

Ius Canonicum, Tomus II: De Personis (*Canon Law, Volume II: On Persons*)

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Section II, Titulus VII, Caput I

Latin

454. Scholion. Crimini haereseos merito aequiparatur schisma. Cfr. Tanner, De spe et carit. q. 6. dub. 2.

Praeter haeresim nullum existit crimen, ob quod Romanus Pontifex, aut *ipso facto* suam iurisdictionem amittit, aut per sententiam iudicalem *deponi potest*. Cfr. Suarez, De fide, disp. 10, sect. 6, n. 14 sq. Etenim verus et indubitatus Papa propter aliud crimen suam iurisdictionem *ipso facto* amitteret aut ex positiva Dei ordinatione aut ex natura rei. Huiusmodi positiva Dei ordinatio non existit, et ex natura rei praeter casum haeresis iurdictio pontificia non aufertur. Nam Papa, etiam iniquissimus propter alia delicta, semper manet *membrum* corporis Ecclesiae.

Ut autem per sententiam iudicalem verus et indubitatus Papa *deponi* posset, omnino requireretur auctoritas, quae post cognitam causam cum vera potestate coactiva de illo ferret sententiam iudicalem. At R. Pontifex vi sui primatus a nulla auctoritate humana iudicari potest, sed a solo Deo [¹]. Cui rationi ex natura primatus petita accedit traditio et praxis Ecclesiae [²]. Tota enim traditio constanter tenuit hoc principium: « *Prima sedes a nemine iudicatur* », ut patet

English

454. Scholion. Schism is rightly equated with the crime of heresy. Cf. Tanner, On Hope and Charity, q. 6, doubt 2.

Besides heresy, there exists no crime for which the Roman Pontiff either loses his jurisdiction *ipso facto* or *can be deposed* through judicial sentence. Cf. Suarez, On Faith, disp. 10, sect. 6, n. 14 ff. Indeed, a true and undoubted Pope would lose his jurisdiction *ipso facto* on account of another crime either through a positive ordinance of God or from the nature of the matter itself. Such a positive ordinance of God does not exist, and by the nature of the matter, papal jurisdiction is not removed except in the case of heresy. For the Pope, even if most wicked due to other offenses, always remains a *member* of the body of the Church.

In order for a true and undoubted Pope to be *deposed* through a judicial sentence, it would absolutely require an authority which, after examining the case, could issue a judicial sentence over him with genuine coercive power. But the Roman Pontiff, by virtue of his primacy, cannot be judged by any human authority, but by God alone [¹]. To this reasoning, derived from the very nature of the primacy, is added the tradition and practice of the Church [²]. For the entire tradition

ex causa Symmachi et Paschalis II. Porro Conciliis generalibus vel Collegio Cardinalium vel Imperatoribus, de quibus unice quaeri posset, ius in Papam esse constanter ab Ecclesia negatum est. Cfr. v. g. causam Eugenii IV. Ipsi quoque Rom. Pontifices nunquam sponte sese *pero* iudicio *coactivo* submiserunt, sed tantum iudicio *discretionis*. Cfr. causam Damasi, Symmachi et Leonis III. Neque paritas est inter *electionem* et *depositionem* R. Pontificis. In illa profecto fit designatio R. Pontificis ministerio hominum; at inde non sequitur Pontificem etiam per homines posse deponi. Nam per *electionem* fit R. Pontifex; per *depositionem* exercetur auctoritas omnino non data in eum, qui actu iam *est* R. Pontifex. Ergo depositio etiam iniqui Papae nec licite nec valide fieri potest. Media autem iusta contra iniquum Papam iuxta Suarez, Defensio fid. cath. I. IV, cap. 6, nn. 17, 18 sunt uberius auxilium gratiae Dei, singularis protectio angeli custodis, oratio universalis Ecclesiae, secreta vel etiam publica admonitio sive correctio fraterna, iusta defensio, sive physica sive moralis fuerit violentia eius.

Veteres auctores passim admiserunt axioma: *Papa dubius est Papa nullus illudque* ad solvendas difficultates ex magno schismate occidentali ortas applicarunt^[3]. Profecto hoc axioma varias admittit significationes; Papa enim dubius potest intelligi non negative, sed *positive* dubius, i. e. post diligens *facti* examen, viri in Ecclesia catholica competentes pronuntiant: « *Non constat de valore electionis canonicae huius Rom. Pontificis* ». Praeterea verba illa « *Papa nullus* » non necessario intelliguntur de Papa, hucusque certo et indubitato atque ab *universa* Ecclesia recepto, de cuius electione postea tot excitentur difficultates, ut *fiat Papa dubius*, qui eam ob causam *excidat* potestate pontificia *iam obtenta*.

has consistently held to this principle: “*The First See is judged by no one*,” as is evident from the cases of Symmachus and Pascal II. Moreover, the right over the Pope has been consistently denied by the Church to General Councils, the College of Cardinals, or Emperors—the only entities about which a question could arise. See, for example, the case of Eugene IV. The Roman Pontiffs themselves have never willingly submitted themselves to *coercive* judgment, but only to the judgment of *discretion*. See the cases of Damasus, Symmachus, and Leo III. Nor is there parity between the *election* and the *deposition* of the Roman Pontiff. In the former, certainly, the designation of the Roman Pontiff occurs through the ministry of men; but it does not follow from this that the Pontiff can also be deposed by men. For through election, one *becomes* Roman Pontiff; through deposition, authority is exercised which is absolutely not granted over him who actually *is* the Roman Pontiff. Therefore, the deposition of even an iniquitous Pope can neither licitly nor validly be performed. The just remedies against an iniquitous Pope, according to Suarez, Defense of the Catholic Faith, Book IV, chapter 6, numbers 17 and 18, are: more abundant assistance of God’s grace, special protection of the guardian angel, the universal prayer of the Church, secret or even public admonition or fraternal correction, just defense, whether the violence he inflicts is physical or moral.

Ancient authors widely accepted the axiom: *A doubtful Pope is no Pope at all*, and applied it to resolve difficulties arising from the Great Western Schism^[3]. Indeed, this axiom admits various interpretations; for a doubtful Pope can be understood not negatively, but *positively* doubtful, i.e., after a diligent examination of the *facts*, competent men in the Catholic Church declare: “*The validity of the canonical election of this Roman Pontiff is not established*.” Furthermore, the words “*no Pope*” are not necessarily understood to refer to a Pope who was previously certain and undoubted and received by the *universal* Church, about whose election so many difficulties arise afterward that he *becomes a*

Talis enim axiomatis sensus « *de Papa nullo* » videtur reprobandus, quoniam *tota* Ecclesia a Rom. Pontifice *legitime* electo penitus deficere nequit propter unitatem a Christo Ecclesiae suae promissam. At alterum membrum axiomatis hanc potest habere significationem, quod R. Pontifex, de cuius electione canonica non constet, atque post accuratum examen *positiva solidaque dubia* existant, omnino non *acquisiverit*^[4] unquam a Christo Domino iurisdictionem papalem. Quare Episcopi in Conc. generali congregati, si ad examen vocant huiusmodi casum dubium, non iudicant de vero Papa, utpote pontificia iurisdictione *carente*. Quodsi axioma hoc ultimo sensu intelligatur, videtur continere doctrinam omnino sanam. Id imprimis eruitur ex *natura iurisdictionis*. Nam iurdictio est essentialiter *relatio Superiorem* inter, qui habet *ius* ad oboedientiam, et *subditum*, qui habet *officium* oboediendi; cessante igitur uno termino, alter necessario cessat, ut patet ex natura relationis. Quodsi iam Papa est vere et permanenter *dubius*, in nullo subdito existit *officium* oboedientiae. Nam lex: *Successori legitime electo S. Petri est oboediendum*, non obligat, si sit *dubia*; porro plane *dubia* est, si *dubie* est *promulgata*. Leges enim instituuntur cum promulgantur et absque sufficienti promulgatione carent parte constitutiva vel conditione *essentiali*. At si *factum* legitimae *electionis* successoris S. Petri *dubie* est probatum, *dubia* est promulgatio; ergo lex illa obiective et ex parte non est rite constituta vereque *dubia* existit neque ullam imponit obligationem. Immo temerarium esset tali viro oboedire, qui titulum sui iuris non probavit. Neque ad principium *possessionis* provocari potest; agitur enim de Romano Pontifice, qui *nondum* est in pacifica *possessione*. Consequenter in illo viro non existit ius praecipiendi, i. e. caret iurisdictione papali.

Aliunde idem efficitur ex *visibilitate* Ecclesiae. Visibilitas enim Ecclesiae in hoc

doubtful Pope, who for that reason *loses* the pontifical power *already obtained*. Such an interpretation of the axiom concerning “*no Pope*” seems to be objectionable, since the *entire* Church cannot completely defect from a Roman Pontiff who has been *legitimately* elected, due to the unity promised by Christ to His Church. But the other part of the axiom can have this meaning: that a Roman Pontiff, whose canonical election is not established, and about whom, after careful examination, *positive and substantial doubts* exist, has never at all *acquired*^[4] papal jurisdiction from Christ the Lord. Therefore, Bishops gathered in a general Council, if they examine such a doubtful case, do not judge a true Pope, as he is *lacking* pontifical jurisdiction. If the axiom is understood in this latter sense, it seems to contain a thoroughly sound doctrine. This is derived primarily from the *nature of jurisdiction*. For jurisdiction is essentially a *relationship between a Superior*, who has the *right* to obedience, and a *subject*, who has the *duty* of obeying; if one term ceases, the other necessarily ceases, as is clear from the nature of a relationship. But if the Pope is truly and permanently *doubtful*, the *duty* of obedience exists in no subject. For the law: *Obedience must be given to the legitimately elected successor of St. Peter*, does not bind if it is *doubtful*; furthermore, it is plainly doubtful if it is *doubtfully promulgated*. For laws are established when they are promulgated, and without sufficient promulgation, they lack a constitutive part or an *essential* condition. But if the *fact* of the legitimate *election* of St. Peter’s successor is *doubtfully* proven, the *promulgation* is doubtful; therefore, that law is objectively and partially not properly constituted and exists as truly doubtful and imposes no obligation. Indeed, it would be rash to obey such a man who has not proven the title of his right. Nor can one appeal to the principle of *possession*; for the matter concerns a Roman Pontiff who is *not yet* in peaceful *possession*. Consequently, in that man there exists no right of commanding, i.e., he lacks papal jurisdiction.

Moreover, the same is established from the *visibility* of the Church. For the visibility of the

consistit, quod talibus signis et criteriis fulgeat obiectivis, ut morali adhibita diligentia praesertim in suis magistratibus legitimis cognosci et discerni possit. At in suppositione facta Papa post diligens examen inveniri nequit. Recte igitur concluditur talem Papam dubium non esse caput proportionatum visibili Ecclesiae a Christo institutae. Neque minus repugnat iste Papa dubius *unitati Ecclesiae*, cui quam maxime obstat corpus perfecte separatum a capite. Nam Papa dubius nullum habet ius praecipendi, et ideo in fidelibus deest obligatio oboediendi; ergo caput esset perfecte separatum a reliquo corpore Ecclesiae. Cfr. *Suarez*, De fide, disp. 10, sect. 6, n. 4, 19.

[^1]: {org. 168} Can. 1556 iunct. cap. 13, X. de iudic. II, 1; cap. 6, X. de elect. I, 6; *Bellarmin.*, De auctor. Concil. cap. 17, 18, 19; *Fagnan.*, in cap. 6, X. de elect. n. 21; *Phillips*, l. c. t. I, § 31; *Kober*, l. c. p. 549 sq.; *Saegmueller*, l. c. p. 144 sq.; 233; *Boux*, De Papa t. II, p. 623 sq., 629 sq.

[^2]: {org. 169} Si *Hinschius*, l. c. t. I, p. 296 sq. defendit contra catholicos, v. g.; *Kober*, l. c. saltem ex iure antiquo depositionem *legitimorum* R. Pontificum non fuisse reprobata (nam de disciplina *vigente* et de depositione *intrusorum* et *usurpatorum*, qui *nunquam fuerunt* Rom. Pontifices, nulla est controversia), manifeste confundit *facta* et *usurpationes* cum *iuribus*, ius *proprium* deponendi principum cum *brachio saeculari* ab Ecclesia requisito, iudicium *proprie* dictum cum iudicio *discretionis*.

[^3]: {org. 170} Cui applicationi, v. g. a *Bellarmino* et *Suaresio* aliisque factae, merito iam contradixerunt *Ballerini*, *Phillips*, *Bauer*, *Card. Hergenroether*, *Card. Franzelin*, De Eccles. p. 233 sq. Cfr. quoque *Boux*, De Papa t. II, p. 673 sq.

[^4]: {org. 171} *Card. Franzelin*, l. c. p. 232, n. 4, i. f.; *Camarda*, l. c. p. 233 sq., 256 sq., ubi agit de legitimis exceptionibus contra electum Rom.

Church consists in this, that it shines forth with such objective signs and criteria that, with moral diligence applied, it can be recognized and discerned, especially in its legitimate authorities. But in the supposed case, the Pope cannot be determined even after diligent examination. Rightly, therefore, it is concluded that such a doubtful Pope is not a proportionate head for the visible Church instituted by Christ. Nor does this doubtful Pope less contradict the *unity of the Church*, to which a body perfectly separated from its head stands in the greatest opposition. For a doubtful Pope has no right to command, and therefore in the faithful there exists no obligation to obey; thus the head would be perfectly separated from the rest of the body of the Church. Cf. *Suarez*, De fide, disp. 10, sect. 6, n. 4, 19.

[^1]: {org. 168} Can. 1556 joined with chap. 13, X. de iudic. II, 1; chap. 6, X. de elect. I, 6; *Bellarmino*, De auctor. Concil. chap. 17, 18, 19; *Fagnani*, in chap. 6, X. de elect. n. 21; *Phillips*, loc. cit. vol. I, § 31; *Kober*, loc. cit. p. 549 sq.; *Saegmueller*, loc. cit. p. 144 sq.; 233; *Boux*, De Papa vol. II, p. 623 sq., 629 sq.

[^2]: {org. 169} If *Hinschius*, in the cited work vol. I, p. 296 ff., argues against Catholics, e.g., *Kober*, in the cited work, that at least according to ancient law the deposition of *legitimate* Roman Pontiffs was not prohibited (for regarding current discipline and the deposition of *intruders* and *usurpers*, who *never were* Roman Pontiffs, there is no controversy), he manifestly confuses *facts* and *usurpations* with *rights*, the *proper* right of deposing princes with the *secular arm* requisitioned by the Church, judgment in the *proper* sense with the judgment of *discretion*.

[^3]: {org. 170} To which application, made for example by *Bellarmino* and *Suarez* and others, *Ballerini*, *Phillips*, *Bauer*, *Cardinal Hergenroether*, *Cardinal Franzelin*, in De Ecclesia p. 233 ff., have already rightly objected. See also *Boux*, De Papa vol. II, p. 673 ff.

[^4]: {org. 171} *Cardinal Franzelin*, in the cited work p. 232, n. 4, at the end; *Camarda*, in the cited work p. 233 ff., 256 ff., where he discusses

Pontificem recteque notat contra Papam electum *et a tota Ecclesia receptum* non admitti exceptionem. Qui *consensus* Eccl. non est electio nec vi sua non electum facit electum, quia canonice electus a Cardinalibus antecederet ad acceptationem Ecclesiae est legitimus Papa. Cfr. *Franzelin*, l. c. p. 234. Ergo acceptatio illa Ecclesiae non est *causa*, sed *signum et effectus* infallibilis *validae electionis*. Vicissim si *tota* Eccl. Papam electum derelinquat, v. g. Petrum de Luna sive Bened. XII, id *certum est signum illum nunquam fuisse legitimum Papam*. Cfr. *Card. Hergenroether-Kirsch*, l. c. t. II, p. 867 sq.; *Bouix*, l. c. p. 684 sq.

legitimate objections against an elected Roman Pontiff and correctly notes that no objection is admitted against a Pope who has been elected *and received by the entire Church*. This *consensus* of the Church is not an election nor by its own power does it make one who was not elected become elected, because one canonically elected by the Cardinals prior to the acceptance of the Church is the legitimate Pope. Cf. *Franzelin*, in the cited work p. 234. Therefore, that acceptance by the Church is not the *cause*, but the *sign and infallible effect of a valid election*. Conversely, if the *entire* Church abandons an elected Pope, e.g., Peter de Luna or Benedict XIII, it is a *certain sign that he was never a legitimate Pope*. Cf. *Cardinal Hergenroether-Kirsch*, in the cited work vol. II, p. 867 ff.; *Bouix*, in the cited work p. 684 ff.