

Quæstiones Canonicae De Prælatorum Ecclesiasticorum electione, institutione, & potestate. Ex Lib. I. Decretalium Disputatae (*Canonical Questions on the Election, Institution, and Power of Ecclesiastical Prelates. From Book I of the Disputed Decretals*)

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CHAPTER XII. ON THE ELECTION OF THE SUPREME PONTIFF.

Latin

QUAESTIO CXXI. *Ad quos pertinet jus eligendi summum Ecclesiae Pastorem?*
Resp. I. Ad Romanae Ecclesiae a Cardinales: Et quidem conformiter primae institutioni Ecclesiarum. Nam electio Praelati ad Clerum, seu Clericorum Collegium b spectat: Cardinales autem pars praecipua sunt Cleri Romani: Ergo merito ad ipsos Romani Pontificis, qui & S. Petri c Principis Apostolorum successor est, electio spectat.

Olim vero etiam populi testimonium, ac postulatio, seu nominatio d petebatur. Quare mirum non est, quod etiam Imperatoris Legati interfuerint; non tantum ut cum reliquo populo boni Pontificis electionem a Clero impetrarent, sed etiam ut violentias, & scandala quae oriri possent, sua auctoritate e impedirent.

Id porro jus a f Justiniano, Mauritio,

English

QUESTION CXXI. *To whom does the right of electing the supreme Pastor of the Church belong?*
Response I. To the Cardinals of the Roman Church: And indeed, this conforms to the first institution of the Churches. For the election of a Prelate belongs to the Clergy, or the College of Clerics: The Cardinals, moreover, are the principal part of the Roman Clergy. Therefore, justly to them belongs the election of the Roman Pontiff, who is also the successor of St. Peter, Prince of the Apostles.

In former times, the testimony of the people, and their petition or nomination was also sought. Therefore, it is not surprising that the Emperor's Legates were also present; not only that they might, along with the rest of the people, seek from the Clergy the election of a good Pontiff, but also that they might by their authority prevent violence and scandals which could arise.

This right, furthermore, was wrongfully usurped by

aliisque Imperatoribus male usurpatum fuit, ut non liceret electum Roman. Pontificem inthronizare, nisi prius approbatio, & confirmatio Imperatoris accederet, quae res interdum schismatis occasionem praebeuit.

Quamobrem Nicolaus IV. Adrianus II. & alii Pontifices, etiam consentientibus Imperatoribus abusum illum g sustulerunt, & Pontificis electionem Clero liberam fecerunt: quandoquidem etiam olim, ante Justiniani tempora, liberam Clericis Roman. Pontificem eligendi potestatem fuisse, neque Imperat. aut Reges auctoritatem suam interposuisse, erudite ostendit Rom. Eccles. defensor h contra Henrici IV. Advocatum, in Concilio congregato in Osborio Germaniae loco contra Cadalous Pseudopapam.

CXXII. *Quae forma in electione Sum. Pontificis observanda est?* Resp. De ea decretum esse ab Alexan. III. in Concil. Lateran. generali a can.I. Et iterum a Greg.X. in Concil. b generali Lugdun. c.2. Denique a Greg.XV. Pont. in cujus statuti observationem c plerique Cardinales jurarunt.

CXXIII. *Potestne electio Sum. Pontificis aliquo casu oppugnari, aut rescindi?* Resp. I. Non potest oppugnari per objectionem a excommunicationis; aut censurae cuiuscunque ab electoribus & contratae. Resp. II Certi casus sunt, in quibus electio Rom. Pontificis ipso jure irrita est, atque ut talis declarari potest : Primus. Si electus in notoria haeresi & fuerit. Si enim accidat Papam manifestum haereticum fieri, coram Concilio & accusari potest, ut depomatur: sicut amnis jus Deum nuncupat permissum, piè credatur. Ergo multò magis, si accidat, manifestum haereticum eligi, talis electio impugnari potest, & quae irrita declarari. Quia secundum jus divinum, haereticus non est Ecclesiae membrum: consequenter non potest esse verum Ecclesiae caput. Secundus. Si electus in Pontificem ob alium defectum inhabilis sit, jure divino, aut naturali: ut si fit infans, amens, aut

Justinian, Mauritius, and other Emperors, such that it was not permitted to enthrone the elected Roman Pontiff unless the approval and confirmation of the Emperor was first obtained, which at times provided occasions for schism.

For this reason, Nicholas IV, Adrian II, and other Pontiffs, even with the consent of the Emperors, removed that abuse, and made the election of the Pontiff free for the Clergy: since even in ancient times, before the era of Justinian, the Roman Clerics had the free power of electing the Roman Pontiff, and neither Emperors nor Kings interposed their authority, as the defender of the Roman Church eruditely demonstrated against the Advocate of Henry IV, in the Council assembled in Osborne, a place in Germany, against Cadalous the Antipope.

CXXII. *What form must be observed in the election of the Supreme Pontiff?* Response: Concerning this matter, a decree was issued by Alexander III in the First Canon of the General Lateran Council. And again by Gregory X in the Second Canon of the General Council of Lyons. Finally, by Pope Gregory XV, to whose statute many Cardinals have sworn observance.

CXXIII. *Can the election of the Supreme Pontiff in any case be contested or rescinded?* Response I. It cannot be contested through an objection of excommunication or any censure incurred by the electors. Response II. There are certain cases in which the election of the Roman Pontiff is null and void by the law itself, and as such can be declared: First. If the one elected was in notorious heresy. For if it happens that a Pope becomes a manifest heretic, he can be accused before a Council to be deposed, as all law calls this permissible, as is piously believed. Therefore, all the more, if it happens that a manifest heretic is elected, such an election can be contested and declared null. Because according to divine law, a heretic is not a member of the Church; consequently, he cannot be the true head of the Church. Second. If the one elected to the Pontificate is ineligible due to another defect, by divine or natural law: as if he were an infant, insane, or a woman. Third. If the legitimately elected Pontiff is simoniacle, the

mulier : Tertius. Si Pontifex legitime electus fit, oppugnari potest electio tamquam ipso jure irrita. Quartus. Si electio Pontificis facta sit per metum gravem, & injustum, irrita censeatur & debet. Non licet tamen Cardinalibus ad aliam electionem procedere, nisi prius, convocato Concilio generali, de nullitate electionis cognoscatur, & requiem in electis ipsemet renuinet. Quod in hoc sacre teneretur, si electionem per talem metum peractam fuisse fiar: quandoquidem ea secundum substantiam irrita est; alioquin ab Ecclesia rescindi numquam posset. Sed aliae Praelatorum electiones, quamvis metu gravi, & injuste extortae fint, videntur consideresecundum substantiam; cum metus voluntarium, absolutè loquendo, non tollat: ideoque electio, si alioquin idoneus est, & illae injuriae non particeps, in casu sensu status erit, donec superioris autoritate rescindatur. Idque propterea, quod nullus sacer canon, quo aliae electiones per metum gravem, & injustum factae ipso facto irritae declarentur; sicuti de elect. Romani Pontificis habetur. Quintus. Si perhibetur, quod si eligentes deficiunt non habuerint jus eligendi, quia non sunt Cardinales Ecclesiae Romanae. Tunc enim destruitur fundamentum elect. legitimae, [constituatur, eum nullus suffragans] ab Cardin. nam, qui ad Pont. elect. secundum canones requiritur: dummodo defectus occultus non fuerit.

CXXIV. *Si metus gravis & injusti incussus sit non ad certam personam eligendam, sed indeterminatè unam ex duobus, an electio certo pontifice postulata electionem praetendat? & Resp. affirmativè:* Cum enim talis electio substantialiter consistat, neque jure canonico innata rependatur, requiem, eam ab Ecclesia rescindi numquam posse: sicuti aliae electiones ob hanc causam judicis officio rescisderentur. Sed alia ratio est matrimonium; ubi si aliquis metu gravi merst adigantur ad accipiendam uxorem, unam ex duabus Caji, aut aliam quamcunque: Si nequam, eo metu durante

election can be contested as null and void by the law itself. Fourth. If the election of the Pontiff was conducted under grave and unjust fear, it must be considered invalid. However, the Cardinals are not permitted to proceed to another election unless, after convening a General Council, the nullity of the election is determined, and the elected person himself renounces. This sacred principle must be upheld in this case, if it becomes clear that the election was carried out under such fear: since it is null according to its substance; otherwise, it could never be rescinded by the Church. But other elections of Prelates, although extorted by grave and unjust fear, seem to be valid according to their substance, since fear does not remove the voluntary nature of an act, absolutely speaking; and therefore the election, if the person is otherwise suitable and not a participant in that injustice, will be valid in this case until it is rescinded by superior authority. This is because there is no sacred canon by which other elections conducted under grave and unjust fear are declared invalid ipso facto, as is stated concerning the election of the Roman Pontiff. Fifth. If it is alleged that the electors did not have the right to elect because they are not Cardinals of the Roman Church. For then the foundation of legitimate election is destroyed, [it is established that no vote] from the Cardinals is valid, which according to the canons is required for the election of the Pontiff—provided that the defect was not hidden.

CXXIV. *If grave and unjust fear is inflicted not to elect a specific person, but indeterminately one of two persons, does the election demanded of a certain pontiff establish a valid election? And I respond affirmatively:* Since such an election is substantially valid, and is not found to be invalidated by canon law, it follows that it can never be rescinded by the Church: just as other elections would be rescinded on this account by the office of a judge. But the reasoning is different for matrimony; where if someone through grave fear is compelled to accept a wife, either one of Caius's two daughters or any other woman: If during the continuation of that fear someone is induced to contract marriage, when

quanquam caudam, inducatur ad contrahendum, alioquin non contracturus, irritus est contractus, canonici juris dispositione, justa quidem ex matrimonium cum libertate plenum contrahi debet, ob multa mala, & infelices exitus, qui ex coacto matrimonio sequi solent: & quia matrimonium est perpetuum vinculum minui in se dissolvi posse debet. Quare idem eadem eatione dicendum de Religionis & professione, irrita fore, si quis gravi, & injusto metu, ad profitendum in hac, vel indeterminatè ad profitendum in aliqua Religione.

CXXV. *Cùm Sum. Pontifex legibus Ecclesiasticis, quamvis pœnales, aut irritantes sunt, non obligatur, qua ratione consistit ergo, ut metu gravi v. e. ordinationem, aut matrimonium gravem metum celebrata, irrita sit?* Resp. Ea ratione: Quia licèt Papa, aut concilium generale tales leges imponere non possint Romanoequentis Pontificibus, qui verè & legitimè electi sunt, quia par in parem non habet & imperium; possunt tamen electionem eorum confirmare per quam verus, & legitimus Pontifex constitui debeat.

CXXVI. *Si Sum. Pontificis electio aliquem defectum vitiorum possit, sequiturne inde, incertum esse, num Ecclesia verum Pontificem, ac Pastorem habeat?* Resp. Nequaquam. Vel enim defectus coram Ecclesia manifestus est, vel occultus. Si primum, nullum subesse potest periculum; quia Ecclesia talem Pontificem non acceptabit. Sin autem secundum, quia ponimus v.g. haereticum occultum ad Pontif. sium assumi, licet is caput Ecclesiae non fit, propter publicam ignorationem Deus (qui in necessariis non deest) supplebit defectum, & omnia ejus acta & decreta perinde a valida, & obligatoria sint, ac si verus Pontifex esset; neque permittet Deus, ut haeresin suam Ecclesiae ex Cathedra proponat. Veruntamen valde probabile est divina providentia caveri, ne unquam haereticus, aut simili substantiali occulto defectu

otherwise they would not have contracted it, the contract is null by the disposition of canon law, justly indeed since matrimony ought to be contracted with full liberty, on account of the many evils and unhappy outcomes which usually follow from a coerced marriage: and because matrimony is a perpetual bond which ought never in itself to be dissolved. Therefore, by the same reasoning, the same must be said concerning religious profession, that it would be null if someone through grave and unjust fear is compelled to profess in this or indeterminately in some religious order.

CXXV. *Since the Supreme Pontiff is not bound by ecclesiastical laws, even when they are penal or invalidating, on what basis then does it hold that an ordination or marriage celebrated under grave fear is invalid?* Answer: For this reason: Although neither the Pope nor a general council can impose such laws on future Roman Pontiffs who are truly and legitimately elected, because an equal has no authority over an equal; they can, nevertheless, confirm the requirements for an election through which a true and legitimate Pontiff must be constituted.

CXXVI. *If the election of a Supreme Pontiff might contain some defect or flaw, does it follow from this that it is uncertain whether the Church has a true Pontiff and Pastor?* Answer: By no means. For either the defect is manifest to the Church, or it is hidden. If the former, there can be no danger, because the Church will not accept such a Pontiff. If, however, the latter—because we suppose, for example, that a secret heretic is elevated to the pontificate—although he is not truly the head of the Church, due to public ignorance, God (who does not fail in necessities) will supply the defect, and all his acts and decrees will be as valid and binding as if he were the true Pontiff; nor will God permit him to propose his heresy to the Church ex Cathedra. Nevertheless, it is highly probable that divine providence prevents anyone who is a heretic or who labors under a similar substantial but hidden defect from ever being elected as Pontiff.

laborans in Pontificem eligatur.

CXXVII. *Si congregato Concilio generali Papa illud Romae declaretur, an Cardinales, absque novo Concilio alium legitime eligere?* Resp. Etiam in hoc casu electionem ad Cardinales pertinere. Cum enim lex eligendi necessitas a Pontificibus A. approbante generali Concilio, eo lata, & confirmata sit, absque causa necessitatis auferri eis non potest. Necessitas autem pro eo vice & auferri Cardinalibus non potest; id expediri postestate esse posset, si v. g. ad schisma tollendum, cui plerique Cardinales faverent, expediens esset, electionem Pontificis a Concilio generali fieri.

CXXIIX. *Quomam in Romanum Pontificem, ac universale Ecclesiae pastorem eligi possit, ac debet?* Resp. I. Aliquis ex corpore Ecclesiae Romanae, seu Collegio Cardinalium eligi & debet, id idoneus adsit. Resp. II. Si alius quicumque Christianus, clericus, vel laicus eligatur in Sum. Pontificem, valida est electio: Quia ob nullam personae inhabilitatem & de jure positivo provenientem, infirmari potest, nisi talis infirmitas expressa in jure habeatur.

CXXIX. *Cum electio Episcopi confirmationem desideret, quis Romanum Pontificem confirmat?* Resp. In eo convenit electio Papae cum alterius Episcopi electione, quod Superiorem non habeat, qui consensum, sed personam nominet, ac deputent, cui Episcopalis jurisdictio, ac potestas obdatur. Discrimen vero est: quod alii electi Episcopi dignitatem in terris habeant, a quo per confirmationem accipiant potestatem: Sed papae ex vi promissionis, atque institutionis a Christo & resurrectionis quasi benedictionis, firmitas in Ecclesiae jurisdictio a confertur: Ut recte Innocentius III. B dixerit: *Potestas nostra non est ex homine, sed ex Deo.* Nihilominus confirmatio obtinet, ut Romanus Pontificus post electionem consecratur, & coronetur. Et antequam id per actum est, in Bullis non se absolute Pontificem appellat: sed dictum

CXXVII. *If, when a General Council is convened, the Pope is declared [deposed] in Rome, can the Cardinals, without a new Council, legitimately elect another?* Response: Even in this case, the election belongs to the Cardinals. For since the law of election was enacted and confirmed by the Pontiffs with the approval of the General Council, it cannot be taken away from them without necessary cause. Moreover, the necessity [of election] cannot be taken away from the Cardinals on that occasion; this could only be arranged if, for example, to remove a schism which many Cardinals might favor, it would be expedient for the election of the Pontiff to be conducted by a General Council.

CXXIIX. *Who can and should be elected as Roman Pontiff and universal pastor of the Church?* Response I: Someone from the body of the Roman Church, or the College of Cardinals, ought to be elected if a suitable candidate is available. Response II: If any other Christian, cleric or layman, is elected as Supreme Pontiff, the election is valid: Because it cannot be invalidated due to any personal ineligibility arising from positive law, unless such invalidation is expressly contained in the law.

CXXIX. *Since the election of a Bishop requires confirmation, who confirms the Roman Pontiff?* I respond. The election of the Pope agrees with the election of another Bishop in this respect, that he has no Superior who might give consent, but rather [electors] nominate and appoint the person to whom Episcopal jurisdiction and power is granted. However, the difference is: that other elected Bishops have a dignity on earth from which they receive power through confirmation; But to the pope, by virtue of promise and institution from Christ and by resurrection as if by blessing, firmness in the Church's jurisdiction is conferred: As Innocent III rightly stated: *Our power is not from man, but from God.* Nevertheless, confirmation is maintained so that the Roman Pontiff after election is consecrated and crowned. And before this is accomplished, in his Bulls he does not call himself Pontiff absolutely, but the said Bishop. Nor does he call that time before his coronation his Apostolate, but rather the office of the

Episcopum. Neque id tempus, quod ante coronationem est, Apostolatus sui vocat, e sed suscepti Apostolatus officii.

CXXX. *Numquid summus Pontifex, qui electus est, legitime, aut etiam consecratus, & coronatus est, Papatui renuntiare potest?* Pro parte negativa esse videtur: Quod renuntiatio dignitatis, aut Praelaturae in manu superioris e fieri debet: Papa autem superiorem in terris non habet. Sin autem dicamus, q. Deus ejus renuntiationem acceptet; talis acceptatio interna evidetur, cum nullo signo cognoscatur. Resp. Quod Papa ob justam causam, maxime si se insufficientem agnosceret ad regendam Ecclesiam universalem, Papatui renuntiare possit, definitum est a Celestino V. Pontifice. Ad Argumentum dicitur, regulam illam, quod renuntiatio in manu superioris fieri debeat, de iis sumtaxat accipiendum esse, qui superiorem habent. Quemadmodum, inquit e. Joan. Monachus, regulam habemus, quod nemo in propria causa judex e esse possit: Etiam tamen Princeps, seu qui superiorem nullum habet, in propria causa e judicare potest. Porro, fi Pontifici se abdicet Pontificatu, necesse dicere debemus, quod Deus abdicationem acceptet, feu a Pontifice illo potestatem tollat: Nam alioquin consequens esset, ut Ecclesia longo tempore a nullo Pastore visibili gubernaretur, si uno fe abdicante, alius in locum ejus cum simili universali potestate substitui non posset. At vero repugnat Christi promissionibus Ecclesiae factis, Atque haec ratio ostendit, validam fore renuntiationem Papatus, tametsi sine justa causa fiat. Cum enim Ecclesia Pontifice cogere non possit, ad retinendum Pontificatum, sed tantum monere, ac rogare, si iis, posthabitis monitionibus, officium pastorale reipsa ac voluntate deferat, non erit Ecclesiam provisum, nisi alius in locum ejus eligatur. Gravissime tamen peccabit Papa f, si absque necessitatis causa Papatui renuntiet; cum inter ipsum, & Ecclesiam universalem arctissimum vinculum a Deo ipsi

Apostolate he has undertaken.

CXXX. *Can the Supreme Pontiff, who has been legitimately elected, or even consecrated and crowned, renounce the Papacy?* For the negative position, it seems: That the renunciation of dignity or Prelature must be made into the hands of a superior; however, the Pope has no superior on earth. But if we say that God accepts his renunciation, such acceptance appears internal, since it is not known by any sign. I respond: That the Pope, for a just cause, especially if he recognizes himself as insufficient to govern the universal Church, can renounce the Papacy, as was defined by Pope Celestine V. To the argument, it is said that the rule stating that renunciation must be made into the hands of a superior is to be understood only concerning those who have a superior. Just as, says Johannes Monachus, we have a rule that no one can be a judge in his own case; nevertheless, a Prince, or one who has no superior, can judge in his own case. Furthermore, if a Pontiff abdicates the Pontificate, we must necessarily say that God accepts the abdication, or removes the power from that Pontiff. For otherwise, the consequence would be that the Church would be governed by no visible Pastor for a long time, if when one abdicates, another could not be substituted in his place with similar universal power. But this contradicts Christ's promises made to the Church. And this reasoning shows that a renunciation of the Papacy would be valid, even if done without just cause. For since the Church cannot compel the Pontiff to retain the Pontificate, but can only admonish and entreat him, if he, disregarding these admonitions, actually and willingly abandons the pastoral office, the Church will not be provided for unless another is elected in his place. Nevertheless, the Pope will sin most gravely if he renounces the Papacy without a cause of necessity, since between him and the universal Church there exists a most binding bond imposed by God Himself.

impositum existat.