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

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Question 32

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, 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 "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 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. Conclave cap.4*, Lauor. *tit.4 cap.6 no.35*, and others commonly affirm this. However, 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*, 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 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 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 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 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 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 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 judicata 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 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 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 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.

[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 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 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 Gravina 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 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 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 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 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 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 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 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.

[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 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 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 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 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.