

Constitutionum Apostolicarum una cum Caeremoniali
Gregoriano de pertinentibus ad electionem Papae:
Synopsis accurata et plana nec non elucidatio omnium
fere difficultatum, quae evenire possunt circa pertinentia
ad Electionem Romanorum Pontificum (*Apostolic
Constitutions Together with the Gregorian Ceremonial
Pertaining to the Election of the Pope: An Accurate and
Clear Synopsis and Explanation of Nearly All the
Difficulties That May Arise Regarding Matters Pertaining to
the Election of Roman Pontiffs*)

by **Fr. Antonino Seraphino Camarda (Fr. Antoninus Seraphinus Camarda), 1738**

[Online Location of Text Here](#)

- *OCR of the original text by AI (o1-2024-12-17).*
- *Translation of the original text performed by AI (o1-2024-12-17).*
- *Last Edit: April 1, 2025.*
- *Version: 1.0*
- *Selection pages: 253–263*

DISSERTATION XXXVIII

On what exceptions can be raised against the election of the Pope.

Before resolving the difficulties, it must first be stated that, according to Panormitanus in the rubric *De exceptionibus* at number one, an exception is the exclusion of an action or an intention. It is of two kinds: one judicial and properly so-called, the other truly extrajudicial and improper. The first is the exclusion of an action and presupposes a lawsuit and a plaintiff; this is properly the defendant's response in judgment, prompted by the plaintiff, yet from the side of the plaintiff or agent there corresponds a replication, which is the exclusion of exceptions. The second is the exclusion of an intention, and this does not presuppose a trial or a plaintiff, but the intention of obtaining or preserving something. This has particular application in elections, when by raising an exception someone prevents another from being elected, or, if elected, from being confirmed, or, if confirmed, from

being consecrated. In this way that exception is the exclusion of an intention, whereas the first is the exclusion of an action.

Secondly, it must be stated that among these exceptions there is found a great difference, according to Panormitanus in the chapter *Super eo* number two. A judicial exception, beyond repelling the plaintiff, does nothing more, for it suffices the one who raises it if he repels the plaintiff and impedes the action. But an extrajudicial exception has a certain force of accusation and action, and the one raising it is in some manner said to be an accuser. This exception is also called an accusation, given what has been said above.

First Inquiry: Whether against the election and the one elected as Pope a judicial and properly so-called exception can be raised.

I answer in the negative. The reason is that one elected to the Papacy does nothing against anyone, nor does he call anyone into judgment, so that the defendant could raise an exception against him and repel him from taking action. On the contrary, as soon as the person elected consents to the election, he is the Pontiff and is able to govern, as Panormitanus notes in the chapter *In nomine Domini*, disputation 23. Therefore, no judicial and properly so-called exception can be raised against a Pope-elect.

Furthermore, the true Pope does not stand in judgment as a real “party” on equal footing with a plaintiff; if he is a true Pope, or even presumed as such, or reckoned so by those under his obedience, he is always the true superior. How then can a judicial exception have place against him?

From this doctrine it is concluded that against the Pope’s election no exception can be raised except one of nullity. Such an exception is counted among extrajudicial exceptions according to Panormitanus in *Clementina prima*, number 78. According to Turrecremata, Bellarmine, and others cited by Pallerino in question 72 on the election of the Pope, any objection that does not render the election null is of no effect against the election of the Pope. For although before the election one can raise all defects, even non-invalidating ones, to prevent an unworthy candidate, nonetheless, to render the election itself void, if it is made despite such a defect, is not possible. Thus, only an exception of nullity is granted, whether on the part of the electors, or of the elected, or of the election itself, as we shall explain more fully.

Second Inquiry: In what cases can an exception of nullity be raised against the Pope’s election from the side of the electors?

I answer that from the side of the electors one may except for nullity of the election in the following cases: 1. Actual madness or insanity at the time of the election. 2. That some Cardinal is not a deacon nor legitimately privileged to vote. 3. That one is not a legitimate Cardinal. Thus hold Panormitanus in the chapter *Licet de electione* number 10, Jacobatius, Azorius, John of St. Thomas, and others. 4. A lack of freedom arising from force or fear inflicted upon the Cardinals, as is gathered from the Council of Constance cited above.

It must be noted, however, that if, after excluding such Cardinals who had these aforesaid defects, the elect still had been chosen by two-thirds of the Cardinals in the Conclave, all exception would cease. Since he was elected by two-thirds of the Cardinals, it would not matter if the others were legitimate voters or not. This is concluded from the chapter *Licet de electione*, and from Jacobatius book 4, article 4, § *tertio casu*, page 201.

Furthermore, note that if a defect in an elector was not objected to before the election, and yet he voted under at least a colorable title without anyone challenging it, his vote would be valid, and after the election there would be no further time to raise an exception against him. The reason is that having a colorable title, and given the common error and tolerance, when he acts by a public office, he acts validly, as the canonists commonly hold.

Third Inquiry: In what cases can an exception of nullity in the Pope's election be raised on the part of the one elected?

I answer that exceptions of nullity can be raised on the part of the one elected for the following: 1. Due to madness or insanity. 2. If the person elected were a woman, a hermaphrodite, mute, deaf, blind, etc. But there is no need to waste time uselessly on such absurdities. The Cardinals are not, nor will they ever be, so foolish as to promote such kinds of persons to the Pontificate, especially since they are led by a special inspiration of the Holy Spirit. 3. The moral defect of heresy on the part of the one elected, which must, however, be understood with some limitation in light of ancient law. For if the one elected detests heresy, then such an exception cannot be raised against him. A heretic cannot be deposed from the Pontificate unless he is pertinacious and incorrigible, and the election of a heretic is not by divine law ipso facto null, even if it ought to be annulled if the elected refuses correction. Thus, to annul such an election, the Church's sentence on the incorrigibility of the elected is necessary. This, however, I say considering the ancient law. Under the new law, according to Paul IV's constitution *Cum ex Apostolatus*, renewed by St. Pius V, an exception of heresy and schism can be raised against the Pope's election if it appears that at some time he was heretical or schismatic. By declaring his election null, if such a person is in possession of the administration, it would be lawful for the clergy and the people to withdraw their obedience from him. How this is to be understood will be explained in subsequent questions. 4. The defect of simony, which has been extensively discussed as to how and when it invalidates an election.

Apart from these moral defects of heresy, schism, and simony, no other crime can be used as grounds for an exception against a canonically elected Pope. For the Pope's power does not depend on moral virtue, and there is no law confirming that such crimes invalidate the Pope's election. The decree of the Lateran Council in the chapter *Licet* always stands, where it is expressly commanded that someone canonically elected, notwithstanding any exception, should be held as the true Pope. Thus Passerinus in question 32, number 8, citing Panormitanus, Azorius, Jacobatius, Bonacina, and others on his behalf.

Furthermore, just as from these crimes, as just explained, the Pope's election is not rendered null, so neither can an exception be raised from excommunication or any other

censure. For according to the constitutions of Pius IV *In eligendis* and Gregory XV *Aeterni Patris*, no excommunication or censure impedes the active or passive voice in a papal election. Likewise, no irregularity or positive-law incapacity can be raised against him. Therefore, the election of one who is bodily deformed or otherwise incapacitated is still valid, although the Cardinals would sin mortally by electing him in this manner, as Jacobatius teaches (book 3, article 1, page 150).

Fourth Inquiry: In what cases can an exception of nullity in the Pope's election be raised from the standpoint of form?

I answer that in the papal election an exception of nullity can be raised from the standpoint of form due to those defects contained in the Bull *Aeterni Patris* at the paragraph *Quod si electio*, for instance, if the election were not held in a closed Conclave, or if it were not carried out by two-thirds of the Cardinals present in the Conclave excluding the vote of the one elected, or other similar defects.

DISSERTATION XXXIX

How can one bring an exception against the election of the Pope?

Having established in the previous dissertation the cases in which exceptions of nullity can be brought against the election of the Pope, there now remains to be discussed in what manner and by whom such an exception may be raised.

It must first be stated that an exception of nullity is of two kinds, namely, one of law alone (*de iure tantum*), and one both of law and fact (*de iure et de facto*). An exception of law alone occurs when nullities are alleged before a competent judge and must be proven, while, in the meantime, obedience is not rendered to the elected individual. However, the alleged Pope is not forcibly removed from his possession, but left in place until the case of the Papacy is decided by a Council and a judgment is pronounced on the validity or nullity of the election. Such an exception is said to be of law but not of fact, because the intruder is not deprived of possession by force. This differs from the exception allowed by the decree of the Council of Constance in session 39, which can be raised against a papal election if it is presumed to have been carried out under duress. An exception of both law and fact occurs when those raising the exception not only allege some nullity against the election or the elected, but also completely refuse obedience to the elected man. They do so in such a way that, if he persists in claiming the Papacy, he might be expelled by force and the power of secular arms, and another might be validly elected in his place, once this step has been taken.

First Inquiry It is asked, first, whether, where the nullity of a papal election is entirely notorious and everywhere manifest, arising from whatever cause, it is permissible to raise an exception against the elected, both in law and in fact. I respond affirmatively, following Passerinus (Question 32, no. 14), who also asserts that this view is common among Doctors and Canonists. The reasoning is most evident, especially if we speak of nullities that may arise from the form itself, namely because the person elected is an intruder; that

is, not elected by a concordant and legitimate election of two-thirds of the Cardinals. From the chapter *In nomine Domini* (Dist. 23) and the chapter *Si pecunia* (Dist. 79), it is established that such an intruder must be rejected and another legitimately elected. In the Constitutions *Aeterni Patris* and *Quod si electio*, it is prescribed that someone elected without observing the form established therein should be considered apostate, and under pain of excommunication all are forbidden to render him obedience.

Furthermore, speaking of the crime of heresy or schism, if it is altogether notorious, there stands the constitution of Pope Paul IV *Cum ex Apostolatus*, which grants the faculty of withdrawing obedience from one who at some time has been shown to be a heretic or schismatic. Finally, concerning the crime of notorious simony, Julius II established that the Cardinals have the faculty to depose the intruder and elect another. Therefore, against someone elected nullly, with a nullity that is entirely notorious, it is truly possible to raise an exception both of law and fact, denying him obedience and electing another who is a legitimate Pope, without awaiting any further judgment.

There are many examples of this. For instance, Constantine, brother of Duke Toto of Nepi, an intruder from the laity and ordained without the election of the Cardinals but rather by force, was expelled after a year by Christopher the Primicerius and his son Sergius the Sacellarius, and Stephen IV was canonically elected. Further, Christopher, Cardinal of the title of St. Lawrence in Damaso, having deposed the legitimate Pope Leo V, invaded the Apostolic See, but after seven months, though he was expelled by another invader, Sergius III (whom the Church tolerated until his death three years later), he was removed.

Second Inquiry It is asked secondly, whether any exception can be raised against someone who has not only been received by the Cardinals but by the whole Church peacefully and without opposition. I respond in the negative with Passerinus (no. 17), citing several Doctors of Canon Law, Innocent the Archbishop of Compostela, Jacobatius, and others in his favor. The reason is very clear: A Pope elected by the Cardinals and peacefully accepted by the whole Church cannot fail to be the true Pope. This can be proven as follows: The Church, after applying moral diligence to the papal election, receives the Pope by a special instinct of the Holy Spirit as the infallible rule of her faith, in whom she cannot err since she is the pillar of truth, against which the gates of hell will not prevail. Therefore, a Pope so received cannot fail to be a true Pope, and consequently no exception can be brought against one who has been so elected and received.

Furthermore, the Church must be certain that she cannot be deceived by the Pope in matters of faith and must also be certain that the Pope is legitimate and has the infallible assistance of the Holy Spirit. Therefore, there must be on earth a judge who can infallibly determine that the one elected as Pope is truly and legitimately the Pope. But this judge can only be the Church, to whom Christ entrusted the election of the Pontiff, and consequently He also entrusted to her a certain and infallible judgment regarding the legitimacy of the papal election, whether this is done judicially through a Council or extra-judicially by the common and peaceful acceptance of the Pope. Thus, the Church cannot

err in peacefully receiving a Pope elected by the Cardinals, and no exception can be raised against a legitimately elected and accepted Pope.

It must be noted, to remove all ambiguity, that no exception can be brought against the election of a Pope peacefully received by the Church not because the consensus or acceptance of the Church is itself an election or by its force can elect one who was not elected, for the faculty of election belongs only to the Cardinals; nor because the consent or acceptance of the faithful acts as a confirmation of the election, for a papal election does not require confirmation; nor because the value of the election depends on the consent and acceptance of the people, since a pope canonically elected by the Cardinals is already a true and legitimate Pope by virtue of that election alone, prior to the acceptance by the Church.

Rather, the faithful consensus and the total acceptance by the Church is an infallible manifestation that the election was valid; it infallibly proves its value a posteriori. Hence, given the infallibility of this acceptance, no exception can be raised against it. Nor does it matter that, despite the infallibility of the Church's judgment in the peaceful reception of the Pope, one might think there is still room for an exception against a Pope elected and received by the Church, not indeed in the forum of conscience and before God, but only in the external forum, so that the election might be invalidated there.

I say this does not stand, because neither in the internal nor in the external forum, once the election and peaceful reception of the Pope by the Church is established, can any exception be given. There should be no doubt whatsoever about the truth of a papal election, because the Church needs certain faith, without any fear that the elected person is not simply the true Pope, and that his acts are infallible. This could not be verified if there were the slightest room for exception. I admit that before the election and peaceful reception of the Pope it is possible to raise an exception both in law and in fact against him; but because the papal election is carried out by the special guidance of the Holy Spirit, and because the Church cannot err in accepting the living rule of faith (which the Pope is), once a legitimate papal election and acceptance has occurred, no exception can be raised—neither in the internal nor the external forum.

John of St. Thomas (*Secunda Secundae*, q. 7, disp. 2, art. a) excellently explains that this acceptance of the Church takes place first by the concordant election of at least two-thirds of the Cardinals, with none of them raising exception or opposition; secondly, by the publication of the election to the people by one Cardinal on behalf of all, which is, as it were, a definitive declaration of the legitimacy of that election; and thirdly, by the acceptance of other prelates and the Roman people, and subsequently by other prelates outside of Rome, with no faithful person contradicting.

All this is further explained and strengthened by the example of the canonization of saints. Although the Pope, prior to the canonization of saints, relies on fallible processes which may contain falsehoods, yet in the very act of canonization he is led infallibly by the Holy Spirit and can never err. Similarly, we say that although the judgment about the papal election in its making may depend on fallible principles, the actual reception by the Church

is guided by the infallible instinct of the Holy Spirit. Thus, the Church is governed so that she never accepted nor will accept an incapable person, nor will she accept anyone but a true Pontiff. Hence, in receiving a Pope, she cannot err. Thus, Gravina, John of St. Thomas, Passerinus (no. 20), and other theologians hold that it is *de fide* (of faith) that a Pope canonically elected in the face of the Church and received by the Church as such is a true Pope, the successor of Blessed Peter, having the fullness of power over God's Church.

But what should be said if, after the election made by the Cardinals and the peaceful acceptance by the Church, some hidden nullity of the election is subsequently revealed? Could one then raise an exception of nullity?

I respond negatively with Passerinus (no. 22). The reason is that laws nullifying and annulling a papal election are aimed at ensuring the freedom and security of the papal election, and especially at avoiding schisms. But if the Pope, elected in the face of the Church with the canonical form observed, is received by the universal Church, and only after this reception some awareness of a defect arises allowing someone to raise an exception and challenge the election, thereby expelling the elected, a great danger of schism would threaten the Church. Therefore, to avoid schisms, it is not permitted to raise an exception of nullity under the above hypothesis.

Moreover, the universal and peaceful acceptance by the Church is like an infallible declaration of the election's validity. Therefore, if a peaceful acceptance of the Pope by the Church exists, and afterwards some hidden defect comes to light, it is a sign that such a defect does not matter for the validity of the election. Otherwise, the Church could have erred in receiving the Pontiff, and no certainty of a legitimate Papacy could ever be had in the Church. We could doubt any Pope whatsoever, whether he was not baptized or had some other hidden defect making him not a legitimate Pope.

The adversaries object that there is indeed certainty that the Pope elected and received by the Church is guided by a special assistance of the Holy Spirit in ruling the Church, and that the Holy Spirit supplies whatever is needed for the Pope's action to be valid. But they say it is not entirely certain that the Church in receiving this Pope, where there was some hidden defect, has not erred, and thus there could still be room for an exception.

I say this objection does not hold, as John of St. Thomas convincingly refutes it in the cited place. There are two propositions here: first, that the Pope peacefully received by the whole Church is a true Pope, or that the Church cannot err in receiving a legitimately elected Pontiff; and second, that a Pope received by the Church has the assistance of the Holy Spirit so he cannot act invalidly. Why should one proposition be more certain than the other? And if it is conceded that the Church can err in receiving the Pope and take a false Pope for a true one, with what certainty can it be affirmed that the Holy Spirit assists this falsely received Pope so that he will not err or act invalidly? Therefore, it is more fitting and must be asserted that the Holy Spirit so governs the Church that she does not receive a false Pope, and that He does not permit anyone false to sit peacefully on Peter's Chair. Hence no exception of nullity, even a hidden one, can be raised after a legitimate papal election and the Church's peaceful acceptance.

Nor does it stand that once the papal election and its peaceful acceptance by the Church have taken place, this Pope is a true Pope, but that he is not beyond deposition if a nullifying defect subsequently becomes evident from positive law.

I say this does not stand, because disputes and schisms must be eliminated by the Church so they do not endure forever. If the force of prescription is so strong as to make what was not one's own become one's own, they rightly proclaim that no appeal or objection is allowed against a judgment that has become *res iudicata*. Should the Church be constantly shaken by lawsuits and contentions, and should her head be subject to the violence of princes so that as often as the Pope stands as a wall for God's house against princes, these princes under the pretext of nullity in the papal election can persecute the Pope? God forbid. Rather, the Church's acceptance must be taken as a complete and public declaration of the election's validity, against which no further objection is valid. Thus the Church can live peacefully under her Pastor, and the Pope can act vigorously without fear of princes and defend the Church's jurisdiction by reproofing vices and reforming morals.

Therefore, one must say that the ecclesiastical laws nullifying papal elections do not include the case of an election whose defect was so hidden that, notwithstanding it, the Pope was universally accepted by the Church as legitimate. Nor can it be asserted without error that a Pope chosen by the Church's peaceful election is the true Pope yet is deposable if a hidden defect of nullity later emerges.

I did not say that a null election is convalidated by the Church's acceptance, but that by no positive law shall an election, secretly deficient, after having been accepted and approved by the Church, remain invalid and empty. Because the peace, security, and tranquility of the universal Church require this.

Third Inquiry It is asked, third, whether before the Pope is peacefully received by the Church, one can raise an exception against his election, either in law only or both in law and fact.

Before answering this question, a threefold case must be distinguished concerning such exception: first, if the nullity of the papal election is entirely notorious and everywhere manifest; second, if the nullity is not strictly notorious and manifest but still certain and indubitable; and third, if the nullity is only probable.

As to the first case, it has already been discussed at length in this dissertation under the first inquiry. Just note that in the case of a simoniacal intruder with a completely notorious simony, the best approach is that established by Julius II in the paragraphs *Licet* and *Ad cuius*, which distinguishes among three things: not receiving the intruder Pope, treating him as excommunicated and heretical, and forcibly stripping him of the Papacy. The first two are granted to all the faithful, but the third to the Cardinals. For in the case of an intruder, the laity should not be the first leaders of war, but subjects who fight at the instance of the Cardinals and a Council, since it pertains to them to provide and govern the Church during a papal vacancy. Thus the best order is preserved if the laity let themselves

be led by the clergy, and at their direction and request move against the intruder Pope, nor withdraw from his obedience unless the clergy and their pastors do so first. For in matters of faith and religion, the laity are to be led and directed, not to lead and govern others.

As for the second case, if the nullity of the election is certain and indubitable, but not altogether notorious, I respond that, although it is not easy for the nullity of a Papal election to be certain and indubitable without being altogether notorious, if that should happen, in such a hypothesis one may raise an exception in law and partially in fact, namely, by not receiving the elected nor rendering obedience to him or communicating with him, but treating him as a heresiarch. However, one may not raise an exception entirely in fact, depriving the intruder of possession by force, expelling him, and compelling his adherents to withdraw obedience.

The first part is proven because the chapter *Licet*, speaking of simony, expressly says: “But also against such a person thus elected or assumed through simoniacal stain, an exception may be raised by any Cardinal who was involved in that election, just as in the case of true and indubitable heresy.” Similarly, the same holds for all that is granted in § *Liceatque omnibus*, i.e., not to render obedience to such an elected and to treat him as a heresiarch and excommunicated person, not communicating with him. Moreover, from these same words it is gathered that the same mode of exception applies to the crime of heresy, since Julius II decreed that an exception can be raised from simony because he presupposed that in the case of true and indubitable heresy one can raise an exception against the pope-elect. Finally, the Constitutions *Aeterni Patris* and *Quod si electio* establish that if the form mandated by these constitutions is not followed, the elected should be held as apostate. Therefore, it is now clear that where the nullity of the election is certain and indubitable, before the Pope is peacefully received by the Church, an exception may be raised at law and partially in fact.

Furthermore, in the Constitution *Aeterni Patris*, not only the intruder but also the electors, supporters, and accomplices are excommunicated, and all are forbidden to render him obedience. This same prohibition is found in the chapter *In nomine Domini* concerning one who might be elected without observing that chapter’s form. In the Constitution *Cum tam Divino* of Julius II, it is likewise commanded that a pope simoniacally elected is to be held as apostate. Thus, when it is certain that the elected is an intruder, not only may the faithful refuse obedience, but they must also treat him as an apostate. Consequently, one may raise an exception in law and partially in fact.

From this doctrine it follows, first, that it is also permissible for those who have already rendered obedience to an intruder to withdraw from his obedience. For according to the very words of Julius II’s Constitution § *Liceatque*, this is allowed. Under the Constitutions of Gregory XV and in the chapter *In nomine Domini* (Dist. 23), it is even commanded under penalty of excommunication, since the supporters of an intruded Pope are excommunicated. Therefore, whoever previously obeyed such an intruder is bound to withdraw from his obedience, lest he persist as a supporter, accomplice, or follower in wrongdoing.

Secondly, although Julius II's Constitution grants the faculty of raising an exception and withdrawing obedience from an intruder by simony, holding him as apostate, this is not imposed under some penalty. Only to the Cardinals is it mandated under pain of excommunication that they not act contrary to that Constitution. Yet from the chapter *In nomine Domini* and Gregory XV's Constitution, supporters, accomplices, authors, and followers of an intruder against these Constitutions are excommunicated.

The second part is proven, namely that outside the case of notoriety, even if the nullity of the papal election is certain, it is not permissible to raise a complete exception in fact by forcibly depriving the intruder of possession and expelling him. For such a thing is not granted to the faithful in this case, and generally one cannot strip a possessor by force without due process of law. That this is not granted is clearly shown: In the Constitutions of Gregory XV it is indeed prescribed that no one should favor the intruder, but it is not said that the intruder should be violently ejected, nor is there any faculty given to elect a new Pontiff.

In the chapter *Si quis pecunia*, although it is commanded that the intruder be expelled, it speaks of one notoriously intruded, as also in the Roman Council chapter *In nomine Domini* and the 19th Constitution of Paul IV. Likewise, the Council of Constance, speaking of one intruded by fear, openly forbids proceeding to another election and wants the elected to be maintained in his possession until the Council decides, suspending his jurisdiction until that time. Therefore, from the said Constitutions, it is clear that the faithful were never granted the right, outside the case of notoriety, to raise a purely factual exception by expelling the intruder. This is undoubtedly a safe way to proceed in similar cases, avoiding violence, wars, homicides, and irreparable damages that come with violent and warlike hostilities.

Nor does it matter that Gratian, in § *Solet* (I, quaest. 5), teaches that an intruded Pope may be dispossessed by force and should not be restored, and explains this by saying that in the case of a papal election, the Church acts as the supreme Prince, who, in a certain case and following the common opinion of Doctors, may declare war against him who, after admonition, refuses to return what he owes. Therefore, one might argue, the Cardinals can, by force, depose a simoniacal intruder who, once admonished, refuses to recede, even without notoriety.

I say this does not stand, because Gratian is there speaking expressly of a case of notoriety, dealing with someone intruded without a legitimate election by the Cardinals. To Gratian's reasoning I respond that the College of Cardinals is not a judge like a supreme Prince. Indeed, the Church during a papal vacancy is not properly a judge unless assembled in a legitimate Council. Thus it is true that a General Council, if the intruder resists its sentence and persists in the Papacy, could depose him by force. But the Church not assembled in Council can only proceed against the intruder by way of a legal exception, not by entirely factual means. Therefore, it cannot dispossess the intruder outside the case of notoriety, since no one should be stripped of possession without legal order.

From this doctrine it follows that outside the case of notoriety, the Cardinals may not proceed to a second election by factual means before a Council's decree invalidating the first election. The reason is that there cannot be two heads, two shepherds, or two Supreme Pontiffs in the Church. Therefore, where one exists, unless this one is first ejected or stripped of possession, another cannot be elected. But outside the case of notoriety, one may not factually expel the intruder, hence one cannot proceed to elect another. Consequently, if another were elected, the first should still be maintained in his possession until a judicial declaration of his nullity is made.

However, it must be noted that in the case of heresy or simony, even if not altogether notorious, if the Pope-elect is received without opposition by the universal Church, a second elect would be altogether schismatic. On the other hand, in the case of notoriety, before the Pope is received by the universal Church, just as he can be expelled by force, so another can be elected in his place, no matter how long the time. But outside the case of notoriety, the first elect must be maintained in possession to the extent that he may not be violently expelled. Then, against both the first and any other elects, the decree of the Council of Constance session 39 must be observed.

But if in this case another election were made, would it be null? I say that in the case of fear, a second election is invalid by the law itself, as appears from the decree of the Council of Constance. But outside the case of fear and notoriety, the second election is not by itself null. On the contrary, it would be judged valid if afterwards the first is declared null and the second remains free from any defect.

As for the third case, namely if the nullity of the election is only probable, even more probable, or most probable, I respond that in no way is it permitted to raise an exception, neither of law nor of fact, nor to depart in any manner from obedience, if the Pope is elected by two-thirds of the Cardinals. The reason is evident: no positive law introducing nullity against a Pope elected by two-thirds of the Cardinals in a doubtful case can prevail against the law of Alexander III contained in the Lateran Council chapter *Licet*, which prescribes that one elected by two-thirds of the Cardinals must be held as the true Pope, with no exception admissible. It is not to be presumed that subsequent laws would prejudice a conciliar law in a doubtful case. Therefore, where nullity is merely probable or even most probable, no exception may be raised, and so forth.

Furthermore, if in such a hypothesis an exception were allowed, it would open the widest door to schisms and wars devastating the Church, and it would become easy to render the election of pontiffs doubtful. Hence, to remove all occasion of schisms, and so that no one can doubt the legitimacy of the papal election, in a doubtful case all exceptions must be avoided, and it was reasonably established by Alexander III at the Lateran Council that no exception can be brought against one elected by two-thirds of the Cardinals.

Finally, this is clear inductively: According to Julius II's Constitution, an exception of simony can only be made if it is true and indubitable. The same is said about the crime of heresy. Likewise, in Gregory XV's Constitution, an exception regarding form does not hold if the nullity is not certain and indubitable. For from the Lateran Council, any election of a

Pope made in any manner, provided it is done by two-thirds of the Cardinals, is valid, and no exception applies—that is, no exception founded on positive law, as Panormitanus explains in the chapter *Licet* on election (no. II). Therefore, whenever positive law introduces some nullity against a papal election, if it does not appear fully and completely evident, possession always stands for the prior conciliar law, and every exception is to be rejected unless it is altogether certain and indubitable. Hence even a General Council cannot declare null the election of one chosen by two-thirds of the Cardinals if complete certainty and indubitability of nullity is lacking.

But what is to be said if nullity arises from a defect in the natural consensus of two-thirds of the Cardinals?

I respond that if this defect is entirely certain and notorious, an exception can be raised both in law and fact. If, however, it is doubtful, then before the universal acceptance by the Church, it must be decided according to common law, and an exception in law only would apply. In that case, before a judgment by a General Council, the elected cannot be deposed from the Papacy nor can another Pope be elected.

Finally, it is asked whether, in a hypothesis where one can raise an exception at law against the papal election, the elected person may be forcibly prevented from taking possession of the papal administration?

I respond that the elected can indeed be prevented negatively by not obeying him and by resisting him if he uses force, because a dubious superior who is not in possession cannot oblige to obedience, as taught by John of St. Thomas and Idelphonsus Baptista, quoted by Passerinus (no. 44). And this is expressly contained in the chapters *Significasti*, *Si vero*, and *Dilecto* on sentences of excommunication in the Sixth Book of Decretals. However, it is not permitted to use force to prevent the elected from issuing commands or to prevent those willing to obey him from doing so. Because by virtue of his election, the Pope possesses the right to command, and unless we are in a case where he may be violently deprived of the Papacy, he cannot be prevented from exercising the Papacy with those who wish to receive him as Pope. Thus, he cannot be prevented from taking possession with regard to those willing to accept him as Pope.