

Jus Canonicum in V. Libros Decretalium (*Canon Law in Five Books of Decretals*)

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Book 1, Title 6, Section 9 - ON THE ELECTION OF THE SUPREME PONTIFF.

§. I. Concerning those to whom the power of electing the Roman Pontiff belongs.

419. Question I. To whom belongs the right of electing the supreme Pastor of the Universal Church? It is answered that this right belongs to the Cardinals of the Roman Church, as is established in chapter “Licet” 6 under this title, and chapter “Ubi” 3 under the same title in the sixth book [of the Decretals]. For since the election of a Prelate, according to the original institution of Churches, belongs to the Clergy, or the College of Clerics, as in chapter 1 under this title, and since Cardinals are the principal part of the Roman Clergy, who represent, as it were, the Chapter of the Roman Church, therefore the election of the Roman Pontiff, who is himself the Successor of St. Peter, Prince of the Apostles, rightly belongs to them, as Laymann notes in chapter “Licet” 6, n. 1 under this title. Although formerly the Roman Pontiff was elected by the Clergy, with the people nominating and requesting whomever they wished as Pontiff, who was afterward approved and confirmed by the Emperor, as is gathered from the decree of Nicholas II in the Council of Carthage, which is referenced in chapter “In nomine” 1, distinction 23—a right which several Emperors usurped for themselves against the Canons and illegitimately, as Azor relates in part 2, book 4, chapter 2, question 2. However, this abuse was later abrogated by other Pontiffs, even with the consent of the Emperors, and the free election of the Holy Pontiff was left and restored to the Clergy, as can be seen in chapter “Cum Hadrianus” 29, and chapter “Ego Ludovicus” 30, and other following chapters in distinction 63.

420. Moreover, a Cardinal created by the Pope, even if he has not yet received the red hat and other Cardinal insignia, which according to the custom of the Roman Curia are usually

given to Cardinals, has the right of suffrage in the election of the Pontiff. This is because as soon as he is nominated and created by the Pope, he obtains all power to administer the Church, even if he has not yet taken possession; just as an Abbot, even if not yet blessed, has full jurisdiction and can use Pontifical Insignia, as Azor states in the cited chapter 2, question 7. Furthermore, although in other elections, a Canon, for example, who is justly impeded can commit his vote to another, as in chapter “Si quis” 46, on this title in the sixth [book of the Decretals], nevertheless in the election of the Pontiff, a Cardinal who is absent for a just cause, or withdrawing, cannot delegate his vote to another Cardinal. This is because such authority has not been granted to Cardinals by law, as Francesco notes in chapter “Ubi periculum” 3, § “Sanè”, number 2, on this title in the sixth [book]; Azor in the cited chapter 2, question 9. It should also be noted here that the Cardinals who elect the Pope do not confer upon him the papal power and jurisdiction, which they themselves do not possess, and therefore cannot give to another: rather, they merely nominate, designate, and elect the Pope. To him who has been nominated and elected by them, Christ immediately confers the pontifical power, which He promised He would give, by the very fact that He established Peter as His Vicar on earth, and likewise all Peter’s legitimate Successors. For this reason, the Cardinals cannot remove from him whom they have elected as Pontiff the power received from Christ, as Azor states in the cited location, question 14.

421. Question 2: If a General Council is convened and declares that a Pope was illegitimately elected by the Cardinals, and consequently is removed from the office of the Pontificate, does the election of another Pontiff then belong to the General Council? It is answered that it is more probable that, even in this case, the power of electing belongs to the Cardinals alone, as Azor teaches in the cited chapter 2, question 13, because this power of electing was granted to the Cardinals in chapter “Licet” 6 under this title by the authority of the Roman Pontiff, with the approval of the Lateran General Council. Therefore, this right cannot be taken away from them by the authority of the Council alone, unless the consent of the Roman Pontiff is also obtained. However, an exception must be made when there exists a grave necessity for removing the power of electing the Pope from the Cardinals, e.g., if for removing a schism which most of the Cardinals might favor, or for some other grave cause they would be suspect; then, for the common good of the Church, the election of the Pontiff, for that occasion, ought to be carried out by the General Council. Indeed, the power of electing has not been granted to the Cardinals in a limited way only for the case of death or renunciation of the Pope himself, as the contrary opinion supposes, but absolutely and without restriction, even if the Pontifical See becomes vacant for another reason, except when urgent necessity or just cause demands otherwise.

422. Question 3. To whom would the election of the Pope belong, if perchance all the Cardinals were dead, for example, carried off by plague? It is answered that it would belong either to the Roman Clergy, as Hostiensis holds in c. Licet 6. V. Inter caetera de elect. and Abbas in the same place n. 11. This is both because it would be difficult to convoke all the Bishops of the Christian world or a General Council; and because it belongs to the clergy to elect their Bishop, and the Pope is the Bishop of the City of Rome.

Indeed, his election in this case would belong to the Roman Clergy, or the Canons of the Lateran Church, because in this Church the Pontiff formerly had his Cathedral and Seat, and in it even today he receives and takes possession of his Pontificate. Or rather, in this case, the right of electing the Pope would devolve to a General Council, as Decius thinks in the cited c. Licet num. ult., because the Supreme Pontiff is not only the Bishop of the City of Rome, but also the pastor and Head of the whole Church, and therefore his election would pertain to the whole Church, especially since schisms would arise if the Roman Clergy alone elected the Roman Pontiff. However, since it would be difficult to convene a General Council, and there would be danger in delay, then it would belong to the Roman Clergy, or the Lateran Chapter; Azor cit. c. 2. q. 11. But if only two of the Cardinals were survivors, with all the others dead, then one would be able to elect the other as Pope, provided that the elected is suitable and consents to his elevation. If, however, only one were to survive, then he alone would have the power of electing, yet he could not elect himself; although he could, not in his own name but in the name of the whole College, whose rights can remain in a single person, according to what was said above, commit the power of electing to another. And then that person, as a compromissary, could also elect him as Pope, provided all fraud and ambition are absent, Abbas in the cited c. Licet, at the end, Decius in the same place at the end. But about this, one can deservedly doubt, because it could result in too grave a prejudice to the whole Church to commit the election of its supreme pastor to a single person.

423. The fourth question asks: What jurisdiction and power does the College of Cardinals possess when the Apostolic See is vacant? It is answered that the College does not exercise the Pope's jurisdiction, nor does it succeed to the exercise thereof, as stated in the Clementine [Constitution] "Ne Romani" 2, at the beginning, under this title, and as taught by the gloss commonly accepted in chapter 1, at the word "Sede vacante" concerning Schismatics, in the 6th [book of Decretals], except insofar as is granted to it by Canon Law in chapter "Ubi periculum" 3, § "Iidem quoque" under this title, in the 6th [book], where it is decreed that the Cardinals should devote themselves to expediting the provision, or election, and should by no means involve themselves in any other business, unless perhaps a necessity so urgent should arise that it would be necessary for them to make provision for defending the land of the Church itself, or part thereof; or if some danger so great and evident should threaten that it would seem to all and each of the Cardinals present, in concord (that is, unanimously, with no one dissenting), that it must be swiftly addressed (the business of election being meanwhile suspended). For example, if someone should intrude himself into the Apostolic See by money or other illicit means, without canonical election, he could be repelled by the Cardinals, Bishops, and other Clerics, according to chapter "Si quis" 9, distinction 79. Thus also the Cardinals can, for the purpose of removing or settling a schism, convoke a General Council. Likewise, if someone were elected by two-thirds of the Cardinals and were far distant from the City [of Rome], the Cardinals could expedite certain matters of business until the new Pope would ratify the election, lest the Church suffer harm, [as stated by] Azor, part 2, book 4, chapter 3, question 1.

424. From this it is inferred that the College of Cardinals, during a vacant See, cannot create Cardinals, nor confer the red hat or other Cardinal insignia upon those created by the deceased Pope, nor send Legates outside the Curia, nor recall those who have been sent, unless necessity urges, for these and other matters are reserved to the Pontiff, as Azor [states] in chapter 1. Much less can the same College issue Constitutions and laws, or correct, change, or abrogate those established by the Holy Pontiffs, or add anything to them, or remove anything from them, especially concerning those matters which deal with the election of the future Pontiff, as is statutorily established in Clement's [Constitution] "Ne Romani" 2, at the beginning of this title, where Clement V in the Council of Vienne condemns and repudiates, with the counsel of his Brother Cardinals, the opinion which asserts that the Constitution of Pope Gregory X concerning the election of the Roman Pontiff issued in the Council of Lyons (which is referenced in chapter "Ubi periculum" 3, this title, in the sixth [book of Decretals]) can be modified, corrected, or changed by the College of Cardinals of the Roman Church during its vacancy, or that anything can be subtracted from it or added to it, or that any dispensation can be made in it or in any part of it, or that the College of Cardinals can renounce it, as not consonant with truth, because the law of a Superior cannot be removed by an inferior: which is what the Cardinals are in comparison to the Holy Pontiff. [Clement] declares null and void whatever power or jurisdiction pertaining to the Roman Pontiff while he lives the Cardinals might exercise during the vacancy of the same Church, except insofar as is permitted to them in the aforementioned Constitution. The reason why the College of Cardinals is denied the exercise of jurisdiction pertaining to the Pope during a vacant See, while the College of Canons, when an Episcopal See is vacant, can exercise those matters which belong to Episcopal jurisdiction, is so that the Cardinals might more swiftly elect the Roman Pontiff; for many other and most grave damages and evils could befall the Church from delay and prolonged postponement of this election, as noted in the cited gloss in chapter 1, word "Sede vacante" at the end of "De Schismaticis" in Book 6, and by Azor in the cited chapter 3, question 1. This is confirmed because the Vicariate of the universal Church was given by Christ to Peter alone and his Successors, and it does not transfer to another during a vacant Papal See. Therefore, when the Pope dies or abdicates, the flock of the faithful is not without a Shepherd, nor is the Church without a Spouse, because Christ is the Spouse, Ruler, and Shepherd who is the Head of the Church, which is His Body, and He is the Shepherd of the Church, which is His Body, as noted in the gloss on the cited Clementine 2, at the word "non consonam," and by Abbas [Panormitanus] *ibid.* n. 7, where at n. 8 he adds that the Vicariate does not transfer to a General Council when the Apostolic See is vacant, and consequently the Council cannot exercise the power pertaining to the Pope. Nor does it stand as an objection if someone were to say: Cardinals can do what is greater, namely create a Pontiff, therefore they can also do what is lesser, namely create a Cardinal. For the consequence is denied, because even though the Chapter of a Cathedral Church elects a Bishop, it nevertheless cannot confer benefices during a vacant See which pertain to the collation of the Bishop alone, as in chapter unique, §. "Cum vero," *Ne Sede vacante*, etc. in the *Liber Sextus*, and the gloss on the cited Clementine 2 under this title, at the word "Potestatis." Nor is this true when that which is greater and that which is lesser

are of different natures and reasons, and one is not subordinated to the other, as Azor [Johannes Azor] states in the cited location.

425. Furthermore, in the cited Clementine [Constitution] 2, §. “And yet it is provided” under this title, it is permitted to the Cardinals, “that if, during the vacancy of the See of the Roman Church, the Camerlengo (to whom it pertains to distribute temporal goods to the poor, and who exercises jurisdiction over all debtors of the Apostolic Chamber, as noted in the gloss here under the word ‘Camerarium’) or the Major Penitentiary (who is customarily a Cardinal, and during the time of enclosure in the Conclave cannot exercise his office by himself, although he could personally if he were outside the enclosure, as noted in the gloss here under the word ‘majorem’) or any other of the minor Penitentiaries (whose office does not expire with the death of the Pontiff) should happen to die, or if in any other way he should be incapacitated (as if he should fall into an infirmity that impedes the execution of his office, or depart, or be unwilling to exercise his office, as noted in the gloss here under the word ‘quovis modo’), the same College may, for as long as the vacancy of the See continues, substitute others in place of the deceased or otherwise incapacitated, in greater number (with respect to the Penitentiaries, but not regarding the Camerlengo), if it should seem expedient to the same assembly of Cardinals in concordant agreement. And this is established so that the office of the Penitentiaries, during the vacancy of the See, might be exercised in matters of the internal forum, to avoid danger to souls, but regarding the external forum, such as in matrimonial dispensations and other matters concerning the Curia, whether mixed or consequential, even their office is suspended: just as all other offices in the City of Rome, besides those excepted here, are suspended until the election of a new Pontiff, [as noted by] Barbosa in his *Collectanea* on the cited Clementine 2, numbers 12 and 13. To these add that the aforementioned Constitution Clementine 2 only prohibits the Cardinals from exercising jurisdiction during the vacancy in those matters which pertain to the jurisdiction of the Pope alone, not however in those matters which pertain to the College of Cardinals without the Pope, for these, even during the vacancy of the See, can be exercised by them, as [noted in the] gloss here under the word ‘pertinentis’, and [by] Abbas [Panormitanus] number 10.

426. Question: Are Cardinals obliged to elect a Roman Pontiff from among their own body, or from the College? The answer is affirmative, if a suitable candidate is present, as established in canon 1, distinction 23, where it states: “Let one be elected from the very bosom of the (Roman) Church itself, if a suitable candidate is found, or, if one is not found therein, let one be chosen from elsewhere.” The same is more expressly stated in canon *Oportebat* 3 and the following canon, distinction 79. However, if in fact someone who is not a Cardinal—whether a cleric or a layman—were elected Pope by two-thirds of the Cardinals, even if a suitable candidate from their body were present, the election would be valid. This is not because a Cardinal ought not to be elected, but because no impediment arising from positive law can be objected against the person elected by two-thirds of the Cardinals that would invalidate the election itself, unless such invalidation is expressly stated in Canon Law, as established in canon *Licet* 6 under this title. [See] Azor, part 2, book 4, chapter 5, question 6. However, an agreement made among Cardinals not to elect anyone outside the College of Cardinals, even if no suitable candidate is found among

them, would not be valid, [according to] Franciscus on canon 3, § *Praeterea*, number 5 under this title, following Johannes Andreae in the same place.

§ II. On the power that the Pope has to establish provisions concerning the election of a future Pontiff, or to appoint his own Successor, and on the form of this election.

427. Question 1. Can the Pope establish a Constitution concerning the form and manner of electing a future Roman Pontiff? The answer is affirmative, as is evident from chapter “Si quis Papa” 2, distinction 79, and chapter 1, distinction 23, and chapter “Licet” 6, this title, at the beginning, where Pope Alexander III states that many statutes were issued by his predecessors to avoid discord in the election of the Roman Pontiff, and he himself issued a new Constitution concerning that election, with the approval of the Lateran Council, to avoid the evil of schism or division, which the Church has often suffered through improper ambition. The reason is that to Peter and his Successors was handed down by Christ the power of binding whatever on earth, Matthew 16, namely through statutes and precepts, among other things; therefore he can also make a Constitution concerning the election of his Successor to prevent future scandals, as [noted by] Abbate [likely referring to Nicolaus de Tudeschis, also known as Abbas Panormitanus] in the cited chapter “Licet,” number 2. It does not obstruct the argument, first, that the Pope cannot name or elect his own Successor, as stated by the gloss in chapter Apostolica 7, § His omnibus, at the word “Beatus,” cause 8, question 1, and other Doctors commonly hold; therefore, neither can he make a Constitution concerning the form and manner to be observed in electing the Roman Pontiff after his death. However, the reasoning is different; because when a Successor is elected, the effectual election refers to a time when he will no longer be Pope, and consequently such an election is invalid due to lack of authority, according to the argument in law Eum qui 13 from the Digest, title de iurisdictione, of which more later. But a Constitution which the Pope makes while he is still alive, concerning the election of his Successor, is admitted because through it provision is made for future scandals, and in a case where no one except himself can make such provision. It is indeed lawful to establish a law to avoid future evils, as Abbas notes in chapter 1. Second objection does not stand. That the tract of future time does not pertain to a judge; [as in] law 1, §. “Nec tamen” from the Digest, title “De usuris” [on usury]. Therefore, the Pope cannot make a statute concerning a future cause. In truth, as to this matter, there is one thing regarding the sentence of a Judge, and another regarding a statute: for a Judge cannot pass sentence on future cases if the obligation has not arisen in the present; e.g., an Ecclesiastical Judge cannot actually pronounce a sentence of excommunication against someone for a future offense. However, a Judge or Magistrate can indeed make a statute to prevent future evils, e.g.: “we decree that no one shall do this, and whoever does so shall be excommunicated ipso facto,” because a sentence vindicates the present and binds him against whom it is issued; but not so with a future decree or Constitution, [as noted by] Felinus in chapter “cum” with the gloss in chapter “Romana” §. V. “futuris” at the end of the section on sentences of excommunication in Book 6. [And by] Abbas in the cited [text] “Licet,” number 9.

428. Question 2: Can the Roman Pontiff substitute or elect a Successor for himself in the Papacy? It is answered that it seems to be prohibited not only by Canon Law, but also by natural law, that the Pope, by his own authority, may elect or nominate a successor for himself, as taught by Azor in part 2, book 4, chapter 3, and other doctors commonly cited in Fagnani in chapter “Accepimus,” paragraph “de pactis,” numbers 29 and following. That this is prohibited by Canon Law is gathered from chapter “Apostolica” 7, paragraph “His omnibus,” along with the gloss on the word “Beatus,” causa 8, question 1, where the reason is given: because this would change the state of the Church, which the Pope cannot do, chapter “Quae ad perpetuam” 3, causa 25, question 1. That this also runs contrary to natural law is proven from the fact that such an election of a Successor made by the Pope would result in grave damage to the Church; for if the election of a future Pontiff were at the free discretion of the living Pope, it could happen that often, not on account of probity of life and morals, but from an inordinate affection toward nephews and blood relatives, Successors to the Papacy might be elected, even if they were not suitable and worthy; from which many serious inconveniences and evils would follow for the whole Church of God. Azor, cited location. The first text in chapter “Si transitus” 10, distinction 79, does not stand in the way, where it is said that the Pope can decide about his successor before his passing. For as the gloss responds there under the term “non possit” [cannot do]; it is one thing to deliberate with the Cardinals about the election of his successor, which is permitted there and can be done; and it is another thing to establish someone as the heir of his dignity, which is entirely prohibited in chapter “Episcopo” 3 and the following chapter, cause 8, question 1, and is not permitted even to the Pope. Nor does the precedent of Peter selecting St. Clement as his successor stand in the way, as is mentioned in chapter 1, cause 8, question 1. For this should not be drawn into consequence, as Peter was one in whose shadow the sick were healed, and he was moved to this by divine inspiration, as noted in the gloss on the cited chapter “Si transitus” under the term “non possit,” and by Torquemada there, number 1. Additionally, that substitution did not take effect, for Clement did not immediately succeed Peter in the Pontificate; rather Linus succeeded him, and Cletus succeeded Linus, and Clement succeeded Cletus, as is established from the Roman Martyrology and Breviary, although there are some who hold the contrary opinion. Nor does it stand in the way that the Pope can give power to some Bishop or other Prelate to elect or nominate his successor, as is established from chapter “Petiisti” 12, cause.7, question 1; therefore also to himself. This consequence is denied because in that case the election occurs by papal authority, not by one’s own authority, as Abbot [likely Abbas Panormitanus] notes in chapter 1, in 2; and the Bishop can dispense with others, or grant privilege to another, or confer dignity, which he cannot bestow upon himself, as Torquemada notes in chapter 1. Finally, other Canons that are alleged to the contrary should be understood thus: not that true substitutions were made in the Apostolic See, but rather designations, because the Supreme Pontiffs, when asked by the Cardinals, indicated whom they judged worthy of the Chair of Peter; yet preserving the free election of the Cardinals, as Fagnani notes in chapter 1, number 61, who pursues this question more extensively.

429. It is asked, 3rd question: What form must be observed in the election of the Supreme Pontiff? Response: It is that which is contained in the Lateran Council, canon 1, and is referenced in chapter “Licet” 6 under this title, where Alexander III decreed that if perhaps the Cardinals cannot fully agree among themselves on appointing a Supreme Pontiff, should two-thirds consent but the remaining third refuse to consent or nominate another by giving their votes to someone else, he who has been elected and accepted by the consenting two-thirds of the Cardinals shall, without any exception, be considered the Roman Pontiff by the Universal Church. If, however, anyone elected or nominated by the third or remaining part should usurp the name of Roman Pontiff, both he himself and all those who receive him shall incur excommunication and privation or deposition from Holy Orders; moreover, the Holy Eucharist shall be denied to them, except when they are at the point of death (and have repented, as follows). Furthermore, if someone should be elected to the Pontificate by fewer than two-thirds of the Cardinals, he shall by no means be accepted and will be subject to the same penalties, unless additional votes are added so that the number of two-thirds is completed. This, however, applies only to the election of the Roman Pontiff, and does not generate prejudice for other Canonical elections in other Churches, in which it suffices if the greater and sounder part of the electors consent; for if any doubt should arise afterward in these matters, it can be settled by the judgment of a Superior, which cannot be done in the election of the Roman Pontiff, because recourse cannot be had to a Superior, since he has no Superior on earth.

430. First note. The election of the Supreme Pontiff has many special aspects that differ from other elections of Prelates inferior to the Pope. Such as, 1. that in this election the consent of the majority is not sufficient, but it is required that two-thirds of the Cardinals present in the Conclave agree on one person, whereas in other elections it is sufficient if the greater and sounder part of the electors consent, *cited chapter “Licet”*, where the reason is given at the end.

2. It is a special feature in the election of the Pope that absent Cardinals are not to be summoned, but after waiting ten days following the death of the Pontiff, those who are then present shall have the power of electing, *chapter “Ubi periculum 3. §. Hoc facto”*, and there *gloss on the word “decem” [ten], in this title in Book 6 [of the Decretals]*.

3. That in this election no comparison is made of zeal to zeal, or of merit to merit, but only of number to number, as is gathered from the *cited chapter “Licet”*, where it states: “*no exception*”, and *ibid. Abbat [likely Abbas Panormitanus] number 8. §. “Sextum speciale” [Sixth special aspect]*.

4. If the election of a Pope is invalid from the beginning due to a defect in the sufficient number of electors giving consent, even after the scrutiny has been published, the other Cardinals can withdraw from the election they had made and add their votes to others, in order to complete the number of two-thirds, and thus the previously invalid election becomes valid. This is different from elections of other Prelates, in which, after they have been made and promulgated in the common name, it is necessary to begin a new election

by all the Chapter members present, as is gathered from *chapter Auditis 29 on this title. Abbas here number 8, § The fourth special case is.*

431. 5. It is a special provision in the election of the Supreme Pontiff that it cannot be challenged by objection of excommunication or any other censure whatsoever incurred by the Electors, nor that the Electors are excommunicated, or in any way suspended, or interdicted, as is held in *Clementine 2, § Furthermore on this title*, where it is decreed that none of the Cardinals may be rejected from the election of the Pontiff on the pretext of any excommunication, suspension, or interdict (whether by law or by man, *gloss ibid. V. on the same*), with other rights concerning the same election remaining in force, and the entire *distinction 79*. And it has been decreed that the election should not be hindered or postponed due to dissensions or schisms, as would happen if exceptions were permitted after an election has once been made. Therefore, it has been wisely provided that no censure of the electors can prevent the validity of a papal election. This holds true not only if some Cardinals are excommunicated, but even if all of them are, because it is generally stated there that none of the Cardinals can be excluded from that election on the pretext of any censure. Therefore, each of them is qualified to validly elect, notwithstanding the censure by which he is bound. Consequently, even if all are bound by censure, all remain qualified, because the fact that many other Cardinals are bound by censure does not render any of them disqualified. *Suarez, disputation 14 on censures, section 2, number 19*. But neither does excommunication nor any other censure on the part of the elected person prevent him from being validly elected. This is both because in the *cited Clementine* it is stated that no one may be validly excluded from said election—since these words are general, they are to be understood generally, that no one should be excluded not only from active election but also from passive election—and because electors who are otherwise disqualified are rendered qualified to elect for the sake of the one elected and the validity of the election, lest occasion be given for schism and delay. Therefore, if for this reason the impediment of any censure whatsoever is removed from the electors, so that notwithstanding it the papal election is valid, much more so is it removed from the part of the elected, as *Suarez correctly noted in the cited location, number 20*.

6. It is a special case that no specific form for papal election is prescribed by Common Law, but this is left to the discretion of the Cardinals, so that they may elect as they wish, through public or secret scrutiny, or by compromise, provided that two-thirds of the Electors present consent, as [Abbas Panormitanus] notes in the cited chapter “Licet,” n.8, § “Nonum speciale,” but this has been changed by new law, of which [we will speak] below.

432. Note 2. The vote of the elected person should not be counted in the number of the two-thirds of electors; thus it is stated in the place cited in the chapter “Licet,” V. “a duabus partibus”: where, however, a distinction must be made; for either the election takes place through private or secret scrutiny, and the vote of the Elected should not be counted in the number of electors, because since he himself does not know whether he has been elected by others, he could not in a secret scrutiny give himself a vote, and nominate or elect himself; because then he would have to be rejected on account of

ambition. Or the election takes place through public scrutiny, such that the votes are expressed openly, with others listening, and then the vote of the elected should be counted in the number of electors, if he was first elected by others, and consents to the election made of him; nor can he then be accused of ambition, since the election does not originate from himself, but he was first called by his Colleagues, to whose votes he afterwards added his own. [Abbas Panormitanus] in the cited chapter “Licet,” n.13, which can also happen in other elections, as stated above. Nevertheless, there is something special in the election of the Pope, namely that if anyone, whether in public or secret scrutiny, has consented to another, and afterward sees himself elected by the majority of Cardinals, he can withdraw from the election or nomination which he made (because in this election, the Electors can also change their votes after the scrutiny has been published), and if just one vote is still lacking to reach two-thirds, he can complete that number through accession by consenting to his own election—something which cannot be done in the elections of other Prelates, as [noted by] Abbas in the cited chapter “Licet,” numbers 8 and 13. However, since today, after the Constitution of Gregory XV, the election of the Pope which takes place through scrutiny must be conducted through secret ballots, the vote of the one elected cannot be counted, as is stated in the cited Constitution, about which [we shall speak] below. Note 3. If one elected to the Papacy by a minority, or an insufficient number of Cardinals, that is, by fewer than two-thirds, conducts himself as Pope, both he himself and those who have received him as such are subject to excommunication, and shall be punished by deprivation of all sacred Orders, as stated in the cited chapter “Licet.” And indeed the first penalty of excommunication is incurred ipso jure, or by the very fact, as Abbatius notes therein, n.7, although it is not reserved to the Pope in that chapter, but through the Bull of the Lord’s Supper [Bulla Coenae], as Suarez notes in disputation 23 on censures, section 3, n.2. The latter penalty, however, of privation or deposition from Orders, is to be imposed by the sentence of a Judge, as is clear from the word “mulctentur” [shall be punished], which is in the future tense; Abbatius, chapter 1, and Suarez, disputation 42 on censures, section 5, number 10.

433. The fourth question: In what cases can the election of the Roman Pontiff be challenged as null and void by its very nature, even if it was conducted by two-thirds of the Cardinals? Response: If the one elected to the Papacy is ineligible for the Papacy by Divine or natural law, then an exception can be raised against him, and it can be petitioned that the election be declared invalid. For example, if he is a manifest heretic, because a heretic by divine law is not a member of the Church, since he stands outside the Church, which is the Congregation of the faithful, among whom one who has rejected the true faith of Christ cannot be counted; consequently, a heretic much less can be the true Head of the Church. And if a Pope can be accused of manifest and notorious heresy, as is gathered from chapter “Si Papa” 6, distinction 40, where it is stated that the Pope is to be judged by no one unless he has deviated from the faith, much more so, if a notorious heretic is elected Pope, the crime of heresy can be objected against him so that he may be deposed, as explained in the cited gloss in chapter “Licet,” on the word “exceptione,” and therein Abbot [likely Abbas Panormitanus, Nicolaus de Tudeschis] number 11, in this title, and Azor in the cited chapter 5, question 7. The same must be said if a woman were elected

Pope (argument from chapter “Nova” 10, on penance and remission), or an infant, or a person of unsound mind who does not have free consent. For the intention of Alexander III in the Lateran Council, related in the cited chapter “Licet,” was only to remove all impediments of positive law, so that no exception rendering one ineligible by positive law could be raised against the one elected Pontiff—for example, that the elected is a layman, or is not initiated in Holy Orders, or is excommunicated, etc.—but not that an exception rendering one ineligible by divine and natural law cannot be raised, because Canon Law cannot remove or supply such impediments, according to Abbot chapter 1, number 11, and Azor in the cited question 7, section “Quaeres insuper.” However, Abbot adds in the passage cited in this title that an exception rendering the elected Pope ineligible for the Papacy by divine or natural law must be raised before he has obtained possession or administration of the Papacy, since such an exception excludes the intention of the Elect, not the action, because no action is appropriate to him in such a case. Afterward, however, one could not raise an exception against him, but he would have to be accused after he has obtained administration and possession. But an exception rendering the elected ineligible by positive law should not be admitted, and only about this does the cited chapter “Licet” speak.

434. The second case in which the election of the Supreme Pontiff can be challenged as null and void by the law itself is if he was elected through simony—whether by money given, accepted, or promised, or by similar payment—as established by the Constitution of Julius II issued in 1505, which begins “Cum tam divina,” and is found in Azor, cited chapter 5, question 7, § “Deinde quaeres,” and is gathered from chapter “Si quis pecunia” 9, distinction 79, where it is stated that one elected to the papacy through simony should be considered not Apostolic but Apostate, for the crime of simony is equated to heresy by the Holy Canons, chapter “Eos qui” 21, cause 1, question 1, and the final chapter of the same cause, question 7. It is stated in the cited Constitution that even if the election was made by two-thirds of the votes, or by unanimous agreement of the Cardinals with no one dissenting, if done through simony, such election is null and the one elected acquires no right in spiritual or temporal matters. That such a Constitution could be established by the Pope is evident because, although after the Roman Pontiff is legitimately elected and created, he is bound by no ecclesiastical laws, whether invalidating or penal (for the Pope cannot impose laws on his Successors if they are truly and legitimately elected, since an equal has no power over an equal, chapter 20 of this title), nevertheless, such laws can be made by the Pope or a General Council prescribing a certain form of election, so that one conducted otherwise would be invalid, lest a Pope be elected through fraud or other illicit means (Azor, chapter 1, § “Et certe”).

435. The third case, the election of the Roman Pontiff conducted under grave and unjust fear, is also invalid according to new law, provided it is proven that such fear intervened, as Azor teaches in the cited Book 4, chapter 2, question 6, where he notes this from Baldus, and it is established from the Council of Constance, Session 39, which Azor cites in Book 4, chapter 5, question 7, § “if finally,” where it is also added that it is not permitted for the Cardinals to proceed to another election unless the nullity of the election is first recognized by a General Council, except if the person thus elected himself renounces it:

for otherwise, unless such an election were invalid by the law itself, it could never be rescinded by the Church or a General Council. Other elections of Prelates, however, although extorted by grave and unjust fear, are not invalid in themselves or in fact as to their substance, since fear does not absolutely and simply remove voluntariness, nor does any Canon exist that invalidates it, as exists for the election of the Supreme Pontiff, although they ought to be rescinded by the authority of a Superior, according to Laymann in “On the Election of Prelates,” question 123. Furthermore, if the election of the Supreme Pontiff has been conducted under grave fear unjustly inflicted, explicitly and specifically to elect this certain person and no other, such an election is void by the law itself; and therefore it cannot be ratified afterward by the Cardinals, because when electors are forced to elect one specific person, the freedom of election is removed—a freedom that consists in the election being made from among multiple candidates at the discretion of the electors, as is stated in chapter 3, § “Caeterum” at the beginning, and there: *with free minds*, in this title in Book VI, and as stated above at paragraph 237. It is different if the Cardinal Electors are unjustly compelled in an indeterminate manner to elect one from among several specific persons, or from a certain category of persons; such an election, speaking absolutely, would be valid, because the freedom of election is not entirely removed, but only restricted to a certain number or category of persons, from whom they can freely elect whomever they wish. Therefore, an election of this kind to the Papacy would be substantially valid, nor is it found to be invalidated by Canon Law, nor could it ever be invalidated by the Church, as other elections might be due to similar fear. Thus Abbatis in the cited chapter “Licet,” number 12, in this title; Azor in the cited chapter 5, question 7, § “Si demum.” The rationale is different regarding matrimony and religious profession, which when extorted through similar grave and unjust fear, are void ipso facto, because they must be contracted with full liberty, as Laymann states in “On the Election of Prelates,” question 124.

436. Fourth case: an objection can also be raised against the election of a Pope on the grounds that the electors did not have the right to elect, because they are not Cardinals of the Roman Church. Through this objection, the foundation of a legitimate election is overturned if it is demonstrated that the election was not made by two-thirds of the Cardinals, which according to the Canons are required for the election of a Pope, provided that the defect which is objected to was not hidden, because the Church does not judge hidden matters. Just as if some statute were to exclude any objection against a sentence, nevertheless it could be objected that the sentence was pronounced by someone who was not a Judge, because a statute prohibiting objections against a sentence presupposes that it is indeed a sentence; but that which is pronounced by one who does not have jurisdiction is not a sentence. So in the matter at hand, according to the Holy Canons, it is required for the substantial form of the election of the Supreme Pontiff that it be made by two-thirds of the Cardinals. If therefore it is made by a smaller number, an objection has place, through which the entire substance and foundation of this election is overturned, according to Abbas [Panormitanus] in the cited chapter “Licet,” numbers 10 and 11, and Azor in the cited question 7, § “Quaeres insuper.”

437. It may be objected here that if the election of the Supreme Pontiff can be invalid due to some defect, either on the part of the electors or on the part of the elected, it follows that it is not certain whether the Church has a true Pontiff and Pastor. Laymann responds in the cited chapter “Licet,” number 4, under this title, that such a defect is either manifest before the Church or not manifest but hidden. In the first case, the Church will not receive such a Pontiff, but will openly protest against his election and oppose it. In the latter case, if, for example, a hidden heretic is elected to the supreme Pontificate, he indeed will not truly be the Head of the Church; nevertheless, on account of public error or ignorance, with God supplying the defect, all acts performed by him will be valid and binding, just as if he were the true Pope, as argued in the *Lex Barbarius* 3 and what the Doctors teach there, in the Digest on the Office of Praetor. Nor will God permit him to publicly propose error or heresy to the Church from the Chair. Indeed, it is probable that Divine Providence will prevent anyone who is a heretic, or who has a similar substantial hidden defect, from ever being elected as Pope.

438. Question 5. What is the new law concerning the form of electing the Roman Pontiff? The answer is that Gregory XV issued a new Constitution on the 17th day before the Calends of December in the year 1621, which begins “Aeterni Patris,” to the observance of which forty Cardinals had sworn. In this Constitution, he decreed that if such an election were celebrated elsewhere than in a closed Conclave, or otherwise than by secret ballot of two-thirds of the Cardinals present in scrutiny and accession (not counting the vote of the elected person); or except through the way of compromise initiated by all Cardinals likewise present in the Conclave, with no one dissenting, and arranged so that no one elected himself; or as if by inspiration, with no preceding discussion about any specific person, equally from all Cardinals present in the Conclave, commonly, with no one dissenting, expressed through the word “*eligo*” [I elect] pronounced in an intelligible voice, or expressed in writing if it could not be done by voice—the election shall be null and invalid by that very fact, without any declaration, and it shall confer no right on the person elected; rather, such a one shall be considered not Apostolic but Apostate, etc. And at the end, the Constitution of Alexander III issued in the Lateran Council, which begins “*Licet de vitanda*,” is expressly and specifically derogated, but only for that occasion, insofar as it prescribes no certain form for the election of the Roman Pontiff. This Constitution of Gregory was confirmed by Urban VIII in the Constitution which begins “*Ad Romani*,” issued on the 5th day before the Calends of February in the year 1625, and he commanded that it be observed perpetually in all future elections of Roman Pontiffs. And at the end of the said Decretal of the Lateran Council, in that part which opposes this Gregorian Constitution, he derogated it not only for that occasion but perpetually, as Fagnanus reports in the cited chapter “*Licet*,” number 25, under this title. Nevertheless, not only by the ancient Canon Law, but also after the new Constitution of Gregory XV, the Cardinals present in the Conclave can agree by compromise that the election of the Roman Pontiff made by the majority of them shall be valid, provided that all Cardinals present, with no one dissenting, consent to this compromise. For then the election is considered to have been made by the common consent of all the compromising Cardinals. And indeed, that such an election of the Pope is valid is also codified in Canon Law, because in the cited chapter “*Licet*,” it is

only required that the election of the Pope be made by two-thirds of the Cardinals present. But truly, he who is thus elected is considered to have been elected not only by the greater part, but also by two-thirds of three parts, indeed by the entire College of Cardinals present, since all consented from the beginning that he should be elected Pope whom the majority of the compromisers would elect. That a compromise made under such a form is valid is established from chapter “Cum dilectus” 32 under this title, which has not been derogated in this part by the Constitution of the Lateran Council in the cited chapter “Licet” under this title. Azor, cited book 4, chapter 2, question 10. But even after the new Constitution of Gregory XV, such an election of the Pope is neither prohibited nor invalid if the Cardinals unanimously, simply, and immediately compromise on the majority of the College, with no other form prescribed, so that he shall be and be considered Pontiff who has been elected by the majority of them. For that new Constitution requires no more for the election of the Pope which occurs through the way of compromise than that it be done by all Cardinals, with no one dissenting, which happens in this form of compromise, as is supposed, Fagnanus in the cited chapter “Licet,” numbers 29 and following, and numbers 60 and following. But it is another matter if the form of compromise were changed to the form of scrutiny, so that the compromisers, having sought the votes of individuals through secret scrutiny, elect as Pope him to whom the majority of the College of Cardinals has consented. For then such an election is invalid, as being made contrary to the form of the Constitution of Gregory XV, since in it there does not concur the secret votes of two parts, as is required in that Constitution, but only of the major part of the College. The Cardinals cannot renounce this Constitution, even by unanimous consent: both because this public law was introduced in favor of the universal Church, which cannot be renounced by private agreement; and because the College of Cardinals cannot change the Constitution of the Pope concerning the election of the Roman Pontiff, Clementine 2, at the beginning, under this title. And in the said Constitution, a decree invalidating is opposed to this, which induces a form without which the act is not valid, nor can it be renounced. And at the end, the Cardinals are prohibited from presuming to do anything contrary to what is contained in it, Fagnanus in the cited chapter “Licet,” numbers 53, 56, and 60, in whom more about such forms of electing through compromise can be seen.

439. To the aforementioned, it should be added that once a canonical election has been conducted according to the prescribed form for the Roman and Universal Bishop, it requires no further confirmation. This is because the Pope does not receive his supreme power and jurisdiction over the entire Church from the Cardinal Electors, nor from any other Superior from whom he might receive it through confirmation, as other Bishops do, since the Pope has no Superior on earth. Rather, this authority is conferred upon the Pope immediately by Christ, by virtue of the promise and act of institution made to Blessed Peter and his Successors, as in canon 1 and 3, distinction 22, and in chapter “Novit” 1, on Judgments, where Pope Innocent III states: *“Our power is not from man, but from God.”* Abbas [Panormitanus] in the cited chapter “Licet,” number 5. By custom, however, after the election (if the Pope-elect was not previously a Bishop), he is usually consecrated, or if already consecrated, crowned. Before this occurs, he does not style himself in Bulls as absolute Bishop, but as Bishop-elect, just as the Emperor is not so called until after

receiving the crown. Nor does the one elected Pope write in his letters, before coronation, “In the year of Our Pontificate,” but rather “In the year of Our acceptance of the Apostolic office,” as noted by the gloss on the Rule of Law, under the term “Data” at the word “Pontificatus.”