

Tractatus de Electione Summi Pontificis (*Treatise on the Election of the Supreme Pontiff*)

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Question 32

Latin

Tractatus de Electione Summi Pontificis QUAESTIO XXXII.

Quae exceptiones dari possint contra electionem Papae.

1. Exceptio est actionis aut intentionis exclusio. Panorm. in rubr. de except. n. 3. Est vero duplex secundum eundem Panorm. ibid. & cap. super eo num. 2. de elect. & cap. si quis contra num. 3. de foro competenti, alia scilicet iudicialis, & proprie dicta, alia extraiudicialis, & impropria. Prima supponit litem, & actorem, & est actionis exclusio, ut habeatur ex l. 1. & 2. ss. de except. Unde propria est rei in iudicium vocati ab actore, & ab eo stimulati, & huic ex parte actoris competit replicatio, quae est exceptionis exclusio l. 2. ss. de except. Sed exceptio extraiudicialis, & impropria non supponit iudicium, neque actorem, sed supponit in aliquo intentionem aliquid obtinendi, vel illud retinendi, ac conservandi, unde distinguitur, ut sit intentionis exclusio. Quae maximum locum habet in electionibus, cum aliquis excipiendo impedit, ne aliquis eligatur, vel ne electus

English

Tractatus de Electione Summi Pontificis Question XXXII

What exceptions may be raised against the election of a Pope?

[1] An “exception” is an exclusion of an action or intention. Panormitanus, in the rubric *De exceptionibus*, no. 3, notes that, according to himself in the same passage and in cap. *Super eo*, no. 2, *De electione* and cap. *Si quis contra*, no. 3 *De foro competenti*, there are two kinds of exceptions: one judicial and properly so-called, the other extrajudicial and improper. The first presupposes a lawsuit and a plaintiff, and it excludes the action, as can be gathered from l. 1 & 2 ss. *De exceptionibus*. Hence it properly belongs to someone summoned before a judge by the plaintiff and incited by him. On the plaintiff’s side there belongs a “replicatio” (counter-plea) that excludes the exception, according to l. 2. ss. *De exceptionibus*. But the extrajudicial and improper exception does not presume a trial or a plaintiff; rather, it presupposes in someone the intention to obtain or retain something. Thus it differs by excluding intention. This latter category has great relevance in elections,

confirmetur, vel confirmatus consecratur. Illa igitur exceptio proprie dicta est actionis, sed ista est intentionis exclusio: Est vero considerabile discrimen, quod inter huiusmodi exceptiones ponit Panorm. *d. cap. super eo num. 2. de elect.* nam prima ultra repulsionem regulariter nihil operatur. Sufficit enim excipienti si repellat actorem, & impediat actionem. Sed secunda habet vim quandam accusationis, & actionis, & qui excipit quodammodo est actor, unde est, quod haec exceptio aliquando appellatur accusatio, ut in *Auth. de Sanct. Episcop. in § si quis autem electum.*

2. Dicitur igitur primum, quod contra electionem, & electum in Papam non datur exceptio iudicialis, & proprie dicta, quia electus nihil agit contra aliquem, nec in aliquod iudicium vocat, ut contra eum reus possit excipere, & eum ab agendo repellere. Sed imo ipse electus statim ac consentit electioni est Pontifex potens administrare Pontificatum cap. *In nomine Domini dist. 23. & cap. si quis pecunia dist. 79.* Quamobrem si illius electio coram Concilio Generali impugnetur, potius si conveniet replicatio, quae est actionis exclusio. Quamvis nec proprie haec illi conveniat, quia verus Papa non habet, ut in iudicio sit proprie pars, quae ex aequo cum actore concurrat, sed semper est superior verus, si est verus Papa, vel praesumptus, aut a sua obedientia reputatus. Solum igitur remanet videndum qualiter contra electionem Papae, & Papam electum dari possit exceptio extrajudicialis.

3. Baldus in cap. *licet n. 4. de elect.* ponderans textum illum praecipienter definientem electum in Papam a duabus partibus Cardinalium sine exceptione, ait textum illum non indigere glossa, nec excipi debere haeresim, quae electo in Papam potest opponi, quia illud proprie non est excipere, sed nullum esse, quod

since by making such an exception someone prevents another from being elected, or from having his election confirmed, or from being consecrated after confirmation. Therefore, the first (proper) exception pertains to the exclusion of action, while the second pertains to exclusion of intention. A notable difference between these exceptions is proposed by Panormitanus in *d. cap. Super eo no. 2 De elect.*: the first type, generally speaking, produces no effect beyond repelling the plaintiff. It suffices for the exceptor to repel the plaintiff and impede his action. The second type, however, has a certain force akin to an accusation and an action. Thus, the one making this second type of exception is, in a way, an accuser or actor, and hence it is sometimes called an accusation, as in the *Authenticum De sanct. Episcop. § Si quis autem electum.*

[2] It is first said that against the election of a Pope and against the person elected as Pope, no judicial and properly so-called exception can be given, because the elect does not act against anyone, nor does he summon anyone to judgment, so that the defendant could raise an exception and repel him from action. On the contrary, as soon as he assents to the election, he is Pope and can exercise the Pontificate (*cap. In nomine Domini, dist. 23 & cap. Si quis pecunia, dist. 79*). Wherefore, if his election is contested before a General Council, it would rather be a matter of a “replicatio” on his part, that is, the exclusion of the action. Yet even this does not quite fit, because a true Pope cannot be considered as a party in judgment on equal footing with the plaintiff; if he is truly Pope or is presumed as such by those who hold him in their obedience, he always remains superior. Thus, only the question remains as to how an extrajudicial exception can be made against the election of a Pope and the Pope-elect.

[3] Baldus, in *cap. Licet no. 4 De elect.*, weighing that text which peremptorily and definitively states that a person elected by two-thirds of the Cardinals shall be Pope “without exception,” says that this text needs no gloss, nor should heresy be considered an exception that can be opposed to the Pope-elect. For such an objection is not properly an

quidem verum est pro hac parte, quod contra electionem Papae solum potest opponi de nullitate. Cum enim electio haec non indigeat confirmatione, sed valide electus statim ac consentit electioni plenissimam potestatem super Ecclesiam a Christo obtineat *cap. In nomine Domini dist. 23. & ibi Glossa vers. dispensandi, & ibi Archid. num. 19. Bellarm. num. 7. v. 12. Gemin. num. 16. 17. Turrecrem. num. 10. 21. 22. Card. Alex. n. 24.* ideo ad effectum excludendi electum a Papatu inutiliter opponitur, quidquid electionem eius non reddit nullam, licet ante electionem omnes defectus etiam non irritantes opponi possint ad persuadendam exclusionem indigni, non tamen ad effectum, ut irrita sit electio, si non obstante aliquo tali defectu fiat electio. Et ita sola oppositio nullitatis potest dari contra Papae electionem ad effectum excludendi electum a Pontificatu, quae oppositio si non est proprie exceptio, nulla proprie exceptio dari potest contra Pontificis electionem. Verum quia nec exceptio extrajudicialis est proprie exceptio, & intra huiusmodi exceptiones numeratur exceptio nullitatis, ut per Panorm. in Clement. *prim. num. 78. de re iudicata*, loquendo cum pluribus dicitur contra Papae electionem dari posse unicam exceptionem nullitatis.

4. Ut vero videatur de quo excipi possit contra electionem Papae distinguendum est, quia Papae electio potest esse nulla, vel ex parte eligentium, vel ex parte electi, vel ex parte electionis. Ex parte eligentium potest excipi actualis furor, vel amentia tempore electionis, vel quod Cardinalis aliquis non sit Diaconus, & neque sit privilegiatus, vel quod non est legitimus Cardinalis Panorm. in *cap. licet de elect. num. 10. Iacobat. l.4. a.4. a. tertio casu pag. 201. Azor. par. 2.l.4.c.5. q. 8. vers. quae res insuper Io: a S. Thom. 2.2 q.1. disp. 2. art. 2.** Verum est, quod si dempto huiusmodi Cardinali, vel pluribus legitimis suffragium non habentibus adhuc electus est nominatus a duabus partibus Cardinalium in Conclavi praesentium, cessat omnis exceptio *cap.*

“exception” but a declaration that the election is null. And this is true, insofar as only nullity can be opposed to the election of the Pope. For since this election needs no confirmation—once legitimately chosen, as soon as he consents, he obtains from Christ the full power over the Church (*cap. In nomine Domini dist. 23 and the Gloss “dispensandi” and there Archidiaconus no. 19; Bellarm. no.7 v.12; Gemin. no.16,17; Turrecrem. no.10,21,22; Card. Alex. no.24*)—it is of no use to oppose anything that does not render the election null. Even before the election, any defects, even those not invalidating, may be raised to persuade the exclusion of an unworthy candidate; but once the election has been made, such a defect does not invalidate it. Thus, only an objection asserting nullity can be made against the Pope’s election in order to exclude the elected person from the Pontificate. If this objection of nullity does not count as a proper exception, then properly speaking, no exception can be made against the Pontifical election. However, since even an extrajudicial exception is not a strict exception, and among such exceptions nullity is included (as Panormitanus shows in *Clemens Prim. no.78 De re iudicata*), it is said, in common parlance, that one single exception of nullity can be raised against a Pope’s election.

[4] To see against whom one may raise such an exception against the Pope’s election, one must distinguish that the papal election can be null by reason of the electors, or by reason of the elected, or by reason of the election procedure itself. On the part of the electors, one may object that at the time of election there was actual fury or insanity, or that some Cardinal is not a deacon nor privileged as such, or not a legitimate Cardinal (Panorm. in *cap. Licet De elect. no.10; Iacobat. l.4 a.4 a. tertio casu pag.201; Azor. par.2 l.4 c.5 q.8 vers. quae res insuper Io. a S. Thom. 2.2 q.1 disp.2 art.2*). It is true, however, that if, after removing such a Cardinal or multiple Cardinals lacking legitimate suffrage, the person elected still remains chosen by two-thirds of the Cardinals present in the Conclave, all exceptions cease (*cap. Licet De elect.*). Since he is elected by two-thirds of the Cardinals, it matters

licet de elect. Talis enim electus cum sit electus a duabus partibus Cardinalium nihil interest, quod alii sint, vel non sint legitimi vocales. Iacobat. *loco citat.* Ex parte eligentium dari etiam potest exceptio defectus libertatis provenientis ex vi, et metu Cardinalibus illato. Nam electionem factam per vim, & metum esse nullam decretum fuit per Concil. Constant. *ut supra quaest. 20.* visum fuit. Sed & ulterius adverti debet, quod cum habens titulum coloratum stante communi errore, & tolerantia valide agat cum aliis ex publico officio, si vitium electoris non opponatur ante electionem, sed ipse habens titulum saltem coloratum nullo reclamante eligat, valide eligit, & post electionem non est tempus amplius excipiendi contra illum.

5. Ex parte vero electi excipi possunt defectus, qui de iure naturali, vel diuino irritam reddunt electionem Panorm. in *cap. licet num. 11. de elect.* Azor. *par.2.l.4.c.5.* Lauor. *cap. 6 num. 34.* Io: a S. Thoma *2.a. disp. 2. art. 3.* Iacobat. *ubi supra.* Et sic potest dari exceptio furoris, vel amentiae Panorm. *ubi supra.* Nauar. *cap. si quando except. 10. num. 4.* & similibus defectuum naturalium, de quibus non est cur fiat exacta quaestio, ut v.g. si electus sit hermaphroditus, mutus, surdus &c. quia, ut ait Baldus in *cap. licet num. 7. de elect.* non est habenda quaestio de his ambagibus, & ineptiis, Cardinales enim non sunt, nec erunt tam fatui, ut huiusmodi genera hominum promoveant, & alias si defectus non reddit personam incapacem simpliciter potestatis pastoralis, sicut est incapax femina, & non tollit usum rationis, & consensum electi, non irritat ipso facto ex lege naturali, vel divina electionem, Iacobat. *l. 3. a 1. pag. 150. § De hermaphrodito.*

6. Ex defectibus vero moralibus potest contra electum dari exceptio haeresis. Panorm. in *d. cap. licet*, & ibi Palaus. *num. 4.* Barbos. *num. 12* Io: a S. Thom. *2. a. disp. 2. art. 2.* Turrecrem. *cap. si quis pecunia dist. 79.* Nauar. *ubi supra* Azor. *d. cap. 5. q.7.* Thesaur. in *v. Conclauē cap. 4.* Lauor. *tit. 4. cap. 6. num. 35.* & alii

not whether others are legitimate voters. Iacobat. *loc. cit.* On the part of the electors, one can also raise the exception of lack of freedom due to violence and fear inflicted on the Cardinals, for an election made under force and fear has been decreed null by the Council of Constance (*as discussed above, Quaest.20*). Furthermore, note that when someone holds a plausible title under common error and tolerance, and exercises a public office, if the fault of the elector is not raised before the election, but he (having at least a colorable title) casts his vote without objection, the election is valid, and there is no longer time to object against him after the election.

[5] On the part of the one elected, exceptions can be made for defects that render the election invalid by natural or divine law (Panorm. in *cap. Licet no.11 De elect.*; Azor. *par.2 l.4 c.5*; Lauor. *cap.6 no.34*; Io. a S. Thoma *2.2 disp.2 art.3*; Iacobat. *ubi supra*). Thus, one may raise insanity or madness (Panorm. *ubi supra*; Navarr. *cap. Si quando except.10 no.4*), or other similar natural defects about which it is pointless to have lengthy debate (e.g., if the elected is a hermaphrodite, mute, deaf, etc.). As Baldus says (*cap. Licet no.7 De elect.*), there should be no question about such absurdities. Cardinals are not so foolish as to promote such persons, and besides, if the defect does not simply render the person incapable of pastoral authority (as a woman is incapable) or does not remove the use of reason and consent, it does not by natural or divine law render the election void. Iacobat. *l.3 a.1 p.150 § De hermaphrodito.*

[6] Of moral defects, heresy can be raised against the elected. Panorm. in *d. cap. Licet*, and also Palaus. *no.4*, Barbos. *no.12*, Io. a S. Thom. *2.2 disp.2 art.2*, Turrecrem. *cap. Si quis pecunia dist.79*, Navarr. *ubi supra*, Azor. *d. cap.5 q.7*, Thesaur. *v. Conclauē cap.4*, Lauor. *tit.4 cap.6 no.35*, and others commonly affirm this. However,

communiter. Quod tamen spectato iure antiquo debet cum limitatione intelligi. Nam si electus haeresim derestertur non potest illi dari haec exceptio, quia nec haereticus est deponendus a Pontificatu, nisi sit pertinax & incorrigibilis, & ut dictum est *quaest. 30.* electio haeretici non est de iure divino ipso facto irrita, licet sit irritanda, si electus nolit corrigi. Unde ad talem electionem irritandam necessaria est Ecclesiae sententia. Valet tamen semper exceptio ut irritetur electio, si electus inveniatur incorrigibilis. Verum spectato iure novo Constitut. 19. Pauli IV. *Cum ex Apostolatus*, innovatae a Pio V. de qua supra dictum est, potest contra electionem Papae dari exceptio haeresis, & schismatis, quia iuxta illas constitutiones irrita est electio illius, quem apparuerit aliquando fuisse haeticum, vel schismaticum. Et ita ut etiam si tales electi sint in possessione suae administrationis, liceat Clero, & populo ab eisdem obedientia discedere, si apparuerit illos aliquando fuisse, vel haeticos, vel schismaticos.

7. De crimine simoniae fuit olim controversia apud antiquos, merito tamen multi negarunt contra electum a duabus partibus Cardinalium posse dari exceptionem simoniae, quoniam electio simoniaca non est de iure divino nulla, & alias ex *cap. licet de elect.* omnis exceptio ex iure positivo proveniens est ablata, ut dixit Panorm. ad *d. cap. licet.* Et propterea non habere locum exceptionem simoniae contra electum a duabus partibus Cardinalium tenuerunt Turrecrem. ad *d. cap. si pecunia dist. 79.* & ibi Gloss. v. *non Apostolicus*, sed & non obstante Constitutione Iulii II. *Cum tam divino*, hanc eandem exceptionem nunc non habere locum tenent illi, qui supra *qu. at. dixerunt eam Iulii II. Constitutionem non esse in usu in tanto rigore, ut simoniaca electio sit ipso iure nulla. Nihilominus contra electum a duabus partibus Cardinalium posse hodie dari exceptionem simoniae docuerunt Caiet. v. excommunicatio cap. 24.* Alban. q. 15. Iacobat. l.4.c.4. S. ex his concludit. Reodan. tract. de simon. par. 2.c. 34. num.*

considering ancient law, this should be understood with some limitation. For if the elected is denounced as a heretic but is no longer heretical, this exception cannot be given. Since even a heretic Pope is not deposed unless he is pertinacious and incorrigible, and as stated above (*Quaest.30.*), the election of a heretic is not by divine law null ipso facto, though it must be invalidated if the elected refuses correction. Thus, to annul such an election, a sentence of the Church is needed. The exception nonetheless stands as grounds to invalidate the election if the elected proves incorrigible. But considering the new law of Pope Paul IV's Constitution 19 *Cum ex Apostolatus*, renewed by Pius V (as discussed above), an exception of heresy and schism may indeed be brought against the papal election, because according to those constitutions, the election of one who was ever known to have been a heretic or a schismatic is null. Thus, even if such elects are in possession of the administration of their office, the clergy and people may withdraw obedience if it should appear they were at any time heretics or schismatics.

[7] Regarding the crime of simony, there was formerly a controversy among the ancients. Many rightly denied that an exception of simony could be brought against someone elected by two-thirds of the Cardinals, because a simoniacal election is not by divine law null. Moreover, from *cap. Licet De elect.* all exceptions derived from positive law are removed, as Panormitanus teaches on *d. cap. Licet.* For this reason, Turrecremata in *cap. Si quis pecunia dist.79.* and the Gloss there on the word "non Apostolicus," held that no exception of simony can be brought against one elected by two-thirds of the Cardinals. And those who said that Julius II's Constitution *Cum tam divino* is not in strict force also maintain today that the exception of simony does not apply. Nevertheless, others teach that today the exception of simony can be brought against an elect chosen by two-thirds of the Cardinals. Among these are Cajetan v. *Excommunicatio cap.24.* Alban. *q.15.* Iacobatius *l.4 c.4.* Reodano *tract. de simonia par.2 c.34 no.15.* Azor. *par.2 l.4 c.54 q.7.* Sanchez *lib.2 Opus. cap.3 dub.104 no.13.* Barbos. in *cap. Licet De elect. no.V.*

15. Azor. *par. 2.1.4.c.54.q.7*. Sanchez *lib. 2. opus. cap. 3. dub. 104. num. 13*. Barbos. in *cap. licet de elect. num. V*. Golin. *de simon. tab. 1.cap. 48.§. n. 9*. Scortia in *select. Theor. 135*. Thesaur. v. *simonia cap. 7*.

8. At de omnibus aliis criminibus loquendo non defuere antiquitus qui dicerent Papam pro crimine notorio posse deponi, contra quos nervose disputarunt Caiet. *tom. primo opus. tract. 1. cap. 37*. Turrecrem. *cap. si quis pecunia dist. 79. & in summa de Eccl. l. 2. cap. 93. & 98*. D. Antonio. *par. 3. tit. 22. cap. 4. 5. 3*. Iacobat. *l. 9. a. 12*. August. de Ancona *q. 5*. Suarez *disp. 10. de fide sect. 6. num. 14*. Io. a S. Th. *2.2. a qu. 1. ad 7. disp. 2. a. 3. 6*. Sed inquires. Neque enim Papae potestas a bonitate vitae dependet, ut supra probatum est, ideo de horum DD. mente, & aliorum quos refero infra dicitur, quod nullius alterius criminis, quam haeresis, schismatis, & simoniae potest dari exceptio contra alias canonice electum in Papam, quia nullo iure constat ex huiusmodi criminibus electionem Papae reddi irritam, & semper veget decretum Concilii Lateran. in *cap. licet*, ut electus canonice nulla obstante exceptione habeatur tanquam verus Papa. Et ita hoc docuerunt Panorm. in *d. cap. licet*. Azor. *par 2.1.4.c.5. q. 7*. Iacobat. *l.4.a.9. num. 3*. Gambar. in *Extravag. Iulii II. num. 164.** & ex Soprano Bonac. *de elect. Pont. contr. 1. q. 2. S. unico v. 18*.

9. Sed sicut huiusmodi criminum, sic excommunicationis, aut Censurae cuiuslibet exceptio contra electionem Papae non potest opponi, cum ex Constitut. Pii Quarti *In eligendis*, & Gregor. XV. *Aeternis Patris*, nulla excommunicatio, aut Censura impediatur usum vocis, aut activae, aut passivae in electione Papae. Pariter nulla potest ei opponi irregularitas, seu inhabilitas, quae sit iuris positiui, & ideo quod electio eius, qui est in corpore vitiatus, aut alio simili modo inhabilis sit valida, licet peccent Cardinales si talem eligant, docet Iacobat. *l.3. a.1 pag.150 §. quod autem*.

10. Ex parte vero formae opponi possunt electioni Papae omnes, & soli illi defectus,

Golin. *de simonia tab.1 c.48 § n.9*, Scortia in *select. Theor.135*, and Thesaur. v. *Simonia cap.7*.

[8] Concerning all other crimes, some ancient authors said the Pope could be deposed for a notorious crime. Against them, Tommaso de Vio Cajetan *Tom.1 Opus. tract.1 cap.37*, Turrecremata *cap. Si quis pecunia dist.79 & in summa de Eccl. l.2 cap.93 & 98*, Dominic of St. Antoninus *par.3 tit.22 cap.4.5.3*, Iacobat. *l.9 a.12*, Augustinus of Ancona *q.5*, Francisco Suarez *disp.10 De fide sect.6 no.14*, and Io. a S. Thoma *2.2 a q.1 ad.7 disp.2 a.3.6* argue strongly. Nor does the papal power depend on moral goodness of life, as proven above. Thus, from the mind of these and other Doctors, it is said that against one canonically elected Pope no exception for other crimes besides heresy, schism, or simony can be given. For it is not established by any law that such crimes render a papal election null, and the decree of the Lateran Council stands firm in *cap. Licet*, that one canonically elected should be held as the true Pope, no matter what.

[9] Similarly, no exception of excommunication or any censure can be brought against the Pope's election, since, according to the Constitutions of Pius IV *In eligendis*, and Gregory XV *Aeterni Patris*, no excommunication or censure impedes the use of either active or passive voice in a papal election. Likewise, no irregularity or disability by positive law can be objected. Hence an election is valid even if the elected is physically maimed or otherwise "incapable" by positive law, though the Cardinals would sin by choosing such a person (Iacobat. *l.3 a.1 p.150 § quod autem*).

[10] On the side of form, all and only those defects can be objected against the Pope's election that

ex quibus electio est ipso iure nulla, ut si electio facta fuisset vivente Pontifice Iacobat. *l.3. a. c. pag. 149. ed. 2.* & prout sunt illi qui continentur in Constitut. Gregor. XV. *Aeternis Patris §. Quod si electio*, ut si huiusmodi electio alibi celebrata fuerit quam in Conclavi.

11. Sed his stantibus inquirendum remanet qualiter contra electionem Papae excipi possit. Nam dupliciter potest excipi contra aliquem, scilicet primo de iure obiciendo nullitates, ut coram iudice competente probandas, interim autem non praestando illi obedientiam, no tamen eu deijciendo, sed in sua possessione eum relinquendo, usquequo coram Concilio causa Papatus sit definita, & de electionis valore vel nullitate pronunciatum, & huiusmodi exceptio potest vocari exceptio de iure, sed non omnino de facto, quia non spoliatur intrusus via facti, & talis exceptio, quae secundum decretum Concil. Constant. *sess.39.* dari potest contra electionem Papae si praesumatur facta per metum. Ibi enim Concilium non removet electum, aut suspendit ab administratione Papatus, nisi pro tempore celebrationis Concilii, in quo non vult, quod electus praesideat, sed pro tunc eius administrationem suspendit. Caeterum expresse prohibet, ne interim alia electio habeatur, & permittit electum in sui obedientia, & possessione manente. Et hoc modo quolibet nullitas potest electioni Pontificis opponi excipiendo, etiamsi ipsa sit occulta, & non notoria, dum tamen oppositores credant eam posse probare, quod iurare debebunt, sicut de oppositoribus metum decernit Concilium Constant. & sicut de oppositoribus aliis electionibus, & electis decretum fuit in *cap. Ut circa de elec. in 6.*

12. Sed alia est exceptio, quae est de iure, & de facto, quia nedum per excipientes opponitur aliqua nullitas contra electionem, vel electum, sed negatur omnino obedientia electo, & ubi ille velit persistere in Papatu pro posse etiam vi, & per potentiam brachii saecularis de sede deijcitur, & alius Papa eligitur. Et haec est exceptio, de qua antiqui DD. dubitarunt an possit dari contra

render it null by law. For instance, if the election were made while another Pope still lived, that would be a nullity (Iacobat. *l.3 a.c. p.149 ed.2*) and similarly defects enumerated in Gregory XV's Constitution *Aeternis Patris § Quod si electio*, such as holding the election outside the Conclave.

[11] Having settled these points, it remains to inquire how an exception may be raised against the Pope's election. One can do so in two ways. First, by raising juridical nullities to be proven before a competent judge, meanwhile withholding obedience but not forcibly deposing him, leaving him in possession until a Council pronounces on the validity or nullity of the election. This form of exception can be called a "legal" exception but not entirely one "in fact," since the intruder is not dispossessed by force, and such an exception is admitted by the Council of Constance *sess.39* if the election is presumed to have been made under fear. The Council does not remove the elect nor suspend his administration of the Papacy except during the time of the Council's celebration, during which it does not allow the elected to preside. Meanwhile, it explicitly forbids a new election and permits the elected to remain in his obedience and possession. Thus, any nullity can be opposed this way against the Papal election, even if it is hidden and not notorious, provided that the opponents believe they can prove it, and must swear to it, just as those who allege fear must do according to the Council of Constance and those who contest other elections and electees must do according to *cap. Ut circa De elect. in 6.*

[12] Another form of exception is both legal and factual, for here not only do opponents object to the nullity in law, but they also deny obedience and, if he insists on holding the Papacy, they may even forcibly depose him using secular arm. They elect another Pope. This is the type of exception about which ancient Doctors doubted whether it could be used against a Pope's election. According to

electionem Papae. Nam vt aduertit Card. Iacobat. *l.4.de Concil. a.4. vers. & cum DD pag. n. 242. lut. E. cum DD. in cap. licet de elect.* dicunt, quod contra electionem Papae non potest excipi, sed debet Papa nulliter electus accusari, mens eorum est, quod in illis casibus non debeat impediri ab administratione sine Concilio, quia accusari non potest nisi apud Concilium *cap. si Papa dist.40 & cap. in fide de haeret. in 6.* Quod si Concilium esset congregatum coram illo excipi posset, & Concilium sine alia accusatione procedere posset. Et illae exceptiones, quae dictae sunt exceptiones de iure, cum ut dictum est habeant vim actionis, & accusationis, cum haec sit vis accusationis extrajudicialis, quae datur contra electionem, ideo dum Doctores dixerunt in aliquibus casibus non posse dari exceptionem, sed tunc posse solum nulliter electum accusari, voluerunt, quod tunc non possit excipi de iure, & facto, sed solum de iure sic accusando, & per hoc accusatum provocando ad Concilium, ut per illud declaretur an exceptiones sint validae electo interim admissio, & in sua administratione manente, si simus in tempore excipiendi, vel nec de iure, sed proprie accusando, si amplius non habeat locum exceptio.

13. Dicitur igitur, quod ubi nullitas quaecunq; & ex quacunque causa veniat est notoria contra electionem Papae, dum est tempus excipiendi potest excipi, & de iure, & de facto electum si pacifice nolit de sede descendere etiam vi, & per potentiam brachii secularis eiciendo, & de sede deiciendo, & alium Papam valide eligendo. Hanc conclusionem negarunt ex antiquis aliqui, ubi sit sermo de exceptione metus, vel haeresis, vel simoniae, & senserunt, quod contra electum receptum a duabus partibus Cardinalium in illis casibus non possit excipi. Quod tenuit Card. Iacobat. *l. 3. de Concil. a. v. de exceptione*, pag. mihi 152. & 153. Et pro hac sententia pag. mihi 148. *v. sed quid si Papa* refert Alanum, Vincet. Innocent. Compostell. Io. Audr. Anton. Card. Panorm. Anchar. Io. de Imola, Card. & Henric. Boich. volentes

Cardinal Iacobatius *l.4 de Concil. a.4 pag.242*, and others commenting on *cap. Licet De elect.*, they say no exception can be made against a Pope's election, but the Pope can be accused—meaning that in such cases one should not impede him from administration without a Council, because he cannot be accused except before a Council (*cap. Si Papa dist.40 & cap. In fide De haeret. in 6*). If a Council is convened, then one may there raise exceptions, and the Council could proceed without further accusation. These exceptions are said to be legal and carry the force of action and accusation, since they represent an extrajudicial accusation allowed against an election. Thus, when Doctors said in some cases no exception can be made but the Pope must be accused, they meant that one may not except both in law and fact, but only in law by accusing him, thereby provoking a Council to declare whether the exceptions are valid, while the elect remains admitted and in administration, or if we are no longer in a time to except at all.

[13] Therefore, if any nullity, from any cause, is notorious against the Pope's election, at the time for making exceptions it is possible to except in both law and fact, removing him by force if he will not peacefully descend from the See, and then electing another Pope. Some ancients denied this conclusion in cases of fear, heresy, or simony, holding that no exception could be made against an elect received by two-thirds of the Cardinals. This was Cardinal Iacobatius's position *l.3 de Concil. a. v. de exceptione p.152-153*, referencing Alanus, Vincentius, Innocentius, Nicolaus de Compostella, Ioannes Andreae, Antonius the Cardinal, Panormitanus, Ancharanus, Johannes de Imola, Cardinalis, and Henricus Boic., who asserted that no exception for heresy can be made against one elected by two-thirds of the Cardinals and already in possession of the Papacy; he can only be accused. The same Iacobatius holds *lib.4 a.4 v. Ex*

contra electum a duabus partibus Cardinalium, & receptum vel in possessione Papatus existentem non posse excipi de crimine haeresis, sed illum posse accusari. Idem tenuit Iacobat. *lib.4. ar.4 v. Ex hic concludit pag. mihi 236. lit. D.* Sed Innoc. Io. Andr. & Compostella absolute voluerunt, quod contra electionem Papae non possit absolute excipi de crimine haeresis, licet ille posthac accusari, quia electus ex sola electione acquirit ius in re, ideo exceptio non est proportionata, quia datur contra parentem, electus autem in Papam nihil petit, cum ex electione acquirat plenum ius, unde consentiendo electioni iam possidet. Sed Panorm. ante possessionem Papatus admittit posse excipi, non tamen post possessionem, postquam admittit posse dari exceptiones etiam defectuum, quae ex iure naturae reddunt nullam electionem, ut quod electus sit mulier, vel furiosus, vel infans.

14. Sed quia alia est quaestio de quando possit dari exceptio, an scilicet quando electus est iam receptus, vel antequam recipiatur, & alia est quaestio absolute per quam quaeritur qualis exceptio dari possit. Nunc examinatur haec secunda quaestio, & de ea loquitur conclusio, quae est communis Canonistarum, & DD & non habet difficultatem; nam primo loquendo de nullitatibus, quae sunt ex parte formae, quia nimirum electus est intrusus non electus ex concordii & legitima electione duarum partium Cardinalium, eum posse, & debere eiici, & alium legitime eligi habetur ex cap. *In nomine Domini d. 23.* & ex cap. *Si pecunia dist. 79.* & licet nunc plura sint de forma electionis Papae, quae non erant tempore Concilii Lateranensi sub Nicolao Secundo, quando conditi fuerunt illi canones, tamen contra omnem electum non servata forma canonica potest de iure, & facto excipi, quia talis non est electus ex concordii consensu electorum, qui non est electus saltem a duabus partibus Cardinalium in Conclavi existentium, & servata canonica forma eligentium. Nam, & in Constitutione *Aeterni Patris* Greg. XV, & *Quod si electio*, habetur quod

hic concludit p.236 lit.D. Innocentius, Ioannes Andreae, and Compostella held absolutely that one cannot except against a papal election on grounds of heresy, since through the election the Pope acquires a right in the matter, and hence exception is not fitting. But Panormitanus admits that before possession of the Papacy one can except, though not afterward. And yet he also admits exceptions for defects by natural law, as if the elect were a woman, insane, or an infant.

[14] Since the question of when exceptions can be made (before or after the Pope is received) differs from the question of what kind of exception may be made at all, we now examine the second question. The common conclusion of Canonists and Doctors, which is not difficult, is this: First, concerning nullities arising from form—for example, if someone intrudes as Pope without a concordant and legitimate two-thirds election—such a person can and should be deposed, and a new election legitimately held, as *cap. In nomine Domini dist.23* and *cap. Si pecunia dist.79* state. Although now there are more rules on the form of a papal election than at the time of the Lateran Council under Pope Nicholas II, whenever the canonical form is not observed, an exception can be raised in law and fact, for he was not elected by at least two-thirds of the Cardinals in Conclave following canonical form. Indeed, in Gregory XV's Constitution *Aeterni Patris* and *Quod si electio*, it is said that if the required form is not observed, the elect is to be considered apostaticus, not apostolicus, and under penalty of excommunication one must not obey him. Thus, not only may he be denied obedience, but another who is a legitimate Pope may be chosen without awaiting any judicial sentence. It would be

electus non servata forma ibi statuta tanquam Apostaticus habeatur, & sub poena excommunicationis prohibetur illi obedientiam praestare. Igitur nedum potest, sed tali electo debet denegari obedientia, & alius eligi qui sit legitimus Papa nullo alio expectato iudicio. Et certe inconveniens maximum esset, si ubi Cardinalibus notorie constat de nullitate electionis ex parte formae non possent ad novam electionem procedere non expectato Concilii iudicio, & decreto, vel etiam non praemisso processu, & iuris ordine servato, & nulliter electo audito. Nam & imo in dicta Constitutione *Aeterni Patris* & in Caeremoniali praecipitur Cardinalibus, ut bis in die servata forma canonica eligant.

15. De crimine vero haeresis, vel schismatis adest Constitutio 19. Pauli IV. *Cum ex Apostolatus*, quae dat facultatem recedendi ab obedientia eius, de quo apparuerit eum aliquando fuisse haereticum, vel schismaticum. Et de crimine simoniae hoc idem statuitur per Iulium Secundum, & datur Cardinalibus facultas, & spoliandi intrusum, & alium eligendi, ut pluries est probatum. Et idem dicendum de omni nullitate, notoria, quia in notoriis non est opus iudice, ut bene docuit Turrecremat. cap. *Si duo dist. 79*.

16. De alia vero quaestione loquendo, quando scilicet contra Papae electionem possit excipi praecipue hac exceptione iuris, & facti loquendo, videri posset, quod non sit habenda consideratio an Papa electus sit, vel non sit receptus, sit vel non sit in possessione administrandi Pontificatum, sed quod etiam contra receptum possit excipi. Tum quia in praefatis Constitutionibus expresse continetur, quod Papa sic nulliter electus etiam post receptionem, & Inthronizationem, & administrationem potest eiici, Tum quia cap. *In nomine Domini dist. 23.* & cap. *Si quis pecunia dist. 79.* & in Constitutione *Aeterni Patris* Greg. XV. praecipitur absolute, quod intrusus non habeatur ut Apostolicus, sed Apostaticus, & quod ei non obediat. Tum quia ut bene in hoc ponderarunt Innoc. &

a great absurdity if, when the Cardinals know the election is null by reason of form, they could not proceed to a new election without waiting for a Council's judgment or a trial. Indeed, Gregory XV and the Ceremonial order the Cardinals to elect twice daily following the canonical form.

[15] Concerning heresy or schism, there is Pope Paul IV's 19th Constitution *Cum ex Apostolatus*, granting permission to depart from obedience to anyone who was ever a heretic or schismatic. For simony, Julius II's Constitution *Cum tam divino* similarly grants Cardinals the faculty to depose an intruder and elect another, as has been proven multiple times. The same reasoning applies to all notorious nullities, since in notorious cases no judge is needed, as Turrecremata cap. *Si duo dist. 79* rightly teaches.

[16] Another question arises about whether one may except against a Pope's election at any time, even after the Pope has been peacefully received. Some might think that one need not consider whether he has been received or enthroned. Since at the moment the elect consents, if legitimately elected, he immediately has from God full authority over the entire Church, independent of the Church's confirmation, by which he can command and compel the Church to receive and obey him, it might seem that even if it later appears that he was nullly elected, one could still raise an exception in law and fact. However, it is said first that if a Pope has been peacefully received by the entire Church without opposition, no exception at all can be given against him. Only if he is found to be currently heretical (and incorrigible) can he be accused, not for nullity of election, but to depose him as a

qui illum sequuntur receptio, seu possessio in materia Papatus est parum considerabilis, cum electus in eo actu, in quo consensit electioni, si est legitime electus statim habeat a Deo, & possideat plenissimam auctoritatem supra totam Ecclesiam, unde habet potestatem ab omni receptione, & consensu Ecclesiae independentem, per quam potest praecipere, & cogere Ecclesiam ut se recipiat, & sibi obedire. Et propterea ubi sit notorium, quod Papa sit nulliter electus etiam postquam fuit receptus, & postquam administravit, & ab illismet qui eum receperunt potest illi obedientia denegari, & potest ille etiam vi expelli, & hoc est dicere, quod nedum potest accusari, sed contra eius electionem, & iure, & facto potest excipi.

17. Nihilominus dicitur primò, quod contra receptum nedum a Cardinalibus, sed a tota Ecclesia pacifice, & sine oppositione nulla prorsus posset dari exceptio, sed solum si cognoscatur esse actu haereticus potest accusari, ut si sit incorrigibilis deponatur. Loquentes de crimine haeresis hanc conclusionem docuerunt Alanus, Vincent. Innoc. Compostell. Io. Andr. Butrius, Card. Panorm. Anchar. Imola in *c. Licet de elect.* quos refert simul cum Egidio Card. Iacobat. l. 3. *de Concil. art. 1. s. Sed quid si Papa, & seq. pag. mihi 143.* & ex duplici capite veritas eius inde. Quia nullitas electionis Papae vel est de iure Divino, vel de iure positivo. De illa si adesset posset semper excipi quia electio taliter nulla, nunquam convalescit. Sed dico talem nullitatem esse impossibilem dari, seu datam unquam esse, si electus canonice in facie Ecclesiae sit communiter ab Ecclesia receptus. Quia Ecclesia, quae recipit Papam, ut suae fidei regulam infallibilem nunquam errabit recipiendo in Pontificem, vel fatuum, vel infantem, vel feminam, vel non baptizatum, & ubi in his moralem adhibuerit diligentiam, quam semper adhibebit Christus illi assistet, ut non erret. Quia enim ad hoc ut Ecclesia sit certa, quod non possit à Pontifice decipi, debet etiam esse certa, quod Papa sit legitimus, &

heretic. Many authors taught that against a Pope received by the whole Church, no exception of nullity can stand. If God permits a man chosen by the Church to be heretical, it would be a sign of Divine providence or guidance that the defect would not remain hidden until he was universally received.

[17] Nevertheless, it is said first that if a Pope was received not merely by the Cardinals, but by the entire Church, peacefully and without any opposition, absolutely no exception can afterward be raised against him. It can only be said that if at some point he is discovered to be a current heretic and incorrigible, he might then be deposed. Speaking of heresy, certain authors—Alanus, Vincentius, Innocentius, Nicolaus de Compostella, Ioannes Andreae, Butrius, Cardinalis (possibly a reference to a known Cardinal commentator), Panormitanus, Ancharanus, and Ioannes de Imola in *cap. Licet De elect.*—all referred together by Cardinal Iacobatius (*l. 3 de Concil. art. 1 s. Sed quid si Papa & seq. pag. mihi 143*) teach this conclusion. And it is borne out by a double reasoning. Because a nullity of the papal election that arises by divine or natural law would, if it existed, always be possible to raise against him. But I say that such a nullity cannot morally occur if the Pope has been canonically elected in the face of the Church and universally accepted by it. For the Church, which receives the Pope as the infallible rule of faith, shall never err by receiving as Pope someone who is insane, an infant, a woman, or unbaptized. When the Church has exercised the due moral diligence (which it always will, with Christ assisting), it will not err. Because in order for the Church to be certain that it cannot be deceived by the Pope, it

habeat infallibilem assistentiam Spiritus Sancti, ideo debet dari in terra Iudex, qui infallibiliter possit decernere, quod electus in Papam est verus Papa. At vero hic Iudex non est nisi Ecclesia ipsa cui Christus electionem Pontificis commisit, ideoque & iudicium certum per quod sciatur electionem fuisse legitimam, siue hoc indicet Ecclesia iudicialiter per Concilium, siue extraiudicialiter per communem, & pacificam Pontificis receptionem. Non quod fidelium consensus & acceptatio sit electio, vel vi sua non electum possit eligere, quia facultas eligendi competit solis Cardinalibus. Nec quia fidelium consensus, aut acceptatio sit veluti confirmatio electionis, quia electio Papae non indiget confirmatione. Nec quia electionis valor dependeat a consensu, & acceptatione populorum. Quia imo statim ex vi electionis factae a Cardinalibus si sit canonice electus est verus Papa, & plenam habet auctoritatem cap. *In nomine Domini dist. 23. cap Si quis pecunia dist. 63.* Sed in hoc fidelium consensus est effectus infallibilis validae electionis, & ideo eius valorem probat a posteriori infallibiliter. Unde contra talem electionem sit acceptatam non debet admitti exceptio, & oppositio, sicut neque admittitur contra sententiam, quae transit in iudicatum, seu cuius iustitia est iam certa, & notoria.

[18]

19. Neque obstat si dicatur ex supra probatis, quod cum nullitas inducta ex iure positivo non sit talis in conscientia, sed electus sit verus Papa, licet deponibilis constituto de defectu, vel personae, vel electionis, ideo stat quod Ecclesiae consensus infallibile sit indicium valoris electionis, quam habet in foro conscientiae, & Dei, sed amouibiliter, unde cum hoc stet, quod possit dari exceptio contra electionem, ut electio in foro externo irritetur. Nam dicitur, quod etiam ante totius Ecclesiae consensum electio Papae facta in facie Ecclesiae est eo modo valida, sed consensus Ecclesiae est infallibilis

must also be certain that he is a true Pope who receives the infallible assistance of the Holy Spirit. For this certainty to stand, there must exist on earth a judge who can infallibly determine that the elected person is a true Pope. But this judge is no one other than the Church itself, to which Christ entrusted the election of the Pontiff. Thus, the Church must also have certain judgment that the election is valid. Whether this judgment be made juridically by a Council or extrajudicially by the Church's universal and peaceful reception of the Pope, the result is the same. It is not that the consensus and acceptance of the faithful constitutes the election or confirms it—since the election is perfect in itself once performed canonically by the Cardinals—but their acceptance is an infallible effect and sign of a valid election. Consequently, one cannot admit an exception against such an election once accepted, just as no opposition is admitted against a sentence that has passed into a res iudicata and whose justice is now certain and manifest.

[18] This section / paragraph is missing due to what I reason is a transcriber's error. Paragraph 19 below is the true next paragraph.

[19] Nor does it serve as an objection if one argues from what has been demonstrated above that, since a nullity introduced by positive law is not such in conscience, the one elected remains a true Pope—though deposable if a defect of person or election is established—therefore the Church's consent is an infallible sign of the validity of the election as it stands in the forum of conscience and before God, though said validity is still removable. From this it follows that an exception can be raised against the election, so that the election might be annulled in the external forum. For it is said that even before the consent of the universal Church, a papal election made in the face of the Church is in some

notificatio, quod electio sit valida simpliciter. Quia & ad Ecclesiae necessaria est fides certa, quod electus simpliciter sit verus Papa, & quae gesta per eum sunt infallibilia, quantum ad ea in quibus Papa non potest errare, & ad hanc fidem necessarium est, & conducit hoc Ecclesiae iudicium. Nam si Papae electio sit dubia iudicium de illius valore non potest spectare ad Papam electum, quia illi stante illo dubio non potest obligare ecclesiam.

20. Pertinebit igitur ad Ecclesiam ipsam, cum non sit dabilis alius, cui hoc iudicium tribui possit. Eadem igitur ratione qua dicimus, quod licet Pontifex antecederet ad Canonizationem Sanctorum innitatur fallibilibus processibus, quibus potest subesse falsum, tamen in actu canonizationis instinctu Spiritus Sancti infallibili ducitur. Sic licet iudicium electionis Papae in suo fieri pendeat a fallibilibus principiis, tamen ipsa actualis Ecclesiae receptio est ex infallibili instinctu Spiritus Sancti. Ideo sic Ecclesia regitur, quod nunquam accepit, nec recipiet incapacem Papatus ex iure divino, nec recipit, nec recipiet nisi verum Pontificem, & ita quod Ecclesia in recipiendo Pontificem non possit errare tenuerunt Gravin. *tom. 3. l.4. contr. 4. diffic. 3.* Io. à S. Thom. 2.2, *a q. a. usq. ad. 7. disp. 2. a. 2.* & alii Theologi, sentientes de fide esse, quod Pontifex in facie Ecclesiae canonice electus, & ut talis ab Ecclesia receptus credatur verus Papa successor B. Petri habens plenitudinem potestatis in Dei Ecclesiam. Addo vero ex eodem Io. a S. Thoma, hanc Ecclesiae acceptionem fieri primo per concordem electionem saltem duarum partium Cardinalium nullo eorum excipiente, aut opponente, & quod publicatio per quam ab uno Cardinali nomine omnium electio publicatur populo est veluti definitiva declaratio huius legitimae electionis, quae veluti confirmatur, & completur cum à reliquis Praelatis, & populo Romano acceptatur electus, & successive ab aliis Praelatis

sense valid; but the Church's consent is the infallible notification that the election is valid, absolutely speaking. This is because the Church needs certain faith that the one elected is, absolutely, the true Pope and that the acts carried out by him are infallible in those matters wherein the Pope cannot err. To this certain faith, the Church's judgment is necessary and conducive. For if the papal election were doubtful, the judgment concerning its value could not belong to the Pope-elect himself, since amid that doubt he could not bind the Church.

[20] Therefore, it must pertain to the Church itself, since there is no one else to whom such a judgment could be assigned. By the same reasoning that we say, even though the process preceding the canonization of Saints relies on fallible proceedings—where falsehood can creep in—yet at the very act of canonization, the Holy Spirit's inspiration leads the Pope infallibly; so too, although the judgment concerning the making of a papal election depends on fallible principles, the Church's actual reception of the Pope-elect proceeds from the infallible inspiration of the Holy Spirit. Thus the Church is governed so that it never has accepted, nor ever will accept, one incapable of the papacy by divine law, nor does it receive—nor will it ever receive—anyone but a true Pontiff. In this manner, the Church, in receiving a Pontiff, cannot err. This was upheld by Gravina [*Tom. 3, Lib. 4, Contr. 4, Diff. 3*], John of St. Thomas [*2.2, a q. a. up to a.7 disp. 2 a.2*], and other theologians, who hold it as a matter of faith that a Pope canonically elected in the face of the Church and received as such by the Church is to be believed the true Pope and the successor of Blessed Peter, possessing plenitude of power in God's Church. Further, I add from the same John of St. Thomas that this acceptance by the Church first takes place through the unanimous election by at least two-thirds of the Cardinals, with none dissenting or objecting, and that the public declaration, whereby the election is proclaimed to the people by one Cardinal in the name of all, is as it were a definitive declaration of this legitimate election, which is effectively confirmed and completed when the

extra Romam existentibus admittitur, & a nullo fidelium contradicatur.

21. Sed loquendo de nullitatibus, quae non sunt de iure naturae, seu divino, alia est ratio conclusionis, quia scilicet leges irritantes electionem Papae non comprehendunt hunc casum in quantum sit possibilis. Nam in multis casibus in particulari non est possibile moraliter, ut quod à Cardinalibus recipiatur is, qui ab iis intra Conclave existentibus non est electus nullo eorum obstante, & nulla parte Ecclesiae reclamante. Et quatenus violentia tanta esset durante violentia electio convalescere non posset, & haec receptio non esset libera, ideoque non esset veluti legitima confirmatio electionis, & cessante metu tunc liceret unicuique contra talem sic violenter intrusum protestari, nec deesset qui id faceret. Ideo si nullitas sit vel ex defectu eligentium, vel ex defectu electionis vix moraliter est possibilis casus, quod electio sit deficiens ab Ecclesia libere, & pacifice nullo reclamante, quia huiusmodi nullitas vix potest reperiri, quae non sit notoria, & certa in quo casu Spiritu Sancto ecclesiam dirigente indubitate fiet, ut aliquis tali electioni se opponat, & electum non recipiat.

22. Si vero aliqua huiusmodi nullitas sit occulta unum de duobus dicendum esset, vel quod Deo dirigente defectus manifestabitur, vel quod lex positiva irritans electionem non comprehendit hunc casum. & hoc secundum rationabiliter dicitur, leges enim irritantes electionem Papae, si non fiant sub hac, vel illa forma, habent pro fine libertatem electionis Pontificis, & praecipue eius securitatem, & ut schismata vitentur. At vero ubi Papa in facie Ecclesiae apparenter eligitur servata canonica forma, & Pontifex electus ab Ecclesia recipitur nulla est hic coactio, & periculum schismatis. Imo periculum est schismatis, si post receptionem aliqua

elected is accepted by the remaining Prelates and the Roman people, and subsequently is accepted by other Prelates outside Rome, with no one among the faithful contradicting.

[21] But when speaking of nullities not arising from the law of nature or divine law, the reasoning for the conclusion differs, since laws invalidating a papal election do not encompass a case as it is taken to be possible here. For in many particular instances, it is not morally possible that the person who is accepted by the Cardinals (who are together in the Conclave) be one who was not elected by them, with none dissenting and with no part of the Church raising an outcry. And if the violence were so great that it continued, the election could not become valid during that violence. In that case, such acceptance would not be free, and thus would not serve as a legitimate confirmation of the election; and once the fear ceased, anyone could lawfully protest against one who had been so violently intruded, and someone would certainly do so. Therefore, if nullity arises either from a defect of the electors or from a defect in the election itself, it is scarcely morally possible that the election, being defective, would be freely and peacefully received by the Church, with no one objecting, because such a nullity can hardly remain unknown or doubtful. In such a scenario, directed by the Holy Spirit, it would undoubtedly happen that someone would oppose such an election and refuse to receive the elected.

[22] If, however, some such nullity were hidden, one of two possibilities must be said: either, by God's guidance, the defect would be revealed, or the positive law invalidating the election does not apply to this particular case. This second explanation can be reasonably maintained. For laws invalidating a papal election if not carried out under a certain form have as their purpose the freedom of the election of the Pontiff and, above all, its security, as well as the avoidance of schisms. But if a Pope is apparently elected in the face of the Church, observing canonical form, and is received by the Church, then here there is no coercion or danger of schism. Indeed, the danger of schism arises if, after reception, some knowledge of a

notitia defectus superveniente, quis vellet contra talem electum excipere, & illius electionem impugnare, & sic electum deicere. Quamobrem in casu simili deficit contrarie finis legis irritantis, unde lex non comprehendit talem casum.

23. Et si iterum dicitur, quod potest esse Papa verus, sed deponibilis, sicut est talis omnis Papa si velit esse haereticus incorrigibilis. Et quod Ecclesiae receptio sufficit, quod sit signum infallibile, quod electus sit verus Papa, non tamen, quod sit Papa non deponibilis, constituto de defectu irritante electionem ex vi iuris positivi. Iterum respondetur, & dicitur primo, quod non omnes admittunt, quod nulliter electus ex defectu formae canonicae, aut personae sit verus Papa in conscientia, sed multi hoc negant, unde hoc non est omnino certum, cum tamen fide certum esse debeat, quod electus ab Ecclesia receptus sit verus Papa. Tum secundo, quia lites in aeternum non debent durare, quod si vis praescriptionis tanta est, ut faciat suum, quod non erat, & leges volunt, quod contra sententiam, quae transiit in iudicatum non detur appellatio, & oppositio, debeatne Ecclesia in aeternum esse subdita litibus, & eius Pontifex subditus violentiae Potentum, ut toties quoties Papa pro Domo Dei contra Principes murus steterit inflexibilis possint Principes sub praetextu nullitatis electionis Papam persequi? minime quidem, sed Ecclesiae acceptatio sumi debet tanquam omnimoda, & publica declaratio valoris electionis, contra quem non valeat alia oppositio, & Ecclesia quiete possit vivere sub suo pastore, & Papa sine timore Potentum possit viriliter agere, & Iurisdictionem Ecclesiae tueri, & vitia arguere, & corrigere. Unde omnino dicendum est, quod leges Ecclesiasticae irritantes electionem Papae non comprehendunt hunc casum electionis, cuius defectus ita fuerit occultus, ut eo non obstante Papa fuerit tanquam legitimus à tota Ecclesia receptus. Unde non dicitur, quod electio nulla convalidetur, ex acceptance Ecclesiae, sed quod per nullam legem positivam electio sit occulte

defect appears and one would wish to object against such an elected Pope and to challenge his election and thus depose him. Hence, in such a similar case, the opposite of what the invalidating law intended occurs, so the law does not encompass such a case.

[23] If it is again objected that one can be a true Pope but still be deposable—as is true of any Pope should he choose to become an incorrigible heretic—and that the Church’s reception suffices as an infallible sign that the elected is a true Pope, but not that he is undeposable if a nullifying defect by positive law were established, I respond again. First, not all admit that a person elected nulliter due to a defect of canonical form or person is in conscience a true Pope; many deny this. Hence this is not entirely certain, whereas it must be certain with the certainty of faith that one accepted by the Church is a true Pope. Secondly, because disputes should not last forever, if the force of prescription is so great that it can make what was not into what is, and the laws will that there be no appeal or opposition against a sentence that has passed into res judicata, then should the Church be forever subject to disputes, and her Pontiff subject to the violence of princes so that every time the Pope stands as an unyielding wall for God’s House against the princes, these princes, under the pretext of nullity of the papal election, can persecute him? Certainly not. Rather, the Church’s acceptance must be taken as a complete and public declaration of the election’s validity, against which no further objection avails, enabling the Church to live quietly under its pastor, and the Pope to act courageously without fear of princes, to defend the Church’s jurisdiction, to reprove and correct vices. Hence we must absolutely say that ecclesiastical laws invalidating a papal election do not encompass the case of an election whose defect remained so hidden that the Pope was accepted by the entire Church as if he were legitimate. Thus, we do not say that a null election is “convalidated” by the Church’s acceptance. Rather, we say that no positive law renders an election, which is both accepted and approved by the Church, secretly invalid or null. For the peace, security, and tranquility of the Church require this.

deficiens, & acceptata ab Ecclesia, & approbata sit irrita, & nulla. Quia hoc requirit Ecclesiae pax, & securitas, & tranquillitas.

24. Addo, quod si nullitas electionis sit ex defectu electi, haec provenire potest, vel ex defectu simoniae, vel ex defectu haeresis, aut schismatis. De defectu autem simoniae loquendo supra. q. 21. probatum est, quod lex Iulii Secundi non comprehendit hunc casum, in quo Pontifex electus ob occultam simoniam sit etiam nullo obstante receptus, quia illa lex supponit exceptionem datam contra electionem ab aliquo ex Cardinalibus praesentibus electioni. Et imo non concedit omnibus fidelibus sed solis Cardinalibus, qui se tali electioni opponere voluerint, ut possint contra intrusum invocare auxilium brachii secularis, nunquam vero concessit, quod in quocunque tempore excipi possit, vel opponi tali electioni, sed imo hanc oppositionem concedit solis Cardinalibus, qui interfuerunt electioni. Et quia ut dictum est praecisa Constitutione hac, Iulii II. contra electum in Papam non potest excipi de simonia, & hanc exceptionem Iulius II. concedit solu Cardinalibus praesentibus electioni, bene colligitur, quod haec exceptio aliis non competit, & quod ad hoc ut electio censenda sit nulla, necesse est, ut haec exceptio detur tempore electionis si fieri potest, vel si tunc ob metum non possit dari, detur antecederet ad Ecclesiae iudicium non vero postquam Ecclesia iam pacifice recepit Pontificem. Et in omni casu dicendum est, quod si electio patiatur hunc defectum, vel Deo dirigente defectus non manebit occultus, nec deficiet, qui in tempore se opponat, ne Ecclesia erret in recipiendo Papam nullum, vel si post Ecclesiae receptionem hic defectus appareat, signum sit, quod electio ex tali defectu in simili casu non est nulla.

25. In casu autem haeresis adest difficultas ex Constitut. 19. Pauli IV. ex qua habetur, quod si etiam quocunque tempore postquam Papa fuit communiter ab omnibus receptus inveniatur, eum aliquando fuisse ante suam electionem

[24] I add that if the nullity of the election arises from a defect in the elected person, this may stem either from simony, heresy, or schism. Concerning the defect of simony, it was proven above (q.21) that the law of Pope Julius II does not encompass the case where a Pope, elected due to hidden simony, is received by all with none dissenting. For that law presupposes that at least one of the Cardinals present at the election could raise an objection against the election. Moreover, it does not grant every faithful person this right, but only to those Cardinals who wish to oppose such an intruder, allowing them to invoke the aid of the secular arm. It never allowed that at any time whatsoever one could object to such an election, and in fact grants this opposition solely to the Cardinals who were present at the election. And since, as was said, apart from this Constitution of Julius II no one can raise the exception of simony against an elected Pope, and that Julius II grants this exception only to Cardinals present at the election, it is rightly inferred that this exception does not belong to others. For the election to be deemed null, it is necessary that this exception be raised at the time of the election if possible; or if, due to fear, it cannot be raised then, it must be raised before the Church has passed judgment—not after the Church has peacefully received the Pontiff. In every case it must be said that if the election suffers from such a defect, then by God's guidance this defect will not remain hidden, nor will there fail to be someone who opposes in due time so that the Church would not err in receiving a null Pope. But if this defect comes to light only after the Church's reception, that is a sign that in such a case the election is not null by that defect.

[25] In the case of heresy, there is difficulty arising from the Constitution 19 of Pope Paul IV, from which it is held that if at any time whatsoever after the Pope has been commonly received by all, it is discovered that he was at some time before his election a heretic or a schismatic, then that election

haereticum, aut schismaticum, electio ipsa habeatur, ut nulla, & gesta per illum, ut irrita.

26. Sed si illius Constitutionis est sensus, quod non obstante, quod Papa fuerit receptus a tota, & universali Ecclesia, adhuc eius electio nedum coram Deo, sed & coram Ecclesia potest esse nulla, si post quodcunque tempus appareat electum aliquando fuisse haereticum, vel schismaticum, & ita ut pro nullis habenda sint tam electio, quam gesta per talem Papam, & adeo ut ab eius obedientia liceat recedere & illum euitare, ut haeresiarcham, imo & si invocato, brachio saeculari opus sit violenter deijcere. Quoniam alia ex parte, quod est possibile aliter se habere; aut quod potest apparere, non esse id quod apparet esse nec est certum, nec potest esse obiectum infallibilis fidei, sequitur per evidentem consequentiam, quod nedum certum non erit ullo unquam tempore, quod haec persona sit legitimus Papa in Ecclesia, & quod in Dei Ecclesia sit Papa verus. sed neque quod gesta per Papam sint legitima, et vera, & valida, & quod Sancti Canonizati sint tales, & quod ea, quae docet, & decernit esse de fide sint talia, quia nec de aliquo Pontifice est certum, quod non fuerit, vel quod non possit apparere, quod fuerit haereticus, vel schismaticus nec valet si quis recurrat ad certitudinem, vel impossibilitatem moralem tum quia nec moraliter est impossibile, quod aliquis Papa fuerit haereticus aut schismaticus ante suam promotionem, & quod hoc possit apparere eum quia ad hoc ut aliquid non sit certum tantum ut sit obiectum fidei, sufficit, quod per potentiam logicam, seu metaphysicam possit aliter se haberi, & quod possit contingere, quod Ecclesia erret in recipiendo Papam & quod possit stare, quod Papa ab universali Ecclesia receptus possit esse Papa non verus, sed talis cui non assistat infallibiliter Spiritus Sanctus. unde eius gesta possunt esse revocabilia, & declarabilia fuisse ipso iure nulla. Et sic tota Religionis & fidei certitudo perit in Ecclesia Dei.

27. Unum igitur de duobus est dicendum,

is to be considered null, and the acts done by him as invalid.

[26] But if the sense of that Constitution is that, notwithstanding the Pope's reception by the entire and universal Church, his election can still be null not only before God but also before the Church if at any subsequent time it appears that the elected person had once been a heretic or schismatic, and hence that both the election and his acts must be considered null, and that it would be lawful to withdraw obedience from him and to avoid him as a heresiarch, even resorting to the secular arm if needed to depose him forcibly—this would mean that what appears to be may not truly be. It would follow that it is never at any time certain that a given person is the legitimate Pope of the Church and a true Pope in God's Church; nor that acts accomplished by this Pope are legitimate, true, and valid; nor that canonized Saints are truly Saints; nor that what he teaches and decrees as of faith is truly so. For it would never be certain that some Pope was not a heretic or schismatic before his promotion, nor is it sufficient to invoke moral certainty or moral impossibility. Because for something not to be certain enough to be an object of faith, it suffices that by logical or metaphysical possibility it could be otherwise—that the Church could err in receiving the Pope, or that a Pope received by the universal Church might not be a true Pope or not be assisted infallibly by the Holy Spirit. Thus his acts could be revoked and declared null by law, destroying all certainty of religion and faith in the Church of God.

[27] Therefore, one of two statements must be

vel scilicet, quod stante sensu praedicto talis Constitutionis, Deus ita diriget electores, & Ecclesiam, ut vel non eligetur unquam qui fuit haereticus, aut schismaticus, aut electi manifestabitur defectus ne recipiatur sine oppositione, & contradictione a tota Ecclesia. Et sic quod Conclusio posita subsistit, nec contra Papam electum, & a tota Ecclesia receptum potest dari exceptio ista de haeresi, vel schismate praeterito, seu de nullitate suae electionis. Sed imo talis exceptio statim habenda est pro falsa, & repugnante infallibilitati quam habet Ecclesia, & habere debet de validitate electionis a se approbatae. Et quamvis dicant posse Papam accusari de haeresi praesenti, quod ego possibile non credo, quia credo Deum nunquam permissurum quod detur Papa haereticus, sicut usque modo nunquam datus fuit, ut bene probant Gravin. *tom. 4. contr. 7. 8.3. pag. 318.* & Brouius in *Pontifical. Rom. cap. 26.* non tamen propter hoc posset dari de nullitate electionis Papae, sed bene posset agi ad hoc ut Papa alias verus et legitimus deponeretur, si vellet esse incorrigibilis. Itaque contra Papam a tota Ecclesia receptum non potest habere locum valida exceptio de nullitate electionis.

28. Vel dicendum est (& sic est prorsus rationabile) quod dicta Constitutionis non est ille sensus, qui suppositus fuit, sed quod in illa parte Constituit. scilicet: *Nec per susceptionem muneris consecrationis, aut subsecutam regiminis, & administrationis possessionem, seu quasi, vel ipsius Romani Pontificis inthronizationem, aut adorationem, seu ei praestitam ab omnibus obedientiam, & cuiusvis temporis in praemissis cursum convaluisse dici, aut convalescere possit, illud verbum ab omnibus* non respicit totam Ecclesiam, sed totum Collegium Cardinalium, aut Romanos praesentes. Nam si voluisset intelligi de tota Ecclesia id clarius expressisset, sicuti vere exprimendum fuisset, & quia non est verisimile quod Pontifex voluerit reddere dubium hunc articulum, scilicet infallibilitatem Ecclesiae

made. Either, given the aforesaid sense of that Constitution, God will so guide the electors and the Church that they will never elect someone who was heretical or schismatic, or that if such a defect exists, it will be manifested before he is received without opposition or contradiction by the whole Church. Thus the conclusion stands that against a Pope elected and received by the whole Church this exception of heresy or past schism or nullity of his election cannot be raised. Indeed, such an exception must at once be considered false and repugnant to the infallibility which the Church has and must have concerning the validity of an election it has approved. And although some say that a currently reigning Pope can be accused of present heresy—which I do not believe possible, for I believe God will never permit a heretical Pope, just as none has ever existed until now, as Gravin and Brouius prove—yet even if that were possible, it would not provide any basis for challenging the nullity of his election. Rather, in that case one could only proceed so that such a Pope, otherwise true and legitimate, might be deposed if he were incorrigible. Thus, no valid exception of nullity of election can be raised against a Pope received by the entire Church.

[28] Or we must say (and this is altogether reasonable) that the meaning of that Constitution is not what was supposed. Rather, in that part of the Constitution of Paul IV where it states: “*Nor by the reception of the office of consecration, or by subsequent possession or quasi-possession of rule and administration, or by the enthronement or adoration of the Roman Pontiff, or by obedience shown to him by all, or by the passage of any amount of time in the aforementioned circumstances, can it be said or allowed that his election has convalesced or will convalesce.*”—the phrase “*by all*” does not refer to the entire Church, but rather to the whole College of Cardinals or all the Romans present. If he had wanted to mean the entire Church, he would have expressed it more clearly, as indeed he should have. Since it is not likely that the Pope intended to render this article doubtful—that is, the infallibility of the Church in

recipiendo Pontifice, imo infallibilitatem assistentiae Spiritus Sancti ei, qui ut Papam sine Ecclesiae contradictione se gerit, & de rebus fidei, & Religionis ex cathedra decernit, cum ex hoc dependeat certitudo fidei Ecclesiae, quae pro regula fidei infallibili debet habere Pontificem.

29. Addo, quod cum in ea Constitutione decernatur gesta Papam talem sint rescindenda, & nulla declaranda mens Pontificis est, quod huiusmodi Papa, qui semel fuit haereticus si hoc appareat non habuerit assistentiam Spiritus Sancti, & quod gesta eius sint rescindenda. Igitur si etiam mens Pontificis dicatur esse quod haec apparentia, & quod ex ea sequitur possit habere locum etiam postquam Papa fuit receptus a tota Ecclesia, sequitur, per necessariam consequentiam, quod mens Pontificis fuerit, quod Papa electus, & receptus possit esse talis de quo appareat quod non habuit assistentiam Spiritus Sancti, & quod fallibiliter ea quae gessit, gesserit, & Ecclesia erraverit, & habuerit Papam falsum pro vero, & sic quod existentia Papatus in Ecclesia sit fallibilis & incerta. Quae quia absurda sunt, omnino igitur est vitanda huiusmodi interpretatio, & dicendum est, quod clausula illa. *Si ullo umquam tempore apparuerit*, debet intelligi de tempore, habili ad disputandum de existentia Papatus in electo, quod est tempus praecedens communem Ecclesiae consensum, & receptionem, & sic est necesse ut haeresis vel schisma saltem tunc incaeperit taliter, ut impediat receptionem electi in Papam, & in tempore congruo facta fuerit aliqua oppositio de haeresi, vel schismate. Quo supposito postea electio non convalescat neque ex longitudine temporis, neque ex omnium Cardinalium consensu. Sed si haeresis appareat electio iudicanda sit nulla. Sed post receptionem nulla iam sit admittenda oppositio, aut exceptio, quia tunc non est amplius tempus habile ad ponendum in dubium electionem Papatus.

30. Dicitur secundo quod antequam Papa sit pacifice receptus ab Ecclesia potest excipi contra eius electionem, tam de iure,

receiving the Pontiff, and the infallibility of the Holy Spirit's assistance to one who, without contradiction from the Church, conducts himself as Pope and decides from the chair matters of faith and religion, from which the Church's certainty of faith depends—it follows that we must avoid such an interpretation.

[29] I add that since this Constitution decrees that the acts of such a Pope are to be rescinded and declared null, the Pontiff's intention is that such a one, who was once a heretic, if this appear, never had the assistance of the Holy Spirit, and that his acts are to be rescinded. Therefore, if one were to say that the Pope's intention also includes that this may come to light even after the Pope has been received by the entire Church, it would follow necessarily that the Pope intended that an elected and received Pope could be one concerning whom it could appear that he lacked the assistance of the Holy Spirit, that his acts were fallible, and that the Church erred in treating him as a true Pope. This would mean that the very existence of the papacy in the Church is fallible and uncertain—an utterly absurd conclusion. Thus we must avoid this interpretation and say that the clause "*if at any time it should appear*" must be understood as referring to a time suitable for questioning the existence of the papacy in the elected person, which is the time before the common consent and reception by the Church. Thus, if heresy or schism began before that time in such a manner as to prevent the elected from being received as Pope, and if at the suitable time some opposition on grounds of heresy or schism was made, then afterward the election does not convalesce, not even by the passage of time or by the consent of all the Cardinals. But if heresy appears only after the Church's reception, then no opposition or exception may be admitted, because at that point the time for placing the papacy in doubt has passed.

[30] Secondly, we say that before the Pope is peacefully received by the Church, one may raise

quam de iure, & facto. Et tunc habet locum doctrina Gratiani, cap. *Deus ergo*, 3. q. 1. quod Papa potest spoliari etiam si fuerit in possessione, nec debet restitui. Sed hic triplex casus distingui debet. Primus est si nullitas sit notoria. Secundus si nullitas licet in rigore non sit notoria, est tamen certa, & indubitata. Tertius si nullitas est solum probabilis. Quia vero in vacantia Papatus, ut Gratianus advertit, Ecclesia non habet superiorem, qui iuridice de causa cognoscat, quia licet Concilium Generale sit Iudex huius causae, tamen Concilium non nisi post longum tempus, & cum difficultate congregatur, & ut ex Panorm. in cap. *licet de elect.* advertit Iacobat. l.3. q.1. sed istud pag. 45. impossibile dicitur, quod sine magna difficultate non habetur, ideo tunc habet Ecclesia, ut contra intrusum quantum licere potest etiam via facti procedat.

31. In primo ergo casu ubi intruso sit notoria, nedum licet excipere de iure, & negare obedientiam intruso, & illum ut excommunicatum, & haeresiarcham evitare, sed more belli prius intruso admonito, ut de sede descendat, si id non faciat possunt Cardinales oppositores & alii fideles illum persequi, & vi eicere, & spoliare, ut expresse habetur cap. *Si quis pecunia dist.* 79, & ex Constitutione Pauli IV. & Iulii II. & est indubitatum & certum. Sic Constantinus Totonis Ducis Nepesini frater, ex laico per vim intrusus & sine electione Cardinalium ordinatus, post annum a Christophoro Primicerio, & Sergio Sacellario eius filio eiectus est, & canonice electus fuit Stephanus IV. Baron. & Brou. ad annum 763. Ciaconus in vita Stephani IV. Christophorus etiam Cardinalis tituli S. Laurentii in Damaso detruso Leone V. legitimo Pontifice, Sedem Apostolicam invasit, sed post septem menses expulsus fuit, quamvis ab alio sedem invadente, qui fuit Sergius III. quem Ecclesia sustinuit usquequo post tres annos defunctus est, Baron. & Brou. ad annum 907. Solum adverto quod optimum erit universaliter servare, quod in casu simoniacae intrusionis dixit Iulius II, qui

objections against his election both in law and in fact. At that time the doctrine of Gratian holds (cap. *Deus ergo*, 3 q.1), namely, that a Pope can be stripped even if he was in possession, and need not be restored. But here we must distinguish three cases. The first is if the nullity is notorious. The second is if the nullity, though not notorious in strict sense, is still certain and beyond doubt. The third is if the nullity is only probable. For when the papacy is vacant, as Gratian notes, the Church has no superior to judge the cause juridically; indeed, although a General Council is the judge in this matter, it cannot be gathered except after a long time and with great difficulty. As Panormitanus and Iacobat. note (cited by others), it is almost impossible to have it without great difficulty. Therefore, in such a time, the Church may proceed as far as allowed, even by factual means, against an intruder.

[31] Thus, in the first case, where the individual who has intruded into the Apostolic See is manifestly an intruder, not only is it permissible by law to lodge an exception against him, and to refuse obedience to the intruder, and to avoid him as one excommunicated and a heresiarch, but—following due warning as is done in warfare—that he should step down from the See; if he does not do so, the opposing Cardinals and other faithful may pursue him, expel him by force, and strip him of what he has seized. This is expressly established in chapter *Si quis pecunia* (Distinction 79), and in the Constitutions of Pope Paul IV and Pope Julius II, and it is undoubted and certain. Thus, Constantine, brother of Toto the Duke of Nepi, a layman, who intruded himself by force and was ordained without the Cardinals' election, was after a year expelled by Christopher the Primicerius and his son Sergius the Sacellarius, and Stephen IV was canonically elected. [Cf. Caesar Baronius and Abraham Bzovius for the year 763; Alphonsus Ciacconius in the Life of Stephen IV.] Likewise, Christopher, Cardinal of the Title of St. Lawrence in Damaso, having deposed the legitimate Pontiff Leo V, invaded the Apostolic See. Yet after seven months he was himself expelled, although by another intruder, who was Sergius III. The Church tolerated

quidem in §. *licet*, & in §. *Ad cuius* *distinguit inter non recipere Pontificem intrusum, & illum habere ut excommunicatum, aut haereticum ex una parte, & intrusum violenter spoliare ex alia parte; nam prima duo concessit omnibus fidelibus, sed tertium Cardinalibus. Quia in casu intrusi laicorum non est esse primos duces belli, sed subditos, qui ad instantiam Cardinalium, quorum inter est providentia & gubernatio Ecclesiae in vacantia Pontificatus, & Concilii, debent bellum gerere, & ita optimus ordo servabitur, si laici duces se sinant Ecclesiasticis, & ad eorum directionem, & instantiam contra Papam intrusum se moveant nec etiam ab eius obedientia recedant, nisi Clero, & eorum Pastoribus recedentibus, quia in rebus fidei, & Religionis Laicorum est duci, & dirigi, non vero ducere, & regere alios. Et intruso ob praetensam simoniam hoc considerandum quod esto electio simoniaca sit declarata nulla ipso facto, hoc debet observari, quod soli Cardinales praesentantes electioni possunt excipere de simoniaca electione quia cum haec exceptio non sit de iure naturae, & alias sit exclusa per Concilium Lateranense in cap. licet de elect.* solum convenit iis, quibus illam concedit Iulius II. qui illam concedit solis Cardinalibus praesentibus electioni.*

32. Quamobrem ubi isti non excipiant, non est unde alius excipere velit, vel in aliquo electum a duabus partibus Cardinalium molestare sub praetextu simoniae. Quia cui non est concessa exceptio contra electionem, multo magis est prohibitum negare obedientiam electo, vel eum vitare. Et ideo quod omnibus fidelibus concedit Iulius II. in §. *Liceatque*; suscipere debet interpretationem, & limitationem capere ab eo quod prius dixerat concedens Cardinalibus praesentibus electioni posse excipere de simonia, & non aliis. Et in § *ad*

Sergius III until he died three years later. [Cf. Baronius and Bzovius for the year 907.] I merely note that it is best universally to observe what Pope Julius II said in the case of simoniacal intrusion. Indeed, in the paragraphs *licet* and *Ad cuius*, Julius II distinguishes between not receiving an intruded Pontiff and treating him as excommunicated or heretical on the one hand, and stripping the intruder of his possession by force on the other. The first two courses of action he granted to all the faithful, but the third he reserved to the Cardinals. For in the case of a lay intruder, laymen are not to be the first leaders in warfare, but rather subjects who, at the urging of the Cardinals—whose responsibility it is to provide for and govern the Church during a papal vacancy—and of a Council, should wage war. Thus, the best order will be preserved if lay leaders allow themselves to be directed by ecclesiastics and move against the intruded Pope only at their prompting and insistence. Nor should they withdraw from his obedience unless the clergy and their pastors have already withdrawn, because in matters of faith and religion, laymen are to be led and directed, not to lead and govern others. In the case of an intruder on grounds of alleged simony, one must consider that, even if a simoniacal election is by its very nature null, this rule must still be observed: only the Cardinals who participated in the election can raise the exception of simony. Since this exception is not of the natural law, and otherwise is excluded by the Lateran Council in the chapter *licet de electione*, Julius II grants this exception solely to the Cardinals who were present at the election.

[32] Therefore, if these Cardinals do not raise the exception, no one else has standing to raise it or to molest the one elected by two-thirds of the Cardinals under the pretext of simony. For those who lack the concession to bring an exception against the election are, a fortiori, forbidden from refusing obedience to the elected or avoiding him. Thus, what Julius II grants to all the faithful in the paragraph *Liceatque* must be interpreted and limited by what he previously said, granting the right to raise the simony exception only to the Cardinals present at the election and to no others. In

cuius solum Cardinalibus, supposita eorum exceptione, et oppositione concedit posse implorare auxilium brachii secularis. Et sic solum supposita exceptione Cardinalium, & ad eorum imploratione possunt laici, vel alii electum simoniace etiam notorium spoliare Papatu.

33. In secundo casu non potest quidem tam defacili evenire, ut nullitas electionis Papae sit certa, evidens, & indubia si non sit notoria, si tamen ita contingat, potest contra Papae electionem excipi de iure, & aliquo modo de facto, & in terminis Concilii Constant. scilicet non recipiendo electum, nec praestando illi obedientiam, & non communicando cum illo, sed habendo illum ut haeresiarcham. Conclusionem hanc habet Panorm. cap. *Licet n. 11. de elect.* & est DD. admittentium dari contra electionem Papae exceptionem de haeresi. Haec enim exceptio ad minus est exercita recusatio, & non acceptatio electi in Pontificem, & non communicatio cum illo, quia habere aliquem, qui se gerit tamquam Pontificem, ut non Pontificem est simul habere illum, ut Apostaticum, & excommunicatum. Et probatur ulterius. Nam primo loquendo de simonia huiusmodi exceptio expresse conceditur ibi; *Sed etiam contradictum sit electum, vel assumptum de simoniaca labe a quocunque Cardinali, qui eidem electioni interfuerit opponi, & excipi possit, sicut de vera, & indubitata haeresi.* Ubi igitur simonia sit certa, & indubitata locum habet exceptio contra electionem Papae sic simoniacam. Et pariter locum habent, quae in §. *licetque* omnibus conceduntur, scilicet non reddere obedientiam tali electo, & posse habere illum ut haeresiarcham excommunicatum non communicando cum illo. Et ex eodem loco, & verbis habetur, quod eodem modo potest excipi de crimine haeresis, quia supposuit Iulius II. quod de vera, & indubitata haeresi possit excipi contra electum in Papam, & ex hoc decernit posse excipi de simonia. Verum quidem est, quod ubi loquimur in terminis Constitut. 19. Pauli IV., licet ad hoc ut electio habeatur ut

the paragraph *Ad cuius*, he grants only to these Cardinals—once they have raised their exception and opposition—the right to invoke the aid of the secular arm. In this way, only if the Cardinals have raised the exception and sought assistance may laymen or others also strip a simoniacally elected individual, even if the matter is notorious, of the papacy.

[33] In the second case, where the nullity of the papal election is not notorious, it cannot so easily happen that the nullity is certain, evident, and beyond doubt. Yet if it should so occur, one may raise a legal exception against the Pope's election and proceed in some measure in fact, following the terms of the Council of Constance. That is, one may refuse to receive the elected person, withhold obedience from him, and avoid communion with him, holding him as a heresiarch. Panormitanus (Niccolò de Tudeschi) states this conclusion in chapter *Licet n. 11. de electione*, and it accords with Doctors who admit that an exception on grounds of heresy may be brought against the Pope's election. For at minimum, this exception takes the form of refusing and not accepting the elected individual as Pope, and not communicating with him. To treat someone who presents himself as Pope as not Pope is the same as treating him as apostate and excommunicated. This is further proven. First, speaking of simony, such an exception is explicitly granted there: "But even if the one elected or assumed is contradicted on the grounds of a simoniacal stain, this may be opposed and excepted against by any Cardinal who took part in that election, just as in the case of true and undoubted heresy." Therefore, where simony is certain and beyond doubt, the exception against the papal election holds, and likewise what is granted to all in the paragraph *licetque* also applies: namely, not rendering obedience to such an elect, and being able to regard him as a heresiarch and excommunicated, and not communicating with him. From the same source and wording, we see that the same applies to the crime of heresy, since Julius II presupposes that in the case of true and undoubted heresy, one may bring an exception against a papal elect. From this he decrees that one may also bring an exception on

nulla sit necessarium, quod haeresis, vel schisma sit notorium, quia in ea requiritur, quod haeresis appareat Ecclesiae, quod non fit, nisi haeresis sit notoria, ut dictum est supra. Tamen loquendo de exceptione de iure, & non omnino de facto, & ad effectum, ut in iudicio appareat, etiam de haeresi praeterita, vel schismate potest supradicto modo excipi nolendo illum recipere, si saltem haeresis sit certa. In terminis etiam Constitutionis Gregor. XV. *Aeterni Patris*, ubi nullitas electionis ex parte formae sit vera, & indubitata, locum habere potest haec exceptio, quia ibi praecipitur, quod electus non servata forma dictae Constitutionis sit, & habeatur ut Apostaticus. Unde hoc confirmatur nam ibi excommunicantur nedum intrusus, sed eius eligentes, fautores, & complices, unde prohibetur, ut illi detur obedientia, cum non possit negari eam esse fautorem, aut etiam complicem intrusionis in Papatum, qui Papae intruso obedit, quod etiam prohibetur cap. *In nomine Domini* respectu eius, qui fuerit electus forma d. cap. *Non servata*, & in Constitutione Iulii II. *Cum tam divino* pariter praecipitur, quod electus simoniace habeatur ut Apostaticus. Unde ubi sit certum, electum esse intrusum, nedum possunt, sed tenentur fideles negare obedientiam tali intruso, & habere illum ut Apostaticum.

34. Ampliatur hoc, ut liceat etiam iis, qui illi obedientiam praestiterunt ab eius obedientia recedere. Nam in terminis Constitutionis Iulii II. hoc illis conceditur in §. *liceatque* & in terminis Constitut. Greg. XV. hoc illis praecipitur sub poena excommunicationis cum illius intrusi fautores excommunicentur, quod fit etiam cap. *In nomine Domini* d. 23. Quamobrem qui prius tali intruso obedivit tenetur ab eius obedientia discedere, ne in fautoria, aut delicti complicitate, vel sequacitate perseveret. Et hic propterea advertendum discrimen, quod in terminis Constitutionis

grounds of simony. To be sure, when we speak according to the terms of the 19th Constitution of Pope Paul IV, it may be necessary for the heresy or schism to be notorious for the election to be considered null, since that Constitution requires that the heresy be manifest to the Church, which does not occur unless the heresy is notorious, as stated above. However, when speaking about a legal exception, and not purely a factual one, and for the purpose of having this appear in judgment, even past heresy or schism may be brought as an exception by refusing to receive him, if at least the heresy is certain. According also to Pope Gregory XV's Constitution *Aeterni Patris*, if the nullity of the election on grounds of form is true and beyond doubt, this exception can apply. For that Constitution requires that one who was not elected following the prescribed form must be held as apostate. Hence, it is confirmed: there not only the intruder is excommunicated, but also those who elected him, his supporters, and accomplices. Therefore, obedience cannot be given to him, since one cannot deny that anyone obeying an intruder to the papacy is a supporter or even an accomplice of the intrusion. This is also forbidden by chapter *In nomine Domini* regarding one elected without following the form of the said chapter *Non servata*, and in Julius II's Constitution *Cum tam divino*, the simoniacally elected must likewise be regarded as apostate. Hence, where it is certain that an individual is an intruder, not only can the faithful refuse obedience, but they are bound to have him as apostate.

[34] This may be extended to allow even those who initially gave obedience to the intruder to withdraw from his obedience. Indeed, in Julius II's Constitution, paragraph *liceatque*, this is granted to them, and in Gregory XV's Constitution, this is commanded under penalty of excommunication, since supporters of the intruder are excommunicated. This is also found in chapter *In nomine Domini* (Dist. 23). Therefore, one who previously obeyed such an intruder is bound to withdraw from obedience to avoid persisting in supporting or complicity in the wrongdoing. Here we should note the distinction: under Julius II's

Iulii II. conceditur facultas excipiendi, & recedendi ab obedientia intrusi per simoniam, & habendi illum ut Apostaticum. Sed non praecipitur hoc sub aliqua poena, nisi quod sub poena excommunicationis praecipitur Cardinalibus, ne faciant contra dictam Constitutionem, unde ipsi eligendo simoniace sunt excommunicati, & etiam non habendo sic electum, ut Apostaticum, sed in terminis cap. *In nomine Domini* & Constitut. Gregor. XV. fautores, complices, auctores, & sequaces intrusi contra dd. Constitutiones sunt excommunicati.

35. Dicitur tamen quod extra casum notorii quantuncumque nullitas electionis Papae sit certa, non licet excipere omnino de facto intrusum privando possessione, quam habet, & cum vi eiciendo, & expellendo, & compellendo ei adhaerentes, ad hoc ut ab eius obedientia recedant. Sed in terminis Concil. Constant. decernentis qualiter ex praetextu metus excipi possit contra electionem Papae, debet expectari sententia Concilii Generalis. Conclusionem hanc tenuerunt communiter antiqui Canonistae in cap. *Licet de elect.* volentes contra haeticum hoc modo possidentem non dari exceptionem, sed illum debere accusari, quos refert, & sequitur Iacobat. *l. de Concil. a. 2.* Probatur autem primo, quia hoc fidelibus in hoc casu non est concessum; & alias de iure communi possessor non potest via facti expoliari. Quod enim hoc non sit concessum apparet. Nam in terminis Constitutionis Greg. XV. praecipitur quidem, quod nullus intruso faveat, sed non dicitur, quod intrusus violenter eiciatur, nec datur facultas novum Pontificem eligendi. In terminis vero cap. *Si quis pecunia* mandatur intrusum expelli, sed cum ibi fit sermo de non electo, sed intruso violenter, & notorie sine concordie electione Cardinalium, est etiam sermo de intruso notorio, sicut & de eo loquitur idem Rom. Concil. cap. *In nomine Domini dist. 23.* Iacobat. *l.3. q.1. §. sed videtur pag. 144.* In casu etiam notorii procedit dispositio Constit. 19. Pauli IV. loquentis

Constitution, there is a faculty granted to raise an exception and to withdraw from obedience to a simoniacal intruder, and to regard him as apostate, but this is not commanded under penalty to all, except that it is commanded under penalty of excommunication that the Cardinals must not act contrary to that Constitution. Thus, by choosing simoniacally they incur excommunication, and likewise by failing to regard the simoniacally elected person as apostate. Under chapter *In nomine Domini* and Gregory XV's Constitution, however, supporters, accomplices, authors, and followers of the intruder against these Constitutions are excommunicated.

[35] It is nevertheless said that outside the case of notoriety, however certain the nullity of the Pope's election may seem, it is not lawful to raise a purely factual objection against the intruder by depriving him of the possession he holds, forcibly expelling him, and compelling his adherents to abandon obedience to him. Rather, following the terms of the Council of Constance, which decrees how one may raise an objection against a papal election under the pretext of fear, one must await the sentence of a General Council. This conclusion was commonly held by the ancient canonists commenting on chapter *Licet de electione*, who wished to deny that such a remedy existed against a heretic in possession, maintaining that he must be accused, not simply set upon. These canonists are reported and followed by Iacobus de Butrio in *l. de Concil. a.2.* The reasoning is as follows: because this is not granted to the faithful in this case, and in common law a possessor cannot be expelled by force. Indeed, in Gregory XV's Constitution, it is commanded that no one favor the intruder, but it does not say that the intruder should be forcibly expelled, nor does it grant the faculty to elect a new Pope. In chapter *Si quis pecunia*, indeed it is mandated to expel the intruder, but there it speaks of a manifest intruder who was not elected but forcibly intruded without a concordant election of the Cardinals, i.e. a notorious intruder, as the same Roman Council speaks in chapter *In nomine Domini* (Dist. 23). [Cf. Iacobatius in *l.3. q.1. § sed videtur p.144.*] In the case of notoriety, the

de eo, qui apparuerit fuisse haereticus, vel schismaticus ante electionem. De intruso etiam per metum loquens Concilium Constant. aperte prohibet procedi ad aliam electionem, & vult electum manuteneri in sua possessione usque ad Concilium, pro cuius tempore eius iurisdictionem suspendit. Et ita exemplo, & similitudine huius dispositionis Concilii sine dubio hic est modus tutus procedendi, & amplectendus in similibus occasionibus, fugiendo violentias, bella, homicidia, & damna irreparabilia, quae secum ferunt violentiae, & bellicae hostilitates.

36. Nec obstat quod Iulius II. in Constitutione *Cum tam divino & ad cuius* conceditur Cardinalibus implorare auxilium brachii saecularis ad excludendum, & deiciendum simoniace intrusum, & loquitur in casu verae, & indubitatae simoniae, quia in hoc casu concessit Cardinalibus ut possint contra electum excipere, & successive fidelibus, ut possint ab eius obedientia discedere. Et confirmatur, quia cum simonia sit crimen, quod mente principaliter committitur, cum consistat in pacto, sine quo non est simonia, vix dari posset casus, in quo Constitutio Iulii Secundi haberet locum si solum in casu notorii posset contra electum excipi de facto, ipsumque etiam vi eici, si opus sit. Tertio, quia Gratian. in §. *Solet l. q. 5.* docet quod Papa intrusus potest vi expoliari, & non debet restitui, quarto quia ratio Gratiani, quod scilicet in casu electionis Papae non datur Superior ad quem habeatur recursus, ostendit quod in eo casu Ecclesia se habet sicut Princeps Supremus, qui quidem in casu certo secundum communem DD. sententiam, si aliter princeps admonitus nolit reddere sibi quod debet, potest illi bellum inferre, ut tradit Suarez *d. sp. 13. de char. sect. 6. n. 2.* & docent Molina *p. 1. de inst. disp. 103.* Vasquez *p. 2. d. 64. cap. 3.* Salas *p. 2. tract. 8. disp. unica sect. 23. n. 123.* Palau *de conscient. disp. 203. dub. 17. n. 1002.* Poterunt igitur Cardinales de facto intrusum simoniace vi expellere, si admonitus nolit recedere quando simonia

disposition of Paul IV's 19th Constitution applies, speaking of one who was evidently heretical or schismatic prior to his election. The Council of Constance, in treating an intruder by fear, openly forbids proceeding to another election and wishes the elected to be maintained in his possession until the Council, during which time it suspends his jurisdiction. By analogy and similarity to this ruling of the Council, it is without doubt a safe and proper approach to follow in similar cases, avoiding violence, wars, homicides, and irreparable damage that accompany violent and warlike hostilities.

[36] Nor does it stand against this reasoning that Julius II, in the Constitution *Cum tam divino & ad cuius*, grants to the Cardinals the power to invoke the help of the secular arm to exclude and depose a simoniacally intruded Pope, clearly speaking in a case of true and undoubted simony. For in that case, he allowed the Cardinals to raise an exception, and thereafter allowed the faithful to depart from his obedience. This confirms the point, since simony is a crime primarily of intention (involving a pact without which there is no simony), and it would scarcely be possible to find a scenario where Julius II's Constitution would apply if it required notoriety before any factual action could be taken against the elect. Third, Gratian in § *Solet l. q. 5.* teaches that an intruded Pope may be stripped of possession by force and need not be restored. Fourth, Gratian's reasoning—that in the case of a papal election there is no superior to whom one can appeal—shows that in such a case the Church behaves like a supreme prince. According to the common opinion of Doctors, a supreme prince, if another prince, once admonished, refuses to render what he owes, may wage war against him (as Suarez teaches in *d. sp. 13. de char. sect. 6. n. 2.*, and as Molina *p. 1. de inst. disp. 103.*, Vasquez *p. 2. d. 64. cap. 3.*, Salas *p. 2. tract. 8. disp. unica sect. 23. n. 123.*, and Palau *de conscient. disp. 203. dub. 17. n. 1002.* say). Hence, Cardinals may forcibly expel a simoniacal intruder if, after being admonished, he will not withdraw, when simony is certain and beyond doubt.

sit certa, & indubitata.

37. Nam ad ista respondetur ordine retrogrado incipiendo ab hoc ultimo, & illud retorquendo. Quia Collegium Cardinalium non est iudex sicuti est Princeps Supremus, imo nec Ecclesia in vacantia Papatus est proprie Iudex, nisi ut congregata in legitimo Concilio. Et sic verum est, quod Concilium Generale, si intrusus contra eius sententiam vellet persistere in Papatu, potest illum vi deijcere. Sed Ecclesia non congregata in Concilio habet, ut contra intrusum procedat solum via exceptionis, & facti. Ideo non potest intrusum spoliare extra casum notorii, quia nullus est spoliandus non servato ordine iuris, eo quod possidet. Ad tertium dicimus Gratianum expresse ibi loqui in casu notorii, quia loquitur in casu intrusi, sine legitima electione Cardinalium, cum modo sit sermo de eo qui alias canonice est electus a duabus partibus Cardinalium, & solum praetextu simoniae contra eum excipitur. Ad primum, & secundum dicitur quod ad summum probare videntur, quod in intruso per simoniam possit, ubi simonia est indubitata, vi spoliari intrusus. Neque ex hoc potest inferri idem licere in aliis casibus, quia ubi exceptio non valet iure divino, sed solum ex vi iuris humani, cum alias ex statuto Concilii. Lateran. in *cap. licet* prohibita sit omnis exceptio contra electum a duabus partibus Cardinalium tantum praecise, & non amplius ex iure positio potest excipi, quantum est concessum derogando illi Concilio, nec licet de casu ad casum hoc extendere.

38. Sed nihilominus dicitur, quod nec in casu simoniae non notoriae potest non expectato iudicio Concilii expelli Papa a possessione, quia licet Iulius II. concesserit dari posse exceptionem in casu verae & indubitatae simoniae, tunc sequetur est de exceptione de iure. Sed quando dat facultatem invocandi brachium saeculare ad eijciendum intrusum, loquitur servato eo quod iuris est in hoc puncto, & iuxta terminos aliarum decretalium, quae hoc admittunt solum in casu notoriae nullitatis,

[37] But we respond to these points in reverse order, starting with the last and turning it back on itself. For the College of Cardinals is not a judge as a supreme prince would be, nor is the Church in a state of sede vacante properly a judge unless convened in a legitimate Council. Thus, while a General Council could indeed depose an intruder forcibly if he persisted against its judgment, the Church not assembled in council has only the route of legal exception and certain limited actions in fact. Therefore, outside the case of notoriety, it cannot strip the intruder of possession without due legal process, since no one possessing something may be deprived of it without legal order. To the third point, we say that Gratian clearly speaks of a notorious case when he treats of an intruder who lacked a lawful election by the Cardinals. But now we speak of someone who was canonically elected by two-thirds of the Cardinals and is opposed only on the ground of alleged simony. To the first and second points, we answer that they at most show that in the case of a simoniacal and undoubted intrusion, it is possible to expel him by force. Nor can we infer the same for other cases, because where an exception does not arise from divine law but solely from positive human law, and where, according to the Lateran Council's chapter *licet*, all exceptions against one elected by two-thirds of the Cardinals are prohibited, we cannot extend the scope of exceptions beyond what is expressly granted by these later constitutions. Thus, one cannot argue from one case to another.

[38] Nevertheless, it is also said that even in a case of non-notorious simony, without awaiting a Council's judgment, one may not depose the Pope from possession. For although Julius II allowed the raising of a legal exception in the case of true and undoubted simony, that pertains to a legal exception (de iure). But when he grants the faculty to invoke the secular arm to expel the intruder, he speaks within the limits of what the law permits in such a point and in line with the terms of other decretals that allow such action only in cases of notorious

in quo non est opus dicere. Sed ubi non est notorium delictum, non potest sine iudice damnari delinquens tollendo vi id, quod ille possidet. Unde extra casum notorii servanda est praxis statuta a Concil. Constantiensi, & expectandum iudicium Concilii.

39. Hinc sequitur quod extra casum notorii non licet Cardinalibus devenire ad secundam electionem via facti ante Concilii decretum irritans electionem priorem. Nam non licet in Ecclesia esse duo capita, & duos Pastores & duos Summos Pontifices, igitur ubi unus adest, nisi liceat illum spoliare Papatu, non licet alium introducere. Cum igitur extra casum notorii non liceat via facti intrusum reijcere, nec licet alium eligere. Unde si alius eligatur primus est in possessione manutenendus. Aegid. autem in cap. *Licet*, quem refert Card. Iacobat. *l.4. art.4. pag. 257.* & sequitur Lavor. arbitratur etiam in casu haeresis, si contigerit Cardinales elegisse haereticum, & electum recepisse, & per annum illi obedisse, & postea detecto errore etiam notorie ab eius obedientia recessisse, quod adhuc manutenendus sit prior electus in possessione donec causa per Concilium fuerit cognita. Verum dicitur, quod si prior Papa est sine oppositione receptus ab Ecclesia, secundus electus est omnino schismaticus. Antequam vero primus fit ab universali Ecclesia receptus in casu notorii, sicut ille potest etiam vi spoliari, ita alius poterit eligi non obstante quacumque longitudine temporis, sed extra casum notorii prior sic debet in sua possessione manuteneri, quod non debet violenter expelli, sed tunc tam contra primum, quam contra alios electos debet servari decretum Concil. Constant. sess. 39.

40. An vero in hoc casu alterius electio sit nulla certum est quod in casu metus secunda electio est ipso iure nulla ex decreto Concilii Constant. & spectato iure communi in cap. *consideravimus*, & cap. *audivimus de elect.* ita universaliter dicendum esset. Sed quia electio Papae non

nullity—where nothing further need be said. Where the crime is not notorious, one cannot condemn an alleged wrongdoer by forcibly taking from him what he possesses without a judge's sentence. Therefore, outside the case of notoriety, one must follow the procedure established by the Council of Constance and await the judgment of a Council.

[39] From this it follows that outside the case of notoriety, the Cardinals are not permitted to proceed by a factual route to a second election before a Council decrees that the first election is void. It is not permissible in the Church to have two heads, two Pastors, two Supreme Pontiffs. Thus, when one is present, unless one may legitimately strip him of the papacy, no second Pope may be introduced. Therefore, outside a notorious case, since one may not by force expel the intruder, neither may another be elected. Consequently, if another is elected, the first must be maintained in possession. Giles (most likely Aegidius Romanus or another commentator) in chapter *Licet*, quoted by Cardinal Iacobatius (*l.4. art.4. p.257.*) and followed by Lavorius, believes that even in the case of heresy—if it happened that the Cardinals elected a heretic and received him, and obeyed him for a year, and later, having discovered his error even notoriously, they withdrew from his obedience—still the first elected must be maintained in possession until the matter is adjudicated by a Council. Indeed, it is said that if the first Pope was accepted without opposition by the Church, the second elected would be utterly schismatic. Yet before the first is universally accepted by the Church, in the case of notoriety he may be deposed by force and another elected, regardless of the length of time. But outside the case of notoriety, the first must remain in possession and must not be violently expelled. Then, against both the first and any others elected, the decree of the Council of Constance (Session 39) must be observed.

[40] Whether in this case the other's election is null is certain: in the case of fear, a second election is null by the law itself according to the decree of the Council of Constance and the common law in chapters *consideravimus* and *audivimus de electione*. Thus, one could say this generally. But

subest legibus de elect. in communi decernentibus, & alias Concil. Constant. timens periculum schismatis, & plurium electionum ad Papatum omnes electos manutinet in possessione, & solum tempore Concilii suspendit eorum iurisdictionem, hinc habetur quod extra casum metus electio posterioris non est ex hoc ipso iure nulla, sed imo est valida iudicanda, si alias contingat priorem declarari nullam, & secunda sine alio defectu subsistat.

41. In tertio autem casu, ubi nullitas inducta de iure positivo electionis Papae non est nec notoria, nec certa, sed solum probabilis, dicitur quod si non est certa, & indubitata quantuncumque alias sit probabilis, probabilior, & probabilissima, non licet contra electionem Papae excipere, nec aliquo modo ab eius obedientia discedere, si Papa sit electus a duabus partibus Cardinalium. Ratio est, quia nulla lex positiva, quae induxit nullitatem contra electum a duabus partibus Cardinalium, in casu dubio praevalere contra legem Alex. III. in Concil. Lateran. contentam in cap. *licet*, & praecipientem electum a duabus partibus Cardinalium debere haberi ut verum Papam nulla exceptione obstante. Leges inter posteriores derogantes legi priori strictissime interpretandae sunt, ut quantum fieri potest vitetur legum correctio, quae maxime vitanda est, c. *cum expediat de electione in 6. Rom. cons. 40.* ex quo Tusc. *litt. C. concl. 1036* deducit, quod ubi lex posterior derogans priori potest conciliari, id debet fieri, ideo non est censendum quod in casu dubio per posteriores leges sit praeiudicatum illi legi consiliari. Et eo magis, quod aliter esset aperta amplissima via schismatibus, & bellis Ecclesiam devastantibus, & de facili redderetur dubia electio ad Pontificatum, cum tamen, ut omnis occasio schismatum tollatur, & non sit unde dubitari possit an Papa sit legitimus, Alex. III. in Concil. Lateran. voluerit, ut contra electum a duabus partibus Cardinalium nulla detur exceptio.

42. Et hoc magis apparet verum, quia iuxta

since the papal election is not subject to the same legislation as ordinary elections, and since the Council of Constance, fearing the peril of schism and multiple elections, ordered that all those elected be maintained in possession and only suspended their jurisdiction until the Council's time, it follows that outside the case of fear, a subsequent election is not ipso iure null. On the contrary, it may be held valid if later the first one is declared null and the second one, absent any other defect, stands firm.

[41] In the third case, where the nullity of a papal election established by positive law is neither notorious nor certain but only probable (even highly probable or most probable), it is said that if it is not certain and beyond doubt, then one cannot lawfully raise any exception against the papal election or depart from obedience in any way, provided that the Pope was elected by two-thirds of the Cardinals. The reason is that no positive law introducing nullity against one elected by two-thirds of the Cardinals can prevail in doubt against the law of Pope Alexander III in the Lateran Council, found in chapter *licet*, which requires that one elected by two-thirds of the Cardinals must be held as the true Pope and that no exception may stand against him. Later laws that derogate earlier ones must be interpreted strictly, so that correction of established laws may be avoided as much as possible—this is taught in *Cum expediat de electione in 6. Rom. cons. 40.*, from which Tuscanus (*litt. C. concl. 1036*) deduces that where a later law derogating a prior one can be reconciled with it, that must be done. Even more so, since otherwise a broad path would be opened to schisms and wars devastating the Church. It would be easy to create doubts about the papal election, whereas Alexander III desired that against one elected by two-thirds of the Cardinals no doubt should be raised, thereby removing any occasion for schism.

[42] This appears even more clearly because

Constitut. Iulii II. exceptio simoniae non potest dari nisi sit vera, & indubitata, & ex eadem Constitutione habetur hoc esse dicendum de exceptione haeresis. Unde hoc idem est dicendum etiam in terminis Constit. Gregor. XV. ut scilicet locum non habeat ubi nullitas non est certa, & indubitata. Nam licet defectus formae inficiat electionem ipsam, & non electus iuxta formam ibi statutam dici possit non electus legitime a duabus partibus Cardinalium, tamen Concil. Lateran. non requirit nisi naturalem consensum duarum partium Cardinalium sub quacumque forma datum, & vult, quod eo existente nulla exceptio valeat, nulla scilicet exceptio in iure positivo fundata, ut bene explicat Panorm. in cap. *licet de elect. num. 11.*

43. Vbi tamen nullitas sit ex defectu naturalis consensus duarum partium Cardinalium, quia exceptio in hoc casu non est prohibita in cap. *Licet*, ut Panorm. ibid. habet, unde hic casus remanet decidendus ex iure communi, & ita ubi vere remaneret dubium, an quis fuisset electus ex naturali consensu duarum partium Cardinalium, non posset electus haberi, ut Papa certus posset exceptio haec dari contra electionem Papae, ut habet Panorm. in cap. *licet*. Sed ante iudicium Concilii Generalis non posset spoliari Papatu, nec alius Papa eligi.

44. Sed nunquid in hoc vel similibus casibus, in quibus de iure potest excipi contra electionem Papae, potest electus vi impediri ne accipiat possessionem administrationis Papatus. Respondetur eum posse impediri negative ei non obediendo, & etiam vi ei resistendo si vim faceret, quia superior dubius, qui non est in possessione, non potest obligare ad sui obedientiam, ut bene tradunt Io. a Thom. *par. 2. q. 18. disp. 12. art. 4. Quod si lex*, & Ildephonsus Baptista *de conscient. disp. 209. dub. 5. num. 1135.* & si vim faciat, vim vi repellere licet cap. *Significasti el. 2. de homic. cap. Si vero de sent. excomm. cap. Dilecto eod. tit. in 6.* Sed non licet vi impedire, ut ne praecipiat, vel ne ei

according to Julius II's Constitution, an exception of simony cannot be made unless it is true and beyond doubt. From the same Constitution, we infer the same for an exception of heresy. Thus, the same must be said of the terms of Gregory XV's Constitution: that it does not apply where nullity is not certain and beyond doubt. Although a defect in form may invalidate the election itself, and someone not elected according to the prescribed form may be said not to have been legitimately chosen by two-thirds of the Cardinals, still the Lateran Council does not require more than the natural consent of two-thirds of the Cardinals, however it is given. If that is present, it wills that no exception be valid. That is, no exception founded on positive law. Panormitanus explains this well in chapter *licet de elect. num. 11.*

[43] Where, however, the nullity arises from a lack of the natural consent of two-thirds of the Cardinals—since this exception is not forbidden by *licet*, as Panormitanus notes—that case must be decided by common law. Thus, where genuine doubt remains whether someone was elected by the natural consent of two-thirds of the Cardinals, the elect cannot be regarded as a certain Pope, and in that case an exception may be raised against the papal election, as Panormitanus states in chapter *licet*. But even then, before the judgment of a General Council, the Pope cannot be stripped of the papacy, nor may another Pope be elected.

[44] But may the elected be prevented by force from taking possession of the administration of the papacy in such cases where an exception against the Pope's election can be raised by law? The answer is that he may be prevented negatively by refusing him obedience and even by using force if he uses force, because a doubtful superior not in possession cannot oblige one to obey him. This is well taught by John of St. Thomas (*part 2. q. 18. disp. 12. art. 4. Quod si lex*) and Ildephonsus Baptista *de conscientia disp. 209. dub. 5. num. 1135.* If he uses force, one may lawfully repel force with force (cf. chap. *Significasti el. 2. de homicid.*; chap. *Si vero de sent. excomm.*; chap. *Dilecto eod. tit. in 6.*). But it is not lawful forcibly to prevent him from commanding, or to prevent those who wish to obey

praecipienti obediatur ab illis qui volunt illi obedire. Quia Papa ex vi electionis possidet ius praecipiendi. Et ideo nisi simus in casu, in quo liceat vi eum expoliare Papatu, non potest impediri ne Papatum administret, cum illis qui illum volunt recipere. Et sic non potest impediri, quin etiam ex parte Ecclesiae possessionem accipiat respectu eorum qui volunt in Papam recipere.

him from doing so. For by virtue of the election, the Pope possesses the right to command. Therefore, unless we are in a case where it is lawful to strip him of the papacy by force, we cannot prevent him from administering the papacy with those who are willing to accept him as Pope. Nor can we prevent him from acquiring possession in the Church's domain, at least with respect to those who want to receive him as Pope.