decree stipulates that those who are elected should be eligible.¹ But the princes' Acceptation [of the decrees] means that Johann is ineligible and unworthy of episcopal office. Know, all who are present, that unless I can prove what I have said, my case falls.

As said, the Acceptation declares Eugenius to be pope, and like the Phoenix, there can be only one pope. Therefore, if anyone assumes the insignia of the papal office while Eugenius is alive, our nation must consider him schismatic and idolatrous rather than pope. Moreover, all who accept honours and offices from such one are schismatic, too. In other cases, the matter may be in doubt, but in the case of cardinals, there can be no uncertainty whatsoever. Therefore, as our adversary has accepted the red hat from Felix², he must be considered schismatic by you, Caesar, in consequence of the Acceptation of the decrees. Augustine firmly held and did not doubt that *a schismatic is outside the Church and unless he repents before the end of his life, he must burn for ever with the devil and his angels*.³

I have now shown that Johann is schismatic. If he is schismatic, then he is outside the communion of the Church. If he is excommunicate, then he is ineligible. If he is ineligible, then his election could evidently not be confirmed,⁴ and consequently, it is not valid. So, as you see, all of you who are present, it has been proven that the Acceptation of the decrees,⁵ which Johann uses in his own defence, is in fact extremely damaging to him. Thus, it often happens that someone who seeks protection behind the sign of the Life-giving Cross, gets a finger stuck into his eyes instead.

¹ The Decree *Quemadmodum in construenda*, of 13 July 1433 (Session XII), p. 471: *Deinde eligant in praefatum praelatum virum aetatis legitimae, moribus gravem, litterarum scientia praeditum, in sacris ordinibus constitutum, at alias idoneum ... Quod si aliter et de alia persona, quam ut praedictum est,*

aut per simoniacam pravitatem electionem fieri contigerit, electio sit ipso jure irrita et inanis

² I.e., the schismatic counterpope elected by the council in Basel

³ Quotation not identified

⁴ I.e., by the metropolitan, the Archbishop of Salzburg

⁵ It is not the acceptance of the decrees in itself, but the concomitant refusal of the Germans to accept the council's deposition of the pope, which supports the claim that Felix and his cardinals schismatic – since there can only be one pope

[35] Prosequor¹ causam. Quid si Johannes omnia decretorum receptione concilio tantum se² tueatur, Eugeniumque³ summo pontificio dejectum, sicut⁴ facit, affirmet⁵? Numquid silebimus theatrumque sibi tamquam Miloni aut Euthello vacuum relinquemus⁶? Minime certe, et quamvis haec causa coram te, Caesar, qui neutralis es, verti non debeat, partes tamen nostras tuebimur, adversariiue sagittas objectu clipei repellentes in pectus etiam ejus⁷ tela nostra jaciemus. Non expectes a me leges⁸ aut sacrarum testimonia scripturarum, quia nec juri civili operam umquam dedi, nec me umquam schola theologorum recepit⁹, quamvis admodum juvenis liberalium artium fuerim auditor. Sed loquar¹⁰, ut nos laici solemus in consilio¹¹ disputare, qui neque¹² syllogismis vel enthymematibus, sed, ut natura tradit, vivacibus rationibus et matura consideratione negotia nostri principis trutinamus. Dicit Johannes non esse fratrem meum episcopum, quem per depositum papam creatus est. Depositionem¹³ vero nunc istius, nunc illius doctoris testimonio firmat. Ego novi, quid unus vel duo dicant, sed quid orbis iudicet, ut animadvertas, exposco.

[36] Respice Italiam omnium caput provinciarum. Quid sedes illa pontificum, Roma, quid regnum Siciliae, quid Veneti, quid Tusci, quid Insubres, quid Ligures, quid Umbria, quid Picenum¹⁴, quid Aemilia? Ubinam¹⁵ divini atque humani juris major quam in Italia cognitio? Itali tamen non depositum Eugenium dicunt, sed illi ut patri et animarum pastori oboediunt. Transi in Galliam. Quid rex Franciae? Quid dux Burgundiae? Quid illud Parisiense gymnasium¹⁶? Quid Avinio? Quid Tolosa¹⁷? Quid Montispesulani¹⁸ vel Aurelianensis universitas? Quid Lovanienses? Num omnes Eugenium venerantur, ordinationique suae tamquam summi pontificis acquiescunt? Mira res: nec Renatus ex Apulia rejectus ab Eugenio dissentit, quamvis regnum sibi ademptum sciat. Nolo singulas lustrare provincias. Tute scis, quid Hispani, quid Angli, quid Scoti, quidne singuli Christianitatis reges in hoc schismate sentiant, qui¹⁹ omnium litteras nuper suscepisti te rogitantes, ut abnegaris²⁰ Basiliensibus, Eugenio dares oboedientiam.

¹ prosequar B
² tantum se : se tantum B
³ Eugenium quoque L
⁴ sicuti L
⁵ affirmat B
⁶ relinquimus B, L
⁷ cuius B

⁸ vel *add.* B
⁹ recipit L
¹⁰ loquor B
¹¹ concilio B, L
¹² nec B
¹³ devotionem A
¹⁴ pacem B

¹⁵ vbi iam L
¹⁶ gignasium A
¹⁷ Tholasci B
¹⁸ Montispesselani B
¹⁹ quid B
²⁰ abnegantes B, L

2.4.4. Eugenius IV has been recognized as pope by almost all the Christian world

[35] I continue pleading my case. What if Johann does not argue on the basis of the [German] Acceptation of the [conciliar] decrees but only defends himself with the Council and claims, as he does, that Eugenius has been deposed from the papacy? Shall we then be silent and leave the stage to Milo and Euthellus? Absolutely not! Though such a case ought not to be pleaded before you, Caesar, in view of your status as neutral, we shall defend our own cause, and, stopping the arrows of our adversary with our shield, we shall shoot them back and even pierce his breast with our own spears. Do not expect law paragraphs or quotations from the Holy Scriptures, for I never studied civil law, nor did I frequent a school of theology; when I was very young, I studied the liberal arts. No, I shall speak as we laypeople usually debate in your council, not with syllogisms and chains of logic, but naturally, as when we discuss the affairs of our prince with vivid reasoning and mature consideration.

Johann claims that my brother is not a bishop because he was appointed by a deposed pope. He corroborates his [claims concerning] the deposition [of the pope] with the testimonies of a couple of doctors.¹ I know very well what one or two men may say, but now I request that you hear what the whole world thinks.

[36] Look to Italy, the head of all regions. What about the very seat of the pontiffs, Rome? What about the Kingdom of Sicily, Venice, Tuscany, Lombardy, Liguria, Umbria, Piceno, and Emilia?² Where is the knowledge of divine and human law greater than in Italy? But the Italians do not say that Eugenius has been deposed – nay, they obey him as father and pastor of their souls. Move on to France, then! What about the King of France, the Duke of Burgundy, the University of Paris, Avignon, Toulouse, and the universities of Montpellier, Orleans, Louvain?³ Do they not all honour Eugenius as pope and obey his decisions as Supreme Pontiff? And remarkably: even René,⁴ who has been driven out of Puglia, acknowledges Eugenius, though he knows that this kingdom has been taken away from him. I shall not mention all the individual lands. You yourself know very well what the Spaniards,⁵ the English, the Scots, and the other Christian kings think about this schism, for you have recently received their letters asking you to reject the Basileans and declare obedience to Eugenius.

¹ I.e., presumably doctors of law; if not, learned men

² The Northern Italian region corresponding to the present-day Emilia-Romagna (with Bologna)

³ Piccolomini is referring to the French universities

⁴ René d'Anjou (1409-1480): Duke of Anjou, Count of Provence

(1434-80), Count of Piedmont, Duke of Bar (1430-80), Duke of Lorraine (1431-53), King of Naples (1435-42)

⁵ Already in 1439-1440, King Juan II of Castile had addressed the emperor, both in letters and through an embassy conducted by Rodrigo Sánchez de Arévalo, urging him to recognise Eugenius

as pope, cf. Trame, pp. 28-29. Scholars have discussed the year of the embassy, and Trame inclined to 1440, but if Piccolomini is implicitly referring to this embassy, it is worth noting his use of the word “nuper”

[37] In adversa parte soli Sabaudienses, quos necessitas trahit, et unicus dux Bavarorum, quem Johannes aut instruxit aut seduxit, cum concilio Feliceque¹ manent. Tanto {284v} itaque plus juris habet meus germanus quam Johannes, quanto major est Eugenii quam Felicis oboedientia. Nos autem Alamani neutralitatem tenemus, non quod Eugenium papam esse² diffiteamur³, sed quod hac potissimum via concordiam posse tractare putamus. Nec tamen omnes in hoc convenimus, nam Frandrenses, Brabantini⁴, Gelrenses, Leodienses⁵, Trajectenses, Hollandini⁶, Zelandini, {289r} Frisones Eugenio parent. Nec Latini tantum, sed etiam Graeci cum eo sentiunt, ut⁷ qui ejus industria tenebrarum caligine posita rursus in viam reducti sunt salutarem. Quis igitur Eugenium esse depositum dicet? Nescio multum argumentari, vir uxoratus sum, et saecularium potius rerum quam ecclesiasticarum peritus. Sed mihi non videtur depositus papa judicandus, quem pauci malivolentia et invidia ducti, tota reclamante fidelium multitudine, deposuisse dicunt.

[38] Ego cum Eugenio video bonos viros, cardinalem Sancti Angeli, qui tum scientiae acumine tum vitae probitate non habet aequalem. Video cardinalem sancti Petri, specimen honestatis. Vidi, antequam moreretur, cardinalem sanctae crucis, quo nemo mundior fuit, Eugenii partes tueri. Quid plures religiosos commemorem, qui diversarum religionum⁸ saeptis⁹ inclusi cum Deo pure famulentur¹⁰, tum Eugenio devote oboediunt. Considero Eugenii opera: non hic thesaurum congregat, sed pauperibus elargitur. Et nunc Graecos ad fidem vocat, nunc Armenos, nunc Arabes, nunc studium habet, ut Teucrorum imperium trans Hellespontum pellatur. Nec alia ejus¹¹ cura est, quam fines Christianae reipublicae vel tueri vel propagare. Quo fit, ut nedum depositione indignus sit Eugenius, sed, si papa non esset, hic potissimum quaeri deberet, cui Romani praesulatus cathedra committeretur¹² ac beati Petri navicula gubernanda. Nec te, Caesar, sentire aliter¹³ existimo, quamvis in auribus diversa tibi nonnulli susurrent, qui, si non suis commodis, sed tuae utilitati studerent, non neutralitatem servare, sed illi te oboedire pontifici commonerent, quem tota sequitur fidelium multitudo, nec te Bavaris, sed omnibus Christianis regibus dicerent conformandum.

¹ Felicique L

² *omit.* B

³ diffitemur L

⁴ *em.*; Barbantini codd.

⁵ Leodinenses B

⁶ Olandini A; Olandani B;

Olandrini L

⁷ uti B, L

⁸ religioni B

⁹ septem B

¹⁰ famulemur B

¹¹ ei B

¹² promitteretur B

¹³ sentire aliter : aliter sentire B

[37] In the opposite camp, only the Savoyards, who can do nothing else, and one of the Dukes of Bavaria,¹ whom Johann either influenced or led astray, remain with the council and with Felix. As Eugenius's obedience is much greater than Felix's, the rights of my brother are much greater [than Johann's]. But we Germans stick to our neutrality – not because we deny that Eugenius is pope, but because we consider that this is the best way to arrive at concord between the parties. But not all [Germans] agree, for the peoples of Flanders, Brabant, Geldre, Leiden, Utrecht, Holland, Zealand, and Frisia obey Eugenius. And he is accepted not just by the Latins but also by the Greeks, for it is through his endeavours that they were brought back from the darkness of shadows to the way of salvation.² So, who is it who claims that Eugenius is deposed? I am not capable of great argumentation, being a married man³ and a specialist in secular rather than ecclesiastical affairs. But I do not think that a pope should be considered deposed just because a few malevolent and jealous people say so, when the whole host of believers disagrees.

[38] I see there are good men with Eugenius, supporting his cause: the Cardinal of Sant' Angelo,⁴ who does not have his equal in learning and decency; the Cardinal of San Pietro⁵, a model of honour; and, before he died, the Cardinal of Santa Croce,⁶ of matchless purity. I do not need to mention the many religious, who, as members of various orders, both serve God with purity and follow Eugenius with devotion.⁷

I consider Eugenius' actions: he does not gather treasure but gives to the poor. Now he calls the Greeks to the Faith, now the Armenians, now the Arabs,⁸ and now he endeavours to drive the Teucric Empire⁹ back across the Hellespont.¹⁰ His only aim is to defend or extend the frontiers of the Christian Commonwealth. Therefore, not only does Eugenius not deserve to be deposed: if he was not pope already; he is above all the one who should be entrusted with the Roman See and the government of Saint Peter's ship.

And I know that you, Caesar, do not disagree, though some men whisper differently in your ears, men who ought not to put their own advantage first, but yours, and who should advise you not to maintain neutrality but to obey the pope, whom the whole host of believers follows, and who should tell you to do as the other Christian kings, not as the Bavarians.

¹ Duke Albrecht III of Bayern-München, Mass, I, p. 307

² Having been reunited, in 1439, with the Latin Church at the Council of Ferrara-Florence

³ "vir uxoratus sum": i.e., a layman

⁴ Giuliano Cesarini (1398-144): created cardinal by Pope Martin V in 1426. Papal president of the Council of Basel until 1437. Mentor and friend of Piccolomini

⁵ Juan Cervantes (1380/1382-1453): created cardinal by Pope Martin V in 1426. Friend of Piccolomini

⁶ Niccolò Albergati (1373-1443): created cardinal by Pope Martin V in 1426. One-time employer, mentor, and friend of Piccolomini

⁷ E.g., Ambrogio Traversari, head of the Camaldolese order, saint

⁸ Here the speaker refers to the reunion between the Latin and

various Oriental Churches effected in connection with the papal Reunion Council in Ferrara-Florence-Rome, 1439-1445

⁹ I.e., the Turks

¹⁰ Piccolomini is referring to Pope Eugenius's endeavours to aid the Byzantines, now reunited with the Latin Church, by raising a crusade against the Turks

[39] Namque ut iterum, quid expediat, breviter attingamus: non expedit, mihi crede, Caesar, illius te pontificis mandata respuere, qui cunctos reges habet assistentes. Non desunt, qui ad imperium aspirent, doceant te majorum exempla: Alexander papa Henricum tertium imperatorem, quia sibi non paruit, excommunicationis gladio percussit, quae res nedum extraneos, sed filium proprium contra Henricum armavit ac multorum bellorum inter parentem et natum origo et causa fuit, nec umquam finiri dissidium nisi mortuo patre potuit. Nec filius postea per Calixtum excommunicatus adversitatibus caruit, qui, ut deficere sibi oboedientiam comperit, conventu principum apud¹ Wormaciam² facto investituras episcoporum ecclesiae Romanae restituit. Sed nimium fortasse {285r} digredior. Nostra intentio fuit Eugenii depositionem refellere, quod mihi jam factum videtur. Cum tota Christianitas paucissimis demptis illi oboediat et ab eo creatos episcopos recipiat³ et veneretur, nec ulli⁴ sunt, qui⁵ decreta sibi objiciant, nisi nos Germani, qui Maguntiae illa suscepimus, verum, sicut est a me paulo ante dictum, non propterea manus clausae sunt Eugenio, quod Alamani decreta concilii receperunt. Plus dico: nec decreta synodorum firma sunt, nisi Romani pontificis assensus interveniat.

¹ ac B

² Formaciam A

³ recipit L

⁴ ulla B

⁵ que B

[39] To summarise what should be done: it is not expedient for you - believe me, Caesar - to disregard the decisions of that pope, who has the support of all the other kings. The examples of your predecessors will show you that there is no shortage of men who want to be emperor.¹ Pope Alexander² struck Emperor Heinrich III.³ with the sword of excommunication because the emperor disobeyed him,⁴ something that caused his own son,⁵ not strangers, to take up arms against him and was the cause and origin of many wars between father and son. The conflict did not end until the father died. And when later the son was excommunicated by Calixtus,⁶ he too had great problems, and seeing that people stopped obeying him, he gathered the princes in Worms and gave back the investiture of bishops to the Roman Church.⁷ But maybe I am digressing too far from the subject: our intention was to refute the deposition of Eugenius, and that I have already done. Whereas all Christianity, with very few exceptions, obeys him and accepts and honours the bishops appointed by him, and whereas nobody rejects his decrees except us Germans, who in Mainz accepted the decrees [of the council], the hands of Eugenius - as I have said before - are not bound because the Germans have accepted those decrees. To put it more forcefully: the decrees of the synods⁸ are only valid with the assent of the Roman Pontiff.

¹ This passage could be conceived as a dire warning: If, in the worst case, the pope came to excommunicate the emperor as a schismatic because of his continued recognition of the council in Basel, there would be no shortage of pretenders to the imperial throne, as shown by history

² Pope Alexander II (d. 1073): Pope from 1061 to his death in 1073. Succeeded by Pope Gregorius VII, the pope who first excommunicated Emperor Heinrich, in 1076

³ Error for Emperor Heinrich IV (1050-1106): King of Germans from 1056, King of the Romans and Emperor from 1084 until his forced abdication in 1105, shortly before his death

⁴ During the Investiture Controversy, Heinrich IV was excommunicated several times by the popes

⁵ The later Heinrich V (1086-1125): from 1099 King of Germany and from 1111 Roman Empe-

ror to his death. He rebelled against his father in 1104

⁶ Pope Calixtus II (d. 1124): Pope from 1119 to his death

⁷ The Concordat of Worms, 1122, whereby Heinrich V renounced the right of investiture of bishops with ring and crozier but retained the right to invest bishops with the regalia of their office, i.e., the temporal rights and properties held from the crown, symbolised by a scepter

⁸ I.e., the councils

[40] Ajunt enim viri prudentes nullam synodum esse ratam, quae non fuerit *apostolicae sedis auctoritate* congregata vel *fulta*. Sic Isidorus Hispalensis de gestis conciliorum scribit, quem cubiti apud me habeo, quemque {289v} cum propter divisionem universalis ecclesiae, quae nunc viget, aliquando legissem. Inveni Leonem papam sanctissimum omnia gesta Chalcedonei¹ synodi confirmasse solaque illa infregisse², quae per ambitionem Constantinopolitorum adversus Niceni decreta concilii fuerant acta, et sane in omnibus synodis apocrisarii papae decretas sententias propter summam auctoritatem apostolicae sedis ante alios confirmabant et sustinebant, ex qua re mihi non videntur³ decreta concilii robur habere, quae praeter⁴ consensum Romani papae sunt edita⁵ quamvis per nationem nostram sunt acceptata. Audivique viros tum bonos tum divini humanique⁶ juris peritissimos nullum synodale decretum esse dicentes, quod ex causa non possit summus pontifex abrogare.

[41] Cum ergo, invictissime Caesar, promotionem germanus meus ab⁷ illa sancta sede receperit⁸, quae ut Lucius papa sanctissimus prior dixit, et postea beatus Jeronimus iteravit, *per Dei omnipotentis gratiam ab apostolicae traditionis⁹ tramite numquam errasse probatur nec haereticis novitatibus depravanda succubuit*, velit tua majestas favores suos nobis impendere et non solum castra, quae in tua sunt ditone, fratri meo concedere, sed ipsum quoque, ut per Bavaros, sicut par est, admittatur, juvare et omni conatu niti, ut illi etiam provisionem suscipiant apostolicam¹⁰ nec se¹¹ amplius adversus mandata summi pontificis unius inanis electionis clipeo tegant. Quia sicut in epistola beati Clementis legitur *apostolica sedes cardo et caput ut factus est a domino et non ab alio est constituta. Et sicut cardine hostium regitur, sic hujus sanctae sedis auctoritate omnes ecclesiae domino disponente¹² reguntur*.

¹ *em.*; Calcedoneum A, L;
Caladoneum B
² fregisse B
³ videtur B, L
⁴ propter B

⁵ concilii robur ... edita *omit.* L [A
and B not derived from L]
⁶ divini humanique : humani
divinique B
⁷ sub B
⁸ recepit B

⁹ sedis L
¹⁰ suscipiant apostolicam :
apostolicam suscipiant L
¹¹ te B
¹² domino disponente :
disponente domino L

[40] For knowledgeable men say that no synod is legitimate unless *it has been* indicted or *endowed with the authority of the Apostolic See*.¹ This is what Isidoro from Spain writes about the acts of the councils [in a book] that I have with me in my own bedchamber² and that I once read because of the present division in the Universal Church.³ There I found that holy Pope Leo confirmed all the decrees of the Synod of Chalcedon⁴ with the exception of those that, due to the ambitious designs of the Constantinopolitans, were enacted against the decrees of the Council of Nicaea.⁵ Moreover, in all synods,⁶ the papal envoys⁷ were - because of the preeminent authority of the Apostolic See - the first to sign the conciliar decrees. It is therefore evident to me that the decrees of the Council [of Basel] are only valid in so far as they have been enacted with the consent of the Roman Pontiff - even though they have been accepted by our nation. And I have heard good men, specialists in divine and human law, say that there is no synodal decree that the pope cannot annul for good cause.

3. Conclusion

[41] Unvanquished Emperor, my brother has received his appointment from that Holy See, which, as first said by holy Pope Lucius⁸ and later repeated by Saint Jerome, *is found, by the grace of God, never to have deviated from the path of apostolic tradition and never to have been misled into falling for novel heresies*.⁹ Therefore, may Your Majesty bestow your favour on us and not only grant my brother the castles under your own jurisdiction, but also, with all your might, ensure that he is admitted by the Bavarians¹⁰ and that they accept his appointment by the Apostolic See and no longer hide from the decision of the Supreme Pontiff behind the shield of an invalid election. For as may be read in the letter of Saint Clement:¹¹ *The Lord made the Apostolic See the hinge and head, and it is not dependent on anybody else. And just as the door is ruled by the hinge, thus, as the Lord has ordained it, all the churches are governed by the authority of this Holy See*.¹²

¹ In the Roman Catholic Church itself, the claims of papal supremacy over the other churches and over the councils as well were eventually recognised. They were still hotly debated, though, in the age of conciliarism, ending with the Council of Basel

² If the text is "cubili". But "at my elbow", if the text is "cubiti". In any case: "close by me" or "at hand"

³ Decretum, D.17.2

⁴ Council of Chalcedon (451). The Council's christological decrees were accepted by Pope Leo and most of the churches. The Pope, however, did not accept its declaration that the See of Constantinople was equal in honour and authority to the See of Rome

⁵ First Council of Nicaea (425). Convened by Emperor Constantine I to settle a number of doctrinal issues

⁶ I.e., ecumenical councils

⁷ "apocrisarii"

⁸ Lucius I (ca.200–254): Pope from 253 to his death

⁹ Decretum, C.24.1.9. (col. 969)

¹⁰ I.e., into the Church of Freising and its properties situated in Bavarian territory

¹¹ Not Clemens, but Anacletus

¹² Decretum, D.22.2. (col. 74). Cf. Pseudo-Isidore: *Letters of Pope Anacletus*, 3, 34 (MPL, 130, col. 78): *Haec vero apostolica sedes caput et cardo, ut praefatum est, a domino ... Used by Piccolomini in other orations, too*

[42] Quam sedem non potuisse Frisingensibus¹ episcopum dare, quam sit ridiculum vides, cum Petro suisque successoribus non ab homine, sed ab ipso Deo fuerit dictum: *pasce oves meas; duc in altum rete; confirma fratres tuos; et quidquam ligaveris in terra² erit ligatum et³ in coelo⁴*, et cetera hujusmodi, quae apud evangelistas leguntur. Sed jam fortasse nimium litteratus nimiumque verbosus videor, ideo tam litteris quam verbis modum facturus. Cum jam fratris mei jus tibi notissimum esse debeat, rogo te, Caesar, peto, precor, obsecro, ut adversario jam denique silentium imponas, ne amplius ipse vel alii in hac {285v} causa te stimulent, utque pro fratre meo, sicut coepisti, perseveres, nec conquiescere velis, donec eum in ecclesia Frisingensi pacificum⁵ reddas. Quod si feceris, ut spero et ut te decet, honorem tuum custodies, nomen et famam augebis⁶, inclytae domui tuae commodum promovebis, majestatem imperii tueberis, subditos in oboedientia retinebis, spem bonam omnibus, qui tibi serviunt, praebebis, Eugenium⁷ tibi conciliabis, animas ecclesiae Frisingensis ex⁸ lupi dentibus eripies, et tamquam justitiae cultor et amator honesti susceptorumque memor officiorum ac retributor obsequiorum cunctorum hominum lignis et calamis commendabere. Nec te quispiam arguet, quod hac causa vel improvidenter⁹ susceperis vel timide¹⁰ deserueris, eritque tibi gloriae sempiternae, quod semel¹¹ incoeperis utcumque arduum perseveranti diligentia perfecisse, antecessoresque tuos Albertum et Sigismundum te fore secutum, qui usque ad ultimum vitae spiritum Eugenio semper fuerunt oboedientes.¹²

¹ Frisingensem B

² in terra : super terram B, L

³ *omit.* A, L

⁴ coelis B

⁵ pontificum L

⁶ auge B

⁷ Eugeniumque N. L

⁸ *omit.* B

⁹ imprudenter B, L

¹⁰ timore B

¹¹ *omit.* B.

¹² Amen *add.* L

[42] You see how ridiculous it is [to claim] that this See could not appoint a Bishop of Freising, when it was God himself and not a man who said to Peter and his successors: *Feed my lambs*,¹ *Take the net into the deep*,² *Confirm the brethren*,³ and *whatsoever thou shalt bind upon earth, it shall be bound also in heaven*,⁴ and other similar things that may be read in the gospels. But maybe I now seem too literary or verbose, so I shall put an end to letters and words.

Whereas now you know the rights of the case of my brother, I ask you, Caesar, I pray you, beg you, and supplicate you to finally impose silence⁵ on our adversary so that he and others will no longer trouble you with this matter. Do also continue to support my brother, as you began to, and do not rest before you have established him in peaceful possession of the Church of Freising. If you do that, as I hope and as befits you, you will safeguard your honour, increase your reputation and fame, promote the interests of your illustrious House, defend the majesty of the Empire, keep your subjects obedient, give good hope to all who serve you, become reconciled with Eugenius, and tear the souls in the Diocese of Freising from the teeth of the wolves. You will be praised in writings⁶ for your defence of justice, your love of honour, your observance of obligations undertaken by you, and your rewarding all services performed for you. Nobody will criticise you for having engaged in this matter imprudently or for giving it up timidly. It will be to your eternal honour that you have, with constant diligence, finished your undertaking, though it proved difficult, and that you have followed in the footsteps of your predecessors Albrecht and Sigismund, who remained in their obedience to Eugenius until the last breath of their lives.

¹ John, 21, 15-17

² Luke, 5, 4: *Launch out into the deep and let down your nets for a*

draught (duc in altum et laxate retia vestra in capturam)

³ Luke, 22, 32

⁴ Matthew, 16, 19

⁵ I.e., concerning this matter

⁶ "lignis et calamis"