De Christi Ecclesia, Libri Sex (*On the Church of Christ, in Six Books*)

by Guilelmo Wilmers (William Wilmers), 1897

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- *Last Edit: April 3, 2025.*
- *Version: 1.0*
- *Selection pages: 256–259*

Liber II, Caput III, Quae. 3–4

Latin	*English*
147. Quaeritur 3. Quis in Pontificem Romanum valide eligi possit.	**147. Third Question: Who can be validly elected as Roman Pontiff.**
Resp. Eligi potest masculus, rationis usu pollens, qui sit membrum Ecclesiae, etsi laicus, qui porro jure humano non impeditur.	*Response:* A male possessing the use of reason, who is a member of the Church, can be elected even if he is a layman, provided he is not impeded by human law.
1. Ut masculus sit requiritur, quia Christus Ecclesiae regimen nonnisi viris commisit.	**1.** That he must be male is required because Christ entrusted the governance of the Church only to men.
Narratio de papissa Joanna jam dudum ab omnibus inter fabulas amandata est, et necessario quidem. Ponitur enim inter Leonem IV. (847—855), et Benedictum III. (855—858), et regnasse dicitur annis duobus, mensibus quinque, diebus quatuor. Atqui id manifesto repugnat. Leoni enim IV. continuo successit Benedictus III.	The story of Pope Joan has long since been relegated to the realm of fables by everyone, and necessarily so. For she is placed between Leo IV (847-855) and Benedict III (855-858), and is said to have reigned for two years, five months, and four days. But this is manifestly impossible. For Benedict III succeeded Leo IV immediately.
2. Membrum Ecclesiae sit oportet, quia qui non est de Ecclesia, non potest esse Ecelesiae caput.	**2.** He must be a member of the Church, because one who is not of the Church cannot be the head of the Church.
3. Ratione pollens, i. e. ut ad annos discretionis pervenerit neve laboret amentia habituali. Pontificatus enim supremum munus est ad jurisdictionem exercendam natura sua destinatum; jurisdictio autem exerceri non potest ab infante aut perpetuo amente.	**3.** Possessing reason, that is, that he has reached the age of discretion and does not suffer from habitual mental incapacity. For the pontificate is the supreme office naturally destined for the exercise of jurisdiction; and jurisdiction cannot be exercised by an infant or by one who is permanently mentally incapacitated.

4. Etsi laicus. Hoc colligitur e Caeremoniali Romanae Ecclesiae exhibente formam ad consecrandum illum, qui e laico est assumptus. Coelestinus V. non erat in sacris ordinibus, cum est electus; erat enim anachoreta. Cum jurisdictio separari possit ab ordine, laicus rite electus et sic in collegium praepositorum assumptus continuo a Deo jurisdictione donatur; recipere tamen debet sacrum ordinem, cum Deus Ecclesiam in universum ab episcopis regi velit.

5. Praeter impedimenta e jure divino petita possent etiam esse impedimenta juris humani, statuta videlicet a summis Pontificibus. Hujusmodi impedimentum adesset, si eligendi modus, ipsa rei substantia spectata non servaretur, aut si quis per simoniam eligeretur. De tali enim Julius II. constitutione, quae incipit *Cum iam*, statuit, ut „a nullo pro Romano Pontifice habeatur". Conc. Lat. V. sess. 5. *Harduin*, IX, 1657. Sine dubio Pontifex de electione leges ferre potest post ejus mortem valituras; et licet hujusmodi legibus non possit ligare alios Pontifices, potest tamen ligare illos, qui nondum sunt Pontifices, sed in Pontifices tantum eligendi. Porro licet huiusmodi leges abrogare possit alius Pontificex, tamen eas abrogare non potest auctoritas ulla inferior, v. g. collegii Cardinalium aut Ecclesiae capite privatae.

Quid vero si propter defectum aliquem occultum invalida esset electio, et quidem primo propter defectum e jure divino petitum, ut si qui electus est, non esset valide baptizatus?

Respondetur. Deum, qui vult, ut Ecclesia habeat supremum Pontificem, provisurum esse, ut non eligatur, qui laboret huiusmodi defectu.

Verum si hoc responsum sufficit quoad defectus e jure divino ortos, non videtur sufficere quoad alios, e jure humano petitos. Et vero, Julius II. faciendo irritas electiones simoniacas, supposuit, ejusmodi electiones fieri posse.

4. Even if a layman. This is gathered from the Ceremonial of the Roman Church, which provides the form for consecrating one who is elevated from the lay state. Celestine V was not in holy orders when he was elected; for he was a hermit. Since jurisdiction can be separated from order, a layman who is duly elected and thus admitted to the college of prelates is immediately endowed with jurisdiction by God; however, he must receive holy orders, since God wills that the Church be governed universally by bishops.

5. Besides impediments derived from divine law, there could also be impediments of human law, namely those established by the Supreme Pontiffs. Such an impediment would exist if the method of election, considering the very substance of the matter, were not observed, or if someone were elected through simony. Regarding this, Julius II, in his constitution which begins with *Cum iam*, decreed that such a person "shall not be considered by anyone as Roman Pontiff." Lateran Council V, session 5. *Harduin*, IX, 1657. Without doubt, a Pontiff can make laws concerning election that will remain valid after his death; and although he cannot bind other Pontiffs with such laws, he can nevertheless bind those who are not yet Pontiffs, but only to be elected as Pontiffs. Furthermore, although another Pontiff can abrogate such laws, no inferior authority can abrogate them, e.g., the College of Cardinals or the Church deprived of its head.

But what if an election were invalid due to some hidden defect, and indeed primarily due to a defect derived from divine law, as if the one elected were not validly baptized?

Response. God, who desires that the Church have a supreme Pontiff, will provide that one who suffers from such a defect will not be elected.

However, if this response suffices concerning defects arising from divine law, it does not seem to suffice concerning others derived from human law. Indeed, Julius II, by invalidating simoniacal elections, supposed that such elections could occur.

Respondeo, applicanda hic esse principia, quae valent de jurisdictione, quae suppletur supposito titulo nonnisi colorato et errore communi fidelium. Titulus coloratus est titulus in se nullus, attamen speciem habens tituli veri. Error communis est error omnium aut fere omnium.

Hinc a. sacerdos, qui simoniace renunciatur parochus, secundum jus canonicum caret jurisdictione. Attamen quia, supposita simonia secreta, existimatur legitime renunciatus habetque aliquem titulum licet invalidum, Ecclesia, i. e. aut episcopus aut supremus Pontifex, supplet defectum, i. e. largitur jurisdictionem. Ecclesia enim non vult tantum malum fidelium, quod cum delinquentis poena esset conjunctum.

b. Episcopus simoniace electus jurisdictione caret secundum jus canonicum. Attamen supposito errore communi ob simoniam non vulgatam Ecclesia, i. e. Romanus Pontifex, supplet defectum largiendo jurisdictionem.

c. Qui simoniace electus est in supremum Pontificem, caret jurisdictione ob Julii II. constitutionem. Attamen quia simonia fuit secreta atque ideo a Cardinalibus non impugnatur electio, mox a tota Ecclesia habetur pro legitimo Pontifice. Tum vero suppletur defectus, non quidem ab Ecclesia, quae ei non potest conferre jurisdictionem, sed a Deo ipso.

Etenim α. si bonum commune exigit, ut in occasione simili Ecclesia parocho aut episcopo largiatur jurisdictionem, non est dubitandum, quin Deus, qui bono Ecclesiae certe non minus movetur quam homines, simili modo agat cum supremo Pontifice.

β. Merito supponitur, Pontifices illos, qui de electione leges tulerunt, non voluisse irritam facere nisi primam illam per Cardinales electionem, non vero alteram, quae quasi fit per totam Ecclesiam. Verbo, supponendi sunt leges tulisse secundum principia illa, quae vigent in Ecclesia. Voluerunt poena afficere reum, non Ecclesiam. Reus poena vero afficitur, quia in conscientia ligatur ita,

I respond, the principles which apply here are those that pertain to jurisdiction that is supplied in cases where there is only a colorable title and a common error among the faithful. A colorable title is a title that is null in itself, yet bears the appearance of a true title. Common error is an error held by all or nearly all.

Hence **a.** a priest who is appointed as parish priest through simony lacks jurisdiction according to canon law. Nevertheless, because, assuming the simony is secret, he is considered legitimately appointed and has some title although invalid, the Church, i.e., either the bishop or the Supreme Pontiff, supplies the defect, that is, bestows jurisdiction. For the Church does not wish such great harm to come to the faithful, which would be joined with the punishment of the offender.

b. A bishop elected through simony lacks jurisdiction according to canon law. Nevertheless, supposing common error due to simony not being widely known, the Church, i.e., the Roman Pontiff, supplies the defect by bestowing jurisdiction.

c. One who is elected to the Supreme Pontificate through simony lacks jurisdiction according to the constitution of Julius II. Nevertheless, because the simony was secret and therefore the election is not challenged by the Cardinals, he is soon regarded by the whole Church as the legitimate Pontiff. In that case, however, the defect is supplied, not indeed by the Church, which cannot confer jurisdiction upon him, but by God Himself.

Indeed α. if the common good requires that in a similar occasion the Church grants jurisdiction to a parish priest or bishop, it should not be doubted that God, who is certainly moved by the good of the Church no less than men are, would act in a similar manner with the Supreme Pontiff.

β. It is reasonably supposed that those Pontiffs who established laws concerning election did not wish to invalidate anything except that first election by the Cardinals, not indeed the second one, which is made as if by the whole Church. In a word, they should be supposed to have made laws according to those principles which are in force in the Church. They wanted to punish the guilty one,

ut viam inquirere teneatur, qua Deo satisfaciat. Ita fere *Haunoldus*, Theol. specul. l. 3, tr. 1, c. 1. Controv. VII, §. V.; Card. *Pallavic*. Cursus theol. de fide, c. 7, n. 144; *Cherubinus Mayr*, Trismegist. juris pontif. lib. 1, tit. 6, §. 1, n. 44; *Schmalzgruber*, Jus eccles. Ed. Rom. tom. 1, pag. 376; *Pirhing*, Jus can. l. 1, tit. 6, sect. 9. n. 434—437.

not the Church. The guilty one is truly punished because he is bound in conscience such that he is obliged to seek a way by which he may satisfy God. Thus generally *Haunoldus* [Christoph Haunold], Theol. specul. l. 3, tr. 1, c. 1. Controv. VII, §. V.; Card. *Pallavic*. [Cardinal Sforza Pallavicino], Cursus theol. de fide, c. 7, n. 144; *Cherubinus Mayr* [Cherubinus Mayr], Trismegist. juris pontif. lib. 1, tit. 6, §. 1, n. 44; *Schmalzgruber* [Franz Schmalzgrueber], Jus eccles. Ed. Rom. tom. 1, pag. 376; *Pirhing*, Jus can. l. 1, tit. 6, sect. 9. n. 434—437.

148. Quaeritur 4. Quot modis a supremo pontificatu recedi possit.

Resp. Receditur 1. abdicatione spontanea, etiamsi fiat sine Cardinalium et Ecclesiae consensu. Abdicatione recessit s. *Coelestinus* V. (a. 1294), postquam Cardinalium „omnium concordi consilio et assensu, auctoritate apostolica statuit et decrevit", posse Pontificem abdicare. Vid. decret. VI, l. 1, tit 7. de renunciat.

148. Fourth Question: In how many ways can one depart from the supreme pontificate.

Response: One departs 1. by voluntary abdication, even if it occurs without the consent of the Cardinals and the Church. Saint *Celestine* V (in 1294) departed by abdication, after he "by the unanimous counsel and assent of all the Cardinals, by apostolic authority established and decreed" that a Pontiff could abdicate. See the decree in Liber Sextus, book 1, title 7, concerning resignation.

2. Pontifex esse cessat, si incidat in perpetuam amentiam. Usus enim rationis est conditio essentialis jurisdictionis exercendae.

2. The Pontiff ceases to be such if he falls into perpetual insanity. For the use of reason is an essential condition for exercising jurisdiction.

3. Cessat esse, si inciderit in haeresim manifestam. Tali enim haeresi cessaret esse membrum Ecclesiae idcirca et caput. Illud autem accidere posse, non constat. *Bellarm.* de Rom. Pont. l. 2, c. 30.

3. He ceases to be [Pontiff] if he should fall into manifest heresy. For by such heresy he would cease to be a member of the Church and therefore also its head. Whether this can actually happen, however, is not established. *Bellarmine*, On the Roman Pontiff, book 2, chapter 30.

4. Si Pontificis electio ita facta est dubia, ut constare non possit, quis sit verus Pontifex, tunc ille, cujus electio facta est dubia, secundum plerosque renunciare debet, ut fiat nova electio; si autem ipse non renunciat, Ecclesia sive episcopi declarare possunt, eundem, utpote dubium, non esse summum Pontificem. Nituntur principio: Papa dubius Papa est nullus. De cujus enim auctoritate non constat, is obedientiam exigere non potest, ut et legi, quae promulgata non est, obedire homines non tenentur. Eo tandem secundum eosdem res devenerata tempore schismatis occidentalis,

4. If a Pope's election is so doubtful that it cannot be established who the true Pontiff is, then according to most authorities, he whose election is doubtful ought to renounce his claim so that a new election may take place; if, however, he does not renounce it, the Church or the bishops can declare that he, being doubtful, is not the Supreme Pontiff. They rely on the principle: A doubtful Pope is no Pope at all. For he whose authority is not certain cannot demand obedience, just as men are not bound to obey a law that has not been promulgated. According to these same authorities,

cui finem imposuit concilium Constantiense. Unde *Bellarminus*: „Dubius Papa habetur pro non Papa,“[^1] et proinde habere super illum potestatem non est habere potestatem in Papam… Etsi concilium sine Papa non potest definire nova dogmata fidei, potest tamen judicare tempore schismatis, quis sit verus Papa et providere Ecclesiae de vero pastore, quando is nullus aut dubius est, et hoc est, quod recte fecit concilium Constantiense. Adde, quod Joannes et Gregorius non inviti depositi sunt; nam ipsi etiam sponte renunciarunt papatui”. De concil. l. 2, c. 19.

Simili modo *Suarez* (tract. de fide disp. 10, s. 6, n. 19), qui rationem hanc addit: „Quia in eo casu non datur verus Papa in conspectu Ecclesiae, quae proinde minime tenetur illi obedire”. Agit de Papa, qui sit dubius, quando non potest certo constare, an vere fuerit electus. Addit: „Si contingeret, uno quopiam recte et rite electo Cardinales proxime post designationem rem vertere in dubium generarique schismata, posset concilium generale de negotio cognoscere, ac pro ratione causae aut electum confirmare aut deponere; quia quamvis eligendi jus concessum sit Cardinalibus, censendum tamen est ea lege fuisse concessum, ut possit semper Ecclesia fieri certa de veritate sui capitis; in casu ergo, quo non possit, jus sibi reservavit convenienter providendi. Est enim hoc et ipsi rationi naturali consentaneum et ad bonum Ecclesiae regimen necessarium. Unde si forte Papa vere coram Deo electus juste deponatur, vere ac valide deponetur, ad eum modum, quo de Papa haeretico diximus”. Cf. *Tanner*, Theol. schol. tom. 3, disp. 1, q. 4, n. 171.

[^1]: *Phillips* (Kirchenrecht I, §. 31, p. 258) asserit, hoc principium esse falsum: rationes, quibus id demonstret, non affert. Videtur confundere electionem coram Deo legitimam, et electionem, quae ab hominibus tamquam legitima cognosci possit et cognoscatur. Non sufficit, ut electio

it finally came to this during the Western Schism, which the Council of Constance brought to an end. Hence *Bellarmine* says: “A doubtful Pope is considered no Pope,”[^1] and consequently to have power over such a one is not to have power over the Pope… Although a council without the Pope cannot define new dogmas of faith, it can nevertheless judge, in time of schism, who is the true Pope and provide the Church with a true pastor when there is none or when he is doubtful, and this is what the Council of Constance rightly did. Add to this that John and Gregory were not unwillingly deposed; for they also voluntarily renounced the papacy.” De concil. l. 2, c. 19.

Similarly *Suarez* (tract. de fide disp. 10, s. 6, n. 19), who adds this reason: “Because in that case there is no true Pope in the sight of the Church, which therefore is by no means bound to obey him.” He speaks of a Pope who is doubtful when it cannot be established with certainty whether he was truly elected. He adds: “If it should happen that, immediately after the designation of someone correctly and properly elected, the Cardinals call the matter into doubt and schisms are generated, a general council could examine the matter and, according to the nature of the case, either confirm or depose the elect; because although the right of election has been granted to the Cardinals, it must nevertheless be considered to have been granted with this proviso, that the Church can always be certain of the truth of its head; in a case, therefore, where this is not possible, the Church has reserved to itself the right to make suitable provision. For this is both in accordance with natural reason itself and necessary for the good governance of the Church. Hence, if perchance a Pope truly elected before God is justly deposed, he will be truly and validly deposed, in the same way as we have spoken of a heretical Pope.” Cf. *Tanner*, Theol. schol. tom. 3, disp. 1, q. 4, n. 171.

[^1]: *Phillips* (Church Law I, §. 31, p. 258) asserts that this principle is false; however, he does not provide reasons to demonstrate this. He seems to confuse an election that is legitimate before God with an election that can be and is recognized as legitimate by men. It is not sufficient that an

coram Deo legitima fuerit; requiritur, ut electio etiam tamquam legitima i. e. tamquam dubio serio non obnoxia cognoscatur. Neque legi sufficit, ut sit lata; requiritur insuper, ut et promulgetur.

election was legitimate before God; it is required that the election also be recognized as legitimate, that is, as not subject to serious doubt. Similarly, it is not sufficient for a law merely to be enacted; it is additionally required that it be promulgated.