

De Curia Romana iuxta reformationem a Pio X sapientissime inductam, Vol. II. De Curia Romana «Sede Vacante» (*On the Roman Curia According to the Wise Reform of Pius X, Vol. II. On the Roman Curia During the Vacant See*)

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Chapter 4, Article 4, n. 3

Latin

3. Num haereticus vel schismaticus aut excommuni- catus eligi possit.

Haeretici et schismatici validé nullatenus eligi valent, cum membra Ecclesiae vero proprioque sensu non sint. Sunt quidem Ecclesiae subditi eo ipso quod baptismatis aqua abluti fuerunt, at nihilominus versantur extra mysticum Christi corpus ob haereses seu schismatis reatum. Haec tamen doctrina sic est intelligenda ut electus in haeresi maneat etiam post nominationem; nam si, ea facta, haeresim seu schisma abiuret, indubie patamus electionem validam fore.

Nullum dubium quin suspensi ac irregulares nec non excommunicati tolerati sint valide eligibiles. Controversia respicit excommunicatos vitandos. Primo intuitu viderentur inhabiles cum a corpore Ecclesiae seiuncti per iudicalem potestatem declarati sint; at intimius rem perpendendo, apparet eos habiles esse. Etenim haec separatio vel seiunctio a corpore mystico

English

3. Whether a Heretic or a Schismatic or an Excommunicated Person Can Be Elected

Heretics and schismatics can never be validly elected, since they are not members of the Church in the proper and strict sense. Indeed, they are subjects of the Church because they have been washed with the water of baptism, yet nonetheless they remain outside the mystical Body of Christ due to the guilt of heresy or schism (2). This doctrine, however, must be understood in such a way that the person chosen remains in heresy even after his nomination. For if, once the deed is done, he renounces his heresy or schism, we must undoubtedly consider the election valid.

There is no doubt that those who are suspended or irregular, as well as “tolerated” excommunicates, can be validly elected. The controversy concerns “to-be-avoided” excommunicates. At first glance, they would seem to be ineligible, since by judicial authority they are separated from the Body of the Church; but upon more careful consideration, it appears they are indeed eligible. This is because

Christi tota pendet ab ecclesiastica auctoritate, quae eandem coarctare aut extendere valet, nec non effectus ipsos eam comitantes decernere. Iamvero cum nulla clausula irritans in iure canonico habeatur, necessario concludendum est, electionem excommunicati vitandi validam *per se* esse.

Chapter 7, Article 1, n. 10–11

10. An excipi possit contra electionem Papae.

Exceptio alia est de iure tantum, alia de iure et de facto. Illa in eo consistit ut obiiciatur nullitas, electum tamen in possessione relinquendo usque ad prolatum definitivum iudicium: haec contra habetur cum electo denegatur obedientia ac ipse a Papatu dejicitur.

Vera exceptio dari nequit, at sola oppositio nullitatis ad effectum excludendi electum a Pontificatu. Sane exceptio vera seu stricte iudicialis non nisi coram iudice competenti proponi valet id est coram legitimo superiore, qui in casu profecto deest.

Oppositionem nullitatis vero quod attinet, distinguendum est an electio impugnetur ex defectu eligentium vel potius electi, vel demum ex vitio formae. Ex parte eligentium excipi potest actualis furor seu amentia electionis tempore aut defectus diaconalis Ordinis, nisi de peculiari constet privilegio expresse tributo, vel renuntiatio in manibus R. Pontificis facta aut canonica depositio. Verum, si dempto Cardinali qui huiusmodi laborat defectu, duae e tribus suffragiorum partibus adhuc habeantur, electio valida est. Haec oppositio ipso Conclavi durante admittitur; non vero deinceps.

Ex parte electi excipi possunt defectus qui de iure divino vel naturali irritam faciant electionem. Quo in casu admittitur exceptio de iure, at non de iure et de facto.

such separation or severance from the Mystical Body of Christ entirely depends on ecclesiastical authority, which can curtail or extend it, and likewise determine the effects accompanying it. Since no nullifying clause exists in canon law for such a case, one must necessarily conclude that the election of an excommunicate-to-be-avoided is valid in itself.

Chapter 7, Article 1, n. 10–11

10. Whether an objection can be raised against the election of a Pope.

An exception can be either of law only, or of both law and fact. The former consists in raising an objection of nullity, while nevertheless leaving the elect in possession [of the office] until a definitive judgment is pronounced; the latter occurs when obedience is denied to the elect and he is deposed from the Papacy.

A true exception cannot be given, but only an opposition of nullity for the purpose of excluding the elect from the Pontificate. Indeed, a true or strictly judicial exception can only be proposed before a competent judge, that is, before a legitimate superior, who in this case is clearly absent.

Concerning the opposition of nullity, however, a distinction must be made as to whether the election is challenged due to a defect in the electors, or rather in the elect, or finally due to a defect in form. On the part of the electors, one may raise an objection regarding actual madness or insanity at the time of the election, or the lack of diaconal Orders, unless a special privilege has been expressly granted, or a resignation made into the hands of the Roman Pontiff, or canonical deposition. However, if, after excluding a Cardinal who suffers from such a defect, two-thirds of the votes are still obtained, the election is valid. This opposition is admitted during the Conclave itself, but not thereafter.

On the part of the elect, objections can be raised regarding defects that would render the election invalid by divine or natural law. In such a case, an exception of law is admitted, but not an exception of both law and fact.

Olim excipiendi erat facultas contra electum simoniace ex Constit. « *Cum tam divino* » Iulii II, nec non contra electum hæreticum ex Constit. « Cum ex Apostolo » Pauli IV. Hodie contra simoniace electum haudquaquam excipi valet, cum simonia, etsi jure divino ac humano prohibita, nihilominus electionem non irritet^[^1].

De electione hæretici recale quæ superius dicta fuere.

Ex parte formæ tandem excipi valent omnes defectus qui nullam ipso iure electionem reddunt. Eiusmodi exceptio nonnisi Conclavi durante, per se fieri potest; per accidens tamen nil vetat quominus et deinceps proponatur, modo tamen certo ac indubie de nullitate constet.

Quavis occurrente nullitatis oppositione, ius causam agendi unius S. Cardinalium Collegii erit, non autem Concilii generalis aut Episcoporum coetus, ut perperam quidam auctores contendunt^[^2].

11. An certa fide constare possit de legitimitate Pontificis.

Quærimus an verus Pontifex visibilis sit in individuo et determinate ita ut non solum fide teneamus esse in Ecclesia Pontificem, qui Romæ suam habet sedem, sed etiam hominem, quem oculis cernimus.

In triplicem Auctores abeunt sententiam.

1° Nonnulli putant quadam tantum morali certitudine nos agnoscere hunc esse verum Pontificem. Ita opinantur Albertin. ^[^3], Caiet. ^[^4], Cordub. ^[^5].

Porro argumenta quibus innituntur hæc sunt:

a) Numquam Deus revelavit hunc esse verum Pontificem; imo, deficiente revelatione, eo ipso deest quoque fides; proinde si non habetur fides, necessario

Formerly, there existed the faculty of objection against one elected simoniacally according to the Constitution "*Cum tam divino*" of Julius II, and likewise against one elected who was a heretic according to the Constitution "*Cum ex Apostolo*" of Paul IV. Today, however, no objection whatsoever can be made against one simoniacally elected, since simony, although prohibited by both divine and human law, nevertheless does not invalidate the election^[^1].

Concerning the election of a heretic, recall what was stated above.

Finally, regarding the form, objections may be raised against all defects which render the election null by the law itself. Such an objection, in principle, can only be made while the Conclave is in session; incidentally, however, nothing prevents it from being proposed subsequently, provided that the nullity is established with certainty and beyond doubt.

Whenever an allegation of nullity arises, the right to adjudicate the case belongs solely to the Sacred College of Cardinals, and not to a General Council or an assembly of Bishops, as some authors erroneously maintain^[^2].

11. Whether the legitimacy of a Pontiff can be established with certain faith.

We inquire whether the true Pontiff is visible as an individual and specifically, such that we hold not only by faith that there is a Pontiff in the Church who has his seat in Rome, but also that this man, whom we see with our eyes, is that Pontiff.

Authors take three different positions on this matter.

1° Some believe that we recognize this person as the true Pontiff with only moral certainty. This opinion is held by Albertinus^[^3], Cajetan^[^4], and Corduba^[^5].

Furthermore, the arguments on which they rely are these:

a) God has never revealed that this man is the true Pontiff; indeed, in the absence of revelation, faith itself is lacking; therefore, if faith is not present, moral certainty must necessarily be admitted, since

admittenda est moralis certitudo, cum physicæ certitudini locus haudquaquam sit.

b) Legitimitas Pontificis est res plane humana et contingens, utpote quæ ex paucorum hominum testimonio pendet et ex plurimis circumstantiis sane dubiis, v. gr. an electus sit baptizatus, an rite ordinatus, etc.

c) Ex mente Ecclesiae constat eos qui verum Pontificem in individuo negant, non censi haereticos; ideoque Sancti Patres dicunt eos non contra fidem errare, sed tantum contra charitatem, quatenus scilicet vinculum unitatis rescindunt.

d) Historia teste, aliquando Pontifex reputatus est, qui talis non erat; agitur ergo de re cui potest reapse subesse falsum.

2° Quidam de fide esse putant, hunc hominem, quem fideles ut caput Ecclesiae devotione ac obedientia prosequuntur, esse verum legitimumque Pontificem. Hanc sententiam profitetur Suárez^[6], afferendis rationibus fretus.

a) Ex Bulla Martini V apud Concil. Constantien. haeretici, qui catholicae Ecclesiae reconciliari volunt, in primis interrogandi sunt, an credant Papam canonice electum, qui pro tempore sit (eius nomine expresso), esse successorem Petri et suprema in universam Ecclesiam potiri potestate. Praeterea haud distinguunt Concilia “inter verum Pontificem in communi, et hunc, qui nunc sedet cum omni consensione Ecclesiae, sed eadem veneratione ac fide complectuntur: sic certe Chalcedonense Concilium recipit nominatim Leonem Papam, sexta Synodus Agathonem, Milevitani. Innocentium III; et sic de ceteris”^[7].

b) Si numquam catholica fide constaret, hunc esse verum Pontificem, consequenter neque constare posset, hoc esse verum concilium, quod non minus haereticum foret, quam si quis negaret vera esse quatuor evangelia, ut Gregorius Magnus merito

there is certainly no place for physical certainty.

b) The legitimacy of a Pontiff is plainly a human and contingent matter, inasmuch as it depends on the testimony of a few men and on numerous truly doubtful circumstances, e.g., whether the one elected is baptized, whether he was properly ordained, etc.

c) According to the mind of the Church, it is established that those who deny the true Pontiff in particular are not considered heretics; therefore the Holy Fathers say that such persons do not err against faith, but only against charity, insofar as they sever the bond of unity.

d) History bears witness that sometimes a man has been considered Pontiff who was not such; therefore it concerns a matter in which falsehood can actually be present.

2° Some believe it to be a matter of faith that this man, whom the faithful follow with devotion and obedience as the head of the Church, is the true and legitimate Pontiff. Suárez^[6] professes this opinion, relying on reasons to be presented.

a) According to the Bull of Martin V at the Council of Constance, heretics who wish to be reconciled to the Catholic Church must first be asked whether they believe that the canonically elected Pope, whoever he may be at the time (with his name expressly stated), is the successor of Peter and possesses supreme power over the universal Church. Moreover, the Councils do not distinguish “between a true Pontiff in general, and this one who now sits with the full consensus of the Church, but they embrace both with the same veneration and faith: thus certainly the Council of Chalcedon received Pope Leo by name, the Sixth Synod received Agatho, the Council of Milevis received Innocent III; and likewise concerning the others”^[7].

b) If it were never established by Catholic faith who is the true Pontiff, consequently it could not be established what is a true council, which would be no less heretical than if someone were to deny that the four gospels are true, as Gregory the Great rightly says. Indeed, a council formally includes

dicit. Re quidem vera concilium formaliter includit Pontificem, cum unus dumtaxat legitimus Pontifex illud cogere valeat, ei praeesse eiusque acta adprobare.

c) “Immo neque catholica veritas et certitudo huius numero Ecclesiae posset recte consistere, quia haec maxime pendet ex coniunctione cum vero capite, requiritque veros ac legitimos sacerdotes, pastores et ecclesiasticam hierarchiam: at haec omnia pendent ex eo, quod verus et legitimus Pontifex in individuo sit certus, et qua ratione possum dubitare de hoc Pontifice, potero et de antecessore, atque adeo de tota retro serie, ergo de veritate episcoporum et cardinalium, qui ab his creati sunt, atque ita ruet tota certitudo verae Ecclesiae, et hierarchici ordinis; quomodo argumentantur haeretici contententes a tempore saltem Urbani papae defecisse veram successionem: hinc enim satis sibi videntur inferre, iam non posse esse certum, an vere Summo Pontifici succedatur, aut ubi gentium vera Ecclesia visibilis extet » [^8].

Romano Pontifici ius est definiendi res fidei et obligandi subditos ut definita credant. Impossibile autem est, ut quis teneatur ad credendum ea, quae hic vir seu Pontifex definit tamquam divinitus revelata, nisi etiam teneatur ad credendum de fide hunc virum id est Pontificem habere a Deo ius definiendi et assistentiam Spiritus Sancti nec non potestatem obligandi fideles ut firmiter credant quae ipse definit, nisi scilicet teneatur credere hunc virum esse verum Papam divi Petri Successorem.

3° Tandem alii auctores docent legitimitatem Pontificis in individuo esse factum theologicum, ideoque, non fide divina eandem esse credendam, sed theologica tantum.

Argumenta quae in medium afferunt patroni postremae sententiae haec sunt:

a) Legitima Pontificis existentia in individuo nequit esse obiectum fidei, cum divinitus

the Pontiff, since only one legitimate Pontiff can convoke it, preside over it, and approve its acts.

c) “Indeed, neither the Catholic truth nor the certainty of this particular Church could rightly persist, because this depends greatly on the connection with the true head, and requires true and legitimate priests, pastors, and ecclesiastical hierarchy: but all these things depend on the fact that the true and legitimate Pontiff as an individual is certain, and by whatever reasoning I might doubt this Pontiff, I could also doubt his predecessor, and thus the entire series going backward, therefore also the truth of the bishops and cardinals who were created by them, and so the entire certainty of the true Church and hierarchical order would collapse; as heretics argue when contending that at least since the time of Pope Urban, the true succession has failed: for from this they seem to infer sufficiently that it can no longer be certain whether one truly succeeds the Supreme Pontiff, or where in the world the true visible Church stands” [^8].

The Roman Pontiff has the right to define matters of faith and to oblige subjects to believe what has been defined. It is impossible, however, that anyone should be bound to believe those things which this man or Pontiff defines as divinely revealed, unless he is also bound to believe as a matter of faith that this man, that is, the Pontiff, has from God the right of defining and the assistance of the Holy Spirit, as well as the power of obliging the faithful to firmly believe what he himself defines—unless, that is, he is bound to believe that this man is the true Pope, the Successor of divine Peter.

3° Finally, other authors teach that the legitimacy of a Pontiff as an individual is a theological fact, and therefore, is not to be believed by divine faith, but only by theological faith.

The arguments that the advocates of the latter opinion put forward are these:

a) The legitimate existence of a Pontiff in a specific individual cannot be an object of faith,

revelata haud sit, neque obiectum simpliciter moralis cuiusdam certitudinis, cum quodvis dubium suapte natura excludere debeat.

b) Cognitio Pontificis in individuo est factum intime ac necessario connexum cum perpetuitate primatus in legitimos Petri successores transferendi. Iamvero facta quae cum aliqua veritate divinitus revelata connectuntur, theologica vocari solent. Ergo.

Si rationes hinc inde a patronis allatae intimius perpendantur, liquido patet tertiam a secunda differre verbis potius quam re. Sane vis quaestionis tota in eo est, ut clare determinetur quid nomine veniat *facti theologici*, et quodnam sit reapse *obiectum materiale* fidei divinae. Qua de re plura tradunt principes theologiae dogmaticae^[9].

Tertiam nos sententiam profiteamur, priori prorsus reiecta, cuius argumenta facile diluuntur. Etenim ex eo quod existentia veri Pontificis in individuo non sit revelata, minime sequitur eandem non nisi morali certitudine esse credendam; nam praeter fidem divinam stricto sensu ac moralem certitudinem, habetur fides seu certitudo theologica. Id quoad primum.

Secundum quod attinet, respondemus, veritatem, de qua agimus, pendere quidem ab humano testimonio, sicuti fides a praedicante pendet; id autem minime vetare quominus fides seu certitudo theologica inde profluat ob necessarium cum dogmate nexum.

Quoad quartum argumentum animadvertimus, numquam decursu temporum accidisse ut universa Ecclesia tanquam verum Pontificem reputaverit, qui reapse talis non erat. Contigit quidem aliquando, quamplures fideles non agnovisse verum et certum pastorem; conspirasse autem totam Ecclesiam in unum falsum caput, existimando scilicet verum esse Papam, qui verus non esset, numquam

since it is not divinely revealed, nor can it be an object of a simply moral certainty, since by its very nature it must exclude any doubt.

b) The recognition of a Pontiff in a specific individual is a fact intimately and necessarily connected with the perpetuity of primacy to be transferred to the legitimate successors of Peter. Indeed, facts that are connected with some divinely revealed truth are usually called theological. Therefore.

If the reasons brought forth by advocates on either side are examined more deeply, it becomes clearly evident that the third opinion differs from the second more in words than in substance. Indeed, the entire force of the question lies in clearly determining what is meant by the term *theological fact*, and what is actually the *material object* of divine faith. On this matter, the foremost authorities of dogmatic theology expound many things^[9].

We profess the third opinion, having entirely rejected the first, whose arguments are easily refuted. For from the fact that the existence of a true Pontiff in a specific individual is not revealed, it by no means follows that the same must be believed with only moral certainty; for besides divine faith in the strict sense and moral certainty, there exists theological faith or certainty. This addresses the first point.

Regarding the second, we respond that the truth with which we are concerned does indeed depend on human testimony, just as faith depends on the preacher; however, this by no means prevents theological faith or certainty from flowing from it due to its necessary connection with dogma.

Regarding the fourth argument, we observe that it has never occurred throughout history that the entire Church has regarded as a true Pontiff one who in reality was not. It has indeed happened at times that many of the faithful did not recognize the true and certain pastor; but for the whole Church to unite behind a false head, namely believing someone to be the true Pope who was not truly so, has never occurred^[10].

accidit^[10].

De tertio argumento non est cur disseramus, cum secundam dumtaxat, non autem postremam attingat sententiam.

[¹]: {org. 1} Cfr. Constit. « *Vacante Sede Apostolica* », tit. II, cap. VI, n. 79.

[²]: {org. 2} Cfr. PASSERINI, op. cit., p. 459.

[³]: {org. 3} Op. cit., qu. 5.

[⁴]: {org. 4} 2-2 qu. I, art. 3.

[⁵]: {org. 5} Lib. I, qu. 17, § 2.

[⁶]: {org. 1} De fide, disp. X, sect. V.

[⁷]: {org. 2} Cfr. SUAREZ, l. c.

[⁸]: {org. 1} (1) SUAREZ, l. c.

[⁹]: {org. 2} (2) Cfr. FRANZELIN, De Trad. th. XII, schol. I; DE LUGO, disp. 20, n. 106; SUAREZ, disp. 5, sect. 6, n. 4 ss.; BILLOT, De Ecclesia, th. XVIII.

[¹⁰]: {org. 1} Cfr. SUAREZ, l. c., n. 8.

Concerning the third argument, there is no reason for us to discuss it, since it pertains only to the second opinion, not to the final one.

[¹]: {org. 1} Cf. Constitution “*Vacante Sede Apostolica*,” title II, chapter VI, n. 79.

[²]: {org. 2} Cf. PASSERINI, op. cit., p. 459.

[³]: {org. 3} Op. cit., qu. 5.

[⁴]: {org. 4} Summa Theologica, 2-2, question 1, article 3.

[⁵]: {org. 5} Book I, question 17, § 2.

[⁶]: {org. 1} De fide, disputation X, section V.

[⁷]: {org. 2} Cf. SUAREZ, loco citato.

[⁸]: {org. 1} (1) SUAREZ, loco citato.

[⁹]: {org. 2} (2) See FRANZELIN, On Tradition, thesis XII, scholium I; DE LUGO, disputation 20, n. 106; SUÁREZ, disputation 5, section 6, n. 4 ff.; BILLOT, On the Church, thesis XVIII.

[¹⁰]: {org. 1} See SUÁREZ, in the cited work, n. 8.