

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*)

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Title VI, Section X

Latin

Aliqua quaesita de electione summi pontificis.

SUMMARIUM

91. Quaeritur 1. an summus pontifex sibi in sede apostolica constituere successorem possit? Pro affirmativa affertur *can. si Petrus* 1. eique subjectus *can. unde* 2. *caus.* 8. *q.* 1. ubi clare asseritur, s. Clementem a B. Petro, cum martirio immineret, ecclesiae universali praefectum esse. Verum istorum canonum veritas non immerito dubia videri poterit, cum legamus successorem proximum sancti Petri fuisse Linum, postea Cletum, deinde primum Clementem. Si dicas, s. Clementem quidem a Petro sibi substitutum, sed demissionis studio renuntiasset dignitati, et sic deinde electum Linum, non repugnvero, sed cum communi dicam, eam substitutionem factam a s. Petro inspiratione, nutuque

English

Certain Questions Regarding the Election of the Supreme Pontiff.

SUMMARY

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

divino, ac proinde ejus factum non trahendum in consequentiam. Quare cum Suār. *D. 20. de fid. f. 5. num. 16.* et frequentiori DD. facile quidem concedo, quod in casu quodam extraordinario, quo aliter necessitati ecclesiae succurri non posse praevideret antecessor, successorem sibi possit sufficere, ut colligi videtur ex *can. transitus 10. dist. 79.* nego tamen, quod istud possit potestate ordinaria.

Ratio est 1. quia papa, et episcopus ratione spiritualis conjugii se habet ac ecclesiam suam, sicut maritus ad uxorem: atqui iste alium sibi successurum in conjugio, etiam post mortem suam, constituere nequit; ergo etc. 2. Dispositio, licet sit facta tempore habili, si conferatur in tempus inhabile, nullum de jure effectum habet: talis est substitutio novi pontificis, a praedecessore facta; confertur enim in tempus mortis, quo papa non amplius est. 3. Hujusmodi substitutio, si ordinarie fieri a papa posset, mutaret universalis ecclesiae statum, et induceret transmissionem haereditariam pontificatus, quam tamen, tanquam maxime perniciosam regimini spirituali, semper exosam ecclesia habuit.

91 An summus pontifex sibi constituere successorem possit?

92 Qui sint electores pontificis?

93 Quae forma eligendi?

94 Quot in electio requirantur suffragia?

95 An compleri numerus per accessum possit?

96 An, et quomodo cardinales compromittere?

97 Qualitates requisitae in electo?

98 Quando electus fiat verus pontifex?

99 An ejus electio valeat impugnari?

100 Quando procedi possit ad novam electionem?

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.

91 Can the Supreme Pontiff appoint his own successor?

92 Who are the electors of the pontiff?

93 What is the form of election?

94 How many votes are required in the election?

95 Can the required number be completed through accession?

96 Whether and how the cardinals may compromise?

97 The qualities required in the elected?

98 When does the elect become the true pontiff?

99 Can his election be challenged?

100 When can one proceed to a new election?

92. Quaeritur 2. penes quos sit potestas eligendi pontificem? Resp. Olim erat penes universum clerum, teste Cyprian. *l. 4. epist.* 2. Postea repetitis vicibus eandem sibi vindicarunt imperatores, jure, an injuria, non disputavero. Affertur quidem privilegium tanquam ab Hadriano concessum Carolo M. prout recenset Gratianus *can. Hadrianus 22. dist. 63.* sed hic canon, ut *num. 6. ad 4.* notavi, multis videtur fictitius, vel si vere datum est ejusmodi privilegium, id intelligendum, non quod ab arbitrio imperatoris dependeret constitutio summi pont. sed quod a clero celebrata eidem fuerit praesentata, et consensus requisitus, ut firmior foret electio.

Moderno tempore pontificem eligunt cardinales, quibus jus eligendi papam concessit Nicolaus II. prout habetur *can. in nomine I. v. quapropter dist. 23.* non tamen solis; quia eorum electioni accedebat approbatio cleri, et populi: solis autem cardinalibus potestas ista primum tributa est in concilio lateranensi *c. licet 6. h. tit.* ubi statutum, ut si inter eos de summo pont. substituendo plena concordia esse non possit, pro legitimo D. Petri successore absque ulla exceptione haberetur, qui a duabus illorum partibus esset electus, et receptus.

93. Quaeritur 3. quae sit forma eligendi pontificem? Resp. Eligi potest vel per inspirationem, vel per compromissum, vel, quae via usitatissima est, per scrutinium. Si per compromissum fiat electio, inter electionem pontificis, et alias electiones hoc discrimen est, quod in his compromissariorum unus nominatus ab altero, istius voto accedere, et sic complere sui electionem possit, ut dictum est *num. 59.* non autem possit, quando per viam compromissi eligendus est pontifex ob *constit. Gregor. XV. incip. aeterni §. 205.* ubi votum seipsum eligentis sive in compromisso, sive in scrutinio irritatur: non tamen propterea irritatur electio, modo in electum, qui sibi ipsi votum dedit, praeter hoc suum votum consentiant duae

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 I. 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

ceterorum partes. Hinc casu, quo in unum collata suffragia duas tertias partes excedunt, electi schedula non aperitur, neque inspicitur, an sibi ipsi suffragium dederit, ut notat card. de Luca *relat. cur. roman. disc. 3. num. 20.*

94. Quaeritur 4. quot suffragia debeat habere electus in pontificem, ut electio ejusdem valeat? Resp. Debet habere duas tertias, ut patet ex *c. ubi periculum 3. h. tit. in 6. Clem. 2. ibid.* et aliis pluribus *const. a Clem. VII. Paulo IV. Pio IV. Greg. XV. et Urban. VIII. editis*, idque merito, quia in electione pontificis gravissimi momenti negotium versatur, quippe per quam a se acceptatam electus hoc ipso sine ullius alterius hominis confirmatione sit verus successor Petri, et Christi vicarius, quin eidem exceptio opponi possit.

Dubium est, an cardinales in conclavi praesentes convenire unanimi consensu possint, ut valeat electio per scrutinium celebrata, in quam major solum suffragantium pars consenserit? Videtur respondendum affirmative: nam committere potestatem eligendi possunt majori parti collegii, sicut est indubitatum ex *c. cum dilectus 32. h. tit.* ergo etiam consentire, ut pro electo habeatur is, in quem major pars suffragia sua contulit, idem enim est, ac si electus fuisset ab omnibus.

Sed tenenda est negativa ob claram decisionem *const. Gregorian. cit.* ubi diserte annullatur electio pontificis per scrutinium aliter, quam suffragiis duarum partium celebrata, cui tanquam juri publico, in favorem totius ecclesiae introducto, privatis cardinalium pactionibus renuntiari non potest.

Ad rationem dubitandi in textu ibi allegato sermo est de compromisso, ex quo duci argumentum ad scrutinium nequit.

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

95. Quaeritur 5. an casu, quo in unum non consentiant duae electorum cardinalium partes, isti per accessum numerum requisitum complere possint? Resp. posse, ita ut novum scrutinium inchoare non sit necesse, sicut necesse est in electionibus ceteris. Colligitur ex *c. licet* 6. *h. tit. ibi nisi major concordia intercesserit*, et notat Abb. *ib. num. 8. cum aliis*.

Permittitur autem accessus iste etiam infirmis, etiamsi morbo impediti, ad capellam, ubi celebratur electio, venire non possint; sicut enim propterea suffragii jure non excidunt, ita neque accedere prohibentur.

Quare, ut jure hoc suo etiam ipsi uti queant, ad eorum singulos per cardinales scrutatores defertur folium, in quo nomina cardinalium, et numerus votorum in quemlibet collatorum notatus est, una cum alia schedula pro accessu parata, et arcula, in quam infirmi, et loco scrutinii absentes vota sua inferunt, et per ejusmodi votum declarant, an, et cui velint accedere.

Accessus autem iste non est permissus, nisi semel in quovis scrutinio, ut bene cum aliis notat P. Vviest. *hic n. 558*.

96. Quaeritur 6. Utrum cardinales in tres v. g. compromittere possint ea forma, ut isti teneantur eligere in summum pont. in quem cardinalium in conclavi praesentium major pars consenserit? Resp. cum distinctione: vel enim compromissum hoc fit ea forma, et conditione, ut compromissarii teneantur eligere, in quem major pars consenserit, collatis in eum votis per formam scrutinii, vel in quem consenserit libere, non observata scrutinii forma.

Si primum, compromissum, et inde secula electio invalida est; quia est electio per compromissum admixtum habens scrutinium, quod ut validum sit in electione pontificis, juxta *constit. Gregor. cit. §. 19*.

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,

requiritur, ut electio fiat per vota secreta, et in electum duae partes cardinalium consenserint.

Si secundum, valet compromissum, et electio ita celebrata. Ratio est, quia valet in aliis electionibus; *c. in causis* 30. *et c. cum dilectus* 32. *h. tit.* in compromisso autem, quo eligitur pontifex, nihil novi praescribitur: ergo etiam valebit in electione pontificis.

97. Quaeritur 7. quisnam eligi in summum pont. possit? Videtur, non posse eligi alium, nisi cardinalem; nam ita 1. statutum videtur *can. in nomine* 1. *dist.* 23. ibi: *eligatur autem de ipsius (romanae) ecclesiae gremio, si reperitur idoneus.* 2. Similia habentur *can. oportebat* 3. *et can. seq. dist.* 79. ubi expresse statuitur, ut *nullus unquam laicorum, neque ex alio ordine praesumat, nisi per distinctos gradus ascendens diaconus, aut presbyter cardinalis factus fuerit, ad sacri pontificatus honorem promoveri.* 3. Confirmat hoc trium saeculorum continua observantia, quo tanto tempore pontifex tantum assumptus est ex gremio cardinalium.

Sed dicendum, in pontificem posse eligi quemcumque fidelem catholicum, etiam laicum, et uxoratum, modo habeat ea, quae jure divino, et naturali ad dignitatem requiruntur. Ita Barb. *l. 1. jur. eccl. c. 1. n. 77. et seqq.* cum communi DD. et decisum videtur *c. licet* 6. *h. tit.* ubi statuitur, ut *sine ulla exceptione ab universali ecclesia romanus pontifex habeatur, qui a duabus partibus concordantibus electus fuerit, et receptus:* igitur etiam non poterit sic electo opponi exceptio, quod non sit de collegio cardinalium, vel clericus. *Conf.* quia ait saepius ad summum pontificatum vocati sunt, qui ante non erant cardinales: sic enim, ut Barb. *l. cit.* notat, Eugenius III. ex abbate simplici, Gregorius X. ex archidiacono, Coelestinus V. ex eremo

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

vocatus, cum nec esset in sacris, pontifex est creatus.

Dixi *etiam laicum*, quod colligitur ex caeremoniali romanae ecclesiae, ubi forma habetur ordinandi eum, qui ex laico in pontificem assumptus fuerit. Addidi *et uxoratum*, intellige, si uxor consentiat; alias poterit eundem revocare.

Neque obstant argumenta opposita. *Ad 1. et 2.* juri antiquiori ibi allegato derogatum est per jus recentius; *c. licet cit.* *Ad 3.* observantiae illi oppono observantiam pro *conf. allatam*.

98. Quaeritur 8. an pontifex verus statim fiat, qui electionem sui a cardinalibus factam acceptavit? Resp. Distinguendum, an legitime electus fuerit, an contra.

Si primum, statim administrationem plenam, a Deo sibi immediate collatam, habet, ut statuitur *can. in nomine* 1. vers. *electus tamen dist. 23.* etiamsi nondum sit consecratus; nam consecratio tantum facit, ut exercere possit ea, quae sunt ordinis. Ratio responsionis est, quia papa non indiget confirmatione; nam confirmatio electionis fieri per superiorem debet; papa autem nullum in terris superiorem habet. Opus tamen est acceptatione ejusdem, ut conjugium spirituale, quod inter ipsum, et ecclesiam intercedit, ratificetur. Porro hoc conjugium spirituale consummatur denique per consecrationem, et coronationem, ante quam in bullis se episcopum quidem appellat, non tamen absolute, sed cum addito *electum*; tempus vero, quod inter utramque, et electionem est medium, non simpliciter *apostolatus sui*, sed *suscepti apostolatus officii* vocat, prout cum gloss. advertit Laym. in *c. licet* 6. n. 7.

Si secundum, electio cardinalium, cum invalida fuerit, jus nullum electo potest

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

tribuere. Hinc expectanda erit ecclesiae universalis acceptatio, quae si superveniat, defectum electionis invalidae, per cardinales factae, si desit tantum conditio jure humano requisita, sanabit, ut adeo fiat verus pontifex. Dixi *conditio jure humano requisita*; nam defectum conditionis requisitae per jus divinum ecclesia sanare non potest. Quia vero ex communi TT. est fide divina credibile, quemlibet summum pont. postquam ab universali ecclesia ut talis est acceptatus, esse verum Christi vicarium, et B. Petri successorem, nullum erit periculum, ne ecclesia consentiat in eum pontificem, qui defectum conditionis jure divino requisitae habet. Sed de hoc latius TT.

99. Quaeritur 9. an summi pont. electio valeat impugnari? Certum est impugnari posse electionem etiam omnium consensu celebratam, si electus laboret defectu, quo jure naturali, aut divino inhabilis redditur, v. g. si sit infans, amens, foemina, haereticus, vel nondum baptizatus. Ratio est, quia, ut *num. prior.* dixi, impedimenta ista ecclesia suo consensu non potest tollere, vel defectum supplere.

Dubium est, an opponi eidem possit defectus conditionis jure solum humano reddentis electionem invalidam? Ratio dubitandi est, quia quaecumque poenae, nullitates, et inhabilitates ligare non possunt pontificem, cum ille superior sit omni jure ecclesiastico: ergo etc.

Sed respondendum est cum distinctione: vel enim electo solum opponitur defectus natalium, ordinis sacri, clericatus etc. quae substantiam, et libertatem electionis non impediunt, vel contra objiciuntur defectus, qui tollunt substantiam, et libertatem electionis, v. g. quod sit gravi metu extorta, quod simoniaca, quod celebrata pauciorum, quam duarum partium suffragiis, vel ab iis, qui potestate eligendi notorie carent.

Si primum, oppositores, vel oppositores non audiuntur ex *c. li-cet cit.* ibi *absque ulla*

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*

exceptione. Si secundum, oppositio admittitur, ut clare habetur can. si quis pecunia q. dist. 79. et constit. Julii II. incip. cum tam divino: edita in concil. later. sess. 5.

Ad rationem dubitandi negatur, quod cum tali defectu electus sit verus pontifex, cum electio sit jure ipso invalida: igitur nihil obest, quin sic electum leges obligent; nam etsi ligent, non ligant pontificem.

100. Quaeritur 10. an si papa quacumque ex causa fuisset electus in-valide, et hoc advertant cardinales, electo invito ad alterius novam electionem possint procedere? Resp. Si electus ut papam se gereret, et electioni renunciare nollet, exspectanda foret sententia concilii generalis de nullitate electionis pronuntiantis, antequam cardinales ad novam electionem possent procedere, prout communiter colligunt DD. ex *concil. constant. sess. 39.* ubi de casu, quo electio est metu ex-torta, expresse habetur.

Post latam tamen sententiam a concilio de nullitate electionis, electio novi pontificis fieri debebit a solis cardinalibus, ut notat cum aliis Laym. in *c. licet cit. num. 5.* et dat rationem, quia cum ea eligendi potestas cardinalibus data sit a summis pont. approbantibus conciliis generalibus, absque necessitatis causa auferri eidem illa non potest.

Necessitas autem, ut Laym. *l. cit.* addit, pro ea vice auferendi cardinalibus hanc potestatem foret, si v. g. ad schisma tollendum, cui plerique eorundem faverent, expediens esset electionem a concilio generali fieri: et ita a concilii constantiensis pp. electus est Martinus V. ut refert Azor. *p. 2. l. 4. c. 2. q. 13.*

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.*