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## Articles

# Toward the Golden Bull and against the Pope: The Role of Custom and Honor in King Ludwig IV's Nuremberg and Frankfurt Appellations (1323–24)

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**Abstract:** This article addresses the onset of a decades-long conflict between the ruler of the Holy Roman Empire King Ludwig IV of Bavaria and the papacy. When Ludwig intervened on behalf of antipapal factions in northern Italy in 1323, Pope John XXII issued an ultimatum demanding that Ludwig immediately cease to exercise the royal power and title on the pretext that he had never received papal approval of his royal election. Failure to comply meant that the king would fall under sentence of excommunication. Ludwig responded with nearly identical appeals issued in Nuremberg and Frankfurt. Against previous arguments that these appeals were either legal documents operating within the confines of Roman Canon law or artifacts of protomodern realpolitik, this article argues that the “Nuremberg” and “Frankfurt Appellations” emerged from the king’s preoccupation with his honor. His Appellations utilized the language and form of Roman Canon law to defame his opponent while he sought to ennoble and justify his actions with a rhetoric mirroring that in supposed repositories of imperial customary law such as the *Sachsen-* and *Schwabenspiegel*. In arguing that German custom superseded the jurisdiction of papal law in his Appellations, Ludwig elevated a discourse concerning royal elections to the highest levels of imperial politics where it would remain and find inclusion, in intent if not precise formulation, in the famed Golden Bull of 1356.

**Keywords:** Ludwig IV of Bavaria, Golden Bull, John XXII, Wittelsbach, Honor, Customary Law, Holy Roman Empire, Nuremberg Appellation, Frankfurt Appellation, *Sachsenspiegel*, *Schwabenspiegel*

THE GOLDEN BULL OF 1356 was the seminal constitutional framework of the Holy Roman Empire that the Habsburg family dominated between 1440 and 1806.<sup>1</sup> Yet this imperial privilege, which fixed the ranks of the prince-electors and defined the sociopolitical order of the empire for centuries to come, was not a product of the Habsburgs,

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<sup>1</sup>On the Golden Bull, see the essays in Ulrike Hohensee et al., eds., *Die Goldene Bulle: Politik – Wahrnehmung – Rezeption*, vols. 1–2 (Berlin, 2009). For extensive bibliography: Len Scales, “Re-staging the Reich: The Life and Times of the Golden Bull (1356),” *Bulletin of International Medieval Research* 17/18 (2012): 87–106.

but rather the Luxemburg emperor Charles IV (r. 1346–78) and the electors.<sup>2</sup> The Bull outlined the social and political hierarchy of the empire with a special emphasis on the privileges of the prince-electors, among which featured the right to elect the King of the Romans, the intermediate step to the imperial title, by a simple majority vote of the electors.<sup>3</sup> Absent was any role for the pope, a conspicuous absence because of the deep imbrication of popes in imperial politics stretching back, prior even to the reign of Charlemagne (r. 768–814) to that of his father Pippin the Short (r. 751–68). Pippin, de facto ruler of the Franks under the powerless last of the Merovingian kings, purportedly sought to know from Pope Zacharias (r. 741–52) who ought to be king—the ruler de facto or de jure. Zacharias’s determination in favor of Pippin, who subsequently became the first Carolingian king, had the inadvertent consequence of lending later theoreticians a ready-made argument that a pope could involve himself in worldly governance. This had far-reaching consequences for imperial-papal relations from the eleventh century on as Pope Gregory VII (r. 1073–85) and his successors increasingly strove with their imperial counterparts for dominance in the empire.<sup>4</sup> Indeed, from the reign of Innocent III (r. 1198–1216), popes increasingly insisted upon their right to examine, approve, or veto the prince-electors’ choice of king, albeit with mixed success. That the Golden Bull allotted an elected king full power to reign without reference to the papacy represented, therefore, a repudiation of long-standing papal claims and the ultimate rejection of any constitutive role for popes in royal politics in the empire. The credit for the expulsion of the papacy from internal politics in the German-speaking lands, however, only partially belongs to the prince-electors and Charles.<sup>5</sup> A larger share of the credit belongs to the grandson of the first Habsburg king, Rudolf I († 1298): Ludwig IV of Bavaria (r. 1314–47), the first emperor from the Wittelsbach family.<sup>6</sup> Ludwig struggled for decades to protect his power against hardened papal opponents determined to invalidate his title and orchestrate imperial politics along lines friendly to the hierocratic agenda of the Holy See.

<sup>2</sup>The Bull, a product of imperial/elector negotiation, nevertheless represented, to quote Scales, an “enactment of imperial majesty”: Scales, “Re-staging,” 91; Claudia Garnier, “Die Ordnung des Reiches. Die Position des Herrschers in der Goldenen Bulle in der Wahrnehmung bis 1400,” in Hohensee, *Die Goldene Bulle*, 201–2; Michael Lindner, “Es war an der Zeit. Die Goldene Bulle in der politischen Praxis Karls IV,“ in Hohensee, *Die Goldene Bulle*, 113–40. On Charles, see: Martin Bauch, *Divina favente clemencia. Auserwählung, Frömmigkeit und Heilungsvermittlung in der Herrschaftspraxis Kaiser Karls IV* (Cologne: 2015); Karl Stöob, *Kaiser Karl IV. und seine Zeit* (Graz, 1990). On the prince-electors: Armin Wolf, “Wie kamen die Kurfürsten zu ihrem Wahlrecht? Eine Stellungnahme zu dem Buch von Alexander Begert,” *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte. Germanistische Abteilung* [Henceforth ZRG.GA] 129 (2012): 340–63; Alexander Begert, *Die Entstehung und Entwicklung des Kurkollegs. Von den Anfängen bis zum frühen 15. Jahrhundert* (Berlin, 2010); Franz-Reiner Erkens, “Vom historischen Deuten und Verstehen, Noch einmal zu einer neuen Theorie über die Entstehung des Kurkollegiums,” ZRG.GA 122 (2005): 327–51; Franz-Reiner Erkens, *Kurfürsten und Königswahl. Zu neuen Theorien über den Königswahlparagrafen im Sachsenspiegel und die Entstehung des Kurfürstenkollegiums* (Hannover, 2002); Armin Wolf, *Die Entstehung des Kurfürstenkollegs 1198–1298. Zur 700-jährigen Wiederkehr der ersten Vereinigung der sieben Kurfürsten*, 2nd ed. (Idstein, 2000).

<sup>3</sup>Wolfgang D. Fritz, ed., *Die Goldene Bulle Kaiser Karls IV. vom Jahre 1356* (Weimar, 1972), 54.

<sup>4</sup>Johannes Fried, *The Middle Ages*, trans. Peter Lewis (Cambridge, 2015), 39.

<sup>5</sup>Ibid., 407.

<sup>6</sup>Michael Menzel, “Feindliche Übernahme. Die ludovicianischen Züge der Goldenen Bulle,“ in Hohensee, *Goldene Bulle*, 39–64. Ludwig IV was the son of Matilda († 1304), daughter of King Rudolf. On Ludwig, see: Martin Clauss, *Ludwig IV. – der Bayer: Herzog, König, Kaiser* (Regensburg, 2014); Michael Menzel, *Die Zeit der Entwürfe: 1273–1347* (Stuttgart, 2012), 153–91; Heinz Thomas, *Ludwig der Bayer, 1282–1347: Kaiser und Ketzer* (Regensburg, 1993). On Rudolf: Bernd Schneidmüller, ed., *König Rudolf I. und der Aufstieg des Hauses Habsburg im Mittelalter* (Darmstadt, 2019).

The onset of this conflict between Ludwig and the papacy in 1323, the subject of this article, set the tone for the remainder of his reign. In that year, Pope John XXII (r. 1316–34) accused Ludwig of exercising royal authority without first receiving papal approbation and demanded that he lay aside the title until John affirmed it. Ludwig responded to John with propaganda couched in legal language that conveyed the legitimacy of his royal title and bitterly opposed the papal position. At first, he propagated his message to small audiences of key supporters in Nuremberg and Frankfurt. As the king stabilized the foundations of his support, however, he sought to disseminate his vision on an ever-broader scale. His escalating efforts, opposed by an unyielding papacy, led the prince-electors to move to protect their own prerogatives concerning the royal election, culminating in their declaration at Rhens in 1338, wherein they determined that imperial custom allotted no role to popes in royal elections. Ludwig accompanied this finding with two grandiose imperial proclamations in 1338 to much the same effect, but these all fell into abeyance under Charles IV until he and his princes crafted a more diplomatic version in the Golden Bull that granted constitutive power to the prince-electors while denying the papacy a role by omission.<sup>7</sup>

Against those historians who have interpreted Ludwig's fight against the papacy as one of protomodern realpolitik with Italy as the stakes, as well as those who have understood it as a legal battle operating strictly within the structural confines of Roman canon law, I argue that he used the language of both Roman canon and customary law alongside antipapal libel to defend his crown.<sup>8</sup> While the intensity of his rhetoric varied over the course of his reign, Ludwig's stress on the customary legal basis governing his election was set from the start in his so-called Nuremberg and Frankfurt "appeals" (Lat. *appellationes*) of 1323/24. On the one hand, he utilized the form of Roman canon appeal to defame Pope John and cast him as an inveterate heretic and enemy of the Christian people and the empire.<sup>9</sup> On the other, Ludwig cloaked himself with a discourse of custom, legitimating his election thereby and reframing it as a matter outside of the jurisdiction of the Roman curia. The "custom" that he advanced concerning the royal election did not reflect actual practice, however, proposing as it did that an election by a simple majority of the prince-electors was valid whereas previous practice

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<sup>7</sup>Michael Menzel, ed., *Constitutiones et Acta Publica Imperatorum et Regum*, Monumenta Germaniae Historica Legum Sectio IV [MGConst] 7.1 (Wiesbaden, 2013), 263–65, 270–81; Jean-Marie Moeglin, "Das Erbe Ludwigs des Bayern," in Hohensee, *Goldene Bulle*, 17–38; Hans-Jürgen Becker, "Licet iuris," in *Handwörterbuch zur deutschen Rechtsgeschichte* [HRG], vol. 3 (Berlin, 2014), 976–79; Hans-Jürgen Becker, "Das Mandat 'Fidem catholicam' Ludwigs des Bayern von 1338," *Deutsches Archiv für Erforschung des Mittelalters* [DA] 26 (1970): 454–512; Thomas Michael Martin, *Auf dem Weg zum Reichstag: Studien zum Wandel der deutschen Zentralgewalt, 1314–1410* (Göttingen, 1993), 183–85; Ernst Schubert, "Die Stellung der Kurfürsten in der spätmittelalterlichen Reichsverfassung," *Jahrbuch für westdeutsche Landesgeschichte* 1 (1975): 111–119; Stengel, *Avignon*, 112–53.

<sup>8</sup>For the former view: H. S. Offler, "Empire and Papacy: The Last Struggle," *Transactions of the Royal Historical Society* 6 (5th Series) (1956): 21–47; Friedrich Bock, *Reichsidee und Nationalstaaten vom Untergang des alten Reiches bis zur Kündigung des deutsch-englischen Bündnisses im Jahre 1341* (Munich, 1943). For the latter perspective: Diethelm Böttcher, "Johannes XXII., Ludwig der Bayer und die *monitio canonica*," *ZRG Kanonistische Abteilung* 127 (2010): 314–49; Hans-Jürgen Becker, *Die Appellation vom Papst an ein allgemeines Konzil. Historische Entwicklung und kanonistische Diskussion im späten Mittelalter und in der frühen Neuzeit* (Vienna, 1988), 83–99; Alois Schütz, "Die Appellationen Ludwigs des Bayern aus den Jahren 1323/24," *Mitteilungen des Instituts für österreichische Geschichtsforschung* 80 (1972): 71–112.

<sup>9</sup>On Roman canon law: James A. Brundage, *Medieval Canon Law* (London, 1995). Concerning libel: Rolf Lieberwirth, "Verleumdung," in *Handwörterbuch zur deutschen Rechtsgeschichte* [HRG], eds. Adalbert Erler and Ekkehard Kaufmann, vol. 5 (Berlin, 1998), 762–64; Peter Weimar and Heinz Holzauer, "Beleidigung," in *Lexikon des Mittelalters* [LexMA], vol. 1 (Munich, 1980), 1837–38.

had relied upon principles of electoral consensus and unanimity.<sup>10</sup> Ludwig's "custom" was plausible as it was not entirely divorced from actual practice; because it contained a chauvinistic appeal to the rights of the empire; and due to the presence of this "custom" in privately conceived—but widely circulating—texts that purported to relate customary law stretching back as far as Charlemagne: the so-called *Sachsen-* and *Schwabenspiegel*.<sup>11</sup> In defending his title and authority through the dissemination of antipapal libel and the rhetoric of custom, Ludwig IV succeeded in remaining king and eventually became the first Holy Roman emperor since Frederick II († 1250) to appear in the German-speaking land despite inveterate papal opposition that continued until his death. Perhaps more importantly, he also injected an explicit discourse concerning the royal elections into the heart of imperial politics that, in its mature guise in the Golden Bull of 1356, would help to provide a stable and lasting political framework for the Holy Roman Empire for centuries to come, although the most abiding beneficiaries of this achievement were neither the Wittelsbachs nor the Luxemburgs, but rather Ludwig's Habsburg cousins.

### From Disputed Election to Contested Kingship

When Ludwig was born in 1282, his Habsburg grandfather Rudolf ruled in the empire as king of the Romans. Amidst the turbulence following the downfall of the Hohenstaufen emperors in the mid-thirteenth century, Rudolf had assiduously risen from a relatively minor count in southwestern Germany to become a significant power in the region prior to being elected king in 1273. While the first Habsburg king ensured that his family would remain ever after a significant presence in imperial politics by granting the duchies of Austria and Styria to his sons, he was less successful in his relations with the papacy, ceding imperial Romagna to papal ownership without, however, managing to attain the imperial crown.<sup>12</sup> The next two kings, Adolf of Nassau (r. 1291–98) and Rudolf's son, Albert I (r. 1298–1308), likewise did not secure the imperial title for themselves. The conflict at the end of Adolf of Nassau's reign, which saw Adolf deposed and Albert elected as king, afforded Ludwig his first real opportunity at power. For his older brother, Rudolf I († 1319), had succeeded their father as count palatine of the Rhine and duke of Upper Bavaria in 1294 and subsequently married King Adolf's daughter. When the other prince-electors moved against Adolf because he sought to secure a dynastic base in Thuringia, Rudolf remained loyal to him, although Adolf died in battle soon after, making way for Albert of Habsburg.<sup>13</sup> In 1301, in the course of subduing opposition at the commencement of his reign, Albert forced the count palatine to share governance of Upper Bavaria with Ludwig, Rudolf's junior by some eight years. This leavened the power of the older, hostile nephew with that of the ambitious younger, whose formative years had been partially spent in Vienna with Albert's sons, including his future royal rival, Frederick "the Fair" (1289–1330).<sup>14</sup> Albert's assassination in 1308 led to the reign of Henry VII of Luxemburg († 1313), who managed to secure the Bohemian royal crown and accompanying electoral status for his son John and, more spectacularly, attained the

<sup>10</sup>Hans-Jürgen Becker, "Der Einfluß des *ius commune* auf das deutsche Königswahlrecht," in *Poeta prof. JUDr. Karlu Malému*, ed. Ladislav Soukup (Prague, 1995), 59–67.

<sup>11</sup>See notes 72–77.

<sup>12</sup>Menzel, *Zeit*, 98–109.

<sup>13</sup>*Ibid.*, 110–21.

<sup>14</sup>*Ibid.*, 121–38.

imperial crown in Rome in 1312. His success was ephemeral, however, for he died of malaria in 1313 while campaigning in Italy, compelling the election in which both Ludwig and Frederick were elected.<sup>15</sup>

At first, however, the leading candidates for the new election seemed to be Henry's son, King John of Bohemia (r. 1310–46), and Frederick, Albert's eldest surviving son and duke of Austria and Styria. As two camps of the prince-electors formed around the rival Luxemburg and Habsburg candidates, however, it quickly became clear that the young and inexperienced John would not succeed his father as king of the Romans and his party, led by the archbishops of Mainz and Trier, cast about for another option against the possibility of a third ambitious Habsburg king. Ludwig of Wittelsbach must have seemed like a natural choice. A second son, his share in the governance of Upper Bavaria did not extend to his brother's hold on the rights of the count palatine and his basis of power was relatively slender.<sup>16</sup> Despite this, he did not hesitate to war against Frederick when the issue of the guardianship of the young heirs of the Duchy of Lower Bavaria arose. Frederick sought to extend Habsburg influence into Lower Bavaria, then ruled by another branch of the Wittelsbach family, whereas Ludwig made clear his willingness to use violence to attain the guardianship for himself. Ludwig's defeat of Frederick in the Battle of Gamelsdorf in 1313 not only extended Ludwig's aegis over his Wittelsbach cousins in Lower Bavaria but also granted him a presence on the highest stages of imperial politics, wherefore the Luxemburg camp now advanced his royal candidacy as a counterweight to the Habsburgs. So it was that his victory over Frederick was capped by his election as king of the Romans on 20 October 1314 when he was thirty-two years old. His election nevertheless took place under a cloud of dissent, for Frederick's defeat at Gamelsdorf had by no means diminished his aspirations and he had been elected king the previous day.<sup>17</sup> Of the electors, the archbishop of Mainz, the margrave of Brandenburg, one of the claimants of the Duchy of Saxony, as well as the Luxemburg family members, Archbishop Balduin of Trier and King John of Bohemia, chose Ludwig as king and crowned him in Aachen. In opposition to his brother, who had proven to be abidingly pugnacious toward him, Count Palatine Rudolf voted for Frederick, as did the other claimant to the Saxon elector title, a rival candidate for the Bohemian crown, and the archbishop of Cologne. This outcome, with neither party willing to concede his right to the crown, necessitated a years-long struggle for the royal title, which only ended when Ludwig successfully confiscated his brother's Rhenish territories in 1317 and emerged victorious at the Battle of Mühldorf on 23 September 1322, in the course of which Frederick fell into captivity. The Habsburger younger brothers, firmly ensconced within Habsburg territories, continued to contest Ludwig's right to the crown and remained intransigent, if nevertheless constrained by Frederick's capture.<sup>18</sup>

The following year, Ludwig used the extinction of the Ascanian margraves of Brandenburg, the last of whom had perished in 1320, as an opportunity to invest his eponymously named eight-year-old son with the Mark of Brandenburg. This move substantially increased the Wittelsbach family's territory, giving them rights and holdings in Bavaria, Franconia, along the Middle Rhine, and now in the northeastern corner of the empire. Equally significantly, it also secured a second vote in royal elections for the Wittelsbachs, promising them increased influence in any future election of the king of the Romans. It also antagonized the king of

<sup>15</sup>Ibid., 138–53; Thomas, *Ludwig*, 17–18.

<sup>16</sup>For financial estimates for Ludwig's kingdom (including Upper Bavaria), see: Thomas, *Ludwig*, 157–58.

<sup>17</sup>Menzel, *Zeit*, 156; Thomas, *Ludwig*, 38–42.

<sup>18</sup>Menzel, *Zeit*, 156–62; Thomas, *Ludwig*, 43–58, 64–107, 117–18.

Bohemia, however, who had his own expansionary designs involving Brandenburg. Ludwig's election had relied upon the support of the Luxemburg electors King John of Bohemia and Archbishop Balduin of Trier, and the chilling effect of the Wittelsbach acquisition of Brandenburg on Luxemburg-Wittelsbach relations left Ludwig without the reliable support of either of the other great dynastic families in the German lands—that is to say, of either the Habsburgs or the Luxemburgs.<sup>19</sup>

Meanwhile, in 1316, the College of Cardinals in Avignon had selected the elderly Jacques Duèze to reign as Pope John XXII after a papal vacancy of almost two years. The cardinals saw him as a compromise interim candidate expected not to live for long. Instead, the seventy-two-year-old John ruled the church for almost two decades and proved to be an energetic, sedulous proponent of papal prerogatives.<sup>20</sup> His predecessor Clement V had moved to Avignon on the border of the Kingdom of France in 1309, as fierce infighting between powerful Roman families had combined with increasing French influence in the curia to render the Provençal city a more attractive alternative to volatile Rome. John, however, almost immediately made clear his ambition to restore papal fortunes in Italy, even by military means where necessary.

He drew on Pope Innocent III's 1202 precedent, set in his bull *Venerabilem*, wherein he expressed his respect for the German custom of electing their own princes, but expected that they would likewise defer to his right of an examination of the elected.<sup>21</sup> In 1317, therefore, John published the papal bull "*Si fratrum*," which made Innocent's argument more stridently while also advancing a novel assertion: if the imperial throne was vacant, the pope should wield the imperial vicariate in Italy with all its powers, seigniorial, legislative, or otherwise. He threatened excommunication for those who denied this prerogative or sought to exercise the laws of the dead Emperor Henry VII without the permission of the Apostolic Stool. The pope accompanied these threats, aimed primarily at defiant Ghibelline adversaries in Milan, Verona, and Ferrara, with the proclamation that an imperial vacancy existed because of the disputed kingly election north of the Alps and the absence, as yet, of papal approbation for either Ludwig or Frederick.<sup>22</sup>

In the wake of his victory over Frederick of Habsburg at Mühldorf, Ludwig certainly registered his triumph with the papal curia, although no known copy survives. Whether or not he explicitly sought papal approbation for his election in this letter, however, John's answer from 18 December avoided the issue altogether. Referring to Ludwig as "elected to the kingship of the Romans" rather than acknowledging him as king, he suggested only that Ludwig give thanks to God and offered to serve as a mediator between he and the captive Frederick, whom John called his "*coelectus*."<sup>23</sup> This was an offer that Ludwig did not accept. After his victory at Mühldorf, Ludwig instead sought to extend his royal influence into northern Italy. He appointed his own imperial vicar in Italy in spring 1323, coming to the aid of the Visconti of Milan and the Este of Ferrara, among other important families, whom the pope had in the meantime declared heretical and excommunicated because they threatened his Italian ambitions.

<sup>19</sup>Menzel, *Zeit*, 162–64; Thomas, *Ludwig*, 115–16.

<sup>20</sup>On John: J. Grohe, "Johannes, 38. J. XXII., Papst," in *LexMA*, vol. 5 (Munich, 1991), cols. 544–46; Paul R. Thibault, "John XXII, Pope," in *Dictionary of the Middle Ages [DMA]*, ed. Joseph R. Strayer, vol. 7 (New York, 1986), 124–25; Guillaume Mollat, *The Popes at Avignon, 1305–1378*, trans. Janet Love (New York, 1963), 9–25.

<sup>21</sup>Jürgen Miethke, "Der Kampf Ludwigs des Bayern mit Papst und avignonesischer Kurie in seiner Bedeutung für die deutsche Geschichte," in *Kaiser Ludwig der Bayer: Konflikte, Weichenstellungen und Wahrnehmung*, eds. Hermann Nehlsen and Hans-Georg Hermann (Paderborn, 2002), 42–44.

<sup>22</sup>*Ibid.*, 53–54.

<sup>23</sup>Jakob Schwalm, ed., *MGConst*, vol. 5 (Hannover, 1909–13), 557.

Ludwig's interference in Italy caused John to turn his attention to the Wittelsbach king. On 8 October 1323, the pope initiated his first process against Ludwig. It was not a threat of deposition from the royal throne, for John did not consider Ludwig to be king without papal approbation. It did, however, inform Ludwig that he would be excommunicated if he continued to exercise the title and the rights of the king of the Romans, among which was specified Ludwig's bestowment of the Mark of Brandenburg upon his son, although the papal scribes blundered in referring to it as "*Magdeburgensi*"—Magdeburg. John gave Ludwig three months to halt his exercise of royal power and to submit himself to papal authority, whereby he might avoid the specified penalty.<sup>24</sup>

This broadside from the Apostolic Stool prompted Ludwig into action. The pope had sent copies of his process to many bishops in Italy and Germany and had even notified the king of France of its publication, but he did not send the process to Ludwig, who nevertheless clearly had heard rumors by 12 November when he commissioned three representatives to travel to the papal curia to discover the nature of the process against him and to seek a delay so that he could marshal a defense of his rights.<sup>25</sup> Ludwig must have learned of the contents of the process by other means, however, before any clear indication could be had from the curia, as his own representatives did not appear before the pope until 2 January 1324.<sup>26</sup> For on 18 December, he responded with the first of his appeals, which historians have dubbed the "Nuremberg Appellation" after its place of promulgation. In this way, he signaled his intention to reject the pope's claims and to hold on to his throne. With the Nuremberg Appellation, Ludwig entered into a conflict with the papacy that only ended with his sudden death in 1347.

### The Appeals at Nuremberg and Frankfurt

The form chosen for the king's initial responses to Pope John was that of the *appellatio*—"appeal" or "appellation." The latter term is used throughout this work not only because this is the typical English term given to the documents promulgated in Nuremberg and Frankfurt but also because "appellation" avoids the false note of clarity of "appeal." In the fourteenth-century German lands, *appellatio* might refer to a Roman canon procedural appeal in a canon law court just as easily as it might to the instantiation of a lawsuit or the right of a freeman to criticize a judgment publicly (*Urteilsschelte*).<sup>27</sup> The flexibility of this genre may well have made it suitable for Ludwig's cause, but there was also the precedent of history, both relatively distant as well as within living memory. In the mid-thirteenth century, when Pope Gregory IX (r. 1227–41) initiated proceedings to depose Emperor Frederick II as part of what was, in essence, a struggle for dominance in Italy, the latter responded at the Council of Lyon in 1245 with an appeal filed on his behalf against the papal action, appealing to a future Roman pope and to a general council of kings, princes, and prelates to take up the justness of his cause.<sup>28</sup> More recently, agents of Philip IV of France (r. 1285–1314) had appealed against Pope Boniface VIII (r. 1294–1303) during the two rulers' quarrel over taxation of the church in France, like

<sup>24</sup>Ibid., 616–19. Magdeburg appears on p. 617.

<sup>25</sup>Ibid., 636–37.

<sup>26</sup>See note 60. Concerning the timing of Ludwig's embassy: Schwalm, ed., *MGConst.*, 5:651.

<sup>27</sup>See: Jürgen Weitzel, "Appellation," in *HRG*, vol. 1 (Berlin, 2004), 268–71.

<sup>28</sup>Becker, *Appellation*, 38–47, esp. 45. On Frederick: Olaf B. Rader, *Friedrich II.: Der Sizilianer auf dem Kaiserthron* (Munich, 2011).



Frederick appealing to a future pope and general council for the sake of their king and against a pope guilty of misusing the “spiritual sword,” a reference to the doctrine of the two swords theory, which posited a separation of the ecclesiastical and secular spheres.<sup>29</sup> The appeals against papal judgments emanating from the courts of Frederick and Philip did not lead to legal victories in a canonical court setting, but rather enabled both rulers to solidify their support and hold out against their opponents until death—Frederick’s and Boniface’s as it turned out—altered the political landscape. If Frederick and Philip had not been able to press their positions with any success in the papacy’s increasingly hierocratic legal system, they had nevertheless deployed legal forms that helped them maintain power, and it was in this tradition that Ludwig’s appellations stood. The novelty of the German king’s appellations lay not in their deployment as home front propaganda of sorts, but rather in their combination of antipapal libel under the guise of canon law combined with the advancement into the highest levels of imperial public discourse of legal principles concerning the royal election ostensibly drawn from customary law.

The first of Ludwig’s appellations was drafted in Nuremberg, where the king had lingered since early November.<sup>30</sup> Nuremberg was an imperial city of particular significance on the itinerary of the king, who visited the city on seventy-four occasions over the course of his reign—more than any other city in the empire.<sup>31</sup> In addition, Nuremberg was home to one of Ludwig’s important financiers, the wealthy burgher Conrad Gross, whose support for the Wittelsbach ruler was of great importance.<sup>32</sup> The imperial notary Herdegen of Bamberg drew up the appellation in the home of Albrecht Ebner, another burgher of the city and later a city council member and head tax collector.<sup>33</sup> The document was notarized and proclaimed before a number of witnesses noted at the beginning of the appeal, among whom numbered the civil notary of Nuremberg, and several deans, canons, and priests from Eichstätt, Bamberg, Regensburg, and Amberg in the direct vicinity of Nuremberg, as well as one cleric from Pfullendorf near Lake Constance.<sup>34</sup> These would seem to be the most legally significant persons present, or perhaps the only persons willing to witness the appellation, for after their names, Herdegen merely noted the presence of many other ecclesiastical and laypeople. Ludwig attested to the words written within the appellation in the presence of Bishop Nicholas of Regensburg, the imperial notary, and the other assembled witnesses, offering them “as if in the presence of our highest lord pope.”<sup>35</sup>

The Nuremberg Appellation is divided into two sections, the “protests” (*protestaciones*) and the “appeals” (*appellaciones*). In the protest, King Ludwig sought first to protect himself personally, testifying that he intended always to honor, love, and support the Holy Roman Church, the “mistress of the universal faith,” as both his mother and his ward, and to

<sup>29</sup>Becker, *Appellation*, 59–71, esp. 64. On the Gelasian doctrine: R. N. Swanson, “Two Swords, Doctrine of,” in *DMA*, vol. 12 (New York, 1989), 333–35. Concerning Philip: Georges Minois, *Philippe le Bel* (Paris, 2014).

<sup>30</sup>As witnessed by charters: *Regesten Kaiser Ludwigs des Bayern.*, vol. 1–11 (1991–2018), 1:50–51, 7:203, 9:218–20, 10:107–9.

<sup>31</sup>Joachim Leuschner, *Deutschland im späten Mittelalter* (Göttingen, 1975), 169.

<sup>32</sup>On Gross, see Peter Fleischmann, *Rat und Patriziat in Nürnberg. Die Herrschaft der Ratsgeschlechter von 13. bis zum 18. Jahrhundert*, vol. 2 (Neustadt an der Aisch, 2008), 457–58; August Gemperlein, “Konrad Groß. Der Stifter des Nürnberger Heiliggeist-Spitals, und seine Beziehungen zu Kaiser Ludwig,” *Mitteilungen des Vereins für Geschichte der Stadt Nürnberg* 39 (1944): 83–126.

<sup>33</sup>On Herdegen: Helmut Bansa, *Studien zur Kanzlei Kaiser Ludwigs des Bayern vom Tag der Wahl bis zur Rückkehr aus Italien (1314–1329)* (Kallmünz, 1968), 221. Concerning Ebner: Fleischmann, *Rat*, 356–57.

<sup>34</sup>*MGConst.*, 5:642.

<sup>35</sup>*Ibid.*

strengthen its position and protect its laws in good faith.<sup>36</sup> He also professed that he knew of the enemies and rebels against the faith and desired to pursue and exterminate wrong-doers as a fervent and zealous advocate of Christianity.<sup>37</sup> Ludwig expressed his belief that he had never transgressed against the church, adding that if he had somehow done so, he was prepared to make humble amends and wished to remain under the rule of ecclesiastical discipline and to govern with its council and direction.<sup>38</sup> He concluded this section, however, with the declaration that he was determined to protect the empire and its laws, affairs, and lands without prejudice just as he had decided concerning the obligations of the faith.<sup>39</sup>

Ludwig had surrounded himself with men of the church in the house of one of Nuremberg's leading burghers and, before the bishop of Regensburg, made a strong assertion of orthodoxy in both action and intent while asserting his willingness to rectify his actions if they somehow operated against the church. Thereby, he carefully hedged against the possibility that he might nevertheless have somehow unknowingly violated the doctrines of the Christian faith. At the same time, however, in ending his protestation of Christian orthodoxy by bundling his duty to protect the empire with the obligations of the faith, Ludwig placed his royal duties alongside and on an equal footing with his individual obligations as a Christian and expressed an independent tone that belied the conciliatory remarks directly preceding, paving the way for his severe assault on the papal accusations and the pope in the second section.

In the second section, Ludwig complained that he had always exhibited goodwill and sincere affection with all due reverence and honor for both the pope and the church, only to learn of the papal process against him, which he declared to be ardent, hateful, injurious, and untrue: crafted against both laws and reason. He accused the pope's process of fomenting dissension and schism in the empire and of advancing wrong by weakening the integrity of the church.<sup>40</sup> After recapitulating the accusations contained within the pope's process, the king brushed aside the pope's demand that he lay aside the exercise of royal rights proclaiming that

from time immemorial, it has been thus observed by law and custom concerning the elected kings and *principes* of the Romans—and the princes and worthies and the great (*meliores ac maiores*) of the empire hold, declare, and understand and have always held, declared, and understood, as is truly notorious to everyone in the German lands, so that there may be none who are uncertain or ignorant—that the King of the Romans is elected solely by all the prince-electors or by the majority of them; and when he has been crowned with the royal crown in the usual and customary place, he is king and is held to be king and is named king; and it is evident from these things and it is extended in the same way to this very same king [Ludwig]; and he freely administers the rights of the kingdom, receives pledges of fidelity and obedience, confers fiefs, and ordains and arranges the goods, honors, dignities, and offices of the kingdom as he pleases.<sup>41</sup>

Concerning his own election, Ludwig ignored the irregularities of his election in claiming that he had been elected by the overwhelming majority (*longe maiori numero*) of the elector princes,

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<sup>36</sup>Ibid.

<sup>37</sup>Ibid.

<sup>38</sup>Ibid., 642–43.

<sup>39</sup>Ibid., 643.

<sup>40</sup>Ibid.

<sup>41</sup>Ibid., 644–45. Müller credited Ludwig's standpoint to Urban IV's bull concerning the royal election, but there is no textual evidence for this notion, whereas Ludwig expressly declared and may have also believed that his rights rested upon old law and custom whatever its ultimate source. See Carl Müller, *Der Kampf Ludwigs des Baiern mit der römischen Curie*, vol. 1 (Tübingen, 1879), 70–71.

which could only be construed as true by ignoring the disputed nature of the Saxon and Bohemian electorships. His coronation had taken place in the accustomed place, Aachen, but here he papered over both that it had not been the traditional coronator—the archbishop of Cologne—who had crowned him and that it was his Habsburg rival who had possessed the authentic royal insignia. While the pope accused him of usurpation, he maintained that he had ruled in peace for almost ten years without any papal reprobation of his election or person, even if such an action could lawfully have been undertaken by a pope.<sup>42</sup> The notion that the empire was vacant Ludwig rejected utterly. “We are king,” he proclaimed, “and we administer the laws of the realm as king; and we possess the rule of the Kingdom of the Romans and have for many years. It cannot be called vacant, for it has a king ruling and holding the power to rule the Kingdom and Empire.”<sup>43</sup>

He rejected the papal claim of approbational authority, but noted that even if the pope had hypothetically possessed this right, it would only have been exercisable if some sort of complaint, request, appeal, or challenge were to have been raised before the Apostolic Stool, which it had not been, or if he were to have requested the imperial coronation and have been rejected for legitimate reasons grounded in written law. This had not occurred and even if the Stool had had such a power, it did not allow him to bestow law or title—which in any case now belonged to Ludwig because of his election—but rather only to endorse them and commend them widely. This truth, the king now maintained, was pleasing to reason, supported by the canons and the laws, and was sanctioned by the opinions of the highest doctors of both laws and made known by the use and custom of boundless time (*longissimi temporis*).<sup>44</sup>

As to the charge that Ludwig had aided and abetted the Visconti heretics of Milan, he engaged in hairsplitting, arguing that neither the pope nor anyone else had informed him of their condemnation and that he had therefore reasonably been capable of being ignorant (*rationabiliter poteramus ignorare*) of the papal action. Ludwig, for his part, could not see how Galeazzo Visconti and his brothers—or any of the other rebels who remained unnamed in the papal process—had rebelled against the church. He had struggled to understand and had come to recognize through their works that some of them had been named rebels against the church because they had devotedly resisted forces operating against the standing and laws of the empire.<sup>45</sup>

Now the king shifted to the offensive. Responding to frequent entreaties and acting from pious duty, Ludwig claimed that he had sent comital envoys to the pope’s cardinal legate in Italy to assist in restoring peace to the region as was known there, only to discover that the cardinal had come, in the words of Matthew 10:34, not “to bring peace, but the sword”—referring here to John’s Italian wars—which was conduct incongruent with his religious profession. He had shamefully dismissed Ludwig’s envoys without a hearing and waged war against loyal imperial subjects in Milan, besieging the city, striving to capture it, and causing injury to both Ludwig and the empire. Ludwig’s comital envoys had offered protection to the extent that they could, but this they had done not on behalf of the Visconti brothers, but rather for the sake of the king and the empire, showing the Visconti neither defense nor favor.<sup>46</sup>

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<sup>42</sup> *MGConst.*, 5:645.

<sup>43</sup> *Ibid.*

<sup>44</sup> *Ibid.*

<sup>45</sup> *Ibid.*

<sup>46</sup> *Ibid.*, 646.

While Pope John sought to accuse Ludwig of supporting heretics and rebels against the church, Ludwig once again declared his orthodoxy and zeal for pursuing and extirpating heresy before going onto the offensive against Pope John with claims best interpretable as defamatory in both content and intention:

We propose and oblige and offer that, in the presence of the reverend fathers, the Lord Cardinals who are not of doubtful character [*non suspecti*], in a gathering of a sacred general council or at another suitable place, he [John] be lawfully tried as a dissembler: a defender and protector of the heretical depravity that corrupts all the Holy Church and confuses it and diverts the penitent from confession, blocking the way into the begotten spirit. For when it was described and properly related that the Franciscans are betrayers of the confessional seal of penitents in the serious and repeated complaints of the archbishops, bishops, and several lesser grades of prelates brought against the General Minister, custodians, guardians, and brothers minor of the Order of Saint Francis, it was sought from him that he, in accordance with his office, correct this just as if it were the most pernicious thing in the Holy Church of God, whence souls were imperiled, the approach to grace is blocked, and the remission of sins is ignored. That one, having turned his back, dissimulating and hiding, does not undertake to care for the pestilential sickness with the salubrious and necessary remedy, inflicting eternally the mortal death of the soul, setting himself up as a patron of the Brothers who are inimical to the Holy Roman Church and the universal faith.<sup>47</sup>

Ludwig then deployed classic imperial-papal imagery in comparing the pope and the emperor to the sun and the moon as two powerful lamps in the firmament of the Church Militant, with the former charged with the daytime disposition of spiritual affairs and the latter with the nighttime judgment over the temporal world.<sup>48</sup> Ludwig accused John, however, of striving to choke the powers of the temporal light, thereby threatening to cast the holy church into confusion and error, amidst which heresies would arise, quarrels abound, and the church, lacking its proper advocate (King Ludwig), would be unable to withstand its enemies.<sup>49</sup>

Cloaking himself in the titles of divinely established champion and guardian of the Catholic faith, advocate of the Roman Church, and king and *princeps* of the empire, Ludwig declared that he wished to station himself as a wall around the house of Israel and the faith, defending both his and the empire's rights, the holy Catholic profession, and the Roman Church from John's troublesome and problematic legal actions, whereupon he appealed to the holy Apostolic Seat—as if it were a legal entity separated from its papal inhabitant—and submitted himself and all his rights and those of the empire to the protection of the same fictive seat.<sup>50</sup>

Ludwig would have liked, he now claimed, to introduce and enact his appeal before the pope, but had been prevented by distance and the abbreviated deadline from doing so. He now expressed that he would do so at the earliest opportunity, as well as present it, declare it, renew it, and publish it at a time and place just as it ought to be published.<sup>51</sup> Because the matters described within the appellation touched upon the standing of the Catholic faith and

<sup>47</sup>Ibid. This refers to the case of the Parisian theologian John of Pouilly. See note 92.

<sup>48</sup>On sun and moon in imperial-papal imagery, see Joseph P. Canning, "How Can We Know Who Holds Legitimate Power? Dante on the Right and Wrong Uses of Knowledge," in *Knowledge, Discipline and Power in the Middle Ages: Essays in Honour of David Luscombe*, eds. Joseph P. Canning et al. (Leiden, 2011), 34; Wolfgang Weber, "Das Sonne-Mond-Gleichnis in der mittelalterlichen Auseinandersetzung zwischen Sacerdotium und Regnum," in *Rechtsgeschichte als Kulturgeschichte* (Aalen, 1976), 147–75.

<sup>49</sup>*MGConst.*, 5:646.

<sup>50</sup>Ibid., 646–47.

<sup>51</sup>Ibid., 647.

the Roman Church, and therefore concerned everyone, Ludwig called for the convocation of a general council where he would “strive for the honor of almighty God” in personal attendance.<sup>52</sup> The appellation closes with the statement that it had been read aloud before the lords and witnesses who had been named previously, the attestation of the witnesses to the drafting of the document, and Herdegen’s acknowledgment of his role as notary.<sup>53</sup>

It is unclear whether Pope John ever received a copy of the Nuremberg Appellation. The original and sole copy resides today in the Wittelsbach’s *Geheimes Hausarchiv*, now kept in the Bavarian State Archive, and it was perhaps placed there after serving its purpose in Nuremberg.<sup>54</sup> Regardless, Ludwig reused almost all the form and content of the Nuremberg document on 5 January 1324, when he had a new copy drawn up before a new set of witnesses. This occurred in another important imperial city along his regular itinerary, Frankfurt, where the wealthy businessman Jacob Knoblauch served as yet another key financier for the royal cause.<sup>55</sup>

The Frankfurt Appellation contains relatively few changes from its predecessor after its beginning, where the names of the witnesses and notary were purposefully left out of the heavily abbreviated text. The witness list appears at the end of the document, however, and it is here that we discover that “this appeal was introduced and read (etc.) on the vigil of Epiphany in the hour before the midday meal [*prandium*] in the year of our Lord 1324.”<sup>56</sup> The witnesses named were Duke Otto of Bavaria, Count Berthold of Grasbach, Ludwig and Gottfried of Holoch, Henry the mayordomo, the cupbearer Dean Gerlac de Ertbach of the Holy Trinity in Speyer, Master Henry of Fulda, Master Thilmann, and Dean Ulrich of St. Stephen’s in Bamberg.<sup>57</sup> Of the named witnesses, only the last was also a named witness of the creation of the appeal in Nuremberg, but he was joined by Henry Hausner, King Ludwig’s chaplain, who read the Frankfurt Appellation aloud to those assembled.<sup>58</sup>

Whereas the Nuremberg Appellation had referred to the “Holy Empire,” the Frankfurt iteration spoke of the “Holy Roman Empire.”<sup>59</sup> The Nuremberg Appellation, revealing the haste with which it had been drawn up, had repeated the error in the papal process of referring to the Mark of Brandenburg as “Magdeburg,” but this was corrected in the Frankfurt version.<sup>60</sup> Moreover, in the space of a few weeks it had clearly been decided that, whereas the Nuremberg Appellation came to its end with a petition to the Apostolic Stool—imagined as independent of its papal occupant—the Frankfurt Appellation ought instead to appeal to a nonextant future general council of the church in the tradition of the appeals of Emperor

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<sup>52</sup>Ibid.

<sup>53</sup>Ibid.

<sup>54</sup>Munich Bayerisches Hauptstaatsarchiv, Abteilung III. Geheimes Hausarchiv 254.

<sup>55</sup>On medieval Frankfurt: Elsbet Orth, “Frankfurt am Main im Früh- und Hochmittelalter” and Konrad Bund, “Frankfurt am Main im Spätmittelalter 1311–1519,” in *Frankfurt am Main. Die Geschichte der Stadt in neun Beiträgen* (Sigmaringen, 1991), 9–52, 53–149. On Knoblauch: Dietrich Andernacht, “Knoblauch, Jakob,” in *Neue Deutsche Biographie*, vol. 12 (Berlin, 1980), 194; Heinz F. Friedrichs, *Frankfurter Patrizier im 12.-14. Jahrhundert*, vol. 2 (Frankfurt, 1958), 21–31. The sole witness of the “Frankfurt Appellation” is a later manuscript copy preserved in the Bibliothèque Nationale in Paris discovered around the turn of the twentieth century (BNF Ms. Lat. 4113): Friedrich Bock, “Die Appellationsschriften König Ludwigs IV. in den Jahren 1323/24,” *DA* 4, no. 1 (1940): 190–94; Jakob Schwalm, *Die Appellation König Ludwigs des Baiern von 1324* (Weimar, 1906), 1–7.

<sup>56</sup>*MGConst.*, 5:659.

<sup>57</sup>Ibid.

<sup>58</sup>Ibid.

<sup>59</sup>Ibid., 658–59.

<sup>60</sup>Ibid., 656.

Frederick II and King Philip IV of France.<sup>61</sup> To the sentence in which Ludwig had stated his intention to serve as a wall before the house of Israel, in which the phrase “champion and guardian [*custos*] of the Christian faith” had been tweaked to read “champion and defender [*defensor*] of the Christian faith,” he added a clause indicating that he reasonably held John’s pronouncements against him suspect and without merit and added the key phrase, “*a non suo iudice*,” to his complaint that John had not followed proper legal procedure. These four words indicated that John could lawfully be refused as judge because of the suspicion that lay upon his actions, although no such power of refusal existed in reference to the Supreme Pontiff.<sup>62</sup>

Perhaps the most significant change in the Frankfurt Appellation was the absence of the libelous charge of heresy that Ludwig had leveled against John in the Nuremberg variant. The accusation that John abetted heretics by virtue of his supposed support for the misdeeds of the Friars Minor had vanished without any textual trace. Karl Zeumer believed that this reflected an increasing influence of the Minorites in Ludwig’s court, although it is now clear that there was as yet no visible Franciscan influence around Ludwig in 1324.<sup>63</sup> Alois Schütz interpreted this, as with every aspect of Ludwig’s appellations, as a decision motivated purely by legal considerations and imagined each appellation as a distinct Roman canon legal appeal deployed in the papal court. He maintained this despite Pope John’s own declaration upon excommunicating Ludwig on 23 March 1324 that neither the German ruler nor his representatives had appeared before him prior to the expiration of the deadline enacted after Ludwig’s envoys had requested, and been granted, an extension in early January.<sup>64</sup> Within this scheme, the Nuremberg Appellation, with its charge that John favored heretics, would have been an effort to remove John as judge because he had been accused of heresy. Schütz supposed that the charge against the Franciscans had been removed because Ludwig shifted strategies from attempting to force John to recuse himself as an accused heretic to arguing that John was unjustly hostile toward him and his cause and thus could not serve as an unbiased judge. He suggested that the Frankfurt Appellation was not a slightly revised version of the Nuremberg Appellation, but rather a document that, despite being almost identical to its predecessor, served an entirely different strategic direction in Ludwig’s legal defense before Pope John.<sup>65</sup> This assertion relies on the belief, however, that Ludwig could somehow have hoped against hope that Pope John would ever have considered recusing himself and submit to the judgment of a general council—moves that would have substantially undermined his power and that of the papacy irrevocably. In essence, Schütz argued that Ludwig believed that he would be able to inspire a tectonic shift in the governance of the entire church despite his inability to cite any successful precedent of this kind. This, combined with a copy of Ludwig’s appeal in the collection of the archbishop of Trier’s notary that shares features of both the Nuremberg and Frankfurt appellations, renders problematic Schütz’s idea of two distinct appeals, suggesting rather iterations of a single text deployed on multiple occasions for the same purpose of shoring up royal support.<sup>66</sup> Despite these problems, within the last decade, Diethelm Böttcher joined Schütz in interpreting the Nuremberg and Frankfurt appellations as straightforward appeals to the papal curia more or

<sup>61</sup>Ibid., 659.

<sup>62</sup>Ibid., 658–59. Concerning *non suus iudex*: Böttcher, “Johannes XXII,” 328, note 41.

<sup>63</sup>Karl Zeumer, “Zur Kritik der Appellationen Ludwigs des Baiern,” *Neues Archiv der Gesellschaft für ältere deutsche Geschichtskunde* 37 (1912): 264; Johannes Hofer, “Zur Geschichte der Appellationen König Ludwigs des Baiern,” *Historisches Jahrbuch* 38 (1917): 514–17.

<sup>64</sup>*MGConst.*, 5:695–96; Schütz, “Appellationen,” 72–73; Böttcher, “Johannes XXII,” 331.

<sup>65</sup>Schütz, “Appellationen,” 86–112, esp. 86–89.

<sup>66</sup>Edmund Ernst Stengel, ed., *Nova Alamanniae*, vol. 1, no. 130 (Berlin, 1921), 80–81.

less along the procedural lines laid out by the canonists Tancred of Bologna, Durandus, and their peers.<sup>67</sup>

Yet the appellations both contain a significant blunder if, in fact, Ludwig truly had intended to press his case within the confines of curial conceptions of Roman canon law. Both contain the phrase: “we are King and we administer the laws of the Kingdom as King and we are ruling in possession [*in possessione regendi*] of the Kingdom of the Romans.”<sup>68</sup> In Roman canon law, however, *possessio* is a matter of simple fact: that one is in actual possession of a thing. The legal title and actual right to a thing is referenced by the word *dominium*. To hold something merely *in possessione* is an inferior claim that could imply that it is not held *in dominio*.<sup>69</sup> This distinction, somewhat muddled in the wake of the fifth-century collapse of Roman authority in the West, reemerged in Bologna in the twelfth century along with the systematic study of the Roman legal tradition more generally.<sup>70</sup> Given that Ludwig’s claim to rule by right was the core issue at stake, it is not very credible that he would have made a mistake of this magnitude with regard to the legal terminology at the very heart of his defense if he had, in fact, intended to conduct his defense according to the precepts of Roman canon law, whether in actual court proceedings per Schütz or, as Böttcher believed, as an extrajudicial appeal.<sup>71</sup> If Ludwig had truly intended his appellations to be actual canonical appeals to the papacy, it is bizarre to imagine that the key issue—that Ludwig held the royal title and authority of the king of the Romans by right—would not have been expressed in the strongest and most exacting legal terminology appropriate to that setting.

The terminological distinction becomes less important, however, with the recognition that the texts deploy Roman canon law against John but defend Ludwig in terms of custom and imperial law. Not that the discourses of custom and imperial law were autochthonously distinct from Roman canon law, as the king implied when he used phrases such as “the use and custom of boundless time” but rather that Ludwig nevertheless presented these repositories of law as such to defend himself on the basis that the pope lacked jurisdiction over royal elections. It is certainly the case that the authors of the famed *Sachsen-* and *Schwabenspiegels* were familiar with important aspects of learned law as witnessed in aspects of these two highly influential German law books, such as the Gelasian doctrine of the two swords, but be that as it may, both books presented themselves as being compilations of *Kaiserrecht*—emperor’s law—that the emperors Charlemagne and Constantine, among others, had granted to the Saxons and Swabians, but that applied to all the German lands more generally.<sup>72</sup> The notion in these texts that each people had particular laws, customs, and privileges that pertained to them was one that would have been readily understood in the German lands, where this notion reflected reality to an extent and where both mirrors found a wide and interested readership.<sup>73</sup>

<sup>67</sup>Böttcher, “Johannes XXII,” 314–49.

<sup>68</sup>*MGH Const*, 5:645, 657.

<sup>69</sup>Adolf Berger, *Encyclopedic Dictionary of Roman Law* (Philadelphia, 1953), 441–42, 636–37.

<sup>70</sup>Anders Winroth, *The Making of Gratian’s Decretum* (Cambridge, 2000), 150–51.

<sup>71</sup>See notes 64 and 65.

<sup>72</sup>Heiner Lück, “Der Sachsenpiegel als Kaiserrecht. Vom universalen Geltungsanspruch eines partikularen Rechtsbuches,” in *Heiliges Römisches Reich Deutscher Nation 962 bis 1806*, eds. Matthias Puhle and Claus-Peter Hasse, vol. 2 (Dresden, 2006), 263–73; Peter Johaneck, “Schwabenspiegel,” in *Die deutsche Literatur des Mittelalters. Verfasserlexikon*, eds. Wolfgang Stammerl and Karl Langosch, vol. 8 (Berlin, 1992), 896–907. Winfried Trusen, “Die Rechtsspiegel und das Kaiserrecht,” *ZRG.GA* 102 (1985): 12–59.

<sup>73</sup>More than 350 manuscripts of the *Schwabenspiegel* survive; the count for the *Sachsenspiegel* eclipses 450: Maria Dobozy, ed., *The Saxon Mirror: A Sachsenspiegel of the Fourteenth Century* (Philadelphia, 1999), 28–31; K. Nehlsen-

The so-called *Schwabenspiegel* was not known as such until the early seventeenth century. Prior to this time, it often was simply known as *Kaiserrecht*. These law books, as Heinz Lieberich noted, served alongside the *Corpus iuris* in the German lands as important means of filling the legal gap left by the absence of an official royal or imperial publication organ.<sup>74</sup> That Ludwig sought to draw upon this wellspring of ideas in his own defense finds support from his legal clarification in the appellations concerning both the election of the king of the Romans in the abstract and his own election in particular in terms of time-honored “law and custom,” as well as his rejection of any papal right to approve the election of the king on the basis of both learned Roman canon law and “the use and custom of boundless time.”<sup>75</sup> Indeed, despite the famous meeting of the Four Roman Law Doctors of Bologna and Emperor Frederick Barbarossa at Roncaglia in 1158, Roman law only made limited inroads into the secular legal practices of the German territories before 1495.<sup>76</sup> An important instance of this was the adoption of Roman notarial practices from Italy, but even in this case, while the form was Roman in appearance, the content of notarial formularies continued to be shaped largely by local law and thus reflect not necessarily the large-scale adoption of Roman law so much as the increasing concern for contractual forms of legality as more generally conceived.<sup>77</sup>

It would not be surprising to encounter an idea of *possessio*, as it would appear in Latin translation, approximating that witnessed in German customary law books such as the *Sachsenspiegel* of the 1230s, the *Schwabenspiegel*, or even the *kleines Kaiserrecht*, propagated in Frankfurt in the 1330s.<sup>78</sup> In these works, the broad distinction is made between just and unjust possession, but not within the categories corresponding to Roman law, which has recourse to notions of abstract (*in animo*) and physical (*in corpore*) possession that play into questions of both *possessio* and *dominium*.<sup>79</sup> In Roman law, one can possess something physically (*in possessione corporale*) without having the *dominium* thereof, but one need not possess something physically (*corporaliter*) to have the *dominium* over it.<sup>80</sup> By contrast, the *Sachsenspiegel* and the *Schwabenspiegel* rely on different means of establishing a right to possession. Thus, for instance, in the *Sachsenspiegel* II.42, if two individuals both claim the same goods in fief, a matter of key distinction is whether or not either party began their claim in physical possession of the property. If one party held the land physically without contest for a year and a day, then this person could no longer lose the goods nor the right of possession. It was only when neither party began their claim with physical possession, or when one of the parties had failed to maintain possession and an uncontested claim for more than a year and a day that a case could be made in court.<sup>81</sup> The *Schwabenspiegel* II.209

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von Stryk, “Schwabenspiegel,” in *LexMA*, vol. 7 (Stuttgart, 1995), 1604; Len Scales, *The Shaping of German Identity: Authority and Crisis, 1245–1414* (Cambridge, 2012), 505–7.

<sup>74</sup>Heinz Lieberich, “Kaiser Ludwig der Baier als Gesetzgeber,” *ZRG.GA* 76 (1959): 205, note 81.

<sup>75</sup>See note 41.

<sup>76</sup>Franz Wieacker, *History of Private Law in Europe*, trans. Tony Weir (Oxford: 1995), 71–112.

<sup>77</sup>Norbert Horn, “Die legistische Literatur der Kommentatoren und der Ausbreitung des gelehrten Rechts,” in *Handbuch der Quellen und Literatur der neueren europäischen Privatrechtsgeschichte*, ed. Helmut Coing, vol. 1 (Munich, 1973), 354–55. On the “custom of law” see: Gerhard Dilcher et al., eds., *Gewohnheitsrecht und Rechtsgewohnheiten im Mittelalter* (Berlin, 1992).

<sup>78</sup>Dietlinde Munzel-Everling, “Kleines Kaiserrecht,” in *HRG*, vol. 2 (Berlin, 2011), 1881–83.

<sup>79</sup>Werner Ogris, “Gewere,” in *HRG*, vol. 2 (Aachen, 2011), 347–52, esp. 351.

<sup>80</sup>Berger, *Encyclopedic*, 636–37.

<sup>81</sup>Karl August Eckhardt, ed., *Sachsenspiegel*, vol. 1 (Göttingen, 1955), 166–67; Takeshi Ishikawa, “Die Gewere im ‘Sachsenspiegel,’” in *Festschrift für Hans Thieme*, ed. Karl Kroeschell (Sigmaringen, 1986), 59–82; Dobozy, *Saxon*, 187, 194–95; Ogris, “Gewere,” 347–52.



similarly maintained that it was the passage of a year and a day without a lawful protest that granted one the right of possession. Should someone challenge this possession, the possessor must come to court and say, “Lord, I am here, and defend my estate, as is my right.” If he did this for three years, then he need only register his right on three court days to establish it, and thereafter possession was his.<sup>82</sup>

Ludwig’s defense of his election and coronation as having occurred according to the precepts of “law and custom” preserved from “time immemorial” finds important echoes in both the *Sachsen-* and *Schwabenspiegel*. He noted in his appellations that his coronation had occurred in the accustomed place, Aachen, while ignoring that it had happened sans both the proper coronator and the real royal insignia. Neither of these two latter elements find mention in either mirror text, however, and if Ludwig’s advisors had recourse to these texts in crafting their lord’s response, they could have drawn comfort from the sympathetic reading there. That they could have easily consulted the *Schwabenspiegel* is witnessed by the survival of Munich Stadtsarchiv Zimilie 14, one of several *Schwabenspiegel* manuscripts held to this day in Munich and dated to the late thirteenth/early fourteenth century. Zimilie 14 was in use by 1317 at the latest and likely belonged to one of Munich’s municipal judges or clerks. It was the direct source of at least two laws in a collection of Munich’s laws, customs, and privileges ranging between 1298 and 1317 and might also have been the copy of the *Schwabenspiegel* that influenced the development of the first recension of Ludwig’s codification of Upper Bavarian territorial law in the 1330s.<sup>83</sup>

Traceable directly to Ludwig’s own time and sphere of influence is Johann of Buch, the first comprehensive glossator of the *Sachsenspiegel*. In addition to his Roman legal training at Bologna, he was counselor and secretary of Ludwig V, margrave of Brandenburg and Ludwig’s son. In 1336, the king would appoint Johann as chief advisor and principal official of the Mark of Brandenburg. In the years 1325–33, he undertook the task of glossing the *Sachsenspiegel* to reconcile its contents, which he wrote he believed to be real imperial privileges and hence a genuine repository of imperial custom in the German lands, with the precepts and concepts of Roman canon law, illustrating the importance that he assigned to integrating these two repositories of supposed imperial law.<sup>84</sup> Johann’s gloss received notice in Bavarian legal circles soon after its creation, for traces of this influential text appear in Ludwig’s Bavarian law code.<sup>85</sup> It is no stretch to suppose that Ludwig and his direct advisors, too, considered the two mirrors to be repositories of actual imperial law given that the most important medieval glossator of the *Sachsenspiegel*—and an Italian-trained jurist at that—also happened to be an important aid to Wittelsbach rule in Brandenburg through 1340.

Given this context, the claim of possession in Ludwig’s Nuremberg and Frankfurt appellations are not wholly separate in concept from the *Schwabenspiegel*’s requirement that one appear in court to proclaim “Lord, I am here, and defend my estate, as is my right.” In Nuremberg, as he did later in Frankfurt before a different audience, Ludwig made his

<sup>82</sup>Friedrich von Lassberg, ed., *Schwabenspiegel oder Schwäbisches Land- und Lehen-Rechtbuch* (Tübingen, 1840), 99–100.

<sup>83</sup>On Zimilie 14: Ulrich-Dieter Oppitz, *Deutsche Rechtsbücher des Mittelalters*, vol. 2, no. 1129 (Cologne: 1990), 711; Ludwig von Rockinger, “Berichte über die Untersuchung von Handschriften des sogenannten Schwabenspiegels XII,” *Sitzungsberichte der phil.-hist. Classe der kaiserlichen Akademie der Wissenschaften*. Wien 120, no. VII (1890), 64–66. On the two Spiegel and Ludwig’s code, see Wilhelm Volkert, ed., *Das Rechtsbuch Kaiser Ludwigs des Bayern von 1346* (Munich, 2010), 200–205.

<sup>84</sup>See Frank-Michael Kaufmann, ed., *Glossen zum Sachsenspiegel-Landrecht. Buch’sche Glosse*, vol. 1 (Hannover, 2002), XXVI–XXXI.

<sup>85</sup>Volkert, *Rechtsbuch*, 200–1.

statements before the public notary, witnesses, and the bishop of Regensburg, but not to create a legal appeal for a papal judge who could only find its content inimical and its pretense of appealing to the Apostolic Stool as an institution separable from the person of the pope completely unacceptable. Ludwig's appellations took the form of legal appeals, but they appealed to the small audiences before which they were read forth—in Nuremberg, this would have been the burgher Albrecht Ebner, Bishop Nicholas of Regensburg, the named witnesses, and the other unnamed clerics and laypersons of Nuremberg who were present at Ebner's house. It is true, of course, that Ebner and the unnamed others—among whom were maybe to be counted Ludwig's financiers—were by no means the king's judges in any technical sense. But they certainly were in the position to judge Ludwig and his cause in a very practical way: they were a consistent and important base of support for the itinerant king who could not simply be taken for granted in the face of a new existential threat to his title so soon after he had defeated and captured his Habsburg rival. King Ludwig had been in Nuremberg since early November and that was where he must have obtained a copy of Pope John's process against him. Once the content of the royal response had been fixed, the affair at Ebner's house must have unfolded in some haste, given the notary's repetition of the papal process's erroneous substitution of Magdeburg for Brandenburg.

King Ludwig's description of the pope as a dissimulator, defender, and patron of heretical depravity was a libelous charge aimed more broadly to damage John's honorable reputation and thereby sap the strength of his assault on Ludwig among his subjects. That Ludwig may well have been thinking in these terms is suggested in a letter that he sent to the city of Strasbourg in 1338 in which he summarized his ongoing dispute with the papal curia. Ludwig related that the pope had laid the ban upon him after he had emerged victorious over his rival for the crown and sought to exercise his powers as king of the Romans "And with that," Ludwig continued, "he sent a number of processes against us out into the world, with which he wished to rob us of our good reputation and to deprive the Empire of its honor."<sup>86</sup> It is in this letter, sent some fifteen years after the beginning of the Wittelsbacher's troubles with the papacy, that Ludwig expressed the stakes as he wished them to be understood and perhaps also as he understood them: the papal processes had not functioned primarily as legal vehicles, but rather as weapons damaging to Ludwig and the empire's honor.

Scholars have shown that references to honor in the fourteenth- and fifteenth-century empire were not mere anachronisms that papered over ruthless realpolitik, but rather that an honorable reputation retained the centrality that it had held in earlier periods throughout late medieval imperial society.<sup>87</sup> The lack of an honorable reputation had damaging repercussions for one's social acceptance and political potential, and therefore honor and reputation were by no

<sup>86</sup>Hans Witte and Georg Wolfram, eds., *Urkundenbuch der Stadt Strassburg*, vol. 5 (Strassburg, 1896), 83–84, no. 77.

<sup>87</sup>Peter Dinzelsbacher, "'strites ère' — über die Verflechtung von Ehre, Schande, Scham und Aggressivität in der mittelalterlichen Mentalität," *Mediaevistik* 28 (2015): 99–140. On Salian and Staufer honor: Ernst-Dieter Hehl, *Gregor VII. und Heinrich IV. in Canossa 1077. Paenitentia – absolutio – honor* (Wiesbaden, 2019); Knut Görich, "Ehre des Königs und Ehre des Reichs," in *Die Salier, das Reich und der Niederrhein*, ed. Tilman Struve (Köln, 2008), 303–26; Knut Görich, "Ehre als Ordnungsfaktor," in *Ordnungskonfigurationen im hohen Mittelalter*, eds. Bernd Schneidmüller and Stefan Weinfurter (Ostfildern, 2006), 59–92; Knut Görich, "Die 'Ehre des Reichs' (honor imperii). Überlegungen zu einem Forschungsproblem," in *Rittertum und höfische Kultur der Stauferzeit*, eds. Johannes Laudage and Yvonne Leiverkus (Cologne, 2006), 36–74. On late medieval honor: Konstantin Langmaier, "Dem Land Ere und Nutz, Frid und Gemach: Das Land als Ehr-, Nutz- und Friedensgemeinschaft," *Vierteljahrschrift für Sozial- und Wirtschaftsgeschichte* 103, no. 2 (2016): 178–200; Paul Töbelmann, "Dienst und Ehre: Wenn der Herzog dem Kaiser den Braten schneidet," *Zeitschrift für Historische Forschung* 37, no. 4 (2010): 561–99; Otto Brunner, *Land and Lordship: Structures of Governance in Medieval Austria*, trans. Howard Kaminsky and James Melton (Philadelphia, 1992), 11, 19, 22, 42, 54–58, 61–67; Sibylle Malamud, "Und von sölichs ir ere

means ancillary concerns at any level of society, although they were of especial concern for the imperial princes and nobility.<sup>88</sup> Assaults on reputation often unfolded in libelous letters that, not unlike Ludwig's appellations, were sent not to their targets, but rather to segments of the imperial public. In one instance, for example, the archbishop of Mainz and consecutive margraves of Meißen and counts of Thuringia were engaged in territorial disputes expressed through insult-laden letters sent to the imperial city of Frankfurt and scarcely touching upon the core dispute, focused instead on vituperative personal attacks.<sup>89</sup> This particular example of honor-depleting vitriol stems from the early fifteenth century, but concerns with honorable reputation were just as prevalent in the fourteenth century. Ludwig revealed this in his letter to Strasbourg, in correspondence with the papacy in which he stressed the importance of protecting his honor, and in the private instructions that he issued to his procurators in the 1330s and 1340s, who were sent to Avignon in repeated failed efforts to achieve the lifting of his excommunication—attempts that foundered on Ludwig's insistence that they agree to nothing that would harm his or the empire's standing and honor.<sup>90</sup>

From this perspective, the king's characterization of the papal processes as a matter of reputation and honor enables a new interpretation into his motivations in drawing up and proclaiming his appellations. He did not experience the papal processes merely as damaging legal documents per se. Rather, he had understood Pope John's accusation that he had illegitimately exercised royal authority and supported heretics as a defamatory blow against his personal reputation just as much as it was an act that threatened the laws and customs of the empire.<sup>91</sup> When considered from this perspective, Ludwig's strange, vitriolic intrusion in the Nuremberg Appellation into a matter of purely ecclesiastical doctrine can be understood as counterlibel.

But if the Nuremberg Appellation had incorporated calumny against Pope John as a key aspect of Ludwig's public rebuttal of the charges against him, then why was it subsequently absent from the Frankfurt text? The heresy charge against John had touched on a purely ecclesiastical affair in which Pope John had condemned the antimendicant writings of the Parisian Master John of Pouilly. It had its basis in the pope's decision to condemn Master John's position as heretical both because it implied limitations on the papacy's jurisdictional

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swarlich berürt.' Frauen vor dem Zürcher Ratsgericht im späten Mittelalter," *Schweizerische Gesellschaft für Wirtschafts- und Sozialgeschichte = Société suisse d'histoire économique et sociale* 13 (1995): 33–43.

<sup>88</sup>Jean-Marie Moeglin, "L'honneur des Princes du Saint Empire (XIVe–XVe siècles)," *Journal des Savants* (1992): 317–44, esp. 337–38; and Jean-Marie Moegli, "Fürstliche Ehre und verletzte Ehre der Fürsten im spätmittelalterlichen deutschen Reich," in *Verletzte Ehre. Ehrkonflikte in Gesellschaften des Mittelalters und der frühen Neuzeit*, eds. Klaus Schreiner and Gerd Schwerhoff (Cologne 1995), 77–91. On honor as social capital: Pierre Bourdieu, "Ökonomisches Kapital, kulturelles Kapital, soziales Kapital," in *Soziale Ungleichheiten*, ed. Reinhard Kreckel (Göttingen, 1983), 183–98.

<sup>89</sup>Moeglin, "L'honneur," 317–44.

<sup>90</sup>See: *MGConst.* 6.1, 649; Sigmund Riezler, *Die literarischen Widersacher der Päpste zur Zeit Ludwig des Baiers* (Leipzig: 1874), 328–9, 331; Sigmund Riezler, *Vatikanische Akten zur deutschen Geschichte in der Zeit Kaiser Ludwigs des Bayern* (Innsbruck, 1891), 592, 599; Christoph Gewold, *Defensio Ludovici IV* (Ingolstadt, 1618), 118, 120. See also Kevin Lord, "Law, Custom, and Honor in the Case of Ludwig IV of Bavaria" (Ph.D. diss., Yale University, 2019), 150–209; Alois Schütz, "Die Verhandlungen Ludwigs des Bayern mit Benedikt XII," *Zeitschrift für bayerische Landesgeschichte* 60, no. 1 (1997): 253–315; Alois Schütz, *Die Prokuratorien und Instruktionen Ludwigs des Bayern für die Kurie* (Kallmünz, 1973); Bernhard Schimmelpfennig, "Benedikt der XII. und Ludwig der Bayer," *Archiv für Kulturgeschichte* 59 (1977): 212–21; Carl Lückcrath, "Zu den Rekonziliationsverhandlungen Ludwigs des Bayern," *DA* 26 (1970): 549–55; Hermann Otto Schwöbel, *Der diplomatische Kampf zwischen Ludwig dem Bayern und der römischen Kurie* (Weimar, 1968).

<sup>91</sup>As he indeed expressed. See note 40.

authority to bestow preaching licenses as well as because of Master John's insistence that confession to, and absolution by, a friar did not release parishioners from the requirement that they confess to their parish priests. The pope's decision had not indicated especial favor for the mendicants against their secular rivals, but rather had protected his prerogatives from the damaging notion that previous occupants of the Holy See could restrict his own ability to manage the church.<sup>92</sup> The removal of this article could have been, as Johannes Hofer once guessed, due to Ludwig's ultimate reluctance to interfere in purely ecclesiastical affairs, but this has never been established.<sup>93</sup> Diethelm Böttcher has argued convincingly that the promulgation of the papal bull *Cum inter nonnullos* on 12 November fatally undermined Ludwig's efforts to join Pope John to the cause of the Franciscan brothers. This bull declared heretical the doctrine that Christ and his apostles had owned nothing, a key bone of contention between many among the Franciscans, who had maintained that Jesus and his followers had the use of goods, but did not own them, and had thus lived in "apostolic poverty"; and Pope John and his ecclesiastical allies, who maintained that this position was contrary to scripture, that Christ had owned goods, and that therefore the church was justified in its possession of worldly goods, powers, and jurisdiction. Böttcher suggested that Ludwig learned of *Cum inter nonnullos* after the drawing up of the Nuremberg Appellation on 18 December and before the repetition of this process in Frankfurt on 5 January. John's latest bull went beyond his previous interventions into Franciscan affairs when he condemned as heresy the doctrine of Christ's absolute poverty, which had hitherto been broadly accepted and even defended among the Franciscan order at its highest levels.<sup>94</sup> When Ludwig became aware that Pope John had proclaimed a bull that undermined a long-cherished tenant of the Minor Brothers, perhaps it was clear that accusing him of being a defender and protector of their supposed "heretical depravity" had passed beyond the pale of a calumny with little basis to one that simply could not be maintained in public without embarrassment.

The Frankfurt Appellation still gave full expression to the Bavarian king's spirited defense of his actions in terms of tradition and custom. The venomous heart of the accusation read out in Ebner's Nuremberg house, however, had been replaced with the less bilious accusation that the pope was suspect as judge in this case and had to recuse himself to a future general council of the church. Even in the absence of the inflammatory aspersion of heretical collusion, however, the Frankfurt Appellation's retention of the harsh language concerning John's process and Italian wars still painted him in a defamatory light. The papal process was "hateful, injurious, and untrue"; "against laws and reason"; and responsible for causing dissension and schism in the empire and weakening the integrity of the church.<sup>95</sup> In Italy, the pope had sent a legate who had dismissed Ludwig's envoys unheard and unleashed war unjustly on imperial subjects who had been declared heretical for no discernable spiritual reason, whereby he had overstepped the boundaries of his role as ecclesiastical sun vis-à-vis the imperial moon, which Ludwig related in terms of John "striving to choke" temporal power and casting the church into confusion, quarrels, and heresies.<sup>96</sup> The Frankfurt text did not lose as much of

<sup>92</sup>Thomas E. Morrissey, "John de Pouilly," in *Biographical Dictionary of Christian Theologians* (Westport, 2000), 285; Brian Tierney, *The Origins of Papal Infallibility, 1150–1350* (Leiden, 1972), 149–54.

<sup>93</sup>Hofer, "Geschichte," 498.

<sup>94</sup>Böttcher, "Johannes XXII," 323–24. On *cum inter nonnullos* see Malcolm D. Lambert, *Franciscan Poverty*, rev. ed. (St. Bonaventure, 1998), 257–62.

<sup>95</sup>See notes 40 and 46.

<sup>96</sup>See note 48.

its polemical and derogatory force against Pope John as might initially be supposed in the absence of the heresy charge.

In the event, Ludwig had his chaplain read out his appellation in Frankfurt without the problematic article on 5 January 1324, a mere two days before John's threatened ban of excommunication was to come into effect. In the meantime, however, the procurators that Ludwig had commissioned in November 1323 finally received a hearing at the curia on 4 January.<sup>97</sup> The document that the procurators presented before Pope John lacked altogether the performative rhetoric of Ludwig's appellations, instead consisting of a straightforward and humble request for a six-month extension of the deadline so that Ludwig might prepare a suitable defense. John responded on 7 January, emphasizing his claim that he had the right to examine and approve the German king, once again accusing Ludwig of supporting heretics and of illegally administering the empire. He responded to the procurators' request for a six-month extension by giving Ludwig an additional two months before the threatened excommunication would take effect.<sup>98</sup>

Alongside this response, John republished his demands in the form of a second process, explaining that he did not want Ludwig or anyone else to be able to pretend that they had not received the process or were unaware of it. An account from Trent suggests how bishops were expected to react to the reception of John's process. The process was read in both Latin and the vernacular before the assembled clergy and representatives of the mendicant orders.<sup>99</sup> A notice from the subvicar of a church in the region explains that the laity were summoned to church by the pealing of the bells to hear the process read aloud in the vernacular and explained to them.<sup>100</sup>

In the absence of submission from King Ludwig as the new deadline came and went in March, Pope John solemnly condemned the Bavarian ruler on 23 March, declaring him contumacious and reiterating the existence of the sentence of excommunication that now lay upon him. John demanded that the bishops support his measures under the threat of suspension and promised Ludwig's secular followers that they too would be excommunicated and their realms would fall under papal interdict if they failed to withdraw their support. He further released all Ludwig's subjects from their oaths, nullifying all agreements and alliances that bound them to him. He offered Ludwig a further three months to submit himself to the Apostolic Stool for approval and to withdraw his aid for the heretical Visconti, lest he incur further penalties. The new danger that this third process posed for Ludwig was that, alongside its charge that Ludwig had exercised royal authority without papal approval, now there appeared the novel accusation that Ludwig's very election had been illegitimate because it had taken place in disputed circumstances.<sup>101</sup>

Against the pope's excommunication, Ludwig issued the Sachsenhausen Appellation in May 1324 through much of Germany, imperial Italy, and beyond. This lengthier document would come back to haunt the king, for in it Ludwig reversed course once again by accusing John of heresy for denying the absolute poverty of Christ and his apostles, the Franciscan position that had enjoyed an ambiguous orthodoxy until John's ascension to the Holy See. The pope and his successors, however, succeeded in quashing the Franciscan position and enforcing John's as orthodox, tying the king to a now-heretical opinion. Ludwig only worsened his

<sup>97</sup>*MGConst.*, 5:652–53.

<sup>98</sup>*Ibid.*, 653–55.

<sup>99</sup>*Ibid.*, 669–72.

<sup>100</sup>*Ibid.*, 672–73.

<sup>101</sup>*Ibid.*, 692–99.

situation when he was crowned Holy Roman emperor in Rome without papal approval in 1328 and subsequently moved to protect ecclesiastical rebels, such as the Franciscan William of Occam and the legal theorist Marsilius of Padua. Ludwig outlived both John and his successor, Benedict XII, but without attaining reconciliation with the church because of his refusal to accept any outcome that resulted in the loss of his and the empire's honor.<sup>102</sup> Benefitting from the aegis of piety afforded by open support from the prince-electors Archbishop Henry III of Mainz, who had gained his seat in 1336 in the face of opposition both from the papacy and within the empire thanks to Ludwig's support, Ludwig orchestrated increasingly impressive assemblies of the imperial estates in the late 1330s and early 1340s to marshal support for the sake of the empire, if not as successfully for his own.<sup>103</sup> Indeed, when the prince-electors produced their famed declaration at Rhens in 1338 with its explicit repudiation of any papal approbational right, the electors acted not necessarily for Ludwig's sake—he is not mentioned in the text—but rather to protect their own prerogatives and to preserve the empire against a papacy whose motives vis-à-vis the empire and its independence of action remained suspect at best. Ludwig, for his part, promulgated the mandate *Fidem Catholicam* and the law *Licet iuris* in the same year.<sup>104</sup> In *Fidem*, he made much the same case as the prince-electors in the Declaration of Rhens, but developed an explicit argument on his own behalf and against the lawfulness of Pope John's processes, relying now not on the hastily contrived framework that his Nuremberg and Frankfurt appellations had represented, but rather on a panoply of learned legal arguments that developed and furthered the pro-Ludovician arguments made in these texts. *Licet iuris*, meanwhile, asserted that the one elected king of the Romans was to be adjudged true and legitimate emperor after his election, owed obedience by all subject to the empire. *Licet iuris*, however, was to have no future, for it would not be until the reign of Maximilian I of Habsburg (r. 1486–1519) that the elected king of the Romans would correspondingly become elected emperor and this on entirely other grounds; while the position concerning the royal election assumed in the Declaration of Rhens and *Fidem Catholicam*—and indeed, in the Nuremberg and Frankfurt appellations—would only attain a kind of lasting legacy when they were recast in the Golden Bull into a mold that skirted controversy by avoiding any mention of the pope at all amidst an entirely different zeitgeist.

For in 1346, Pope Clement VI (r. 1342–52) tired of fruitless negotiations with the Wittelsbach ruler and orchestrated the election of an anti-king, Charles IV of Luxemburg, son of John of Bohemia, whereupon Ludwig shortly settled the matter in Charles's favor when he died suddenly in 1347, still dogged by the sentence of excommunication and heresy that hung over much of his reign. Nevertheless, Ludwig had never bowed to papal demands and, in pursuit of his own rights, ended up inadvertently at the vanguard of a larger movement that would ultimately succeed in definitively removing the papacy from imperial politics with the issuance of Charles IV's Golden Bull of 1356. In the immediate aftermath of the sudden papal fusillade of October 1323, the Nuremberg and Frankfurt appellations had served Ludwig's purposes. Against the papal process, the Wittelsbach ruler had his own rhetorical cudgel with which he could hammer home the simple message that he had acted lawfully whereas John was a wicked heretic. These texts were propaganda, it is true, but they did not merely seek to promote Ludwig's political cause, for both John's processes and

<sup>102</sup>See note 90.

<sup>103</sup>Kaufhold, *Gladius*, 210–47; Edmund Ernst Stengel, *Avignon und Rhens. Forschungen zur Geschichte des Kampfes um das Recht am Reich in der ersten Hälfte des 14. Jahrhunderts* (Weimar, 1930), 85–184.

<sup>104</sup>See note 7.

Ludwig's appellations represented a series of legally constitutive ideas with a fairly casual relationship to actual legal precedent. Pope John wished to increase the authority of the papacy over the affairs of the empire, over the German prince-electors, and over the person of the king and emperor. Ludwig, meanwhile, ensured that his appellatory responses dripped with official character in their drawing up and promulgation and their outward conformity to ecclesiastical legal norms. He issued them before audiences that were small, to be sure, but formed of important supporters in crucial imperial cities. He appeared in his official capacity as king of the Romans, the importance of which is suggested from a chronicle that, despite its pro-Ludovician position, opined the year 1346 was an inglorious one for the Wittelsbacher, "for he did not hold court, nor display himself as king anywhere."<sup>105</sup> Appearing before his supporters as the legitimate king of the Romans, he engaged in the straightforward, open character assassination of John, on the one hand, while pressing an argument that he had operated entirely according to the dictates of customary law, on the other. Ludwig could scarcely have imagined that decades of conflict lay ahead when he hastily issued his appellations in Nuremberg and Frankfurt before small audiences of his subjects, but it was nevertheless his undaunted appearance as king of the Romans in these two imperial cities that led to his success in securing the support of these key royal constituencies and emboldened him to pursue further antipapal proclamations at Sachsenhausen and beyond.

King Ludwig had aimed to protect his own standing rather than engaging in a principled defense of the rights of the empire. Nevertheless, the creative legal concepts that he grounded in custom and tradition in his Nuremberg and Frankfurt appellations found their way with relatively few changes into his Sachsenhausen Appellation, the prince-electors' repudiation of papal influence on royal elections in 1338 at Rhens, and the Golden Bull. For almost a century Charles IV and his two sons would rule over an empire riven by the Black Death, warfare, the papal schism, and religious turmoil, but the constitutional framework codified in the Golden Bull enshrined a sociopolitical order that helped to ensure the resilience of the Holy Roman Empire for centuries to follow.<sup>106</sup> The principles concerning the royal election that Ludwig IV had first publicly championed helped to ensure electorally based dynastic transitions from the Luxemburg King Wenceslaus (r. 1376–1400) to the Wittelsbach Count Palatine Rupert († 1410) in 1400 and then back again to the Luxemburger Jobst of Moravia (†1411) in 1410. They provided a framework ensuring the successful transition from Jobst's brother, Sigismund of Luxemburg (r. 1411–37) to Albert II of Habsburg († 1439) in 1438 and to Albert's cousin, Frederick III of Habsburg († 1493), in 1440. Frederick and his son, Maximilian, cemented Habsburg possession of the empire such that only a single non-Habsburg held imperial power between 1437 and 1806. Charles VII, the second and last Wittelsbach emperor, received the throne in 1742 in opposition to Maria Theresa of Habsburg. Charles undoubtedly placed much of his hope for victory against the Habsburgs in his military alliance with France and Spain, but he also leaned heavily upon imperial tradition with his unanimous election by the prince-electors; subsequent coronation, attended by some fifty counts and princes; and the revival of attendance in the imperial

<sup>105</sup>Georg Leidinger, ed., *Bayerische Chroniken des 14. Jahrhunderts* (Hannover, 1918), 137; Scales, *Shaping*, 80.

<sup>106</sup>Barbara Stollberg-Rilinger, *The Holy Roman Empire: A Short History*, trans. Yair Mintzker (Princeton, 2018), esp. 140–46; Barbara Stollberg-Rilinger, *The Emperor's Old Clothes: Constitutional History and the Symbolic Language of the Holy Roman Empire*, trans. Thomas Dunlap (New York, 2015); Joachim Whaley, *Germany and the Holy Roman Empire*, vol. 1 (Oxford, 2012), 301, 351, 369, 444, 471, 643; Peter Moraw, *Von offener Verfassung zu gestalteter Verdichtung* (Berlin, 1985).

Reichstag.<sup>107</sup> This speaks not only to the importance with which the prince-electors continued to imbue their now-venerable right of election but also the extent to which the election could continue to convey legitimacy even in light of the long and nigh-hereditary Habsburg possession of the throne. Wittelsbach hopes foundered when Charles died in 1745, ceding the field to Maria Theresa of Habsburg and her husband, soon to be crowned Emperor Francis I. The constitutional framework of the royal election that had emerged out of Ludwig IV's desperate bid to retain his power some four centuries prior nevertheless would continue to remain a salient political idea in the Holy Roman Empire until its dissolution by the last Habsburg emperor in 1806.

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<sup>107</sup>Peter H. Wilson, *Heart of Europe: A History of the Holy Roman Empire* (Cambridge, 2016), 477.