

## AN EXCERPT FROM DE MILIS'S *REPERTORIUM IURIS* IN THE LIBRARY OF JUAN DE SEGOVIA (Biblioteca Universitaria de Salamanca MS 2504)\*

Among the many manuscripts which Juan de Segovia, former student and professor of theology at University of Salamanca and noted conciliarist<sup>1</sup>, donated to his *alma mater* in 1457<sup>2</sup>, one of the most interesting is MS 2504 of the present-day Biblioteca Universitaria de Salamanca<sup>3</sup>. This manuscript consists of works by Segovia's ideological adversaries, such as Juan de Torquemada, Henricus Kalteisen and Nicolaus of Cusa, and thus has been cited as an example of its owner's intellectual honesty<sup>4</sup>. In his donation, Segovia describes MS 2504 thus: *Tractatus atque conclusiones «et»*

\* I would like to thank Prof. K. Pennington of Syracuse University and Profs. R. H. Helmholz and C. Fasolt of the University of Chicago for their help with this article.

1 On Juan de Segovia, see J. Haller et. al., *Concilium Basiliense* 1 (Basel 1896) 20-53. E. Amann, «Jean de Ségovie», *Dictionnaire de Théologie Catholique* 8 (Paris 1924) 816-19; U. Fromherz, *Johannes von Segovia als Geschichtsschreiber des Konzils von Basel* (Basel 1960); Hermann Diener, «Zur Persönlichkeit des Johannes von Segovia. Ein Beitrag zur Methode der Auswertung päpstlicher Register des späten Mittelalters», *Quellen und Forschungen aus italienischen Archiven und Bibliotheken* 44 (1964) 289-365; Benigno Hernández Montes, «Segovia, Juan Alfonso de», *DHEE* 4 (Madrid 1975) 2401-2403; Antony Black, *Council and Commune* (London 1979).

2 Segovia donated his personal library to the University of Salamanca on 9 October 1457 from his retirement in Aiton (Savoy). The text of Segovia's library donation is found in MS 211 (fols. 1r-15r) of the Biblioteca Universitaria de Salamanca. On this donation, see Manuel Torres, «Juan de Segovia y su donación de manuscritos a la Universidad de Salamanca», *Anales de la Asociación española para el progreso de las ciencias*, 4 (1939) 947-64; Julio González, *El maestro Juan de Segovia y su biblioteca* (Madrid 1944); Benigno Hernández Montes, *Biblioteca de Juan de Segovia. Edición y comentario de su escritura de donación. Biblioteca Theologica Hispania, ser. 2, t. 3* (Madrid 1984). Hernández Montes's work (hereafter cited as *Biblioteca*) is the most important of the studies cited. For the date of Segovia's donation, see *Biblioteca*, 113.

3 A brief description of MS 2504 is available in Florencio Marcos Rodríguez, «Los manuscritos pretridentinos hispanos de ciencias sagradas en la Biblioteca Universitaria de Salamanca», «Repertorio de Historia de las Ciencias Eclesiásticas en España 2 (Salamanca 1971) 455-56. However, this description is unreliable as regards the contents of the MS. For additional information on the contents of MS 2504, see *Biblioteca*, 230-35; José M. March, «Sobre el concilio de Basilea y Juan de Segovia», *Estudios Eclesiásticos* 7 (1928) 119-20 (unreliable); Antonio García y García, «La canonística ibérica medieval posterior al Decreto de Graciano», *Repertorio de Historia de las Ciencias Eclesiásticas en España 2* (Salamanca 1971) 193, 198, 203; Ramón Hernández, «Teólogos dominicos españoles pretridentinos», *Repertorio de Historia de las Ciencias Eclesiásticas en España 3* (Salamanca 1971) 200-202; Werner Krämer, «Die Relevanz des kirchenpolitischen Schrifttums Heinrich Kalteisens für die Cusanusforschung», *Mitteilungen und Forschungsbeiträge der Cusanus-Gesellschaft* 8 (1970) 115-46; idem, *Konzens und Rezeption. Verfassungsprinzipien der Kirche im Basler Konziliarismus* (Münster 1980) 459 [Handschriftenverzeichnis]; Laureano Robles, «Escritores dominicos de la Corona de Aragón» (s. XIII-XV), *Repertorio de Historia de las Ciencias Eclesiásticas en España 3* (Salamanca 1971) 164.

4 *Biblioteca*, 230.

*oraciones alias composite in favorem pape durante Basiliensi concilio*<sup>5</sup>... A list of its contents follows<sup>6</sup>:

- 1) fols. 1-3r: Proposita facta in anno domino nostro francorum regi nomine trium statum 1439 et die 29 augusti. (fol. 3v Blank)
- 2) fols. 4r-12r: Epistola regi francorum. Inc.: *ut appareat vobis christianissimo*...
- 3) fol. 12r: Copia predictarum supplicacionum et requisitionum francorum regis
- 4) fol. 13rv: Littera quam dom. francorum rex scripsit congregatis in Basilea. Ins.: Invictum nobis ab *excelso regalis*...
- 5) fol. 13v-15r: Oratio pro reddenda pace et utilitate ecclesie. Inc.: *Omnes corpus Christi misticum sumus*.... (fols. 15v-19v: Blank).
- 6) fols. 20r-57r: JUAN DE TORQUEMADA. Responsio in blasphemiam et sacrilegam invectivam ad sanctissimum canonem iustissime condempnationis dampnatissime congregacionis Basiliensis<sup>7</sup> (fol. 57v: Blank).
- 7) fols. 58r-59v: Propositiones variae pro auctoritate et superioritate pontificis supra concilium. Inc.: *Beati Pauli apostoli vox*...
- 8) fol. 60r: Articuli propositionem oratorum Gabrielis quam fecit archiep. Spoletensis in presentia domini archiep. Remensis cancellarius Francie et aliorum prelatorum Bituris existentium 3 Dec. 1439. Inc.: Oratores Gabrielis dominum nostrum regem...
- 9) fols. 60v-61r: JUAN DE TORQUEMADA. Propositiones de auctoritate et potestate papae (6 Dec. 1439). Inc.: *Primo quod solus habet papa*...
- 10) fol. 61rv: *Idem*. Sabbati 11 Dec. Turonis coram regina ambass. Florentini. Inc.: *Primo turbacionem quam per suas*...
- 11) fols. 62r-65v: Proposita domini archiep. Spoletensis, 23 Dec. in presentia d. n. regis Francie. Inc.: *Sanctissimus ac deo acceptissimus pontifex*...
- 12) fols. 65v-66r: Epis. Meldensis proposuit assumens verbum 2 Thess 2 Inc.: *Rogamus vos per adventum domini*<sup>8</sup>...

<sup>5</sup> *Biblioteca*, 97. Cf. Kramer, «Die Relevanz», 116.

<sup>6</sup> This list does not claim to be definitive, but it is intended to give a more comprehensive catalogue of the contents of MS 2504 than has previously been available. In those cases where author and/or title could not be established in any other way, I have adopted the title as given in the MS 2504 contains an index on the verso of the first fly-leaf written in a 15th-century hand. Occasionally the titles given in that index differ from those appearing at the beginning of various tracts. In such instances I have chosen what I consider the more appropriate title. On the index, see Krämer, «Die Relevanz», 116-17, esp. n. 8. It should be noted that, contrary to what Krämer states there, the priory at Aiton was not located on the Lake of Geneva, but rather south of Annecy in Haute Savoie.

<sup>7</sup> Ed. Mansi 31A, cols. 63-126. See Th. Kaeppli, *Scriptores Ordinis Praedicatorum mediae aevi* 3 (Rome 1980) 33 [no 2719].

<sup>8</sup> Cf. F. Palacky (ed.), *Monumenta conciliorum generalium seculi XV* 3 (Vienna/Basel 1886-1932) 507, 8-9 (hereafter cited as MC).

- 13) fols. 66v-67r: Conclusiones epis. Dignenis in dieta Bituricensi. Inc.: Reverendissimo in Christo patri domino...
- 14) fols. 67v-68r: HENRICUS DE HASSIA (= de Langenstein). Propositiones circa materiam schimatis. Inc.: Regula est ex logica et theologia...
- 15) fol. 68rv: Propositiones et positiones aliquorum de scismate.
- 16) fol. 69rv: Conclusiones datae per nuntios et fautores Gabriellis in dieta Maguncie de a. d. 1441<sup>9</sup>.
- 17) fols. 69v-70v: Conclusiones portatae de Burgundia a. d. <14> 42 April per magistrum Thomam de Casset.
- 18) fol. 70v: Conclusiones aportatae de Burgundia 1441 Nov. per Thomam de Hazelbayth.  
(fol. 71rv: Blank)
- 19) fols. 72r-73v: FRANCISCUS DE TRIVISANUS. Tractatus circa materiam auctoritatis ecclesiae. Inc.: Quoniam in modernis temporibus...  
(fols. 74rv Missing)
- 20) fols. 75r-100v: JUAN DE CASANOVA, Tractatus de potestate papae et concilii. Inc.: Missing due to mutilated fol. 74<sup>10</sup>.
- 21) fols. 101r-103: JUAN DE CASANOVA (?). Quaestio est utrum papa subsit iudicio concilii generalis. Inc.: Quaestio est... Et supponitur quod ipsum concilium sit<sup>11</sup>...  
(fol. 103v Blank)
- 22) fol. 104rv: PS. DIONYSIUS. De ecclesiastica hierachia exceptum. (= cap. 1, 1-5)<sup>12</sup>.
- 23) fol. 105r: *Idem*. Excerpta varia (De divinis nominibus, De mystica theologia, Epistola ad Demophilum, Epistola ad Titum).
- 24) fols. 105v-109r: LUDOVICUS DE ROMA (protonotarius). Compilatio quod ad imperatorem pertinet indictio novi concilii casu simultaneae celebrationis duorum que talia reputantur. Inc.: Omnipotentis dei postulatio suffragio<sup>13</sup>...  
(fol. 109v Blank)

9 Krämer, «Die Relevanz», 116, 128; *Biblioteca* 234.

10 The colophon (f. 100v) to this tract, in Segovia's own hand, reads: Tractatus iste fuit presentatus pape Eugenio per autorem ipsius Florentine a.d. 1435, fuitque copiatu hic circa festum Pasche eodem anno et correctus cum originali alio qui remansit auctori. On the authorship of this tract, see Gracia y García, «La canónica ibérica medieval», 193; Robles, «Dominicos Corona de Aragón», 165-66; Horst, *Zwischen*, 41, n. 59.

11 On the authorship of this tract, see Josep Perarnau, «Raphael de Pornaxio, Joan de Casanova o Julià Tallada? Noves dades sobre l'autor del De potestate papae et concilii generalis», *Spanische Forschungen der Görres-Gesellschaft, I. Reihe: Gesammelte Aufsätze zur Kulturgeschichte Spaniens* 29 (Münster 1978) 457-81; and *Biblioteca* 234.

12 Ed. PG 3, cols. 370-78.

13 Cf. MC 3, 301 ss.

- 25) fols. 110-11v: JUAN DE PALOMAR. Casus formatus contra celebrationem concilii ycumenici in Avinione. Inc.: Sacrum concilium obligatur per decretum solempniter factum<sup>14</sup>....
- 26) fols. 112r-13v: Informationes datae per oratores Eugenii ad unum ex oratoribus imperii. Inc.: Non est contentio d. n. Eugenii papae.
- 27) fols. 114r: JUAN DE PALOMAR. Continuation of the Casus formatus (from fol. 111v). Expl.: ...non a minori parte sed a toto factum esse censetur.  
(fol. 114v: Blank).
- 28) fol. 115r: Deleted attempt at continuation of *Casus* found on fol. 114r.  
(fol. 115v: Blank).
- 29) fols. 116r-42v: HENRICUS DE KALTEISEN. Consilium super auctoritate pape et concilii et quid sentiendum «sit» de translatione concilii. Inc.: Audiui et conturbatus est<sup>15</sup>.
- 30) fols. 142v-44r: Proposito facta per oratores regis romanorum et electorum Florentinae ut dictum fuerit 13 Nov. anno «14» 42. Inc.: Beatissime pater et domine clementisse. Soliti sunt viri clarissimi<sup>16</sup>.
- 31) fols. 144v-45r: Copia responsionis Gabrielis ad ambassiatore regis romanorum. Inc.: De venerabilium fratrum S.R.E. consilio<sup>17</sup>.
- 32) fol. 145r: Copia cedulae apposite de recessu Gabielis ex Florencia (1442). Inc.: Angelus dei gratias episcopus...  
(fols. 145v-46v: Blank)
- 33) fols. 147-50r: HENRICUS DE KALTEISEN. Allegatio contra auctoritatem et gesta Basiliensis concilii. Inc.: Ut contra dicta Basiliense quis sciat se defendere<sup>18</sup>...  
(fol. 151rv: Missing)
- 34) fols. 152r-206v: HENRICUS DE WERL. De excellentia potestatis apostolicae. Inc. Rex pacificus sacerdos dei<sup>19</sup>...

14 Antonio García, «La canonística», 198.

15 *Die Deutsche Reichstagsakten* (hereafter cited as DRTA). Ältere Reihe 15 (Göttingen 1957) 437-50. See Krämer, «Die Relevanz», 116 ss.; Kaeppli *Scriptores* 2, 205; Benigno Hernández Montes, «Obras de Juan de Segovia» (hereafter cited *OJS*, *Repertorio de Historia de las Ciencias Eclesiásticas en España*, 6 (Salamanca 1967) 328.

16 See *OJS* 299.

17 Cf. *Biblioteca* 234.

18 Cf. *Biblioteca* 308; Krämer, «Die Relevanz...», 116, 129, 133-4. On page 116, Krämer writes: «Mit der Nr. 2 (i. 3. Kalteisen's *Allegatio*) kann hier erstmals eine Stellungnahme des Heinrich Kalteisen über die Interpretation der Konstanzer Dekrets aus papalistischer Sicht und seine Auseinandersetzung mit den vom Basler Konzil am 15. Mai 1439 dekretierten «drei Wahrheiten» vorgelegt werden. Sie ist eine Erwiderung auf die Rede Segovias auf dem Mainzer Reichstag am 27. März 1441. Note that the decree to which Krämer refers, namely *Sicut una*, was issued in the Council of Basel's 33rd session on 16 may 1439 (MC 3. 278) and that Segovia's speech at Mainz was given on 28 march 1441 (SRTA 15, 648-759).

19 The prologue to Werl's work is found on fols. 206rv. Inc.: Apostolus Paulus 1 ad Cor 1 inquit... Cf. *Biblioteca*, 234. On Werl, see Sophronius Classen, «Heinrich von Werl, O. Min., ein deutscher Skotish» *Wissenschaft und Weisheit* 10 (1943) 61-72; 11 (1944) 67-71.

- 35( fols. 207r-209r: HENRICUS TOKE. Consilium de quattuor contradictoriis pro unione ecclesiae. Inc.: In primo protestor quecumque... (fol. 209v: Blank)
- 36) fols. 210r-222r: NICOLAUS CUSANUS. Summa dictorum in dieta Frankfordiae, 1442. Inc.: Dampnatis amedistis in magna ycumenica synodo<sup>20</sup>...
- 37) fols. 222v-23v: Finis dietae Nurembergensis et verba post dissolutionem cum Ioh. Carvajal Inc.: Post dissolutam (?) insuper congregatam (?)<sup>21</sup>...
- 38) fols. 224r-32r: JUAN DE TORQUEMADA. Tractatus de XV significatio-nibus ecclesiae. Inc.: Quoniam secundum philosophi sententiam<sup>22</sup>...
- 39) fol. 232r: IOHANNES DE MILIS. Excerptum Repertorii iuris. (fols. 232v-33v: Blank).
- 40) fols. 234r-53r: ANTONIUS DE ROSELLIS. Allegationes in favorem papalis auctoritatis. Inc.: Casus talis est sanctissimus dominus Eugenius<sup>23</sup>...
- 41) fol. 253v: BONIFATIUS Prior Generalis Cartusiae. Excerptum tractatus eius contra illos de domo Cartusiae quia derelicta obediencia Benedicti XIII adhaeserunt determinationi concilii Pisani. Inc.: Consequenter quis umquam audivit...
- 42) fol. 253v: IOHANNES DE MILIS. Excerptum Repertorii iuris. (fols. 254r-57v: Blank).
- 43) fol. 258r-265v: IOHANNES DE OPATOWICE, O.P. (Bishop of Chelmen). Tractatus contra sacra concilia. Inc.: Paulus apostolus 1 ad Corin. c. 3: Viam per quam<sup>24</sup>...

As is evident from this list, MS 2504 includes numerous short works and excerpts dealing mainly with papal authority and the relationship between the pope and general councils. We are concerned here with one such excerpt, of which there are two almost identical copies in MS 2504<sup>25</sup>. This brief excerpt has been entirely

20 Ed. DRTA 16, 408-34. Cf. Krämer, «Die Relevanz» 116.

21 cf. *Biblioteca*, 232.

22 The title given in the index to MS 2504 reads: Tractatus... cum X conclusionibus in favorem papalis auctoritatis. On this work, see Marcos, «Los manuscritos...», 456; García y García, «La canonística...», 203; Hernández, «Dominicos...», 202 (where the folio numbers are incorrect). This work is not included among Torquemada's works in Kaeppli, *Scriptores*.

23 Cf. *Biblioteca* 232-34.

24 This tract is written in several hands, including an elegant humanist script (fols. 261r-64v), and may contain more than the title suggests. On Johannes de Opatowice, see Conradus Eubel, *Hierarchia catholica medi aevi* 1 (2 ed. Monasterii 1913 = Padua 1960) 184; Pius B Gams, *Series episcoporum ecclesiae catholicae* (Regensburg 1873-86 = Graz 1957) 344.

25 MS 2504 fol. 232r (no. 51) and fol. 253v (no. 55), respectively. See the appendix A for an edition of the excerpt in question. The differences between the two copies appear in the apparatus.

overlooked to date<sup>26</sup>, as an illustration of Segovia's interest in the legal issues associated with the Council of Basel's proceedings against Pope Eugenius IV, it merits closer attention.

As the colophon on folio 232r of MS 2504 states, the excerpt in question comes from Johannes de Milis's *Repertorium iuris* which was also known by its incipit *Absenti*<sup>27</sup>. Little is known about the author Johannes or Johannes Nicolaus de Milis<sup>28</sup>. According to J. F. von Schulte, he was born in Verona, became a *iuris utriusque doctor* and worked as a lawyer, probably in Rome, at the beginning of the 15th-century. It should be noted, however, that an *advocatus consistorialis* named Johannes de Milis was incorporated into the Council of Basel by proxy on 30 June 1433<sup>29</sup>. Moreover, Giuseppe Alberigo has called attention to the *consilium* of a certain Johannes de Milis, an *avvocato consistoriale* from Brescia<sup>30</sup>, which treats the legitimacy of the Council of Basel and of Pope Eugenius IV's attempt to transfer that council to Bologna against its will<sup>31</sup>. Although this Milis's *consilium* defends a more «conciliarist» view of the relative powers of pope and council than does the *Repertorium*, there is at least one striking parallel between these two works<sup>32</sup>, and one is tempted, not without reason, to say that it was one and the same Johannes de Milis who the *consilium* in question, who was incorporated into the Council of Basel in 1433 and who authored the *Repertorium iuris* which Juan de Segovia had excerpted. This identification, especially the link to the Council of Basel, would also help to explain why Segovia had an excerpt of this particular *Repertorium* in the first page.

26 The only scholar to even «mention» this excerpt, Florencio Marcos, wrongly includes it as part of a work attributed to Juan de Torquemada, see Marcos, «Los manuscritos...», p. 456.

27 Fol. 232r: *Hec sunt verba lo de Millis in repertorio suo quod Absenti ca<sup>o</sup> appellatur in litera P.* According to J. F. von Schulte, Milis's work was called *Repertorium Milis, alias Absenti*, cf. J. F. von Schulte, *Die Geschichte der Quellen und Literatur des canonischen Rechts* 2 (Stuttgart 1875-77=Graz 1956) 300.

28 Cf. Schulte, *Geschichte*, pp. 299-300. J. Viret's brief article on «Jean ou Ioannes Milis» *Dictionnaire du droit canonique* 6 (Paris 1957) col. 114 is taken almost verbatim from Schulte.

29 See J. Haller, *Concilium Basiliense* 2 (Basel 1897) 440, lines 3-4: *Item lecto mandato domini Iohannis de Milis advocati consistorialis, nomine suo incorporatus concilio dominus Franciscus de la Cruce, etc.*

30 Giuseppe Alberigo, *Chiesa conciliare. Identità e significato del conciliarismo* (Brescia 1981) 263, n. 60. Alberigo dates this *consilium* to the winter of 1432-33, but offers no compelling evidence for doing so.

31 The text of Milis's *consilium* is found in Mansi 30, cols. 814-22. It is not complete. For a brief analysis, see Alberigo, *Chiesa* 263. The *consilium* treats the following five *dubia*: Primo quo tempore debuerit finiri. Secundo quo tempore debeat vel debuit finiri. Tertio si non fuit inchoatum tempore statuto, an postea per intervallum plurimum mensium potuerit inchoari etc. Quarto an dictum concilium debite inchoatum ex causis in dicto concilio expressis possit dissolvi per papam contra voluntatem concilii vel locum mutare et civitatem Bononiae pro loco concilii deputare. Quinto an dictum concilium sic congregatum potuerit papam monere, quod dictam dissolutionem revocet et revocationem publicet et concilio Basiliensi per se vel alium assistat (See Mansi 30, col. 815).

32 The relevant passage from Milis's *consilium* is given in appendix B. The parallel passage from the *Repertorium* is also presented to facilitate comparison.

Milis's *Repertorium*<sup>33</sup> is a sort of encyclopedia of legal wisdom arranged alphabetically based on initial key words. As stated on folio 232r, Segovia's excerpt is taken from the «p»-section, specially from the entry *papa*, and treats, not surprisingly, the case of the heretical pope<sup>34</sup>. It seems reasonable to assume that Segovia consulted this entry in Milis's *Repertorium* around the time of the Council of Basel's deposition proceedings against Pope Eugenius IV, that is, in or around 1439. There is, however, no specific mention of Milis's work in Segovia's writings from that period.

The view expressed in our excerpt limits the instances in which charges can be brought against the pope to the one case of heresy. This position corresponds to a strict reading of D. 40 c. 6 and stands in contrast to the position of canonists, such as Stephen of Tournai and the influential 12 th-century Decretist Huguccio, who considered other notorious crimes, in addition to heresy, to be actionable offenses<sup>35</sup>.

In the case of papal heresy, it is suggested that a council, presumably a general council, is competent to adjudicate the matter. Moreover, Milis maintains that a heretical pope is judged *a jure*, perhaps in contrast to those canonists, again including Huguccio, who taught that the *papa haereticus* was deposed from office automatically or *ipso facto*<sup>36</sup>. In support of his view, Milis cites the «theologians», notably Pierre de la Palu, as well as the canonist Guido de Baysio. Equating the Roman Pontiff with the *Ecclesia Romana*, Milis further states that the pope's judgment is superior to that of the Universal Church and indeed that the pope cannot err, because God would not permit it. Finally, as evidence of the pope's inerrability, he notes that no one may appeal from a papal decision—a view allegedly found in Roman Law and treated elsewhere in the *Repertorium*.

Lacking any decisive textual evidence, we can only speculate that Juan de Segovia entirely approved of Milis's view on the council's power to try a pope for heresy. But he by no means would have endorsed any claim exalting the pope alone over and against the judgment of the whole church. Most of Segovia's works, especially those from 1439 and after, argue directly against such a claim.

Clearly the excerpts from Milis's *Repertorium* fit Segovia's description of the contents of MS 2504. They are aptly classified as works *in favorem papae*, for they

33 Schulte lists six editions of the *Repertorium*, Schulte, *Geschichte*, p. 300, n. 2. His list does not include the 1522 edition (Lyon) used here, nor does it include the 1572 Frankfurt edition cited in the *National Union Catalogue. Pre-1596 Imprints* vol. 383, p. 554.

34 On this subject, see Brian Tierney, *Foundations of the Conciliar Theory* (Cambridge 1955); Ludwig Buisson, *Potestas und Caritas. Die päpstliche Gewalt im Spätmittelalter* (Cologne 1958) 166-215; J. M. Moynihan, *Papal Immunity and Liability in the Writings of the Medieval Canonists* (Rome 1961); Jeffrey A. Mirus, 'On the Deposition of the Pope for Heresy», *Archivum Historiae Pontificae* 13 (Rome 1975) and Arnulf Vagedes, *Das Konzil über dem Panormitanus zum Streit zwischen dem Konzil von Basel und Eugen IV* 2 vols. Paderborner Theologische Studien, Bd. 11 (Paderborn: Ferdinand Schöningh, 1981), vol. 1, 229 ss.

35 See Moynihan *Papal Immunity* 53-54, 75 ss.; Tierney, *Foundations*, 56 ss.; and Buisson, *Potestas*, 183. The views of numerous medieval canonists are presented clearly in Moynihan, *Papal Immunity* 43-135.

36 See Moynihan, *Papal Immunity* 80-81; Tierney, *Foundations* 60-63.

stress the superiority of the pope, even while allowing the one classic exception to papal immunity. Although these excerpts may well testify to Segovia's «intellectual honesty», they also indicate the extent of this interest in contemporary canonical thinking on the case of the heretical pope. As a theologian, albeit a theologian from a university dominated by lawyers<sup>37</sup>, it is not surprising that Juan de Segovia relied more upon theological than legal arguments when calling for the deposition of Pope Eugenius IV as a heretic<sup>38</sup>. Nonetheless, as these excerpts from Johannes Milis's *Repertorium* in his library show, Segovia was not unaware of canonical treatments of the problem.

The excerpts discussed here constitute only two very brief pieces in a very rich manuscript. In conclusion, I should like to reiterate Benigno Hernández Montes's call for a more intensive and systematic study of Salamanca MS 2504<sup>39</sup>. The list of its contents given above represents an improvement on previously existing lists, but, as noted, it is by no means the last word. Additional, more comprehensive investigation remains a *desideratum*.

#### APPENDIX A<sup>40</sup>

- 1 Papa nemini subicitur nec potest eciam per concilium iudicari nisi de heresi XL dis. c. *Si papa*<sup>1</sup> et XXI di. c. *Nunc autem*<sup>2</sup> et no. Inno. *De verborum significatione* c. *Ex parte*<sup>3</sup> et Io. An. in c. *In fidei favorem*, *De hereticis* li. VI super verbum *favorem*<sup>4</sup>, in no. et *De concessione prebende* c. *Proposuit* super glo. *Nam contra*<sup>5</sup>. Et de heresi non iudicatur, sed a iure, quia hereticus privatus est omni potestate et beneficiis ecclesiasticis secundum theologos, et specialiter secundum Petrum de Palude in tractatu suo<sup>6</sup>, et facit quod no. Arch. XXVIII q. iii *Dixit Apostolus*<sup>7</sup>. Et sententia romani pontificis prevalet sentencie

<sup>37</sup> On the predominance of lawyers at the University of Salamanca in the 15th century, see Antonio García y García et al. *La Universidad de Salamanca I* (Salamanca 1989) 43 ss.

<sup>38</sup> On the role of theological as opposed to legal argumentation in Segovia, see Antony Black, *Council and Commune* 128-37.

<sup>39</sup> 1 iudicari] revocari L 1-2 XL-et<sup>1</sup> om. L 2 XXI] XLI L Nunc] Tunc L 3 in c.] om. L li.] in S<sup>1</sup> 3 li.-favorem] om. L super...favorem] om. S<sup>1</sup> 3 Nam contra] Dispensare L Et] Sed L 4 est] a iure add. L 5 Palude] Palu L 11 quibus] que S<sup>1</sup> 13 Hec-«p»] om. S<sup>1</sup>.

<sup>1</sup> D. 40 c.6 (Friedberd 1, 146) <sup>2</sup> D.21 c.7 (Friedberg 1, 71) <sup>3</sup> Innocentius IV Novella X 5.40.23 <sup>4</sup> Johannes Andreae, Novella <sup>5</sup> *Idem* <sup>6</sup> Petrus de la Palu, Tractatus de potestate papae 1.3. Ed. P. T. Stella (Zürich 1966) 195-96; cf. Guillaume de Pierre Godin Tractatus de causa immediata ecclesiastice potestatis 4.1. Ed. William D. McCready (Toronto 1982) 192-93 Guido de Baysio (Archdeacon), Rosarium (Edition).

<sup>40</sup> The following edition of the excerpt from Johannes de Milis's *Repertorium* is based on MS 2504, fol. 232r. In the apparatus, S<sup>1</sup> refers to MS 2504, fol. 253v, L refers to the 1522 Lyon edition of Milis's work. If this excerpt is at all representative, there is reason to question the reliability of the 1522 edition.



10 universalis ecclesie dei. Sententia ergo ecclesie militantis prevalet sentencie ecclesie triumphantis, nisi romana ecclesia erraret, quod fieri posse non creditur, quia deus non permetteret no. glo. XXIII q.i *Quodcumque*<sup>8</sup>. Et ab eius sententia non appellatur IX q.iii *Cuncta per mundum*<sup>9</sup>. Ymo stultum est quem de hoc admonere cum omnes sciant Ff. a quibus app. non li. 1 i. in principio<sup>10</sup>. Vide sub verbum *appelacio* § Appellari non potest a papa. Vide infra § Pape non est obediendum<sup>12</sup>. Hec sunt verba Io. de Millis in repertorio suo quod Absenti ca?? appellatur in littera «p».

## APPENDIX B

Mansi 30, col. 818.

Sed excipiuntur tres casus quibus papae non est obediendum et sententia concilii praevalet sententiae pape. Primus, quando agitur de haeresi et hic est casus noster, quia concilium agit extirpare haeresim Bohemorum et papa dissolvendo concilium impedivit dictam haeresim extirpari et consequenter haeresim fovet. Hoc ergo casu concilium est super papam XL d. *Si papa* in tex. et glo. facit quod notat Ioh. And in c. *Proposuit*, *De concess. praeb.* et *De here.*, *In fidei favorem* in VI in novella. Et potest hoc casu papa per concilium iudicari per tex. d. (XL) c. *si papa* in fin. et XVII dis. § *Hinc etiam* v. ad haec. et V q. VII § *Item cum Balaam* in fin. Et notat Arch. et Ioh. And. in c. *in fidei favorem* in VI *De here.*

MS 2504, fol. 232r.

Papa nemini subicitur nec potest etiam per concilium iudicari nisi de heresi XL dist. c. *Si papa* et XXI di. c. *Nunc autem* et no. Inno. *De verborum significacion* c. *Ex parte* et Io. An. in c. *In fidei favorem*, *De hereticis* li. VI super verbum *favorum* in no. et *De concessione prebende* c. *Proposuit* super glo. *Nam contra*.

<sup>8</sup> Glos. Ord. C. 24 q. 1 c. 6

<sup>9</sup> C. 9 q. 3 c. 17.

<sup>10</sup> Dig. 49. 1. 1. 1.

<sup>11</sup> Ioannis de Milis Repertorium iuris (Lyon 1522) fol. 7v.

<sup>12</sup> Ibid. fol. 130r.