

Jus Ecclesiasticum Universum Brevi Methodo ad Discentium Utilitatem Explicatum seu Lucubrationes Canonicae in Quinque Libros Decretalium Gregorii IX Pontificis Maximi (*The Entire Body of Ecclesiastical Law Explained by a Brief Method for the Benefit of Learners, or Canonical Dissertations on the Five Books of the Decretals of Pope Gregory IX*)

by Hanz Schmalzgrueber (Hans Schmalzgrueber), 1845

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Title VI, Section X

Certain Questions Regarding the Election of the Supreme Pontiff.

SUMMARY

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91. The first question is whether the Supreme Pontiff can appoint his successor to the Apostolic See. In support of the affirmative position, *canon si Petrus* 1 is cited, along with the related *canon unde* 2, *causa* 8, *quaestio* 1, where it is clearly asserted that St. Clement was appointed by Blessed Peter as head of the universal Church when his martyrdom was imminent. However, the truthfulness of these canons might reasonably appear doubtful, since we read that the immediate successor of St. Peter was Linus, then Cletus, and only then Clement. If you should say that St. Clement was indeed appointed by Peter as his substitute, but out of humility renounced the dignity, and thus Linus was subsequently elected, I would not object, but would say with the common opinion that this substitution

was made by St. Peter through divine inspiration and direction, and therefore his action should not be drawn into establishing a precedent. Therefore, with Suárez (*Disputatio* 20, *de fide*, section 5, number 16) and the more common opinion of the Doctors, I readily concede that in some extraordinary case, where the predecessor foresaw that the needs of the Church could not otherwise be addressed, he could appoint a successor for himself, as seems to be gathered from *canon transitus* 10, *distinctio* 79. I deny, however, that this can be done by ordinary power.

The reason is: 1. Because the Pope and bishop, by reason of spiritual marriage, relates to his church as a husband to his wife; yet the latter cannot appoint another to succeed him in marriage, even after his death; therefore, etc. 2. A disposition, although made during a suitable time, if it is deferred to an unsuitable time, has no legal effect: such is the substitution of a new pontiff made by his predecessor; for it is deferred to the time of death, when the Pope no longer exists. 3. This kind of substitution, if it could be ordinarily done by the Pope, would change the state of the universal Church, and would introduce hereditary transmission of the pontificate, which, however, the Church has always regarded as extremely pernicious to spiritual governance.

92. Question 2: With whom does the power of electing the pontiff rest? Response: Formerly it was with the entire clergy, as Cyprian attests in *Book 4, Epistle 2*. Later, on repeated occasions, emperors claimed this power for themselves, whether by right or injustice, I shall not debate. Indeed, a privilege is cited as having been granted by Hadrian to Charlemagne, as Gratian records in *Canon Hadrianus 22, Distinction 63*. But this canon, as I noted in *number 6, at 4*, seems fictitious to many, or if such a privilege was truly granted, it should be understood not that the constitution of the Supreme Pontiff depended on the emperor's discretion, but that the election celebrated by the clergy was presented to him, and his consent was required, so that the election would be more secure.

In modern times, the cardinals elect the pontiff, to whom Nicholas II granted the right of electing the pope, as stated in *can. in nomine 1. v. quapropter dist. 23*. However, not to them alone; because the approval of the clergy and the people was added to their election. This power was first granted to the cardinals alone in the Lateran Council, as found in *c. licet 6. h. tit.* where it was decreed that if complete agreement could not be reached among them concerning the appointment of the Supreme Pontiff, then he who was elected and received by two-thirds of them would be considered, without any exception, the legitimate successor of St. Peter.

93. The third question asks: what is the form for electing a pontiff? Response: He can be elected either through inspiration, or through compromise, or—which is the most common method—through scrutiny [voting]. If the election is conducted by compromise, there is this difference between the election of a pontiff and other elections: in the latter, one of those nominated by another among the compromisers may add his vote to that person's and thus complete his own election, as was stated in *number 59*. However, this is not permitted when a pontiff is to be elected through the method of compromise, according to

the *Constitution* of Gregory XV beginning with *Aeterni* §. 205, where a vote cast for oneself, whether in compromise or in scrutiny, is invalidated. Nevertheless, the election itself is not thereby invalidated, provided that, apart from this self-given vote, two-thirds of the remaining votes consent to the elected person. Hence, in a case where the votes collected for one person exceed two-thirds, the ballot of the elected person is not opened nor examined to see whether he has given himself a vote, as Cardinal de Luca notes in *Relationes Curiae Romanae*, discourse 3, number 20.

94. The fourth question asks: how many votes must one elected to the pontificate have for the election to be valid? I respond: He must have two-thirds, as is evident from *chapter "Ubi periculum" 3 of this title in the Liber Sextus, Clementine 2 in the same place*, and from numerous other *constitutions issued by Clement VII, Paul IV, Pius IV, Gregory XV, and Urban VIII*. This requirement is fitting because the matter at hand in a papal election is of the gravest importance, since through the election, once accepted by him, the elect becomes, without confirmation from any other person, the true successor of Peter and Vicar of Christ, against whom no exception can be raised.

A doubt arises as to whether Cardinals present in conclave can unanimously agree that an election conducted by scrutiny should be valid if only a majority of voters consented to it? It seems one should answer affirmatively: for they can commit the power of electing to the majority of the college, as is indisputably established in *chapter "Cum dilectus" 32 of this title*. Therefore, they can also consent that he upon whom the majority has conferred their votes be considered elected, for this would be the same as if he had been elected by all.

But the negative position must be maintained due to the clear decision in *the aforementioned Gregorian constitution*, where an election of a pontiff by scrutiny conducted otherwise than with a two-thirds majority is explicitly nullified. This regulation, being public law introduced for the benefit of the entire Church, cannot be renounced by private agreements among the Cardinals.

To address the reason for doubt: in the text cited there, the discussion concerns compromise [election by delegation], from which an argument cannot be drawn regarding scrutiny [direct voting].

95. The fifth question: in the case where two-thirds of the Cardinal electors do not consent to one candidate, can they complete the required number through accession? I respond that they can, such that it is not necessary to begin a new scrutiny, as is necessary in other elections. This is inferred from *chapter "Licet" 6 under this title*, where it states "*unless a greater agreement has intervened,*" and Abbas [Panormitanus] notes this in the same place, *number 8*, along with others.

This accession is permitted even to the infirm, even if they are prevented by illness from coming to the chapel where the election is celebrated; for just as they do not lose their right of suffrage on this account, so they are not prohibited from acceding.

Therefore, so that they too may be able to use this right, a sheet is brought to each of them by the Cardinal scrutineers, on which are noted the names of the Cardinals and the number of votes cast for each one, together with another ballot prepared for the accession, and a small box, into which the infirm and those absent from the place of scrutiny may cast their votes, and through such a vote declare whether and to whom they wish to accede.

This accession, however, is not permitted more than once in any scrutiny, as Father Wiest correctly notes in this place, *number 558*, along with others.

96. The sixth question: Whether the cardinals can compromise on three [cardinals], for example, in such a form that these [compromisers] are bound to elect as Supreme Pontiff the one on whom the majority of the cardinals present in the conclave have agreed? I respond with a distinction: either this compromise is made in such a form and condition that the compromisers are bound to elect the one on whom the majority has agreed, with votes cast for him through the form of scrutiny, or the one on whom they have freely agreed, without observing the form of scrutiny.

If the first case applies, the compromise and the election that follows from it are invalid; because it is an election by compromise mixed with scrutiny, which to be valid in the election of a pontiff, according to *the Constitution of Gregory cited in §. 19.*, requires that the election be conducted by secret votes, and that two-thirds of the cardinals have agreed on the elect.

If the second case applies, the compromise and the election so celebrated are valid. The reason is that it is valid in other elections, as stated in *chapter "in causis" 30 and chapter "cum dilectus" 32 of this title*. In a compromise by which a pontiff is elected, nothing new is prescribed: therefore it will also be valid in the election of a pontiff.

97. Question 7: Who can be elected as Supreme Pontiff? It seems that no one except a Cardinal can be elected, for 1. this appears to be decreed in *canon "In nomine" 1, distinction 23*, where it states: "*Let him be elected from the bosom of that (Roman) Church itself, if one suitable is found.*" 2. Similar provisions are contained in *canon "Oportebat" 3 and the following canon, distinction 79*, where it is expressly established that "*no one from among the laity, nor from any other order, shall presume to be promoted to the honor of the sacred pontificate, unless he has ascended through the distinct grades and has been made a deacon or a cardinal priest.*" 3. This is confirmed by the continuous practice of three centuries, during which time the pontiff has been chosen only from among the College of Cardinals.

But it must be said that anyone who is a Catholic faithful can be elected as pope, even a layman and a married man, provided he possesses those qualities which are required for the dignity by divine and natural law. Thus Barbosa (*Juris Ecclesiastici, Book 1, chapter 1, numbers 77 and following*) along with the common opinion of the Doctors, and this appears to have been decided in *chapter "Licet" 6 of this title*, where it is established that, *without any exception, he who has been elected and received by two concordant parts*

shall be considered the Roman Pontiff by the universal Church: therefore, the objection cannot be raised against one so elected that he is not from the college of Cardinals or not a cleric. *This is confirmed* because many times men who were not previously Cardinals have been called to the supreme pontificate: thus, as Barbosa *in the cited passage* notes, Eugene III was created pontiff from being a simple abbot, Gregory X from being an archdeacon, and Celestine V was called from his hermitage when he was not even in holy orders.

I said *even a layman*, which is gathered from the ceremonial of the Roman Church, where the form for ordaining one who has been elevated to the pontificate from the lay state is provided. I added *and a married man*, understand this to mean if his wife consents; otherwise, she could recall him.

Nor do the opposing arguments stand in the way. *To the 1st and 2nd*, the ancient law alleged there has been derogated by more recent law, *in the cited chapter "Licet."* *To the 3rd*, I oppose to that observance the observance brought forward in the *confirmation*.

98. Question 8: Does one who has accepted his election as pontiff by the cardinals immediately become the true pontiff? Response: A distinction must be made between whether he was legitimately elected or not.

In the first case, he immediately possesses full administration [of papal powers], conferred on him directly by God, as established in canon "*In nomine*" 1, verse "*electus tamen*" distinction 23, even if he has not yet been consecrated; for consecration only enables him to exercise those functions which pertain to [holy] orders. The reason for this response is that the pope does not require confirmation; for confirmation of an election must be done by a superior, but the pope has no superior on earth. His acceptance is necessary, however, so that the spiritual marriage which exists between himself and the church may be ratified. Furthermore, this spiritual marriage is finally consummated through consecration and coronation, before which he indeed calls himself bishop in papal bulls, yet not absolutely, but with the addition of the word "*elect*"; moreover, the time between both [consecration and coronation] and the election, he calls not simply "*of his apostolate*" but "*of the apostolic office assumed*," as Laymann observes with the gloss in chapter "*Licet*" 6, number 7.

If it is the second case, the election by the Cardinals, having been invalid, can confer no right upon the one elected. Hence, the acceptance of the universal Church must be awaited, which, if it should follow, will heal the defect of an invalid election made by the Cardinals, if only a condition required by human law is lacking, such that he becomes a true pontiff. I said *a condition required by human law*; for the Church cannot heal the defect of a condition required by divine law. Since indeed, according to the common opinion of theologians, it is credible by divine faith that any Supreme Pontiff, after he has been accepted as such by the universal Church, is the true Vicar of Christ and successor of Blessed Peter, there will be no danger that the Church would consent to a pontiff who has a defect in a condition required by divine law. But theologians treat this more extensively elsewhere.

99. Question 9: Can the election of the Supreme Pontiff be challenged? It is certain that an election, even one celebrated with the consent of all, can be challenged if the one elected suffers from a defect which renders him ineligible by natural or divine law, e.g., if he is an infant, insane, a woman, a heretic, or not yet baptized. The reason is that, as I said in the *previous number*, the Church cannot remove these impediments by its consent, nor supply for the defect.

The doubt is whether a defect in a condition that renders the election invalid by human law alone can be objected to it? The reason for doubting is that whatever penalties, nullities, and ineligibilities cannot bind the pontiff, since he is superior to all ecclesiastical law: therefore, etc.

But one must respond with a distinction: either the elected person is opposed only for defects of birth, holy orders, clerical status, etc., which do not impede the substance and freedom of the election, or, on the contrary, defects are objected which destroy the substance and freedom of the election, e.g., that it was extorted by grave fear, that it was simoniacal, that it was celebrated with the votes of fewer than two-thirds, or by those who notoriously lack the power to elect.

If the first case applies, those raising objections or opposing are not heard, according to the *cited chapter "Licet"* which states "*without any exception.*" *If the second case applies*, the objection is admitted, as is clearly stated in Canon "*Si quis pecunia*," question 79, and in the Constitution of Julius II beginning "*Cum tam divino*," issued in the Lateran Council, Session 5.

To the reason for doubting, it is denied that one elected with such a defect is a true pontiff, since the election is invalid by the law itself: therefore, nothing prevents the laws from binding one so elected; for even though they bind, they do not bind a [true] pontiff.

100. Question 10: If the pope was elected invalidly for whatever reason, and the cardinals become aware of this, can they proceed to a new election of another while the elected person is unwilling? Response: If the one elected were to conduct himself as pope and refuse to renounce the election, the judgment of a general council pronouncing the nullity of the election would have to be awaited before the cardinals could proceed to a new election, as the Doctors commonly infer from the *Council of Constance*, Session 39, where concerning the case in which an election is extorted by fear, it is expressly stated.

After a sentence has been pronounced by a council concerning the nullity of an election, the election of a new pontiff ought to be carried out by the cardinals alone, as Laymann notes with others in chapter "*Licet*," *cited*, number 5. And he gives the reason: because since that power of electing has been given to the cardinals by the Supreme Pontiffs with the approval of general councils, it cannot be taken away from them without a cause of necessity.

However, as Laymann in the *cited location* adds, a necessity for taking away this power from the cardinals on a particular occasion would exist if, for example, to eliminate a

schism which most of them might favor, it would be expedient for the election to be carried out by a general council. And thus Pope Martin V was elected by the Council of Constance, as Azor reports in *Part 2, Book 4, Chapter 2, Question 13*.