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Luther at Augsburg, 1518: New Light on Papal Strategies

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Leo x's brief Cum nuper, which authorised Cardinal Cajetan to put Luther on trial but did not restrict debate between them, was sent not on 11 September 1518, as has been generally believed, but on 2 November. It referred to a lost brief countermanding the order of 23 August for Luther's arrest: this brief instead offered a safe conduct to Rome. However, Luther's abrupt departure from Augsburg prevented this offer from being made. Exsurge Domine (1520), which convicted Luther without trial on inflated charges of heresy, made the false claim that he had rejected an invitation to Rome.

Luther as threat to the papacy

On 31 October 1517 the Augustinian friar (not monk),¹ Martin Luther, professor of theology at the small University of Wittenberg, sent a letter to Archbishop Albert of Brandenburg, solicitously informing him of the faulty ways in which indulgences were being offered, in his name, in his provinces of Mainz and Magdeburg.² Further doubts concerning indulgences, he said, could be seen

CIC = *Corpus iuris canonici*, ed. Emil Friedberg, Leipzig 1879–81; *DCL* = *Dokumente zur Causa Lutheri (1517–1521)*, ed. Peter Fabisch and Erwin Iserloh, Münster 1988–91; *LW* = *Luther's works*, gen. ed. Jaroslav Pelikan and Helmut T. Lehman, St Louis 1955–86; *WA* = *D. Martin Luthers Werke: Kritische Gesamtausgabe*, Weimar 1883–; *WAB* = *D. Martin Luthers Werke: Kritische Gesamtausgabe: Briefwechsel*, Weimar 1930–; *ZKG* = *Zeitschrift für Kirchengeschichte*

Translations of Latin texts in this article are my own, unless otherwise acknowledged.

¹ The English word 'monk', unlike the German *Mönch* and French *moine*, does not have the general meaning of 'religious', that is, 'a member of any religious order, whether monastic or mendicant or other'.

² Martin Luther to Archbishop Albert of Brandenburg, 31 Oct. 1517, *WABi*. 110–12. Luther also wrote to the bishop of his diocese, Brandenburg, which was in the province

in the enclosed proposal for a disputation (the *Ninety-Five Theses*). Luther was not complaining about the simoniacal selling of indulgences, as is often thought.³ Rather, he held that they were being ‘oversold’, in the sense of claiming more efficacy for them than they possessed. Specifically, he maintained that they were at most remissions of punishments imposed by popes and other prelates, not of punishments due by God’s justice; and therefore they had no effect on easing the pains of souls in purgatory.⁴

The views that Luther expressed here obviously gave cause for concern, and Albert immediately brought the matter to the attention of the Roman curia. Rome’s first reaction was to try ‘diplomacy’. The pope, Leo x, wrote in February 1518 to the head of the Augustinian friars, Gabriel della Volta of Venice, telling him to intervene, ‘to try to placate the man’. If he acted quickly, the pope believed, it would not be difficult to put out the flame that had just started to burn.⁵ But then it was decided to appoint a commission to summon Luther to Rome for trial on suspicion of heresy. The following account deals with this and subsequent events in Augsburg, which historians believe were controlled by two papal briefs addressed to Thomas de Vio, Cardinal Cajetan, papal legate to the Diet of Augsburg: *Postquam ad aures*, dated 23 August (1518), and *Cum nuper*, sent on 11 September. However, *Cum nuper*, which is edited and translated in Appendix 1 below, was actually sent on 2 November, and so had no effect at all on the proceedings in Germany. However it reveals that an earlier brief was indeed sent in September, with quite different instructions.

Trial in Rome aborted, Luther convicted

The workings of criminal prosecution (using inquisitorial procedure) with regard to Luther were first clarified by Karl Müller in 1903,⁶ and expanded

of Magdeburg. The fullest account of the pertinent events is to be found in Martin Brecht, *Martin Luther, I: His road to reformation, 1483–1521*, trans. James L. Schaaf, Philadelphia, PA 1985.

³ In large part this has been due to the mistranslation of *redimere* (‘acquire’) as ‘buy’ or ‘purchase’. Luther took up the danger of simony (buying spiritual benefits or preferences) only briefly, in commenting on thesis 42 in his *Resolutiones disputationum de indulgentiarum virtute*. WA i. 599. The translation in LW xxxi. 201 reads: ‘It must be a free gift [*donatio*] or it will become a clear case of simony and a foul transaction [*venditio*, lit. ‘sale’].’ But the translation betrays Luther when it goes on to render ‘quando dicitur’ as ‘when the indulgence sellers say’ (making Luther assert that indulgences are consciously and deliberately being sold). Many of these problems have been eliminated in the translation of the theses by Timothy J. Wengert in *The annotated Luther, I*, Minneapolis, MN 2015, 51–4, published separately as *Martin Luther’s Ninety-Five Theses*, Minneapolis, MN 2015.

⁴ These points are especially set forth in theses 5–13 and 20–6.

⁵ Leo x to Gabriel della Volta, *Litterae tuae*, 3 Feb. 1518, DCL ii. 19–23, esp. p. 21.

⁶ Karl Müller, ‘Luthers römischer Prozess’, ZKG xxiv (1903), 46–85.

upon by Paul Kalkoff⁷ and Ludwig Pastor.⁸ First, the Dominican friar Sylvester Mazzolini, called Prierias from his home town of Prierio, as Master of the Sacred Palace, was given the task of assessing Luther's *Ninety-Five Theses*, doubtless fulfilling the duty of *ensor librorum* recently assigned to his office.⁹ The pope had also given Prierias the special function of 'inquisitor of the city and world', as Prierias would later tell Luther, which automatically made him both ordinary and delegated judge over everyone in matters of faith.¹⁰ He had previously served as inquisitor for the faith ('inquisitor haereticarum pravitatis') of Brescia from 1508 and of Milan from 1511; John Tetzel was in fact currently official inquisitor in Germany. The usual concern of such judges at that time was not religious dissent but diabolical sorcery.¹¹

Prierias quickly produced and printed his *Dialogue on the presumptuous conclusions of Martin Luther on the power of the pope*, which began with principles leading to the conclusion that anyone who denied the efficacy of the Roman Church in the matter of indulgences was a heretic.¹² In due course, the local fiscal procurator, Mario di Perusco, brought charges against Luther on three heads: (1) suspicion of heresy; (2) undermining church authority; and (3) irreverence towards the keys. The pope responded by appointing a commission, consisting of his auditor general, Bishop Jerome Ghinucci, and Prierias himself, to serve as joint inquisitors (*judices et auditores*). Around the middle of June they issued a citation to Luther to appear in Rome within sixty days of its reception.¹³ The text of the citation has not survived, but we have Luther's characterisations of it

⁷ Paul Kalkoff, *Forschungen zu Luthers römischem Prozess*, Rome 1905, and 'Zu Luthers römischem Prozess', *ZKG* xxv (1904), 90–147, 273–90, 399–459, 503–603; xxxi (1910), 48–65, 368–414; xxxii (1911), 1–67, 199–258, 408–56, 572–95; xxxiii (1912), 1–72; the last instalments of this study, from xxxii. 199 onwards, were issued in book form as *Zu Luthers römischem Prozess: der Prozess des Jahres 1518*, Gotha 1912.

⁸ Ludwig Pastor, *History of the popes*, trans. Ralph Francis Kerr and others, St Louis 1923–69, vii. 361–403.

⁹ Michael Tavuzzi, *Prierias: the life and works of Silvestro Mazzolini da Prierio, 1456–1527*, Durham, NC 1997, 77.

¹⁰ 'Ego, ... urbis et orbis domini nostri spontaneo munere inquisitor ac perinde sive ordinarie sive delegato jure inspectantibus ad fidem iudex' ('I, inquisitor of the city and the world by the free gift of our lord, and therefore both ordinary and delegated judge in matters concerning the faith'): Silvestro Prierias, *Replica ... ad fratrem Martinum Luther* (Nov. 1518), *DCL* i. 109–28, esp. p. 117.

¹¹ Tavuzzi, *Prierias*, 55–9, 68–9, and also his *Renaissance inquisitors: Dominican inquisitors and inquisitorial districts in Northern Italy, 1474–1527*, Leiden 2007. For Tetzel see Nikolaus Paulus, *Johann Tetzel als Ablassprediger*, Mainz 1899, 3; he considers the report that Tetzel was previously inquisitor in Poland to be a mistake.

¹² Silvestro Prierias, *In praesumptuosas Martini Lutheri conclusiones de potestate Papae Dialogus*, *DCL* i. 52–107, esp. p. 117.

¹³ Kalkoff, *Forschungen*, 51–2.

in his appeals and elsewhere, telling of Perusco's general charges, the appointment of Ghinucci and Prierias and other details.¹⁴

But then something occurred to short-circuit the process and condemn Luther out of hand. He had given a sermon on the subject of excommunication on May 16, which was not immediately published,¹⁵ but a biased summary of it by someone in the audience began to circulate. A copy reached the Emperor Maximilian in Augsburg, who was moved to write to the pope on 5 August, urging him to take action against Luther.¹⁶

We know what happened in Rome from the brief, *Postquam ad aures*, which the pope sent to Cardinal Cajetan on 23 August 1518.¹⁷ Leo starts with an account of the first proceedings against Luther: when it came to his ears that Friar Martin had made various heretical statements and published conclusions in Germany, in order to correct his rashness, the pope commissioned Bishop Jerome Ghinucci to summon Luther to make response on points of faith; and, as the pope was informed, Ghinucci had issued the citation.¹⁸ Leo does not mention Prierias so perhaps he had stepped down from the commission at some point after the citation was sent, leaving Ghinucci as sole judge.

Then, however (the pope continues), it came to his notice that the said Martin, pertinaciously persisting in heresy, had published other conclusions and scandalous pamphlets containing several other heresies and errors, as a result of which 'the matter is notorious before us both by repute and by permanence of fact [*tum ex fama, tum et facti permanentia*], and inexcusable'. Ghinucci had accordingly declared him a heretic.¹⁹ In summing up this event later, the pope stated that this action followed upon the demand of the fiscal procurator.²⁰

The kind of notoriety invoked here was explained by William Durand in his *Speculum juris*. It needed no trial, and no citation, except to hear the

¹⁴ Müller, 'Luthers Prozess', 46–7. At Augsburg, Luther would claim, in effect, that the citation did not specify his errors. Luther clearly did not take seriously the strictures of Prierias's *Dialogue* (which was sent along with the citation), and neither did Cajetan.

¹⁵ Luther, *Sermo de virtute excommunicationis*, WA i. 638–43.

¹⁶ Emperor Maximilian to Leo x, 5 Aug. 1518, *DCL* ii. 42–4.

¹⁷ Leo x, *Postquam ad aures*, to Cardinal Thomas Cajetan, 23 Aug. 1518, *DCL* ii. 62–6. The brief survives only in Luther's own account of events in Augsburg: *Acta Augustana* (Nov. 1518), *DCL* ii. 62–6; *LW* xxxi. 286–8. Luther's commentary on it follows at *DCL* ii. 66–9; *LW* xxxi. 289–92. He did not see it until after he had left Augsburg, and he deemed it a forgery: *DCL* ii. 66–9; *LW* xxxi. 289–92 at pp. 6–8).

¹⁸ Leo x, *Postquam ad aures*, 62–4.

¹⁹ *Ibid.*

²⁰ 'On account of his evil speech and his heretical writings against us and the Apostolic See he was a notorious heretic, and out of abundant caution was declared to be such by the auditor general of the Apostolic Chamber at the instance of the fiscal procurator': Leo x, *Cum nuper*, 2 Nov. (see Appendix 1 below).

sentence, and it admitted of no appeal.²¹ Such a judgement could be very arbitrary, of course, and ran great risk of injustice, especially when, as in this case, there was apparently no effort made to ascertain the ‘fact’ that appeared so obvious to the pope: namely that this new incriminating material was actually by Luther. Later on, when Luther was tried at the Diet of Worms, the first order of business was to obtain from him an acknowledgment that the books in evidence were actually by him.²²

As a consequence of Luther’s conviction, Cajetan was ordered without delay to ‘force and compel’ Luther to appear before him, resorting to both the ecclesiastical and the secular arm; he was to be held in custody until further instructions for sending him to Rome were received.²³ Or, if Luther should appear before the cardinal willingly and repentant, Cajetan was to receive him back into the unity of the Church. However, if he failed to show up and eluded capture, the cardinal was authorised to excommunicate him and his adherents and treat them as heretics.²⁴ According to canon law, however, this could occur only after the excommunication had been in place for over a year without being absolved.²⁵

Conciliation in Augsburg or safe conduct to Rome

What followed after this has been completely misunderstood, because the next extant brief of Leo to Cajetan, *Cum nuper*, which was actually sent on 2 November,²⁶ was wrongly redated to 11 September by Paul

²¹ William Durand, *Speculum iudiciale* (1289), bk 3, part 1, rubric *De notoriis criminibus*, §8, sections 10–12, Basel 1574 edn (Aalen 1975), ii. 50–1. See Müller, ‘Luthers Prozess’, 61–6.

²² Müller, ‘Luthers Prozess’, 64. Müller believes that Ghinucci’s declaration simply ended the inquiry into *publica fama*, the prerequisite for starting an inquisition itself, and the question of Luther’s being actually declared a heretic would await the pope’s judgement (p. 67). Much of Müller’s argument is given in Pastor, *History of the popes*, vii. 369–70. I see it rather as an actual conviction, which of course the pope could reverse; and I discount the distinction between *haereticus declaratus* and *haereticus condemnatus* made by Heinrich Ulmann in ‘Studien zur Geschichte des Papstes Leo x’, *Deutsche Zeitschrift für Geschichtswissenschaft* x (1893), 1–13 at p. 12, often repeated by subsequent scholars. See Müller, ‘Luthers Prozess’, 67: he cites Leo in *Exsurge*, ‘declarantes, ... condemnamus’: *DCL* ii. 400; but the declaration entails the condemnation.

²³ ‘eum sub fideli custodia retineas, donec a nobis aliud habueris in mandatis, ut coram nobis et sede Apostolica [sistatur]’: Leo, *Postquam ad aures*, 64. The final verb first appears in the 1545 edition of the *Acta Augustana*: *WA* ii. 23.

²⁴ Leo, *Postquam ad aures*, 64.

²⁵ Alexander IV, *Cum contumacia*, *Sext* 5.2.7, *CIC* ii. 1071.

²⁶ Leo x to Cajetan, *Cum nuper*, 2 Nov. 1518: *Sacrum theatrum Dominicanum*, ed. Vincenzo Maria Fontana, Rome 1666, 346 (text and translation in Appendix 1 below).

Kalkoff in 1905.²⁷ This dating has been accepted by all historians ever since, along with Kalkoff's conclusion that Cajetan was immediately authorised to put Luther on trial in Augsburg. It is also frequently, and mistakenly, asserted that *Cum nuper* forbade Cajetan to enter into discussion with Luther.²⁸

A careful reading of the brief shows that, before it was sent, there had been an exchange of letters, namely new instructions received by Cajetan from the pope, and a reply in return received by the pope from Cajetan, which of course could not have taken place between 23 August and mid-September, given the 600 miles that lay between Rome and Augsburg. A one-way journey usually took a dozen days or more.

Specifically, after reminding Cajetan that he had written to him previously ('alias'), telling about Luther's conviction and the order for his arrest (the purport of *Postquam ad aures*, 23 August), the pope says that he told him further to invite Luther to Rome: 'that you inform him that, if he were willing to excuse himself in these matters and to appear before us, though not meriting an audience, out of our clemency we were prepared, even with a guarantee of protection, to hear him kindly'.²⁹

In other words, a less coercive strategy had been hit upon. No longer was he to be treated as a notorious convicted heretic, with the only judicial action remaining being his sentencing. Rather, emphasis was now to be upon the effort to persuade him to withdraw from his extreme positions, and, failing that, he was to be offered free conveyance to Rome, under safe conduct, to make his excuses to the pope in person. These, then, were the instructions under which Cajetan was operating when Luther arrived in Augsburg.

²⁷ Kalkoff, *Forschungen*, 57–8. Kalkoff maintains that Fontana got both the day and the month wrong, reading arabic *II* as roman *II* and *7bris* as *9bris*.

²⁸ See, for instance, Pastor, *History of the popes*, vii. 372; Wilhelm Borth, *Die Luthersache (Causa Lutheri), 1517–1524*, Lübeck 1970, 50; Gerhard Hennig, *Cajetan und Luther: ein historischer Beitrag zur Begegnung von Thomismus und Reformation*, Stuttgart 1966, 44; Scott H. Hendrix, *Luther and the papacy*, Philadelphia, PA 1981, 54; Brecht, *Martin Luther*, i. 250; Jared Wicks, 'Roman reactions to Luther: the first year (1518)', *Catholic Historical Review* lxix (1983), 521–62 at pp. 538–9; *DCL* ii. 60–1; Charles Morerod, *Cajetan et Luther en 1518: édition, traduction, et commentaire des opuscules d'Augsbourg de Cajetan*, Fribourg 1994, i. 34; Armin Kohnle, *Reichstag und Reformation: kaiserliche und ständische Religionspolitik von den anfängen der Causa Lutheri bis zum Nürnberger Religionsfrieden*, Heidelberg 2001, 28; Christopher Spehr, *Luther und das Konzil: zur Entwicklung eines zentralen Themas in der Reformationszeit*, Tübingen 2010, 72; Michael O'Connor, *Cajetan's biblical commentaries: motive and method*, Leiden 2017, 45–6.

²⁹ 'illumque moneres ut, si super his se excusare et coram nobis comparere vellet, nos cum (licet audiri non mereretur) clementia nostra paratos esse, etiam sibi praestita securitate, benigne audire': Leo x, *Cum nuper*.

After the cardinal received these orders, Leo reminds him in *Cum nuper*, Cajetan wrote back to the pope, suggesting that it might be better for him to put Luther on trial in Augsburg.³⁰ It was to this suggestion that the pope finally replied on 2 November, much too late, giving him permission to go ahead with the trial.

Some idea of the content of the invitation that was to be offered to Luther can be gleaned from the reference to it in the bull *Exsurge Domine*, two years later, when the pope falsely claimed that the offer had actually been made, and had been contemptuously rejected by Luther:

After we cited him, desiring to proceed more mildly with him, we invited him, and, both through various negotiations with our legate and through our own letters, we exhorted him to recede from the aforesaid errors, or else he should come and speak not secretly but openly and face to face, after the example of Our Saviour and the Apostle Paul, with safe conduct offered and sufficient funds supplied for the journey, without any apprehension or fear, which perfect charity should put aside [cf. 1 John iv. 18]. If he had done this, we feel certain that he would have come to himself and acknowledged his errors, and he would not have found the great number of deviations in the Roman curia which he had denounced so vehemently beyond what is deserving, swayed by the false rumours of evil-minded persons. And we should have instructed him more clearly than light itself that the holy Roman pontiffs, our predecessors, whom he had injured and savaged beyond all decency, had never erred in their canons and constitutions, which he seeks to impugn, because, as the prophet says, 'Neither balm nor healer is lacking in Gilead' [Jeremiah viii.22].³¹

Shortly after releasing the bull on 15 June 1520, the pope described the invitation to Rome to Duke George of Saxony:

After some conclusions of the said Martin were proved wrong by all theologians, we exhorted him kindly to come to us under safe conduct to uphold the said conclusions before us in the presence of other theologians, or, if these theologians were able to convince him, to withdraw them and to return to his senses; but it was all in vain, since he preferred to persist in his false opinions and to remain a reprobate.³²

A consequence of the new strategy was that the conviction of Luther as a notorious heretic (which Luther did not find out about until later, when he saw *Postquam ad aures*) was voided or suspended, and the citation to Prierias and Ghinucci in Rome was reinstated, with the term for appearance extended, as Cajetan would inform Luther.

³⁰ 'tamen crederes non ab re forsan fore, si causa ejus ... per te istic audiri et terminari posset': *ibid.* ³¹ Leo x, *Exsurge Domine*, DCL ii. 354-411 at pp. 394-6.

³² Leo x to George of Saxony, *Redditae nobis*, 5 July 1520, in *Akten und Briefe zur Kirchenpolitik Herzog Georgs von Sachsen*, Leipzig 1905, ed. Felician Gess, i. 127-9 at p. 127. It is possible, however, that Leo was referring here to something that may have been offered through Miltitz.

When were the instructions about the invitation to Rome sent? Doubtless in the first week or two of September, because by the beginning of October Cardinal Giulio de' Medici, the papal secretary of state, expected to have received an acknowledgment of receipt from Cajetan; he wrote on 3 October to inquire whether he had received the dispatch in the matter of Friar Martin that had been sent to him.³³ Medici enlarged upon the matter in another letter four days later, on 7 October (which happened to be the very day on which Luther arrived in Augsburg): 'In the said matter of Friar Martin, Your Lordship should deal with it as you see fit; and, as for the dispatch that was sent to you, you can follow whatever course you judge best; it was decided herein that in notorious and public matters there is no need for any ceremony or citation.'³⁴

Cajetan must already have sent a citation to Luther, following the orders of the 23 August brief, *Postquam ad aures*, overriding the citation to Rome; but, lest he give the game away (that Luther was to be arrested), he would have phrased the summons in such a way as to suggest that the trial was being transferred to Augsburg, with himself as judge-inquisitor. This would have been in keeping with Luther's own desire for a change of venue to Germany, for which he had been lobbying through the Elector Frederick. This is what Luther stated in the appeal to the pope that he composed in Augsburg.³⁵

Cajetan's acknowledgement of receiving the instructions from Rome, an acknowledgement that contained his request that he himself try Luther in Augsburg, would therefore have reached Rome only after Medici had sent off his letter of 7 October; and the pope and his advisors would wait until 2 November to reply to the cardinal's request in the affirmative, in *Cum nuper*, allowing him to pass judgement on Luther.

The instructions about the Rome invitation must have arrived in Augsburg before 25 September, because on that day Cajetan finished the first of a series of *quaestiones disputatae* contesting propositions of Luther in scholastic format.³⁶ In each *quaestio*, Luther's opinion is first stated and arguments in its favour are listed, followed by arguments against. Then comes Cajetan's response opposing the proposition, along with answers to the original arguments in favour of it.

³³ Cardinal Giulio de' Medici to Cajetan, 3 Oct. 1519; Kalkoff, *Forschungen*, 129.

³⁴ Medici to Cajetan, 7 Oct. 1518, in 'I manoscritti Torrigiani', ed. Cesare Guasti, *Archivio Storico Italiano* iii/24 (1876), 5–31, esp. p. 23.

³⁵ Luther's appeal to the pope: *DCL* ii. 118–26 at p. 123.

³⁶ They are listed in chronological order in Hennig, *Cajetan und Luther*, 46–7 (for the correction of no. 11 from 12 Oct. see n. 42 below). They are edited, with French translations, by Morerod, *Cajetan et Luther*, i. 181–423, in the order printed by Cajetan in 1523. For English versions see Jared Wicks, *Cajetan responds: a reader in Reformation controversy*, Washington 1978, 47–91.

Discussion in Augsburg interrupted and continued

By 8 October, the cardinal had finished ten of the *quaestiones*, and on 12 October he and Luther met formally for the first time. Luther expected a straightforward trial. But Cajetan told him that if he did not make a simple revocation, or else did not appear before the two judges, Prierias and Ghinucci, within the (new) term fixed in his citation, the cardinal would be inclined to bind ('vellet innodare') him and his supporters with a sentence of excommunication, saying that he was authorised to do so by the Holy See.³⁷

When Luther asked him what errors he had committed, as a first response Cajetan singled out the subject of his *quaestio* 8 (finished on 7 October), namely, Luther's denial in thesis 58 that indulgences drew on the treasury of Christ's merits; this went counter to Clement VI's decretal *Unigenitus*.³⁸ Then he cited the subject of *quaestio* 2 (finished on 26 September), the explanation that Luther had given of thesis 7 in his *Resolutiones*, that unless the penitent in confession had faith (that is, believed for certain) in Christ's forgiveness, he would not be forgiven. Cajetan said that this was an error that should be repudiated; for no one going to confession could be certain of receiving grace.³⁹

Luther gave a brief reply on the following day, and then, on the next day, 14 October, he returned with a longer written response to the two objections, which the cardinal agreed to send to the pope. But then, after some discussion, Cajetan became exasperated with Luther and curtly ordered him to make a retraction, or else leave his presence and not return. Luther complied: 'When I heard this and realised that he was firm in his position and would not consider the Scripture passages, and since I had also determined not to retract, I left, with no hope of returning.'⁴⁰

This is what Luther says in the *Acta*, but a clearer picture emerges in the letter that he wrote to George Spalatin at the end of that day (14 October). Cajetan's outburst, Luther claims, came after he had scored a textual point against the cardinal concerning *Unigenitus*. But after lunch Cajetan summoned John Staupitz and attempted with much flattery to have him convince Luther to recant. It was decided at the end of discussion that Cajetan would present articles for revocation along with statements of correct doctrine, and that is where the case rested; but Luther adds that he does not have confidence in the cardinal.⁴¹ He also adds that he has

³⁷ Luther's appeal to the pope: *DCL* ii.124.

³⁸ Clement VI, *Unigenitus* (1343), *Extravagantes communes* 5.9.2: *CIC* ii. 1304–6.

³⁹ Luther, *Acta Augustana*, 89.

⁴⁰ *Ibid.* 101.

⁴¹ 'Tandem eo ventum est, ut praescribat articulos quibus revocare, quid et sapere debeam. Et hucusque pendet negotium. Sed mihi non est spes neque fiducia in

no intention of recanting anything, as would be clear in the appeal that he was preparing.

However, Cajetan himself had hope of a good outcome, as he would later state to the Elector Frederick, and proof of this is that he resumed composing his *quaestiones* on that very day, 14 October. But this fact (of immediate resumption) has been obscured by the misdating of the first *quaestio* to two days earlier, 12 October.⁴² The correct chronology is:

14 October: *quaestio* 11, on thesis 18, concerning the alleged sinfulness of fearing judgement

14 October: *quaestio* 12, on thesis 14, dealing with imperfect love and fear

15 October: *quaestio* 13, on thesis 26, discussing the power of the keys and purgatory

17 October: *quaestio* 14, on thesis 18, on the growth of love in purgatory

Invitation to Rome precluded by Luther's abrupt departure

Everything was pre-empted, however, when, after several days of silence on the cardinal's part, Luther left in the middle of the night, on the advice of friends, on hearing of an alleged boast by Cajetan that he had a mandate to put Luther and Staupitz in prison.⁴³ He left behind an appeal to the pope, notarised on 16 October, and two letters to Cajetan, dated 17 and 18 October.⁴⁴ Luther could have addressed his appeal directly to the pope, as Catherine of Aragon would successfully do a decade later, appealing from Cardinals Wolsey and Campeggio to Clement VII (the former Cardinal de' Medici).⁴⁵ Or he could have addressed his appeal to Prierias and Ghinucci for transmission by Cajetan, recusing them as his judges, specifying his other grievances and requesting a formal response, *apostoli* ('apostles'), which they would be required to grant, whether *dimissorii* (granting the appeal) or *refutatorii* (refusing it). Instead, he chose to

eum': Luther to Spalatin, 14 Oct. 1518, *WAB* i. 213–15 at p. 215 ('In the end it was decided that [the Legate] would draw up the articles I should recant, and he would set forth the teaching I should hold. This is the status of the case thus far. Yet I am not hopeful, nor do I trust him': *LW* xlvi. 86).

⁴² For the correct date of q. 11 (= q. 17 in his edition) see Morerod, *Cajetan et Luther*, 422 n. 531. The mistaken date of 12 October comes from the 1575 edition.

⁴³ Luther, *Acta Augustana*, 102.

⁴⁴ In the first, he speaks of his opponents on the subject of indulgences 'who have raised me up into this tragedy' ('qui me in hanc tragoediam suscitaverunt'): *DCL* ii. 113.

⁴⁵ H. A. Kelly, *The matrimonial trials of Henry VIII*, Stanford 1976, 135–6. The cardinals were commissioned to hold an inquisition against Catherine and Henry VIII as joint defendants on a charge of having entered into an incestuous marriage.

describe them as ‘pretensed judges’, acting on the the pope’s ‘pretensed commission’ and to adopt instead the course of presenting his appeal to ‘honest persons’, when the pertinent judges were not available; he requested *apostoli testimoniales* from the notary, which he produced in the form of one or more public instruments. Though he asked for *apostoli* from ‘anyone who is willing and able to give them’, neither lower nor higher court was obliged to respond.⁴⁶ The public posting of the appeal on the door of the Augsburg cathedral on 22 October did not constitute or add to its legal status but only secured publicity for it.

Cajetan summed up his encounters with Luther in a letter to the Elector Frederick written on 25 October. After welcoming Luther in a fatherly way, he says, he told him that he would be questioned according to solid Scripture and the sacred canons, and, if he ‘acknowledged himself’ (that is, admitted his errors) and took precautions about ‘not returning to the vomit’, he would bring the case to a close, on the authority of Pope Leo. He then showed him and paternally explained that his disputations and sermons were against apostolic teaching and contradicted both Scripture and solid church doctrine.⁴⁷

After discussions with associates of Luther, Cajetan continues, he hoped all would be well (‘bene sperarem omnia’), but then Luther and his party left, having deceived him. He left behind a letter excusing himself, but did not revoke the evil statements (*maledicta*) that he had made and scandals that he had inflicted on the Church.⁴⁸

Cajetan had obviously not felt the need to raise the possibility of a visit to the pope under safe conduct, because he had become committed to being able to settle matters there at Augsburg. When Luther saw the assertion in *Exsurge Domine* that he had rejected the offer of a safe journey to Rome, he vehemently denied it, as we will see.

Cum nuper *authorises trial*

While Cajetan was dealing with Luther in this way in Augsburg, the cardinal’s response to the pope’s instructions about inviting Luther to Rome would have been the subject of discussion at the papal curia, specifically the alternative proceedings that he proposed: that he himself be empowered to put Luther on trial and to judge him guilty or not guilty there at Augsburg. It finally decided that this was indeed a good suggestion, and, on 2 November, Pope Leo commissioned Cajetan to undertake it:

⁴⁶ Luther’s appeal to the pope, *DCL* ii. 124–5. For the different kinds of *apostoli* see Durand, *Speculum*, bk iv, pt 2, rubric *De appellationibus*, §3 (*De apostolis*), sections 1–6; and see section 11, for making appeals when the judge is not available: ii. 195–7.

⁴⁷ Cajetan to Frederick, 25 Oct. 1518, *DCL* ii. 128–31, esp. p. 129.

⁴⁸ *Ibid.* 130.

Calling to mind that here on earth we rule in the place of Him who does not wish the sinner to die but rather to be converted and live, and whose nature it is always to have mercy and to spare, and also being greatly confident in your great learning, that you will diligently execute what we shall commit to you, we have decided to commit to Your Reverence, and we do hereby so commit, that you summon the said Martin and diligently examine his case; and once the case has been diligently heard and examined by you, you are to proceed to his absolution or condemnation, as justice will require; but, if you find that he has fallen into error, and if he publicly confesses his errors and is prepared to abjure them, we grant you the licence and faculty by Apostolic authority, on the basis of this present letter, after enjoining on him a salutary penance, to fully absolve him and restore him to fame and honours.⁴⁹

This brief, *Cum nuper*, ordering Cajetan to put Luther on trial, would have crossed in the post with the cardinal's account of the fiasco at Augsburg, the content of which can be gathered from Cajetan's letter to Frederick. His final assessment was that, even though Luther had put forth his views (*dicta*) as matters for disputation, he had asserted them affirmatively in sermons, and reportedly confirmed them in the vernacular tongue.⁵⁰ Some of his statements were against the teaching of the Holy See, while others were *damnabilia*, matters for condemnation. He asked Frederick to send Luther to Rome, or at least exile him from his territories. He should know that he, Cajetan, washed his hands of the matter, and that the case would now be prosecuted in Rome. He had written to the pope and reported Luther's fraudulent behaviour.⁵¹

But Cajetan was mistaken about how Rome's would respond. Far from deciding to prosecute the case, the pope and his advisors let the matter fall into abeyance, except for one thing, clarifying the question of indulgences. Leo quickly addressed a bull to Cajetan, *Cum postquam*, dated 9 November, giving a brief explanation of indulgences, which the cardinal was directed to promulgate widely, to counter statements that had been spoken 'less correctly' ('*ea quae minus recte dicta essent*').⁵²

At the end of March 1519, misled by Carl Miltitz about Luther's willingness to revoke his statements, Pope Leo sent a conciliatory brief, *Summopere nobis placuit*, to Luther. In it he said that he now understood what provoked him to write and make statements 'less correctly' (using the same phrase, *minus recte*, that he had used in his bull on indulgences). Leo rejoiced that Luther was now 'prepared to revoke all in writing' and 'to explain his

⁴⁹ Leo x, *Cum nuper*, 2 Nov. 1518.

⁵⁰ Doubtless referring especially to *Ein Sermon von Ablass und Gnade* (WA i. 239–46), printed in March 1518, where, however, many of his positions are stated mildly and tentatively. See the translation in Wengert, *Martin Luther's Ninety-Five Theses*, 41–8.

⁵¹ Cajetan to the Elector Frederick, 25 Oct. 1518, 130–1.

⁵² Leo x to Cajetan, *Cum postquam*, 9 Nov. 1518, *DCL* ii. 191–202. See Pastor's summary: *History of the popes*, vii. 379.

error' to princes and others. He welcomed him to Rome to make the submission that he feared to make before Cardinal Cajetan.⁵³

Condemnation without trial, 1520

It was not until the beginning of the next year, on 9 January 1520, that the case against Luther was re-opened. A commission of theologians appointed on 11 February, led by Cardinals Cajetan and Peter Accolti, which lasted until mid-March, recommended a moderate approach, making 'a careful distinction between the degrees of objection to be taken to the new doctrines', disapproving them without condemning Luther himself.⁵⁴ Leo rejected this strategy, perhaps under the influence of John Eck, who had recently arrived from Germany. Prierias also participated.⁵⁵ Eventually, a rather disorderly list of forty-one objectionable statements made by Luther was agreed upon.⁵⁶ It was decided not to summon Luther to trial again, but simply to give him sixty days to recant everything. It was also decided not to explain what was wrong with each statement, as Cajetan wanted, but simply to condemn them all indiscriminately, as Eck proposed, although the main reason for doing so seems to have been that it would have taken too much time to explain the objections. It was resolved to cite Luther's erroneous propositions verbatim, but this resolution was only imperfectly carried out.⁵⁷

The result was set forth in a papal bull, *Exsurge Domine*, issued on 15 June 1520. The pope first says that for some time he has heard of errors, and read some of them with his own eyes (in effect declaring them notorious),⁵⁸ which are 'either heretical, or false, or scandalous, or offensive to pious ears, or seductive of simple minds', disseminated by certain frivolous persons in the illustrious nation of Germany.⁵⁹ He includes some of them, giving their gist ('tenor'), and then condemns them again in the same terms.⁶⁰ The result of this procedure is that none of these statements is asserted to be actual heresy.⁶¹ The pope then announces that many of

⁵³ Leo x to Luther, *Summopere nobis placuit*, 29 Mar. 1519, *DCL* ii. 238–40. The bland letter to the pope that Luther drafted in January (*DCL* ii. 236–7), later printed with the place and date of Altenburg, 3 March 1519, was never sent.

⁵⁴ Pastor, *History of the popes*, vii. 387.

⁵⁵ Tavuzzi, *Prierias*, 106. Prierias attended the consistories of 23 May and 1 June 1520.

⁵⁶ See Jared Wicks, 'Opponents, Roman Catholic', *Oxford encyclopedia of Martin Luther*, ed. Derek R. Nelson and Paul R. Hinlicky, New York 2017, iii. 33–48 at p. 37.

⁵⁷ Pastor, *History of the popes*, vii. 396–8.

⁵⁸ Müller, 'Luthers römischer Process', 64 (no. 2), 81.

⁵⁹ Leo x, *Exsurge Domine*, 368.

⁶⁰ *Ibid.* 386.

⁶¹ Roland Bainton points out that the same formula had been used a hundred years earlier in the condemnation of John Hus at the Council of Constance (1415): *Here I stand: a life of Martin Luther*, New York 1950, 147.

these errors are to be found in the writings of Martin Luther, and therefore he condemns all of his works that contain them.

Leo goes on to assert that Luther contemptuously rejected the original citation that was sent to him, which, of course, was not true. He then claims that he made every effort to treat him kindly, specifically by inviting him under safe conduct to visit the Roman curia, which he also rejected with contempt.

The pope adds that Luther had remained contumacious and had sustained censures for over a year.⁶² In so saying, Leo (or the large committee that authored the text) was claiming to have observed the law with regard to suspects who refused to respond to official citations in matters of faith. The law of contumacy did not apply in Augsburg because the essential element of being excommunicated and remaining so for a year was missing. Here the year-long period was present, but the excommunication was still lacking, despite the claim of Luther's having been under censures.⁶³

The bull fails to mention that, far from being contemptuous of the citation to the Roman tribunal, Luther lodged a respectful appeal to the pope himself. Leo ignores this appeal and conflates it with the other appeal that Luther eventually made. 'What is worse', Leo charges, 'on hearing of the citation', Luther appealed to a future council, in violation of the constitutions of Pius II and Julius II, an offence incurring 'the punishment of heretics'.⁶⁴ Therefore, he continues, 'we could proceed against him as if (*tanquam*) notoriously suspect in faith, indeed, truly heretical, and move without further citation or delay to his condemnation and conviction, as if a heretic, and to the severity of each and all of the aforementioned punishments and censures'.⁶⁵ Again, multiple censures are claimed, all amounting, it seems, to a state of notoriety.

Nevertheless, Luther is given another chance: as yet another concession to him, he is granted a further delay of sixty days, in order that he may return to the Church and be reconciled. If he does not comply, Leo says, he condemns him and his adherents (using the present tense,

⁶² Leo X, *Exsurge Domine*, 394–6.

⁶³ The automatic excommunication incurred for appealing to a future council did not qualify (though some curialists doubtless disagreed).

⁶⁴ Pius II, *Execrabilis* (18 June 1459), specifies the punishment as that due to the favourers of heretics, while Julius II, *Suscepti regiminis* (1 July 1509), though purporting to repeat Pius' decree, says it is the punishment of actual heretics, and he adds that such offenders are to be held as true schismatics: *Bullarium, diplomatum, et privilegiorum sanctorum romanorum pontificum Taurinensis editio*, ed. Francesco Gaude, Turin 1857–72, v. 149–50 (Pius II), 479–81 (Julius II). Neither pope defines offenders as heretics. Curialists who held that appealing to a council was proof of heresy would have to apply it not only to Luther and his notary but also to all the members of the University of Paris, which made such an appeal in March of 1518 (*DCL* ii. 227–8 n. 41).

⁶⁵ Leo X, *Exsurge Domine*, 396.

‘condemnamus’), declaring them, like arid branches, to have been and to be notorious and pertinacious heretics, to be treated as such. And then all of Luther’s writings, even those not containing the aforesaid errors, are to be shunned and burned.⁶⁶

Here the pope goes beyond what the law provided for in punishing persons under excommunication for failure to appear in a matter of faith, which was to treat them as ‘as-if heretics’. He pronounces them to be actual heretics, and notorious ones at that. He goes even further against established canon law in applying this designation not only to Luther, but also to his followers. By rights, they should at most have been declared liable to a charge of ‘vehement suspicion of heresy’, in offering support to a heretic.

Luther’s reactions

In the first of Luther’s written responses to the charges of *Exsurge Domine*, namely, *Against the execrable bull of the AntiChrist*, of late October 1520, in addition to mocking the grab-bag characterisation of the offences (he says it is equivalent to saying, ‘Some are heresies, we think, some are errors, some are scandalous, but we don’t know which, what kind, or how much’),⁶⁷ he indignantly rejects the pope’s claim that he had invited him to Rome. He suspects that the real authors of the bull were John Eck and his associates, and he says that the story of the offer of a visit is particularly ridiculous. They claim that, in addition to all the other great considerations that they heaped upon him, they promised him the wherewithal to go to Rome. ‘I know who the maker of this glorious lie is’, Luther says. It is Cardinal Cajetan, who, born and raised to tell lies, now that he is securely back in Rome, pretends that in Augsburg he promised him money to go to Rome, whereas the cardinal himself when he was there was so poor that there was fear he would starve his household to death. However, Luther says, let them send him money now, and he will go. He will turn down the safe conduct, but the money they pay will have to be enough to hire an army, say 20,000 foot-soldiers and 5,000 horse, to protect him in that deadly city.⁶⁸

Luther wrote this well after the expiry of the sixty-day period granted to him, and after another several weeks, on 10 December 1520, he responded with a ceremonial burning of *Exsurge*. The following month, on 3 January 1521, Pope Leo issued the bull *Decet Romanum Pontificem*, announcing that Martin has contemptuously refused to renounce his errors and come to him. ‘And, now that he is declared a heretic’, those ‘who publicly

⁶⁶ Ibid. 396–402.

⁶⁷ Luther, *Adversus execrabilem Antichristi bullam*: WA vi. 597–612 at pp. 599–600.

⁶⁸ Ibid. vi. 605.

and notoriously follow the pestiferous and heretical sect of the said Martin' have incurred the penalties listed in *Exsurge* and are now 'deservedly to be considered as heretics'.⁶⁹ Moreover, since all this is manifest and notorious, and the pope hereby declares it to be so, it is in need of no proof, warning, or citation; he further declares Martin and his followers to have fallen under the censures of excommunication as well as anathema and eternal malediction, and confiscation of all goods and deprivation of honours, and the penalties of lese majesty.⁷⁰

What began on a local level in Germany could have been adjudicated locally.⁷¹ But, of course, if Luther did not like his treatment there, he would undoubtedly have appealed to the pope. As it was, the matter went to the pope immediately, and he and his advisors vacillated between strategies of persuasion and coercion. Because of a mistaken dating of Leo's brief *Cum nuper*, the fact that Cardinal Cajetan at Augsburg was in a persuasive rather than coercive cycle has been overlooked. It was for this reason that he was preparing detailed debates with Luther. In spite of his initial frustration with Luther's recalcitrance, he became confident that he could win him over. This was doubtless a vain hope, because Luther likewise stated his determination not to concede any of his positions.

However, if Luther had not withdrawn from the 'tragedy' that he was forced into in Augsburg,⁷² the discussions would doubtless have continued well into November, and, when *Cum nuper*, sent on 2 November, finally arrived, Cajetan could have turned the proceedings into a formal inquisition. He would naturally have proceeded in the way that he desired the pope to proceed later on in Rome. That is, he wished the erroneous statements to be carefully defined, not simply declared to range between heresy and rashness (with everything together adding up to heresy).

If Luther had actually been tried in Augsburg and condemned on the errors delineated by Cajetan, and had refused to capitulate, the cardinal might not have been able to discipline him physically, because of the imperial safe conduct that Luther carried, but he could have excommunicated him and imposed other spiritual penalties. Similarly, if Luther had been summoned to Rome in 1520 and tried in proper canonical form, whether *in praesentia* or *in absentia*, it would have won the papacy plaudits for equity and due process. As it was, mendaciousness and heavy-handed expediency won the day, and made a dangerous situation much worse than it might otherwise have been.

⁶⁹ Leo x, *Decet romanum pontificem* (3 Jan. 1521), *DCL* ii. 457–67 at pp. 462–3.

⁷⁰ *Ibid.* ii. 463–4.

⁷¹ Robert E. McNally, 'The Roman process of Martin Luther: a failure in subsidiarity', in James A. Coriden (ed.), *The once and future Church*, Staten Island 1971, 111–28, esp. pp. 112–13.

⁷² See n. 44 above.

APPENDIX 1

Leo X, Cum nuper, 2 November 1518

This brief was originally published by Vincenzo Maria Fontana in *Sacrum theatrum Dominicanum* (Rome 1666), 346. The first two emendations in the text below were suggested by Paul Kalkoff in *Forschungen*, 57–8. I reject Kalkoff's further emendation of the date from 2 November to 11 September.

Cum nuper tuis litteris nobis significaveris quod, licet alias Circumspectioni Tuae commisserimus ut Fratrem Martinum Lutter—qui, propter ejus in nos et Sedem Apostolicam maledicta et heretica ejus scripta, notorius hereticus erat, et, ex abundantanti, ut talis per Camerae Apostolicae generalem auditorem, instante procuratore fiscali, declaratus fuerat—capi faceres; illumque moneres ut, si super his se excusare et coram nobis comparere vellet, nos cum (licet audiri non mereretur) clementia nostra paratos esse, etiam sibi praestita securitate, benigne audire, tamen crederes [F *credere*] non ab re forsitan fore, si causa ejus, licet ex iis [F *exilis*] sit quae apud hanc Sanctam Sedem agitari et cognosci deberet, per te istic audiri et terminari posset, nos, mente revolventes [F *revolentes*] quod illius vices in terris tenemus [F *tenerus*] qui non vult mortem peccatoris, sed ut convertatur et vivat, ejusque proprium est misereri semper et parcere, ac de singulari tua doctrina plurimum confidentes, quod ea quae tibi commisserimus diligenter exequeris, eidem Circumspectioni Tuae committendum duximus, prout etiam committimus, ut eundem Martinum coram te accersiri facias, ejusque causam diligenter examines, eaque per te diligenter audita et examinata, ad illius absolutionem vel condemnationem, prout justum fuerit, procedas; et nihilominus si ipsum in errorem prolapsum fuisse repereris, eumque errores suos publice fateri et illos abjurare paratum esse, illum, injuncta sibi prius penitentia salutari, plenarie absolvendi et ad famam honoresque restituendi, auctoritate Apostolica, tenore praesentium, licentiam et facultatem concedimus.

Datum Romae apud S. Petrum sub annulo Piscatoris, die 2 Novembris MDXVIII, pontificatus nostri anno sexto.

(Since you recently signified to us in your letters that, even though we had previously [*alias*] commissioned Your Reverence concerning Friar Martin Luther – who on account of his evil speech and his heretical writings against us and the Apostolic See was a notorious heretic, and out of abundant caution was declared to be such by the auditor general of the Apostolic Chamber at the instance of the fiscal procurator – that he be taken into custody; and that you inform him that, if he were willing to excuse himself in these matters and to appear before us, though not meriting an audience, out of our clemency we were prepared, even with a guarantee of protection, to hear him kindly; you nevertheless believed that it might perhaps be advisable if his case, though it concerns matters that should be dealt with and tried at this Holy See, could be heard and concluded by you there in Augsburg; calling to mind that here on earth we rule in the place of Him who does not wish the sinner to die but rather to be converted

and live, and whose nature it is always to have mercy and to spare, and also being greatly confident in your great learning, that you will diligently execute what we shall commit to you, we have decided to commit to Your Reverence, and we do hereby so commit, that you summon the said Martin and diligently examine his case; and once the case has been diligently heard and examined by you, you are to proceed to his absolution or condemnation, as justice will require; but, if you find that he has fallen into error, and if he publicly confesses his errors and is prepared to abjure them, we grant you the licence and faculty by Apostolic authority, on the basis of this present letter, after enjoining on him a salutary penance, to fully absolve him and restore him to fame and honours.

Given at Rome at St Peter's under the ring of the Fisherman, the 2nd day of November, 1518, the 6th year of our pontificate.)