

Ius Decretalium: ad usum praelectionum in scholis textus canonici sive iuris decretalium, Tomus II Pars Secunda (*The Law of the Decretals: For Use in Lectures on the Canonical Text or Decretal Law, Volume 2 Part 2*)

by Fr. Francisco Xavier Wernz S.J., 1915

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- OCR of the original text by AI (*claude-3-7-sonnet-20250219*).
- Translation of the original text performed by AI (*claude-3-7-sonnet-20250219*).
- Last Edit: April 3, 2025.
- Version: 1.0
- Selection pages: 355–358

Section II, Caput I, Titulus XXX, n. 616

616. Scholion. Schism is rightfully equated to the crime of heresy. Cf. *Tanner*, On Hope and Charity, q. 6, doubt 2.

617. Besides heresy, there exists no crime for which the Roman Pontiff either loses his jurisdiction *ipso facto* or *can be deposed* through judicial sentence. Cf. *Suarez*, On Faith, disp. 10, sect. 6, n. 14ff. Indeed, a true and undoubted Pope would lose his jurisdiction *ipso facto* for another crime either by positive divine ordinance or from the nature of the matter itself. Such a positive divine ordinance does not exist at all, and from the nature of the matter, pontifical jurisdiction is not removed except in the case of heresy. For even the most wicked Pope, on account of other offenses, always remains a *member* of the body of the Church.

However, for the true and undoubted Pope to be *deposed* through a judicial sentence, it would absolutely require an authority that could issue a judicial sentence against him with discernment of cause and with true coercive power. But the Roman Pontiff, by virtue of his primacy, cannot be judged by any human authority, but by God alone¹. This reasoning, derived from the nature of the primacy, is supported by the tradition and practice of the

¹ {org. 181} Ch. 13. X. de iudic. ll. 1.; ch. 6. X. de elect. l. 6.; *Bellarmino*, On the Authority of Councils, ch. 17, 18, 19; *Fagnani* on ch. 6. X. de elect. n. 21.; *Phillips* loc. cit. vol. I. § 31.; *Kober* loc. cit. p. 549 sq.; *Saegmueller* loc. cit. p. 144, sq. 233.; *Bouix*, On the Pope, vol. II. p. 623 sq. 629 sq.

Church². For the entire tradition has constantly held to this principle: “*The First See is judged by no one*,” as is evident from the cases of Symmachus and Paschal II. Furthermore, the right over the Pope has been constantly denied by the Church to General Councils or the College of Cardinals or Emperors, about whom alone a question might arise. See, for example, the case of Eugene IV. The Roman Pontiffs themselves have never willingly submitted themselves to a *truly coercive judgment*, but only to a judgment of *discernment*. See the cases of Damasus, Symmachus, and Leo III. Nor is there parity between the *election* and the *deposition* of the Roman Pontiff. In the former, the designation of the Roman Pontiff certainly occurs through the ministry of men; but it does not follow therefrom that the Pontiff can also be deposed by men. For through election one *becomes* Roman Pontiff; through deposition, authority would be exercised that is absolutely not granted over him who actually *is* the Roman Pontiff. Therefore, the deposition of even an iniquitous Pope can neither be done licitly nor validly. The just means against an iniquitous Pope, according to Suárez, *Defense of the Catholic Faith*, Book IV, Chapter 6, numbers 17-18, are more abundant help of God’s grace, special guardianship of the guardian angel, universal prayer of the Church, secret or even public admonition or fraternal correction, just defense, whether his violence be physical or moral.

618. Scholion. The ancient authors widely accepted the axiom: *A doubtful Pope is no Pope at all* and applied it to resolve the difficulties arising from the Great Western Schism³.

Indeed, this axiom admits various interpretations. For a Pope can be understood as doubtful not in a negative sense, but *positively* doubtful, i.e., after a diligent examination of the *facts*, competent men in the Catholic Church declare: “*It is not established that this Roman Pontiff’s canonical election is valid*.” Moreover, the phrase “*no Pope*” is not necessarily understood to refer to a Pope who until now was *certainly* and undoubtedly received by the *universal* Church, about whose election so many difficulties are subsequently raised that he becomes a *doubtful Pope*, who for this reason *loses* the pontifical power *already obtained*. Such an understanding of the axiom concerning “*no Pope*” seems to be reprehensible, since the *entire* Church cannot completely fall away from a Roman Pontiff *legitimately* elected, due to the unity promised by Christ to His

² {org. 182} If *Hinschius*, in the cited work vol. I, p. 296 ff., argues against Catholics such as *Kober* in the cited work that at least according to ancient law the deposition of *legitimate* Roman Pontiffs was not condemned (for regarding the *current* discipline and the deposition of *intruders* and *usurpers*, who were *never* Roman Pontiffs, there is no controversy), he manifestly confuses *facts* and *usurpations* with *rights*, the *proper* right of deposing princes with the *secular arm* required by the Church, and judgment *properly* so called with the judgment of *discretion*.

³ {org. 183} Several authors have rightfully contradicted this application made by *Bellarmino*, *Suarez*, and others, including *Ballerini*, *Phillips*, *Bauer*, *Cardinal Hergenroether*, and *Cardinal Franzelin* in *De Ecclesia*, p. 233 ff. See also *Bouix*, *De Papa* vol. II, p. 673 ff.; *Billot* in the cited work, p. 134 ff.

Church. However, the other part of the axiom can have this meaning: that a Roman Pontiff, whose canonical election is not established, and concerning whom, after careful examination, *positive* and solid *doubts* exist, has *never acquired*⁴ from Christ the Lord *papal jurisdiction* at all. Therefore, Bishops gathered in a general Council, if they call such a doubtful case for examination, do not judge a *true* Pope, as he is *lacking* pontifical jurisdiction. If this axiom is understood in this latter sense, it seems to contain an entirely sound doctrine. This is primarily derived from the *nature of jurisdiction*. For jurisdiction is essentially a *relationship between a Superior*, who has the *right* to obedience, and a *subject*, who has the *duty* to obey; therefore when one term ceases, the other necessarily ceases, as is evident from the nature of a relationship. If, therefore, a Pope is truly and permanently *doubtful*, the *duty* of obedience exists in no subject. For the law: *Obedience is owed to the legitimately elected successor of St. Peter*, does not oblige if it is *doubtful*; furthermore, it is plainly doubtful if it is *doubtfully promulgated*. For laws are established when they are promulgated, and without sufficient promulgation they lack a constitutive part or an *essential* condition. But if the *fact* of the legitimate *election* of the successor of St. Peter is *doubtfully* proven, the *promulgation* is *doubtful*; therefore that law is objectively and partially not properly constituted and exists as truly doubtful and imposes no obligation. Indeed, it would be rash to obey such a man who has not proven the title of his right. Nor can one appeal to the principle of *possession*; for we are dealing with a Roman Pontiff who is *not yet* in peaceful *possession*. Consequently, in such a man there exists no right to command, i.e., he lacks *papal jurisdiction*.

Furthermore, the same is proven from the *visibility* of the Church. For the visibility of the Church consists in this: that it shines forth with such objective signs and criteria that, with moral diligence applied, it can be recognized and discerned especially in its legitimate authorities. But in the supposed case, the Pope cannot be found after diligent examination. Therefore, it is rightly concluded that such a doubtful Pope is not a proportionate head for the visible Church instituted by Christ. Nor is this doubtful Pope less repugnant to the *unity* of the Church, which is greatly obstructed by a body perfectly separated from its head. For a doubtful Pope has no right to command, and thus in the

⁴ {org. 184} *Card. Franzelin* loc. cit. p. 232, n. 4 in fine; *Camarda* loc. cit. p. 253 sq. 256 sq., where he treats of legitimate exceptions against an elected Roman Pontiff and rightly notes that against a Pope who is elected *and received by the whole Church* no exception is admitted. This *consensus* of the Church *is not an election nor by its own power does it make one who is not elected into one who is elected*, because one canonically elected by the Cardinals prior to the acceptance of the Church is the legitimate Pope. Cf. *Franzelin* loc. cit. p. 234. Therefore that acceptance by the Church is not the *cause*, but the *sign and infallible effect of a valid election*. Conversely, if *the whole Church* abandons an elected Pope, e.g., Peter de Luna or Benedict XIII, *it is a certain sign* that he was never a legitimate Pope. Cf. *Card. Hergenröther-Kirsch* loc. cit. t. II. p. 867 sq.; *Bonix* loc. cit. p. 684 sq.; *Billot* loc. cit. p. 144 sq.

faithful there is no obligation to obey; therefore, the head would be perfectly separated from the rest of the body of the Church. Cf. *Suarez*, On Faith, disp. 10, sect. 6, n. 4, 19.