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THE CAUSA OF JOHANNES FALKENBERG
AND SYNODAL PRAXIS
AT THE COUNCIL OF CONSTANCE (1414–1418)**
BETWEEN COUNCIL AND POPE

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Abstract: While the council fathers at the Council of Constance (1414–1418) managed to achieve a specific condemnation of the theses of Wyclif, Hus, and Jerome of Prague, in the case of Jean Petit, the council only made a very general judgement of tyrannicide through the decree *Quilibet tyrannus*. Something similar occurred with some of the theses of Johannes Falkenberg as, even though its author was imprisoned and his theses were condemned as seditious, they were not expressly condemned as heretical by the council, giving rise to strenuous complaints from representatives of the Polish crown to Pope Martin V, who made a protest at the last session of the council claiming that the case had not been properly decided and presenting an *appellatio ad futurum concilium*. This article analyzes the dispute over the theses of Johannes Falkenberg at the Council of Constance, focusing on the debates that took place within the *natio gallicana*. It also attempts to explain the correlation between the consolidation of conciliar authority and the course of the Falkenberg case.

Keywords: Heresy, Tyranny, Procedure, Conciliarism, Inquisition, Falkenberg.

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THE CONFLICT: THE TEUTONIC KNIGHTS AND THE POLISH CROWN

After the Council of Pisa (1409), which was summoned to solve the Schism that arose following the election of two Popes in 1378, the crisis in the Church continued to be extremely serious. Instead of two lines of Popes, one in Rome and one in Avignon, the election of another Pope in Pisa added a third. In an attempt to resolve the situation, John XXIII, Pope of the Pisan line, with the support of Sigismund, *Rex Romanorum* and future Holy Roman Emperor, summoned a council on All Saints Day in 1414 in the city

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of Constance. When John XXIII realized that he would not be able to control the council based on the numerical majority of Italian members and given the fact that the council fathers organized themselves into nations, he decided to leave Constance, causing great uncertainty among the attendees. In these circumstances, the council fathers realized that they needed to legitimize their authority without a papal head so they approved the decree *Haec sancta synodus*.¹ Even though opinions differ over how the text should be interpreted, there is no doubt that the decree demanded obedience to the council over matters of union, faith, and reform *in capite et membris*. For this reason, I believe that the inquisitorial processes of the *causa fidei* sought the temporary consolidation of the council as the highest power within the *ordo iudiciarius* of the Church (Provvidente, 2013). In the context of these arguments over its legitimacy, the Council of Constance (1414–1418) decided to concentrate on the *causa fidei*. The attention of the council was thus focused on condemning the theses of John Wyclif, Jan Hus, and Jerome of Prague. But the question remains: what happened with the other *causae fidei*? While the council fathers managed to achieve a specific condemnation of the theses of Wyclif, Hus, and Jerome of Prague, in the case of Jean Petit, the council only made a very general judgement of tyrannicide through the decree *Quilibet tyrannus* (Traxler, 2019: 76; Rollo-Koster, 2018: 193–211). Something similar occurred with some of the theses of Johannes Falkenberg as, even though its author was imprisoned and his theses were condemned as seditious, they were not expressly condemned as heretical by the council, giving rise to strenuous complaints from representatives of the Polish crown to Pope Martin V, who made a protest at the last session of the council claiming that the case had not been properly decided and presenting an *appellatio ad futurum concilium*.² This article analyzes the dispute over the theses of Johannes Falkenberg at the Council of Constance, focusing on the debates that took place within the *natio gallicana*. It also attempts to explain the correlation between the consolidation of conciliar authority and the course of the Falkenberg case.

¹For the text of *Haec sancta*: Decaluwé, 1973. The author points out that there was no critical edition of the council decree, giving rise to so much debate and discussion. For this reason he proposes a new critical edition. Regarding the previous editions of the main sources of the Crowder, 1962; Stump, 1990. Regarding the interpretations of the Decaluwé, 2008.

²Falkenberg was sentenced to perpetual imprisonment by the General Chapter of the German Province of the Order on June 6, 1417. He was later incarcerated in Engelsburg until he was released in the mid-1420s after a recantation (Boockmann, 1975: 292–293; 300–302).

The debates over Johannes Falkenberg's theses can only be fully understood within the wider context of the conflict between the Polish crown and the Order of the Teutonic Knights. Although the latter was founded, like the Knights Hospitaller, to support crusades in the Holy Land, following the end of the Crusades, it evolved into a military order that gradually accumulated power thanks to the privileges it was granted by the Emperor and the Pope (Boockmann, 1975 and *ibid.*: 50–129; Gouguenheim, 2007; Paravicini, 1989; Christiansen, 1980; Brennan, 2006: 27–116; Urban, 2000: 96–97). The Order's area of influence began to concentrate especially in the Baltic region and, soon after their expulsion from Hungary, they received a request from Conrad I, one of the Dukes of Mazovia, to join the military campaign to Christianize Prussia, which was still pagan at the time. Successive military victories and imperial and papal privileges quickly made the Order a major power in the region (Frost, 2015: 6).

In 1385, following the accord of Krewo, the Polish nobility decided to offer the crown to Jadwiga, one of the daughters of Louis of Anjou, and arranged her betrothal to Jogaila, the Grand Duke of Lithuania, thus paving the way for a union between the Polish crown and the Grand Duchy of Lithuania (*ibid.*: 47–60). The marriage required the conversion of Jogaila, who was still pagan and who, after his baptism, would receive the name of Władysław II Jagiełło. The conversion of Jogaila also meant that his people and the Lithuanian nobility would adopt the Christian faith, which they did quickly and peacefully through the bestowal of gifts and privileges.³ In order to provide theological support for the conversion, the University of Krakow started to play a fundamental role in the kingdom (Knoll, 2016).

In Lithuania power was assumed by Witold, Jogaila's cousin, who in 1401 became a Grand Duke of this territory. There is no doubt that the peaceful conversion of Lithuania seriously questioned the legitimacy of the presence of the Teutonic Knights, who had concentrated their efforts on a series of military campaigns that would result in the Christianization of Lithuanians (Boockmann, 1975: 124). In 1409, a dispute between the Teutonic Knights, the Polish crown, and the Duchy of Lithuania would arise following the rebellion of Samogitia, a region that was still pagan but had been previously ceded by Lithuania to the Order. The Teutonic Order, claiming that the rebellion had been encouraged and supported by Witold, was finally defeated on 15 July, 1410, at the famous battle

³Regarding the Christianization of Lithuania: Urban, 1989b; Kłoczowski, 1989: 105–135; 137–157.

of Tannenberg (Grunwald in the Polish tradition) and was never able to fully recover (Urban, 1999: 133–168; Gouguenheim, 2012; Paravicini, Petrauskas, Vercamer, 2012; on Samogitia: Urban, 1989a). While the Poles and Lithuanians concentrated on the peaceful conversion of Samogitia, the Teutonic Knights began a campaign to undermine King Jagiełło and Witold, accusing them of receiving support from schismatics (orthodox Christians) and heathens in their military campaigns against the Order (Urban, 1999: 169–2006). The Treaty of Thorn (Toruń) signed after the war did not solve the conflict, and between 1412 and 1414, Sigismund, the King of Hungary and *Rex Romanorum* who aspired to become emperor, mediated on several occasions without ever finding a definitive solution. This is why both sides in the dispute decided to bring the matter before the Council of Constance whose main objective was to unify the Church after successive splits since 1378, to address important doctrinal issues, and to start a reform of the Church *in capite et membris*.⁴

This ongoing dispute explains why both the Order and the Polish-Lithuanian crown were particularly well-represented at the council. In the case of the Order, the head of their delegation was the Archbishop of Riga Johannes von Wallenrode, who was supported by the *Obertrappier*, Friedrich von Welden; the *Deutschmeister*, Konrad von Egloffstein; Johann Abeczier, *Doctor Decretorum*; the Knight Johann von Orsichau (Orzechów); and the Burgermeister of Chelmno, Konrad von Kesselhut. The Order's emissary Peter von Wormditt also came to Constance with the court of John XXIII (Brennan, 2006: 119–121; Brandmüller, 1998: 151).

Nicholas Tromba (Mikołaj Trąba), Archbishop of Gniezno; Jacobus Kurdwanowski, Bishop of Płock; the designated Bishop of Poznan, Andreas Laskari; and the Bishop of Włocławek, Jan Kropidło represented the Polish crown. The *rector* of the University of Krakow, Paweł Włodkowic (Paulus Vladimiri), *doctor in utroque iure* and the true head of the delegation spoke for the institution in Constance and presented the main arguments against the Order (Brennan, 2006: 121–122; Brandmüller, 1998: 151–152).

Sigismund attempted to force both parties to accept his mediation and ordered a delay in the debate until his return from Narbonne and the creation of a commission under the leadership of Cardinal Zabarella charged

⁴Regarding the Council of Constance and the conflict between the Order of Teutonic Knights and the Polish crown: Brandmüller, 1998: 150–175 and specifically on historiography Frenken, 1993: 207–243; *Das Konstanzer Konzil*, Frenken, 2015: 225–227. Regarding the idea of reform: Stump, 1994.

with analyzing the affair on May 11, 1415. However, arguments quickly began to be presented to the council.⁵

Taking advantage of the absence of the Polish delegation during the first months of the council, Peter von Wordmitt and Johannes von Wallenrode began a campaign of defamation against the Crown, accusing King Jagiełło and his cousin the Grand Duke of Lithuania of violating the peace of Thorn and receiving military assistance from heathens in their war against the Order. They also urged the council to defend the Order (Brennan, 2006: 122–126).

On behalf of the Polish crown, on July 5 and 6, 1415, Paweł Włodkowic drafted his opinions in the treatise *De potestate pape et imperatoris respectu infidelium* which began with the incipit *Saevientibus olim Pruthenis* and a series of *Conclusiones* that began with the incipit *Opinio ostiensis (Hostiensis)* which would be read to the German nation at the Council of Constance (Vladimiri, 1965c: 792–844 and *Pisma wybrane Pawła Włodkowica* 1966: 2–212; Vladimiri, 1965b: 864–884 and *Pisma wybrane Pawła Włodkowica* 1966: 113–137). Although there were differences between the texts, their objective was the same given that the main argument focused on the interpretation of the decretal *Quod super his*.⁶ Włodkowic made reference to the interpretation of Pope Innocent IV's opposition to the interpretation of Cardinal Hostiensis, which denied the legitimacy of *dominium* among heathens (Brennan, 2006: 145–229). Drawing on Pope Innocent IV's arguments, Włodkowic suggested that *dominium* and *iurisdictio* existed among heathens by virtue of *ius gentium* and so they could hold their properties and governments legitimately.⁷ Although he admitted that the heathens who

⁵Regarding the commission: Brandmüller, 1998: 152–153. According to the author it was not an official council body but an advisory commission created by Sigismund. Led by Cardinal Zabarella, there were two members from each nation: Bernarde de la Planche and John Stokes for the *natio anglicana*, Jean de Mâcon and Adam de Cameraco for the *natio gallicana*, Lamberto de Stipite and Conrad Seglauer for the *natio germanica* and Antonio de Ponte and Gaspar de Perugia for the *natio italica*. See also: Frenken, 1993: 210 and Acta Concilii Constanciensis, 1928: 241.

⁶Gorski, 1971: 162–166; Woś, 1979; Muldoon, 1979: 105–131; P. Russell, 1980: 237–254. On Pope Innocent IV: Miethke, 2008. On the conflict from a theological perspective: Kwiatkowski, 2000; Brennan, 2006: 1–26.

⁷*Paulus Vladimiri and his Doctrine Concerning International Law and Politics* 1965a: 750–761; Wielgus, 1998; Brennan, 2006: 309–310; Dufour, 2014. In this article the author mentions that in the historiography of international law, emphasis has always been placed on the rupture in which Hugo Grotius' work played a key role in establishing the foundations of modern *ius gentium*. However, in recent years other authors have also noted the influence of the *magni hispani* as Francisco de Vitoria and Domingo de Soto on the origins of modern

had occupied the Holy Land must be fought by the Church, the peoples who remained outside of the Church peacefully and who allowed Christians to live freely must be tolerated and their conversion sought peacefully through the sending of preachers (Brennan, 2006: 206; Vladimiri, 1965b: 124). If they did not accept their presence, this could be considered a valid reason to take military action. This also opened the door to a reassessment of the concept of a just war modifying some of the traditional conditions for it.⁸ Although Włodkowic focused on engaging on a *processus doctrinalis* that questioned the legitimacy of the presence of the Order and military action in the region, he also denounced the numerous abuses of the Order to the point of accusing it of heresy in his treatise *Causa inter Reges Poloniae et Cruciferos* (published under the title of its incipit *Ad Aperiendam*) and the *Articuli contra Cruciferos de Prussia*.⁹ The ultimate objective of his complaints was, without a doubt, to achieve the dissolution of the Order since it was considered a heretical body.

Bishop Giacomo Arrigoni de Lodi; the consistorial lawyer, Dominicus de Ponte; the Canon of Augsburg, Rudolf Arzt; the Bishop of Ciudad Rodrigo,

international law. The objective of his article is to show that the origins of *ius gentium* can even be traced back to debates between the Order of Teutonic Knights and representatives of the Polish crown at the Council of Constance. Textual evidence has not been found that Spanish theologians and legal scholars of the 16th century were aware of the arguments of this dispute. Perhaps the similarities can be explained by the fact that most of these authors drew on prior canonical tradition in debates over the decree *Quod super his*. However, to rule out a direct influence one would have to study the circulation of manuscripts by the authors involved in the disputes between the Order and the Polish crown. Although figures such as André Diaz de Escobar were deeply involved in these debates and he wrote a treatise defending the order, thus far the reception of these debates on the Iberian peninsula cannot be established. More recently Knoll, 2016: 238–244.

⁸Changes in the concept of a crusade can be perceived at the Council of Constance. With the Christianization of Lithuania, the Order of Teutonic Knights would lose a large part of their justification for operating in the Baltic region. The main problem was justifying a war that was not waged against aggressive pagan peoples or to recover the Holy Land. At the beginning of the century, changes in the idea of a crusade emerged. The two major threats from then on would be the expansion of Ottoman Turks into the Balkans and, from the 1420s onward, the Hussites in Bohemia. Regarding the issues surrounding the crusades in the early 15th century see especially: Soukup, 2017b; Housley, 2017; Soukup, 2017a and Sarnowsky, 2017: 11–44; 45–84; 85–122; 123–160.

⁹Vladimiri, 1966: 144–271; *Pisma wybrane Pawła Włodkowica* 1966: 2–168; Vladimiri, 1965a: 916–988; Chollet, 2014 and the book based on his thesis Chollet, 2019. The author also notes the importance of understanding legal debates within a wider context, including chronicles, diplomatic documents, and literary sources related to the dispute. It is interesting to see that Paulus Vladimiri begins by attacking the legal basis for the Order and only later on at Constance starts a campaign to have it condemned as heretical.

André Dias de Escobar; and Doctor Johannes Urbach of Bamberg responded to these serious charges for the Teutonic Knights.¹⁰

JOHANNES FALKENBERG ENTERS THE PROCEEDINGS

Another figure very close to the Order taking part in the dispute with representatives of the Polish crown was the Dominican monk Johannes Falkenberg who, after studying *artes* in 1380 in Prague and moving on to study law, in 1384 continued his *peregrinatio academica* at the Faculty of Theology of the University of Vienna, remaining there at least until 1387 only to appear between 1405 and 1406 in Krakow where he acted as *lector* at the Dominican monastery. In 1411, we find him again as an *inquisitor* in Magdeburg where he demonstrated great zeal in the persecution of heretics. A year later, in Prussia, he made contact with the Order of the Teutonic Knights.¹¹ Between 1415 and 1416, although he was not a major figure at the council, he actively debated with Pierre D'Ailly, Gerson, and Pierre de Versailles, assuming views similar to those of the Burgundians during the debates over the nine assertions of Jean Petit taken from his *Justification* of the tyrannicide of the Duke of Orléans.¹² In spite of the campaign to discredit the Polish-Lithuanian monarchy and the accusations levied against it, most of the council fathers continued to regard it positively due to its efforts to achieve a union with the Orthodox Church and especially the peaceful conversion of Samogitia. At the end of 1415, the arrival of a delegation of 60 baptized Samogitians made a very favorable impression on the council (Brandmüller, 1998: 157).

However, Falkenberg captured the attention of the council when between the end of 1416 and the beginning of 1417, his text *Satira contra hereses cetera nefanda Polonorum et eorum regis Jaghel* arrived in Constance from Paris. Proceedings soon began against him given that some statements of his work were considered heretical.¹³ The Dominican monk claimed that King Władysław II Jagiełło was idolatrous and a heretic and even a pagan

¹⁰Regarding the Bishop of Lodi, Dominicus de Ponte and Rudolf Arzt: Boockmann, 1975: 236, 237. On André Dias de Escobar: Sturgeon, 2017. Regarding Johannes Urbach of Bamberg: Boockmann, 1975: 246; and for his text: Weise, 1970. The text has been translated into English by Brennan, 2006: 422–532.

¹¹For a biography see: Boockmann, 1975: 130–196; 297–305; Frenken, 1993: 227–229.

¹²Regarding the treatises of Johannes Falkenberg on the *Justification* by Jean Petit at Constance: Prochaska, 1996: 49; Gerson, 1706a: Col. 1014, 1020 & 1030; Acta Concilii Constanciensis, 1928: 352–352.

¹³For an edition of the text: Boockmann, 1975: 312–354 and Włodek, 1973.

who had faked his conversion and baptism in order to destroy the Church and thus he had to be eliminated. He argued that the Church could not defend itself against hypocrisy because it could not see what went on in people's hearts. In addition, in his conflict with the Order, the king had allied with pagans, committed numerous atrocities, and had rebaptized (orthodox) Ruthenians. The accusation of heresy and the need to have it rooted out was expanded to all Poles as they had not rebelled against their king but many of them had been members of his armies. For that reason, it was the Christian princes' obligation to rise against Władysław and the Poles and punish them with death; otherwise they would deserve eternal damnation and all those who fought against them would on the contrary obtain salvation.¹⁴

In February 1417, the council rapidly created a commission to judge the theses of Falkenberg. It soon identified a list of eleven articles called the *Satira* that were considered heretical and suggested a text for a *sententia diffinitiva* to be approved by the nations as the first step to its passing in a plenary session.¹⁵ The results of the deliberations over these events in

¹⁴For recent commentary of the text see Housley, 2020: 183–198.

¹⁵Regarding the proposed *sententia*, there are two texts, one by Pierre D'Ailly and another by Francesco Zabarella, both published by *Acta Concilii Constanciensis*, 1896: 410–413. In these texts, one can find the 11 articles considered by the commission to be heretical in their proposed *sententia*: (1) Quod rex Polonorum, cum sit malus presidens, est ydolum et omnes Poloni sunt idolatre et serviunt ydolo suo Jaghel. (2) Item dicit, quod Poloni et eorum rex sunt Deo odibiles heretici et impudici canes, reversi ad vomitum sue infidelitatis. Et ergo securissime omnes, non solum principes seculi, verum etiam inferiores qui ad Polonorum et eorum regis exterminium se ex caritate accinxerint, vitam merentur eternam. (3) Item dicit, quod indubie Polonos et eorum regem propter periculum, quod ab eis timetur ecclesie futurum, etiam antequam dissidium faciant, ceteris paribus magis meritorium est occidere quam paganos. (4) Item dicit, quod omni submoto dubio [per] belli certamen, quo pro defensione christianorum ex caritate suscepto principes seculi Polonos et eorum regem occidunt, regna merentur celestia. (5) Item dicit, quod pestifera universitas Polonorum, cuius Jaghel caput, est tota obnoxia, quia peccatum hereseos totam invasit, ab ecclesia resecurit et omnes ex ea facit vehementer contra ecclesiam colla subrigere, quatenus, si valuerint, sanguinem christianorum effundant et hereseos sue venena ad tabefacienda membra ecclesie transfundant. Et ergo principes seculi ultionis gladio tenetur absque omni dissimulatione Polonos omnes cum eorum rege vel maiorem partem extinguere aut principes eorum et nobiles omnes in patibulis contra solem suspendere. (6) Item, dicit, quod ex principibus seculis, qui sunt ydonei et ratione et potestate Polonos et eorum regem Jaghel reprimere et dimittunt in christianos decabari, supplicio merentur iehanne cum eius mancipio in eternum vapulari. (7) Item dicit, quod principes seculi sceleri, unde Poloni et eorum rex Jaghel digni sunt morte eterna, consenserint, quia tacuerunt, cum potuerunt id impedire aut redarguere, et ergo proinde sunt digni morte eterna. (8) Item dicit, quod principes seculi [qui] crimina Polonorum et eorum regis Jaghel possunt corrigere et emendare et negligunt et ideo eorum procul dubio culpam habent criminaque committunt et

the *natio gallicana* are relatively well-documented while for the rest of the nations the sources are sketchier.¹⁶ Precisely for this reason, there has been a major debate within the historiography about the link between the *causae* of Jean Petit and that of Falkenberg at the heart of the French nation.

According to Heinrich Finke, one of the most important editors of sources about the Council of Constance, both cases were closely linked in terms of content as the core of the debate revolved around the concept of tyrannicide. There was also a link regarding the political alliances within the nation. While the Burgundians seemed to take on the defense of Falkenberg, questioning the heretical character of his articles, the Gersonists and Armagnacs argued that they were.¹⁷ However, Schoenstedt had already

in eternum iehenne mancipio merentur vapulari. (9) Item dicit, quod manifestum est, quod qui in bellis Polonis et eorum regi Jaghel contra christianos ingravato auxilium prebuerunt et sunt occisi, descenderunt ad amaritudinem eterne damnationis. Et qui superstites vivunt et non sunt conversi per penitentiam, omnes laborant in statu damnationis et extra mortis periculum non possunt absolutionis beneficium sine speciali indulto pape obtinere. (10) Item dicit, quod iniuriam, quam Poloni et eorum rex ecclesie irrogarunt, non possunt sine offensa Dei dissimulare inultam. Ergo absque omni relatratus calumnia in Polonis et eorum rege tenetur indispensabiliter iniuriam Dei morte vindicare. (11) Item dicit, quod principes seculi tenentur exercitibus sacrilegos homines Polonos et eorum de terra perdere. On the *facultas theologica* Frenken, 2003 and reprinted in Grohe, Leal, Reale, 2006: 365–383.

¹⁶The historiography of the Council of Constance has studied the importance of its organization by *nationes*. On 7 February, 1415, the council quickly organized itself by nations in the same manner as for example universities (German, French, Italian, English and, later, Spanish) in order to counter the numerical majority of Italian members at the council. Regarding the nations: *Acta Concilii Constanciensis*, 1928: 211 and Finke, 1937 reprinted in *Das Konstanzer Konzil*, 1977: 347–368. For the rest of the classical bibliography on the issue: Frenken, 1993: 352–357. At Constance the main debates and arguments took place within the nations. Once the nations had come to a decision, it had to be approved by the chosen delegates to the general congregation. Once consensus between all nations had been reached, the decisions would be officially announced at a general session. In the case of the *causa fidei* the council created *ad hoc* commissions in order to analyze each of the *causae*. Once the commission came to a decision, it had to be approved by each of the nations and the general congregation and then publicly announced at a general session. Regarding the *natio gallicana*: Vallery-Radot, 2016. On the more recent discussion, see Frenken, 2017.

¹⁷Regarding the similarities Finke, 1896: 250: “Ihr Inhalt [el de la *Satira*] gleich in etwa der Petitschen *Justificatio*, indem auch sie den Tyrannenmord predigt, allerdings die Tötung eines bestimmten Tyrannen. Der Falkenberg-Prozeß löst in gewissem Sinne den Petit-Prozeß ab. Die innere Verwandtschaft beider Prozesse zeigt sich darin, daß die führenden Persönlichkeiten der Gersonianer und Burgunder auch als Gegner und Verteidiger Falkenbergs erschienen.” It is interesting to note that many of the sources published by Finke come from the manuscripts BNF 1485 I and II (FL) of the National Library of France. Although Finke has published numerous texts from these manuscripts, he also admitted that there were many still to be published. *Acta Concilii Constanciensis*, 1896: 241: “Beide Bände sind das Handexemplar des Hauptes der Burgundischen Gesandtschaft, des Bischofs von Arras, Matin Porée. Die Originalität ergibt

stated in his study of tyrannicide the differences between the two *causae*. In the case of Falkenberg, his tyrant reflected the traditional notion of a bad governor who because of his heretical nature became a tyrant and must thus be fought and eliminated by a crusade. In contrast, Jean Petit's notion of a tyrant was rooted in the notion of *crimen maiestatis*, making reference to the political reality in which the French monarch was consolidating its power. According to Schoenstedt, while Jean Petit's notion was the result of a medieval outlook that recognized the existence of "states", Falkenberg's approach was grounded in the traditional medieval order, which denied their existence. On this point it is worth emphasizing that the originality of Jean Petit's thesis resided in identifying a tyrant as someone who plotted against the royal majesty seeking to seize power: in that case in particular, there was a clear reference to the Duke of Orléans.¹⁸

The differences between the two concepts of tyranny would become much clearer with the critical editions of the *Satira* which until then was only known from the eleven articles extracted from the text. With access to a critical edition, Hartmut Bookmann cast aside the idea that the two concepts could be similar (Boockmann, 1975: 240). Apart from these major conceptual differences, there were other issues that allow us to distinguish between the two cases.

Firstly, while the nine assertions from the *Justification* of Jean Petit were part of a text written *post factum* which to a certain degree justified the actions taken by the Duke of Burgundy, Falkenberg's theses suggested action which should be taken in the future with regard to the King of Poland and his subjects. Secondly, while discussions of Jean Petit's theses were

sich schon aus manchen Randglossen wie (propia [cedula]), (propia motiva anno xv) [...] Viele Anträge und Gutachten sind daraus gedruckt, aber lange nicht alles, manches unten gebrachte Stück gewährt einen tiefen Einblick in die oft stürmischen Verhandlungen." These manuscripts apparently belonged to Martin Porée, who played a fundamental role in the Petit case on the Burgundian side and who was a firm opponent of Jean Gerson at Constance. He would also become the visible face of the opposition within the French nation regarding the proposed sentence of the commission of faith to condemn Falkenberg's theses. This would contribute to understand the assumption that the two proceedings were connected. There appears to be a clear intention to link the two *causae* within the compilation of the texts in spite of their differences.

¹⁸Schoenstedt, 1938: 109–110; Boockmann, 1975: 290. Regarding concepts of tyranny and *crimen maiestatis*: Cuttler, 1981; Miethke, 1999: 24–48; more recently on the debates about Jean Petit's *Justification*: Turchetti, 2013: 218–334. About the *crimen maiestatis*: Chiffolleau, 1993; Krynen, 1993; Boudet and Chiffolleau, 2017.

a fundamental issue in the disputes between the Armagnacs and the Burgundians, the dispute over the Falkenberg theses was just one more element within a much more complex conflict between the Polish crown and the Order of Teutonic Knights. In fact, the Order sought to distance itself from Falkenberg and his theses in order to avoid any potential negative repercussions.¹⁹ In personal terms, while Jean Petit enjoyed the protection of the Duke of Burgundy and so did not suffer any major consequences in his lifetime, Falkenberg would be arrested and imprisoned for several years after the Council of Constance ended in 1418. Finally, it is important to take into account the different contexts in which the issues were addressed by the council. The case of Jean Petit occupied the council fathers from the start and seemed to be headed for a rapid resolution with the decree *Quilibet tyrannus*.²⁰ However, this decree did not satisfy the Burgundians or the Gersonists who continued to demand an explicit condemnation of the nine assertions as heretical. The Burgundian strategy, as led by Martin Porée, consisted of avoiding having the nine assertions considered as *materia fidei* and simultaneously to have the case addressed in a *stylus iuridicus*. In fact, the commission of cardinals, given the task of considering the Petit case on January 14, 1416, used the bishop and the Paris inquisitor's failure to appear in court as legal justification to declare the prior condemnation of 1413 as invalid.²¹ In addition, the nine assertions had already been submitted for study by a group of theologians and judges designated by the council who, at the end of 1415, presented their opinions saying that the majority believed that they should not be condemned as heretical. In contrast, the text by Johannes Falkenberg got to Constance later (between the end of 1416 and beginning of 1417) and so the proceedings began late, when the council was occupied with other issues and well after the Gersonists had suffered a major setback.²²

¹⁹Acta Concilii Constanciensis, 1896: 250. Regarding historiographic discussions of both cases see Frenken, 1993: 230–236.

²⁰Gerson, 1973: 531: “Et credatis quod adversarii crediderunt habere conclusionem et condemnationem dictarum novem assertionum in una hebdomada, attentis favoribus quos habebant per Regem Romanorum, qui multa protulit enormia de D. Duce, quem visus est habere pro capitali nemico, et hoc ad suggestionem dicti Ludovici de Bavaria, qui dictum Regem regebat, pro tunc, cum uxore sua, ut fertur hic communiter.” A fundamental text on this topic is still Coville, 1932; on the affair in Constance, Brandmüller, 1998: 95–115.

²¹On the Burgundian strategy: Provvidente, 2019. On the *stylus theologicus* in Gerson's thought Iribarren, 2017.

²²Frenken, 1993: 236. Although it is true that when the Falkenberg case began, the Gersonists had been defeated and could not get Jean Petit's thesis condemned as heretical,

Apart from these significant differences, it is undeniable that in general the discussions of the *Satira* within the *natio gallicana* found the Burgundians trying to prevent the condemnation of the Dominican's thesis and the Gersonists pressuring for them to be declared heretical.²³ Without denying these major differences, within the manuscript tradition, both *causae* were linked, and this might be a compelling reason to reevaluate how and in what sense they were related.²⁴ On this point, I would suggest that discussions of the Falkenberg theses within the *natio gallicana* and the different positions taken on the debates were related to the fact that the case was seen as an opportunity to reopen the debates on the *Justification*. While the Gersonists saw a condemnation of the Falkenberg thesis as an important precedent for a reconsideration of the *Justification*, the Burgundians opposed condemnation as a means of sealing the defeat of the Gersonists definitively. In that context, moved by the heat of the dispute, both the Gersonists and Burgundians insisted on the similarities and analogies between the two *causae*. For this reason, the arguments were centered on two issues that had been crucial in the Jean Petit case: the interpretation of the commandment *Non occides* and the necessity for a public process to determine a king's status as a tyrant or heretical prior to his elimination (Provvidente, 2019: 145–150). Seen from this angle, the similarities between both *causae* would appear to have been exaggerated leading to a distorted vision of the affair

they still held out hope that the council would reopen the case. The Gersonists continued to claim for a condemnation even after the election of Martin v. Pierre D'Ailly appealed to the Pope as late as January 8, 1418 cf. *Acta Concilii Constanciensis*, 1896: 351: "Dignetur ergo sanctitas vestra, beatissime pater, ad honorem huius sacri concilii, ad fidei conservationem, ad correctionem errantium et pro pastoralis vestre sollicitudinis debito primo et precipuo taliter et ordine tali etiam personaliter seu in presencia vestre sanctitatis provisionem apponere, quod huiusmodi doctrine pestifere possit celeriter, summarie et de plano ac sine strepitu et figura iudicii audiri, examinari...".

²³It is difficult to make general statements about these alliances. Apart from the political issues, personal ties appear to have played an important role as well. The fact that Falkenberg was Dominican may have influenced the defense of Martin Porée and Jean de Rocha within the *natio gallicana*. However, the sources are not forthcoming on the issue Frenken, 1993: 234.

²⁴See supra note 32. It should be remembered that many of the sources published by Finke come from the manuscripts of the Bibliothèque Nationale de France (FL) 1485 I and II which may have belonged to Martin Porée. Most of the sources for the Jean Petit and Falkenberg case were published in that first volume. Although this seems to have led Finke to exaggerate the similarities between both *causae*, the compilation of the texts does not appear to have happened by chance. Something similar is true of the manuscript *Fürstlich Waldburg-Zeilischen Gesamtarchivs in Zeil Nr. 9 (prov.)*, fol. 128r and 168r which contains both a text of the *Satira* by Falkenberg and an anonymous Burgundian text: Boockmann, 1975: 272–279.

by many historians. To prove this hypothesis, the following addresses the debate of the Falkenberg case within the *natio gallicana*.

THE NATIO GALLICANA DISCUSSES THE CASE

A notarial protocol describing the events between April 30 and July 9, 1417 is one of the main sources for the debates within the French nation (*Acta Concilii Constanciensis*, 1896: 356–362). On the first date, during a meeting of the French nation under the presidency of Jacques de Gélou of Tours in the Dominican refectory, Nicholas Tromba (Mikołaj Trąba), Archbishop of Gniezno and Jacobus Kurdwanowski, Bishop of Płock, appeared to request that the nation, or delegates, discuss the document containing the text of the *sententia* of the commission that had analyzed the eleven articles of Falkenberg's *Satira*.²⁵ One of the judges assigned by the French nation, the Bishop of Saint Pol de Léon, presented the document to the notaries with the corresponding seals and the Bishop of Arras, Martin Porée, apparently in order to dissent and prolong the discussion, asked that it be read in public, drawing a protest from Fillastre, De Chaland, Simon of Cramaud, Jean of Rochetaillée, Jean Mauroux, the Archbishops of Vienne and Besançon, and the Bishops of Le Puy, Oloron, Dol, Toulon, Saint Pol de Léon, Bangor, Aosta, and Lavaur, who were joined by Gerson and envoys from the king.²⁶ This marked the formal beginning of the debate within the French nation. Representatives of the Polish crown certainly intended for the *sententia* to be approved by the different nations of the council (the English, German, Italian and, by that time, the Spanish) so as to facilitate the approval of the corresponding decree once consent had been obtained by each of them.²⁷ However, the council was occupied with other issues such as the case against Benedict XIII and the procedure for the election of the new Pope. There is not much evidence for how the issue was discussed among the other nations (Brandmüller, 1998: 174).

On May 14, a Polish delegation once again appeared before the *natio gallicana* led by Paweł Włodkowic which also included the *licentiatus in*

²⁵*Acta Concilii Constanciensis*, 1896: 356–357: "...pater d. Nycholaus archiepiscopus Gnez-nensis ...supplicavit suo et aliorum dominorum de Polonia ibidem existentium, quod dicta natio Gallicana vellet dictam cedulam examinare aut ad hoc deputatos dare, qui eam videant et examinent ad finem, quod causa citius terminetur."

²⁶*Ibid.*: 357: "Et reverendus in Christo pater d. Martinus episcopus Attrebatensis petit, quod dicta cedula publicaretur. Sed protunc non fuit publicata petentibus in premissis et in dicta congregatione."

²⁷Regarding the internal functions of the French nation, see: Vallery-Radot, 2016: 55–60.

decretis Peter Wolfram and the consistorial lawyer Simon of Teramo. Paweł Włodkowic read the text from a document with the *sententia* and urged the nation to rule on the issue in order to have the sentence approved during a plenary session of the council (*Acta Concilii Constanciensis*, 1896: 358). Cardinal de Chalant spoke next, and it was decided that a commission of delegates from the nation would consider the issue. This commission consisted of the Bishops of Oloron, Arras, and Toulon, the Abbots of Cluny and Cormery, and the masters Jourdain Morin and Guillaume Beauneveu who, as secretary of the commission, received a copy of the *cedula sigillata* on which they were to deliberate (*ibid.*). On June 21, the issue was debated once more in the French nation. The commission secretary, Beauneveu, presented the work of the delegates who had discussed the *cedula*, followed by Martín Porée who stated that although he did not want to say anything against the King of Poland, he believed that the matter should continue to be discussed more extensively by theologians and jurists. The Bishop of Digne answered that the matter had already been sufficiently discussed by the commission and that experts had been already consulted. Next, the document was handed to the notary and the text was read out as the members of the commission believed that there were no objections to it being approved by the nation.²⁸ Martín Porée requested that words be removed alluding to Falkenberg's belonging to the Dominican order — Porée was also a Dominican and seemed to be seeking to ensure that the Order's prestige was not tarnished by the issue.²⁹

²⁸*Acta Concilii Constanciensis*, 1896: 359: "In qua idem d. presidens inter cetera per ipsum proposita proposuit de dicta materia in prefata cedula contenta et super sententia ferenda et propositione per ipsum facta prefatus magister Guillelmus Pulcrinepotis commisarius sive deputatus in hac parte cum certis aliis dominis dicte nationis deputatis ad videndum et examinandum dictam cedulam et referendum in dicta natione de voluntate et assensu aliorum d. condeputatorum suorum relacionem in dicta congregacione fecit fidelem. Qua relacione facta prefatus d. Martinus episcopus Attebatensis fecit primo una protestacionem, videlicet, quod non intendit aliquid dicere in peiudicium alicuius persone et presertim serenissimi principis d. regis Polonie, sed dumtaxat in favorem fidei et post multa per eum dicta conclusit, quod deputentur aliqui d. magistri in theologia et doctores in iure canonico qui disputent istam materia. Et reverendus in Christo pater dominus...episcopus Dignensis dixit, quod materia fuit iam solemniter disputata et examinata et dixit, quod d. iudices habuerint sepe et sepius deliberacionem cum magistris et doctoribus et post multas deliberaciones cedulam, de qua supra fit mencio, conceperant, que videtur expedienda sub tenore per eos concepta, cuius tenor in dicta congregacione fuit per me notarium publicum infrascriptum de verbo ad verbum alta et intellegibili voco lectus sub hiis verbis..."

²⁹*Ibid.*: 360: "Post cuius quidem cedule lecturam fuit procesum ad audicionem votorum et ...erat in sessione generali dicti sacri concilii ferenda et promulganda, prefato d. Attebatensi

Finally, the issue was put to a vote within the nation, but the results were not published. On July 3, the nation was visited again by the Polish delegation, this time led by the consistorial lawyer Simon of Teramo who thanked the nation for the conclusion it had reached but also stated that, following the presentation of *dubia* by some members, it had not yet been approved. Martín Porée accepted the challenge and presented himself as one of the members who had submitted a text with objections. Immediately afterward, Simon of Teramo requested that approval of the sentence by the nation not be delayed any further.³⁰ Bishop Kurdwanowski and Paweł Włodkowic spoke similarly and Beauneveu admitted that although the conclusion had been written, it had not been published due to the objections. It was stipulated that all those who were interested in the matter could receive a copy of Porée's text and the debate was postponed until July 5. Following the reading of Porée's text, the President of the nation stated that if anyone wished to change their vote this was the time to do so.³¹ In addition to Porée's document, other figures close to the Burgundians took part in the debate and questioned the decision of the commission created by the nation. They included Jean de Rocha twice, Jean de Vincelles, the procurator of Cluny, and a Franciscan, Master Jacobus.³² On July 9, the count of votes from the previous two sessions was finally read out and the sentence of the commission was approved by a majority with the recommendation that the phrase *in fide* be changed to *contra fidem* and the mention of Falkenberg's belonging to the Dominican Order be removed.³³

episcopo dumtaxat excepto qui volebat plenius audiri et ulterius dixit, quod verba 'ordinis Predicatorum' tollerentur de cedula predicta..."

³⁰Acta Concilii Constanciensis, 1896: 360: "De quo prefati d. ambassiatores conquerebantur, supplicantes, quatenus pro presenti premissa sententia concepta per dictos d. iudices, ut in cedula superius descripta continetur, nullatenus impediatur sue quovismodo retardetur. Cui pretatus d. episcopus Attrebatensis replicavit dicens, quod ipse fuit unus de deputatis et dedit quandam cedulam, in qua movit certa dubia et vult informari super dubiis per eum datis, alioquin vult facere partem cum suis sequacibus."

³¹Regarding the *scrutinium*, majority votes and canonical *unanimitas*: Grossi, 1958; Ruffini, 1977; Ventura, 1996; A. Russell, 2017: 85–115; A. Russell, 2018; Prügl, Grohe, 2018.

³²In the case of the text by Porée, Finke dates it as being from August 4 as can be seen *in margine* of the manuscript of the BNF (Latin Found) 1485, fol. 451–454. However, it is known that on July 3, 1417, in the *natio gallicana*, a *cedula* was presented with objections to the proposal of a sentence. Finke says that this was a text with *dubium* and not a *cedula* and thus dates it according to the note in the margin. However, it might have been the text from July 3. For the texts of the interventions Acta Concilii Constanciensis, 1896: 378–387; 363–370; 370–373; 373–377; 387–395.

³³Ibid.: 362: "Et dictis votis diligenter ...fuerunt et sunt oppinionis et eorum vota in hoc concurrunt quod sententia feratur in sessione publica sacri concilii, prout concepta fuit per

Although Walter Brandmüller does not analyze these arguments in detail as they appeared to him to be full of casuistical objections whose purpose was to mitigate the effects of Falkenberg's statements, I believe that it is interesting to return to his analysis because it reveals how the French approached Falkenberg's theses.³⁴

In the case of Martin Porée's text, the emphasis was placed on the argument that on certain occasions it was necessary that heretics be punished without respecting the legal process. There were four ways to kill a man: through a legal decree respecting the *ordo iuris*, out of necessity, accidentally, and in bad faith. Only the latter case would represent a violation of the commandment *Non occides*. It had not been the *intentio Domini* to hand down the prohibition *simpliciter et universaliter*, and there were exceptions in numerous passages of scripture.³⁵ The Church must be able to defend itself and resist infidels, heretics, and apostates, otherwise it would be destroyed

prefatos d. iudices ac prout et quemadmodum in dicta cedula per eos concepta et superius descripta continetur eo salvo, quod in verbis, ubi dicitur 'in fide' loco eorum ponatur 'contra fidem' et quod tollantur verba 'ordinis Predicatorum et sic iterato d. presidens publicando vota et conclusiones suprascriptas conclusit..."

³⁴Brandmüller, 1998: 173: "In diesem Zusammenhang war es wohl, daß auch Johannes [Jean] de Rocha Falkenberg gegen den Häresievorwurf in Schutz nahm, wobei er dessen Sätze die gefährlichen Spitzen durch dann und wann *rabulistische Distinktionen* abzubrechen sucht. Desgleichen taten der Prokurator Johannes de Vincellis von Cluny, und ein Franziskaner Fr. Jacobus." In contrast, these debates have been analyzed in detail by Lewis, 1990: 81–118; 160–197.

³⁵Acta Concilii Constanciensis, 1896: 378–379. The concept of *intentio domini* seems to allude to a theological issue in Biblical exegesis very important for all the *causae fidei* at Constance. About this problem Zach Flanagan, 2006. In this article, the author presents a historiographical analysis of the issue. Flanagan presents the Biblical exegesis of Gerson in all its complexity. Between the two extremes of an *ad litteram* interpretation and a spiritual interpretation, Gerson sought to establish the principles of a *via media* with the category *sensus litteralis*. The difference between an *ad litteram* exegesis examining merely the grammar and an exegesis that takes into account the *sensus litteralis* laid in establishing in the latter case the *intentio* of the author. Given that in the case of the biblical text God was the author and God always speaks the truth, the literal meaning was always true. By separating a *sensus litteralis* from exegesis *ad litteram*, Gerson was able to argue for the importance of a literal explanation against the Burgundians and against the dangers of an *ad litteram* interpretation by Hus and his Czech followers. In any case, it was one thing to affirm the meaning in a literal sense and another to find that meaning in the Scriptures. For this purpose, Gerson would establish a set of rules for biblical exegesis that would facilitate this determination. In this explanation, references to Henry of Oyta and Nicholas of Lyra would appear to be fundamental. The rules can be grouped into three types: the immediate context of the passage in question, the context of the biblical *corpus* overall and finally the extra-textual rules established by the Church, guided by the Holy Spirit. For the case of Jean Petit in Constance, it is essential Froehlich, 1977.

by them. Next, Porée argued that Christ in the Garden of Gethsemane, when the apostles presented him with two swords, had answered that they were *satis* meaning their use. If he had not accepted them, he would have answered that they were *nimis*.³⁶ Similarly, as proof of the acceptance of the use of violence, he cited numerous biblical passages from the New Testament in which his interpretation was that it was allowed. In Luke 3:14, John the Baptist advised the soldiers who said that they were content with their pay not to reject military service. In a similar passage, Luke 19:27, Jesus, in the parable of the talents, called for those who did not accept his reign to be brought before him and killed in front of him. He also cited Romans 13:4, in which Paul urges princes not to wield their sword in vain as a servant of God must be an avenger to punish the evildoer. A passage in the Acts of the Apostles 5:1–11, received a similar interpretation: it describes Paul killing Ananias and Sapphira with his words (*Acta Concilii Constanciensis*, 1896: 380–381).

Next, Porée argued that it was often necessary to amputate a member to save the body and so killing was part of the political life of a community. If the principle of *Non occides* were interpreted literally it would be illegal to kill as part of a just war as it would not always be possible to respect the *ordo iudiciarius*.³⁷ Given that infidels receive the *beneficium* of life from God, by taking arms against faith they deserve to lose it. Princes are offended by those who attack the faith and thus those subjects have an obligation to protect their prince from attacks and offenses. Given that heathens are continuously damaging the faith, Christians must consider them their permanent enemies and are obliged to attack them due to the promises they made at their baptism. Porée argued that given that

³⁶*Acta Concilii Constanciensis*, 1896: 379: “Eciam pro loco et tempore oportet resistere et se defendere, aliter enim, nisi ecclesia se defenderet ab infidelibus, hereticis et apostatis a fide, posset ab eis destrui et sic periret honor et cultus divinus ac religio christiana, unde Luce xxii (36) dicit Dominus: ‘Qui non habet gladium, vendat tunicam suam’ etc. Cui responderunt apostoli: ‘Domine, ecce duo gladii hic’; quibus dixit: ‘Satis est.’ Si igitur ecclesia non haberet gladium materialem contra infideles, hereticos et apostatas a fide eos debite puniendum, eciam debellandum, sed solummodo spiritualem ad eos excommunicandum, dicendum fuisset, ‘nimis est’ et non ‘satis est’.”

³⁷*Ibid.*: 381: “Et tamen non semper est possibile iuricarium ordinem, ut supra contra tales servare, qui hoc non obstante sunt morte nec sun de iure multorum regnum aut principum, qui eos in bello iusto aut alias debite quandoque occidunt tali ordine non servato...”

heathens were a constant threat to faith, it was an obligation for Christians to attack them.³⁸

Meanwhile, Jean de Rocha analyzed the first of Falkenberg's propositions, which went as follows: "Rex Polonorum, cum sit malus presidens, est ydolum et omnes Poloni sunt ydolatre et serviunt ydolo suo Jaghel..." According to Jean de Rocha, the temporo-causal *cum* should be interpreted in a temporal sense and the two potential meanings of the word *ydolum* should be established. If the term was used to refer to someone who did not have true *dominium*, the statement could be considered heretical as it was similar to the statement of Wyclif. However, if it was used in the metaphorical sense of something that looks like a man but cannot see, hear, or speak, it could not be considered heretical but simply scandalous and prejudicial as a bad king has some of the characteristics of an idol. In addition, accusing the Poles of heresy was not in itself a heretical act as their orthodoxy was not an article of faith. Hence, saying that those who exterminated the Poles deserved eternal life for this act of charity was simply seditious, not heretical (Acta Concilii Constanciensis, 1896: 363–364). Commenting on Falkenberg's third article, Jean de Rocha argued that given that the commandment *Non occides* should be understood as *non occides innocentem*, there was no violation of scripture. There was no doubt that killing was allowed under certain circumstances and those who argued otherwise were Manichean.³⁹ The key to proceeding with the elimination of the Polish king rested in the notoriety of the crime and Jean de Rocha presumed that no prince would act that way unless it was such a crime. If the Polish king were as Falkenberg described, then the uprising against him was legitimate and if not, the theses were simply seditious, not heretical.⁴⁰

³⁸Acta Concilii Constanciensis, 1896: 382–383: "Item licitum est alicui se defendendo alium occidere absque iudiciaria auctoritate, intelligendo ut supra, sive pro conservatione vite proprie, rerum suarum aut etiam sociorum. Sed constat, quod conservatio fide catholice, pacis ecclesiastice et caritatis, per quas totum corpus ecclesie connectitur et vivit, est magis licita et necessaria, quam conservatio propii corporis, rerum suarum aut etiam sociorum. Ergo pro conservatione huiusmodi licitum est, hereticos, infideles et apostatas, fidei invasores in casu isto absque iudiciaria auctoritate occidere".

³⁹Ibid.: 366: "Ad primum principale dicitur, quod iste propositiones non repugnant illi precepto: 'Non occides', unde preceptum illud habet intellegi: 'Non occides innocentem' etiam propria auctoritate et cum determinationibus necessariis. Non enim quicumque interficit hominem, agit contra illum preceptum: 'Non occides', sicut erronee oppinatus est herethiarcha impiissimus Manicheus, et multi casus sunt, in quibus licite potest homo interfici. Sed utrum talis sit rex Polonorum, quod veniat sub huiusmodi intellectum, quo precipitur: 'Non occides', licet estimem, quod sic, tamen non michi constant ipsum esse talem vel non talem..."

⁴⁰Ibid.: 367 & 370. On the *notoria*: Chiffolleau, 2006.

The position of Jean de Vincelles was analogous to the one he had adopted during the debate over the thesis of Jean Petit. He believed that the great danger was having to defend against a king who had only simulated his conversion to Christianity. In that case, he would be more dangerous than an openly pagan or heathen king. Taking care not to offend the Polish king, Jean de Vincelles postulated the hypothetical case of a Sultan of Babylonia who in his youth had fought against the Church but in order to obtain the throne of the Christian kingdom of Armenia had faked his conversion and agreed to be baptized. This Sultan would eventually have made use of pagan troops to fight against Christians. In that case, the Sultan would be an idol as their outer appearance would not correspond with the reality inside. If the threat to the Church could not be avoided in any other way, Christian princes should kill the Sultan (Acta Concilii Constanciensis, 1896: 370–373).

Another important voice in these debates was that of the Franciscan Master Jacobus who, using numerous examples from the Bible, also argued in favor of the idea that there were cases when a person could be punished without following *ordo iuris*. Although a *homicidium* was always forbidden, sometimes eliminating an evildoer without making a public accusation against him in front of a judge was licit and did not go against the *ordo iuris*.⁴¹

On August 15, 1417, after the final vote had taken place within the French nation, the Gersonists replied to the arguments of the Bishop of Arras claiming that no Christian was obliged to persecute adversaries of the Catholic faith to the death outside of the order of divine law because as Augustine stated, sin was the absence of that order. In the case in question, maintaining that order meant the possession of an *iudiciaria potestas*, a plurality of witnesses and equity in procedure which must take into account the good of the community, and the circumstances and intentions of the person accused.⁴²

Although the *iudiciaria potestas in occidendo* originated with God, it resided by delegation, in the hands of those who exercised public power.

⁴¹Acta Concilii Constanciensis, 1896: 375: “Ex hiis sequitur, quod, licet malefactor, si commode fieri potest, antequam interficiatur, sit coram iudice vocandus et convincendus, tamen in casu non est contra iuris divini ordinem, sine tali processu hominem gravissime in Deum et Christum peccantem interficere.”

⁴²Gerson, 1973: 280–284 and Acta Concilii Constanciensis, 1896: 395–402; *ibid.*: 395: “Et quia secundum Augustinum peccatum est ordinis privatio, hic autem ordo stat in tribus, scilicet in iudiciaria potestate, in testium pluralitate et in executionis equitate...” On the ambiguity of Augustine’s view on this topic Masolini, 2020.

Not respecting recourse to judicial jurisdiction was to repeat the error made by Jan Hus causing confusion in the ecclesiastical and secular *politia*.⁴³ In addition, the text affirmed that only negative commandments, which included *Non occides* had no exceptions whatsoever. On this point the text made a clear reference to the obligation of prelates to know the *causae fidei* that generated *scandalum* in their diocese. The reference appeared to be an allusion to an issue debated during the case of Jean Petit regarding the power of bishops to condemn heresies although they had not already been condemned by the Holy See.⁴⁴ This allusion also appears to show that when the Falkenberg thesis was debated in the *natio gallicana*, most of the council fathers involved had at the forefront of their minds the debates over the *Justification* of Jean Petit. The ultimate objective of the text was to show that all the biblical precedents cited to justify tyrannicide made reference to the concept of *iudiciaria potestas*. While Phineas had received orders from Moses, Mattathias had acted as *iudex*. The conclusion from what had been said before was that all doctrines that defended, ordered, or approved the death of any man under the pretext of heresy, tyranny, or any other crime that was not sufficiently based in the order of divine right (*iuris divini ordo*) or even ignored, must be considered heretical.⁴⁵

⁴³Acta Concilii Constanciensis, 1896: 396: “Prima propositio declaratur: iudiciaria potestas in occidendo originatur a solo Deo et participative tantummodo derivatur in homines, qui funguntur publica potestate; et hoc de lege communi et divina revelacione seu dispensacione speciali non interveniente [...] Oppositum vero dicere est incidere in errorem Huss de punicione stuprorum per inferiores, est insuper confusionis totius policie tam secularis quam ecclesiastice multipliciter inductivum”.

⁴⁴Ibid.: 397: “Primum correlarium: Prelato cuilibet convenit cognoscere de causis fidei, presertim quando et ubi suam diocesim notorie scandalisant (sic).” On this topic: Provvidente, 2011. Jean de Rocha’s text is more explicit about it Acta Concilii Constanciensis, 1896: 408: “Nulli prelato seu episcopo preter Romanum aut deputatum per eum convenit cognoscere de causis fidei in dubiis necdum per sedem apostolicam vel concilium generale formaliter vel virtualiter evidenter, quamvis cuilibet episcopo et inquisitori conveniat inquirere et cognoscere de causis, si qui reperiantur errantes contra fidem in territoriis suis, indiscussis per sedem apostolicam vel concilium generale formaliter vel virtualiter evidenter. Et quamvis episcopis civitatum, in quibus est universitas cum theologica facultate, possit cum consilio magistrorum propositiones, que viderentur periculose et scandalose, prohibere etiam sub censuram, illas tamen nodum per sedem apostolicam vel generale concilium condemnatas non possunt ut hereticas aut erroneas contra fidem iudicialiter condemnare, sed eas tenetur referre sedi apostolice vel concilio generali.” Regarding the notion of *scandalum*: Fossier, 2009.

⁴⁵Acta Concilii Constanciensis, 1896: 399: “Elicitur tandem ex predictis pertinenter et evidenter regula generalis saluberrima, quod omnis doctrina suadens, iubens vel approbens occisionem hominis cuiuscunque sub pretextu vel heresis vel tyrannidis vel alterius criminis,

The answer to the Gersonists was presented by Jean de Rocha, who made another contribution to the debates. According to his view, some Christians must persecute unto death the adversaries of the Catholic faith *iuris divini ordine non servato*. Otherwise, princes such as the Kings of Castile and Aragon would not be unable to fight against infidels in their kingdoms. In the war against the Saracens, it was not always possible to maintain the *ordo iudiciarius*. In some cases what was known as *ordo divinus* was respect for the process and in others it was an appeal to the case of *necessitas*. In these cases, killing an infidel who threatened the Church could be justified as protecting the Church and would be a greater obligation than the need to maintain *ordo iudiciarius*.⁴⁶ Thus, saying that one could not eliminate infidels without submitting to the *ordo iuris* would be absurd and mean that illustrious figures such as Saint Louis of France, Godfrey of Bouillon, Baldwin, the Knights of Saint John of Jerusalem, and the Teutonic Knights had been sinners (Acta Concilii Constanciensis, 1896: 409. Finally, Jean de Rocha, after discussing the notion of dispensation from the ten commandments said that arguing that it was impossible to kill a man under any circumstances was to succumb to a Manichean error and thus the commandment *Non occides* must be understood as *non homicidium facies*.⁴⁷

There is little evidence regarding the debates of the other nations over the Falkenberg theses, but an important exception is the text of Nicholas of Dinkelsbühl of the German nation which recognized that although the theses could be *sapientes heresim* these were not in themselves heretical. To be heretical, a thesis had to contradict a Catholic truth. It was not enough for a statement to be scandalous to be considered heretical. Given that it was possible that the Poles could become idolatrous as they had been before their conversion, it was not heretical to say that idolaters deserved to be

non incluso sufficienter aut etiam excluso divini iuris ordine, censenda est hereticalis, implicans contradictionem et iudicio fidei reprobanda.”

⁴⁶Acta Concilii Constanciensis, 1896: 403: “Quia bellans contra Sarracenos pro fide ipsos iuste persequitur, ubi tamen ordo huiusmodi non servatur, patet de iudiciaria potestate et testium pluralitate, cum non sit factus ibi processus iudiciarius nec ipse bellans sit iudex. Forte dicetur, quod quilibet princeps christianus est iudex contra Sarracenos et quilibet bellans eius subditus facit auctoritate iudiciaria aut saltem pape, quasi iudicis ordinarii et quod ibi non exigitur pluralitas testium, quia res de nota est...”

⁴⁷Ibid.: 407: “Hoc preceptum: “Non occides” etiam resolutum ad illud: “Non homicidium facies”, accipiendo homicidium pro hominis occisione secundum vocabuli virtutem et significationem et derivationem, prout abstrahit a licita vel illicita occisione, est dispensabile. Probatur, quia aliter nullum hominem liceret in quocumque casu interficere, quod est error et heresis impiissimi Manichei.”

exterminated. Condemning the propositions as heretical was dangerous as it would oblige the faithful to believe the opposite of the condemned doctrine as a truth regarding faith (Acta Concilii Constanciensis, 1896: 413–428).

Within the *natio gallicana*, the Falkenberg case came to a close on July 9, 1417, when, after listening to the objections, the Archbishop of Tours proceeded to count the votes *pro et contra* on the sentence proposed by the council commission and it was decided that the whole conciliar assembly could proceed to approve it in a plenary session (ibid.: 362). Thanks to the debates analyzed, I believe that it is possible to affirm that, in spite of the significant differences between the two *causae*, both the focus on the interpretation of the biblical commandment *Non occides* and discussions over the need to undergo *ordo iuris* before proceeding to eliminate a tyrannical prince, make a specific point clear. The council fathers of the *natio gallicana*, in debating Falkenberg's eleven theses, continued to have at the forefront of their minds the debate over the *Justification* of Jean Petit. Even though they won the approval of the *natio gallicana*, the Polish representatives were not as successful with the other nations, and this would lead them to declare their frustration at the final session of the council.

THE APPEAL AD FUTURUM CONCILIUM AND SYNODAL PRAXIS

After more than three years and the election of Pope Martin V, the Council of Constance finally concluded on 22 April 1418 with a mass at the final public session. Once it had finished, Cardinal Brancaccio made the long-awaited proclamation: *Domini, ite in pace*.⁴⁸ Just as Jean Puy-de-Noix, the recently named Bishop of Catania, was heading for the pulpit to give the final sermon to close the council, the consistorial lawyer Gaspar of Perugia took advantage of the moment to speak on behalf of the Polish and Lithuanian delegation, reading a protest that demanded the condemnation of Falkenberg's *Satira* as heretical due to the fact that it had apparently been condemned by the nations but not by the whole council in a public session.⁴⁹ If the council did not proceed with the condemnation, they would appeal *ad futurum concilium*. In response to these statements, Jean de Rochetaillée, Archbishop of Rouen and Latin Patriarch of Constantinople; Jean Mauroux, the Latin Patriarch of Antioch; and a Spanish Dominican monk, spoke, questioning whether the theses had been condemned as heretical by all the

⁴⁸About these events: Boockmann, 1975: 284–286. The primary sources could be found here: Hardt, 1700: col. 1548–1554.

⁴⁹Ibid.: col. 1551–1552. About these events: Brandmüller, 1998: 410–414.

nations. Meanwhile, Simon of Teramo and Agostino Lante reacted against these statements saying that those who had questioned the condemnation of the theses spoke as private persons and not as representatives of their nations (Hardt, 1700: 1551–1552). Next, Paweł Włodkowic attempted to continue the presentation of Gaspar of Perugia outlining details of the case. However, Pope Martin v interrupted him, stating that he would maintain and approve all the decisions and decrees accepted *conciliariter* but not what had been decided without the consent of all the nations.⁵⁰ Given that he wanted to continue reading the protest, the Pope ordered silence once again and threatened him with excommunication. Nonetheless, Włodkowic's response was an appeal to a future council (Brandmüller, 1998: 412).

On May 1, 1418, the Polish delegation read out their appeal at the Franciscan Church, also making reference to the events of the final session. The appeal document was delivered to Pope Martin v on May 4, at the Episcopal Palace of Constance, where he lived at the time. On May 9, Martin v summoned a consistory which apparently took place a day later, though Agostino Lante of Pisa, a lawyer at the *camera apostolica* presented a complaint against the appeal.⁵¹ After the representatives of the Polish Crown reiterated their desire to maintain the appeal, the Pope read out a *minuta sub forma Bullae* known by the words *Ad perpetuam rei memoriam* which prevented an appeal on questions of faith beyond the

⁵⁰Hardt, 1700: col. 1557: "...imposito omnibus silentio, dixit, respondendo ad praedicta, quod omnia et singula determinata et conclusa et decreta in materiis fidei per praesens concilium conciliariter tenere et inviolabiliter observare volebat et nunquam contravenire quoquo modo. Ipsaque sic *conciliariter* facta approbat [papa] omnia gesta in concilio conciliariter circa materiam fidei et ratificat et non aliter nec alio modo." About the concept *conciliariter* in opposition to *nationaliter*: Brandmüller, 1998: 418–420. The author mentions the importance of these events for understanding the true meaning of the expression. With this statement Martín v said that he would approve everything that had been approved by the council in the plenary session and not by individual nations alone. According to Brandmüller this is important to an understanding of the theological debates of the 60s regarding the doctrinal value of the decrees *Haec sancta* and *Frequens*. The term *conciliariter* also appeared in the bull *Inter cunctas* on 22 February, 1418. Regarding this topic see the changes in Paul De Vooght's view De Vooght, 1964: 64: "Le 22 avril 1418, à la dernière session du Concile de Constance, Martin v a déclaré qu'il approuvait tout ce qui avait été décidé *conciliariter*, j'ai pris argument de la déclaration de Martin v pour affirmer qu'il avait approuvait le conciliarisme. Je ne retire rien de ce que j'ai dit là-dessus, mais je pense qu'il y a lieu de préciser le *genre* d'approbation donné par Martin v en cette circonstance." Later the same author commented on this in De Vooght, 1971: 128: "La cuestión de si Martín v aprobó o no el decreto *Haec sancta* es, de hecho, totalmente secundaria..."

⁵¹For the dates of these events as seen in the sources: Bäumer, 1964. A text of the appeal is found in *Monumenta mediæ aevi...*, 1874: 432–440.

Apostolic See (Bäumer, 1964: 200). It is interesting to note that although the prohibition on appeals to the council was incorporated in the tradition from that moment, the text was never published in the form of a bull. One of the main pieces of evidence related to this *minuta* comes from the pen of Jean Gerson who quickly warned of the potential ecclesiological problems that might result from such a prohibition.⁵²

Shortly after Martin v's prohibition on appeals to the council, Gerson wrote a brief treatise on the issue under the title *An liceat in causis fidei a papa appellare* in which he asked the rhetorical question of whether the prohibition on appeals to the council was Catholic and whether it did not go against *ius divinum* and *ius humanum*.⁵³ In fact, according to Gerson, the Constance decrees contradicted the prohibition on appeals, especially the *Haec sancta* approved in the fifth session of April 6, 1415 which, in addition to union and reform, called for the need to obey the council on issues related to matters of faith.⁵⁴ The prohibition on appeals to the council clearly questioned the conciliar authority which had just brought an end to the Schism. This prohibition on appeals *ad futurum concilium*, would have a series of consequences. Firstly, the Pope would not be subject to the *lex divina* or *evangelica* established by Christ who had said that anyone who sinned against him must be submitted to *correctio fraterna* and if they did not see their error, they would have to appeal to the Church (Mathew 18:15).⁵⁵ Another significant consequence would be that Paul had violated divine and human law when he had corrected Peter (Galatians 2). In fact, his resistance to Peter had been the equivalent to an appeal to the Church.⁵⁶

⁵²Gerson, 1960–1973b: 302–303: “...cui appellationi cum respondendum esset, lecta est, ut dicitur, in consistorio generali et publico quod ultimo Constantiae celebratum est, *minuta quaedam sub forma Bullae*, destruens, ut asserunt qui legerunt eam, fundamentale penitus robur nedum Pisani sed Constantiensis Concilii et eorum omnium quae in eis, praesertim super electione Summi Pontificis et intrusorum ejectione, attentata factave sunt.”

⁵³For an edition of the text: Gerson, 1706b: 297–290 and *ibid.*: col. 303–308; *ibid.*: 303D. About the context: Mcguire, 2005: 280–281. On the relationship between the *ius humanum* and *ius divinum*: Flanagin, 2008; Provvidente, 2018.

⁵⁴In fact, the text began by citing *Haec sancta*: Gerson, 1706b: col. 303.

⁵⁵*Ibid.*: 304A, col. 304: “Sequerentur enim primo, quod Papa non sujiceretur legi divinae, vel evangelicae, quae generaliter absque omni exceptione promulgata est a Christo Matth. XVIII.” Regarding these texts: Sère, 2016: 200–246.

⁵⁶Gerson, 1960–1973a: 284: “Sequetur secundo quod Paulus egisset contra ius divinum et humanum dum restitit Petro in faciem, hoc est publice et coram Ecclesiae congregatione, sicut habetur ad Gal II. Haec enim resistentia non fuit minor provocatio Pauli contra Petrum quam fuisset appellatio ad Ecclesiam, immo fuit equivalenter appellatio. Unde et si Petrus desistere noluisset, fuisset ab Ecclesia condemnandus.”

Third, the Pope, who was a member of the body of the Church, could not be removed if he caused *scandalum*, and that went against evangelical doctrine and even natural law.⁵⁷ Fourth, Peter, the high Pontiff, would not have been obliged by the apostles to justify himself when he accepted the Gentiles of Judea into the faith (Acts of Apostles 11).⁵⁸ Fifth, if someone was harmed by the Pope, there would be no means of defense which went against natural law (Gerson, 1960—1973a: 285). Sixth, a Pope could not be judged and deposed by the council if he became a scandal for the Church.⁵⁹ Seven, Gerson argued that the council would not be the *iudex legitimus* of the Pope in contrast to what had occurred at the Council of Constance. On this last point, it is interesting to note that Gerson argued that a mere declaration of heresy would not make the Pope inferior to anyone and thus a deposition process would not be necessary. On the contrary, as the case of John XXIII showed, he had been considered a true Pope until the moment the council had judged him *tanquam suum seditum* through a definitive sentence issued after a formal process. Claiming that it was the mere heretical act of the Pope itself that made him unworthy of the office would generate uncertainty in the *politia ecclesiastica* and approve a doctrine similar to that of Wyclif which argued that someone who committed a mortal sin could not become a Pope or bishop and could not legally consecrate the sacraments. It was not just the *peccatum haeresis* that caused his deposition *eo facto* but a *humana depositio* was necessary.⁶⁰ Finally, Gerson said that if appeals to a council

⁵⁷Gerson, 1960—1973a: 284: “Sequeretur tertio, quod Papa, que est membrum corporis Ecclesiae, sicut homines alii, si scandalizaret totum corpus, ipse non esset rescindendus, ut totum corpus sanum fieret; contra doctrinam Christi evangelicam, fundatam in similitudine iuris naturalis Matth. XVIII cum glossis et determinationibus Doctorum in materia de scandalo, se fundatum in hac lege divina et naturali”.

⁵⁸Ibid.: 284–285: “Sequetur quarto quod Petrus, Summus Pontifex, non debuisset compelli reddere rationem ab Apostolis et fratribus qui erant in Judea quia visitaverat Cornelium gentilem; cuius tamen oppositum dicitur expresse Act. XI: cum adisset autem Petrus Jerosolymam, scilicet ubi erat Ecclesia, disceptabant adversus illum qui erant ex circumcisione dicentes: quare introisti ad viros praeputum habentes et manducasti cum illis?”

⁵⁹Ibid.: 285: “Sequeretur sexto quod in nullo casu papa posset iudicari vel deponi per generale concilium, quantumcumque criminis esset vel scandalus Ecclesiae”.

⁶⁰Ibid.: 286: “Sequeretur septimo, et magis ad hominem, quod concilium generale non esset supra papam, vel iudex papae legitimus; cujus oppositum determinavit et practicavit sacrum Constantiense concilium. Amplius non est verum quod papa eo facto quo cadit in haeresim praesertim latentem, sit depositus a papatu sicut nec est verum de aliis episcopis, quemadmodum ista materia declarata est alibi latius, reducendo hanc opinionem ad multiplex inconveniens sicut ad incertitudinem ecclesiasticae politicae et susceptionis sacramentorum, et ad favorabilitatem damnatae doctrinae Joannis Wicleffi qui principaliter innitebatur tali fundamento quod nullus existens in peccato mortali erat papa vel episcopus, nec consecrabat...”

were prohibited, John XXIII would continue to be the legitimate Pope instead of Martin V.⁶¹ Additionally, Martin V would be contradicting his statement that he had approved everything decided *conciliariter* and Pedro Luna would have been unjustly accused of heresy. Next, Gerson argued that the prohibition of appeal to the council was heretical and damaged the ecclesiastical hierarchy as it contradicted a series of eight Catholic declarations, the most important of which stated that in questions of faith only the *ecclesia universalis* through its representative body, the general council, could be regarded as *iudex infallibilis* (Gerson, 1706b: col. 307B). Finally, Gerson alluded to interpretations of some theologians close to the Pope who argued that the constitution did not apply to all cases but only to those in which the Pope had done *id quod in se est* and when he deviated from the faith. Gerson also left the door open for the Pope to eliminate any suspicion against him by condemning as heretical doctrine such as that opposed by the Poles and other similar examples.⁶²

Interpretations of Gerson's text *An liceat in causis fidei a papa appellare* have generally been influenced by the ecclesiastical context and the controversies over the Second Vatican Council. In their approaches to the affair, both Karl August Fink and Hans Küng sought to limit the scope of the declaration by Martin V saying that the Pope had only meant to forbid the specific case of appeal related to Falkenberg's theses. Thus, there was no questioning over the superiority of the council to the Pope.⁶³ Meanwhile, Paul De Vooght, who also sympathized with the spirit of the Second Vatican Council, initially believed that Martin V's prohibition was a reaction against a radical conciliarism and an attempt to limit the authority of the council.

⁶¹Gerson, 1960–1973a: 278: “Sequeretur octavo et ad hominem multiplex inconueniens in eis quae facta sunt, et quae adherentes praedictae assertioni nullatenus existimandi sunt concedere velle. Et primo quod Johanne olim XXIII reputandus est adhuc papa sicut prius; et ita quod sanctissimus dominus noster papa Martinus non est legitime electus neque papa; quod idem dominus noster et suum collegium noluit ea quae conciliariter facta sunt per sacrum Constantiense concilium inuolabiliter observare...”

⁶²Ibid.: 290: “Porro dominus noster tollere poterit efficaciter suspicionem sinistram quae contran Sanctitatem suam fieri posset, si dicta sua factis compenset, hoc est si sponte, nullo requirente, damnet doctrinam illam pestiferam et crudelem contra Polonos, *cum similibus allis*, cum tali celeritate qualem materia vergens in scandalum et perniciem reipublicae postulat et requirit, procul *abjecta quamvis acceptione personarum*.” This final expression is one of the most frequent references used by Gerson to allude to the power of The Duke of Burgundy in the Jean Petit affair.

⁶³Fink, 1962: 340; Küng, 1962: 250: “Es geht daraus klar hervor, daß es bei der Antwort Martins V. um keinen allgemeinen, grundsätzlichen Entscheid, sondern um einen singulären Entscheid gegen die Polen ging...”

However, soon afterward, he sought to moderate the scope of his statements and argued that the prohibition of Martin V had fewer consequences than he had initially imagined (De Vooght, 1964: 143–181). In fact, according to his interpretation, which twisted slightly the scope of Gerson's text, the prohibition of appeal was not general in nature and did not apply, for example, in the case of a doctrinal error by the Pope. Thus there was no contradiction with the decree *Haec sancta* from the fifth session which stated, in the words of De Vooght, the “dogma of conciliar superiority” (De Vooght, 1963). In addition, according to his perspective on events, Gerson's text demonstrated the resistance that had arisen at the council whose consequence was that the Pope eventually decided not to publish the *minuta sub forma Bullae*.⁶⁴ In an article on the issue, Remigius Bäumer, after correcting some errors in the chronology of the events, adopted the view of Hubert Jedin who said that a definitive answer to the question of Martin V's bull could only be pronounced through a reading of the text itself which had never been published as a bull, and that according to the account of Gerson himself as well as the partial publication of the correspondence of the representatives of the Order of Teutonic Knights, there was no doubt that the prohibition was general and not restricted to certain cases in particular (Bäumer, 1964: 209; Jedin, 1965: 16; Forstreuter, Koeppen, 1960).

Beyond the controversy over the Second Vatican Council, Hans Jürgen Becker, in his study of the appeal to the general council which also indicated that this was not an isolated event and appeals could be traced back to the first in 1245, showed that Martin V's prohibition had met with an immediate irritable reaction among some of the council fathers (Becker, 1988: 127). Recently, Tomasz Graff analyzed how the Polish appeal *ad futurum concilium* had been interpreted by Polish historiography, which generally focused on demonstrating the negative consequences of the inflexibility of the Polish delegation at the end of the council. In contrast, Graff noted that it was in fact their intransigence that earned them good long-term results as, after spending several years in prison, Falkenberg ended up recanting his theses (Graff, 2017: 143–176).

According to Paul De Vooght, Gerson reacted to the prohibition of appeal on a matter of principle as he realized that there were some important contradictions between the prohibition of appeal to the council and the synodal

⁶⁴De Vooght, 1967. This hypothesis was not explicitly demonstrated by author.

praxis of the Council of Constance. It is no coincidence that Gerson began his text with a citation from the decree *Haec sancta* in which the council's superiority was affirmed on matters related to union, faith, and reform (De Vooght, 1967: 67). Although his ideas clearly cannot be projected onto all of the council fathers, he believed that the failure to condemn certain heretical theses appeared to undermine the conciliar authority that had made the solution to the Schism possible.

If the general council acted *regula a spiritu sancto directa* and could not be wrong on matters of faith, the lack of a concrete decision on the Falkenberg case, like the case of Jean Petit, seemed to expose certain contradictions in Gerson's ecclesiological view.⁶⁵ During his exile in Melk after the Council of Constance, Gerson wrote the *Dialogus apologeticus* which, among other things, sought to justify his actions in the Jean Petit case but also mentioned the conflict originated by Martin V's prohibition of appeal to the a council. The text was conceived as a fictitious dialogue between a master, Monicus, and his disciple Volucer and in it, Gerson stated through Volucer that he believed that Cardinal D'Ailly would have been much better placed to explain the lack of condemnation by the council of certain theses that were openly heretical. It was the *zelus habenda unionis* that had led many of the council fathers to tolerate things that in another context would not have been tolerated.⁶⁶ In the case of Falkenberg's theses especially, it remained to be explained why the consensus apparently obtained in the *natio gallicana* condemning them as heretical could not be replicated by the other nations. As in the case of Petit, the question was left open without a decision even though Falkenberg's fate had been sealed on June 6 when he was condemned by the general chapter of his Order to remain in prison (Brandmüller, 1998: 175). The causes of this lack of decision are multiple

⁶⁵Gerson, 1960–1973b: 115–116: “Non est possibile stante lege Christi concilium generale aut universalem ecclesiam congregatam debite in determinando veritates fidei aut necessarias vel utiles pro regimime ecclesiae errare [...] ecclesia congregata vices universalis ecclesiae gerens est inobliquabilis circa fidem et mores ad determinandum pro universali ecclesiae regimine [...] Sicut ecclesia universalis congregata habet singulare privilegium in tradendo fidelibus credenda explicita aut necessaria pro ecclesiae regimine et hoc vel indicative vel obligative, ita multitudo fidelium singulariter trahitur a spiritu sancto ad assentiendum determinative aut auctoritative per ecclesiam congregatam.”

⁶⁶Ibid.: 302: “Volucer-Sua fuit insuper conversatio assidue cum illo praeceptore suo quam sapientissimum et prudentissimum nemo dubitaverit, cardinalem Cameracensem dico; poterit ille multo doctius et salubrius cum auctoritatis pondere super hac re verbo vel scripto tradere qui cognovit. Hoc unum scio quod zelus habendae unionis in schismate tam desperato tantique temporis, fecit multa tolerari quae fuissent aliunde nec tolerabilia nec toleranda.”

and can only be a matter of conjecture. The council might not have wanted to make a definition on the thorny and difficult theological question related to the killing of a tyrant for which there was no definitive answer and, at the same, time the council fathers did not want to increase political tensions within the *nationes* raised by both issues, the *causa* Petit and the *causa* Falkenberg.⁶⁷ There is no doubt that the election of Martin v came as a relief to the Order since the recently elected Pope had always shown himself to favor it in contrast to John XXIII, the Pope of the Pisan line who had initially summoned the Council of Constance.

CONCLUSIONS

Debates on the Falkenberg theses within the *natio gallicana* and the positions that were taken there were the result of attempts to use the Falkenberg case as a means of reopening the discussions over Petit's *Justification*. Although the Gersonists did not achieve a condemnation of the nine assertions taken from the *Justification* of Jean Petit, they believed that a condemnation of the theses of Falkenberg could be read as a new precedent for reopening debates over the *Justification*. Meanwhile, the Burgundians sought to prevent this in order to definitively bring an end to the issue. In that context, impassioned by the dispute, both the Gersonists and the Burgundians appear to have forced similarities and analogies between the two *causae*. For that reason, the debate focused on two issues that had been very important to the Jean Petit case: the interpretation of the biblical commandment *Non occides* and the debate over the need for a public process to decide upon the nature of a tyrant or a heretical king as a necessary step prior to their elimination. Seen from that perspective, the similarities between the two *causae* were exaggerated in spite of the considerable differences in the context of the debates and the conceptions of tyranny under discussion. These facts have led a good part of the historiography to take a distorted view of the affair, emphasizing the similarities between the two cases. Although there is no doubt that the debates on the agenda of the council were very different when the theses of Falkenberg were discussed compared to the other *causae fidei* (Wyclif, Hus, Jerome of Prague), Gerson, like other council fathers, believed that the lack of condemnation as heretical of certain theses on tyrannicide undermined the authority of the council as founded in the decree *Haec sancta*. With the prohibition of appeal to the council

⁶⁷On the failure to make a final decision on these two issues Franken, 2016–2017; for a different interpretation: Rollo-Koster, 2018; Rollo-Koster, 2022: 185.

by Martin v within the context of the Falkenberg *causa*, this became even clearer. In the final phase of the council, Gerson concentrated on noting that acceptance of the prohibition of appeal to the council represented a contradiction with the synodal praxis carried out in Constance until that moment. The decree *Haec sancta* would also be invoked at the end of the council as a justification for synodal praxis even when the union of the Church had been achieved.

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Provvidente S. [Проввиденте С.] The Causa of Johannes Falkenberg and Synodal Praxis at the Council of Constance (1414–1418) [Дело Иоанна Фалькенберга и соборная практика на Констанцском соборе (1414–1418)] : Between Council and Pope [между собором и папой] // Философия. Журнал Высшей школы экономики. — 2022. — Т. 6, № 4. — С. 61–98.

СЕВАСТЬЯНО ПРОВВИДЕНТЕ

PhD, PROFESSOR

НАЦИОНАЛЬНЫЙ ПЕДАГОГИЧЕСКИЙ УНИВЕРСИТЕТ (БУЭНОС-АЙРЕС, АРГЕНТИНА)

НАУЧНЫЙ СОТРУДНИК

МЕЖДИСЦИПЛИНАРНЫЙ ИНСТИТУТ ИСТОРИИ И ГУМАНИТАРНЫХ НАУК

(БУЭНОС-АЙРЕС, АРГЕНТИНА)

ДЕЛО ИОАННА ФАЛЬКЕНБЕРГА
И СОВОРНАЯ ПРАКТИКА
НА КОНСТАНЦСКОМ СОВОРЕ (1414–1418)
МЕЖДУ СОВОРОМ И ПАПЫ

Получено: 26.09.2022. Рецензировано: 27.10.2022. Принято: 30.11.2022.

Аннотация: На Констанцском соборе (1414–1418) епископы сумели добиться осуждения тезисов Джона Виклифа, Яна Гуса и Иеронима Пражского, однако трактат Жана Пти об оправдании тираноубийства был признан собором вздорным, но не еретическим: в декрете *Quilibet tyrannus* отрицалась безусловная легитимность тираноубийства. Нечто подобное произошло и с некоторыми тезисами Иоганна Фалькенберга, поскольку — хотя их автор был заключен в тюрьму, а его тезисы были названы мятежными — они не были прямо осуждены собором как еретические. Это стало причиной настойчивых жалоб представителей польской короны на папу Мартина V, который заявил протест на последнем заседании собора. Он объявил, что дело не было разрешено должным образом, и представил апелляцию на это решение, адресованную следующему собору. В данной статье анализируется спор вокруг тезисов Иоганна Фалькенберга на Констанцском собо-

ре с акцентом на дебаты, происходившие внутри представителей галликанской церкви. Также предпринимается попытка объяснить корреляцию между укреплением соборной власти и ходом дела Фалькенберга.

Ключевые слова: ересь, тирания, процесс, концилиарное движение, инквизиция, Фалькенберг.

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