

# Ius Decretalium: ad usum praelectionum in scholis textus canonici sive iuris decretalium, Tomus II Pars Secunda (*The Law of the Decretals: For Use in Lectures on the Canonical Text or Decretal Law, Volume 2 Part 2*)

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## Section II, Caput I, Titulus XXX, n. 616

### Latin

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

617. 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 omnino 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 discretionem causae et 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<sup>[1]</sup>. Cui rationi ex natura primatus

### English

**616. Scholion.** Schism is rightfully equated to the crime of heresy. Cf. *Tanner*, On Hope and Charity, q. 6, doubt 2.

617. 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. 14ff. Indeed, a true and undoubted Pope would lose his jurisdiction *ipso facto* for another crime either by positive divine ordinance or from the nature of the matter itself. Such a positive divine ordinance does not exist at all, and from the nature of the matter, pontifical jurisdiction is not removed except in the case of heresy. For even the most wicked Pope, on account of other offenses, always remains a *member* of the body of the Church.

However, for the true and undoubted Pope to be *deposed* through a judicial sentence, it would absolutely require an authority that could issue a judicial sentence against him with discernment of cause and with true coercive power. But the Roman Pontiff, by virtue of his primacy, cannot be judged by any human authority, but by God alone<sup>[1]</sup>. This

petitae accedit traditio et praxis Ecclesiae<sup>[2]</sup>. Tota enim traditio constanter tenuit hoc principium: “*Prima sedes a nemine iudicatur*,” ut patet 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 *vero iudicio coactivo* submiserunt, sed tantum iudicio *discretionis*. Cfr. causam Damasi, Symmachi, 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. l. IV. cap. 6. n. 17. 18. sunt uberius auxilium gratiae Dei, singularis custodia angeli custodis, oratio universalis Ecclesiae, secreta vel etiam publica admonitio sive correctio fraterna, iusta defensio, sive violentia eius fuerit physica sive moralis.

**618. Scholion.** Veteres auctores passim admiserunt axioma: *Papa dubius est Papa nullus* illudque ad solvendas difficultates ex magno schismate occidentali ortas applicarunt<sup>[3]</sup>.

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 ab *universa* Ecclesia

reasoning, derived from the nature of the primacy, is supported by the tradition and practice of the Church<sup>[2]</sup>. For the entire tradition has constantly held to this principle: “*The First See is judged by no one*,” as is evident from the cases of Symmachus and Paschal II. Furthermore, the right over the Pope has been constantly denied by the Church to General Councils or the College of Cardinals or Emperors, about whom alone a question might arise. See, for example, the case of Eugene IV. The Roman Pontiffs themselves have never willingly submitted themselves to a *truly coercive judgment*, but only to a judgment of *discernment*. 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, the designation of the Roman Pontiff certainly occurs through the ministry of men; but it does not follow therefrom that the Pontiff can also be deposed by men. For through election one *becomes* Roman Pontiff; through deposition, authority would be exercised that is absolutely not granted over him who actually *is* the Roman Pontiff. Therefore, the deposition of even an iniquitous Pope can neither be done licitly nor validly. The just means against an iniquitous Pope, according to *Suárez*, Defense of the Catholic Faith, Book IV, Chapter 6, numbers 17-18, are more abundant help of God’s grace, special guardianship of the guardian angel, universal prayer of the Church, secret or even public admonition or fraternal correction, just defense, whether his violence be physical or moral.

**618. Scholion.** The ancient authors widely accepted the axiom: *A doubtful Pope is no Pope at all* and applied it to resolve the difficulties arising from the Great Western Schism<sup>[3]</sup>.

Indeed, this axiom admits various interpretations. For a Pope can be understood as doubtful not in a negative sense, but *positively* doubtful, i.e., after a diligent examination of the *facts*, competent men in the Catholic Church declare: “*It is not established that this Roman Pontiff’s canonical election is valid*.” Moreover, the phrase “*no Pope*” is not necessarily understood to refer to a Pope who until now was *certainly* and undoubtedly received by the

recepto, de cuius electione postea tot excitantur difficultates, ut fiat *Papa dubius*, qui eam ob causam *excidat* potestate pontificia *iam obtenta*. Talis enim axiomatis sensus ” *de Papa nullo* „ videtur reprobatus, 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* existunt, omnino non *acquisiverit*<sup>[4]</sup> *unquam* a Christo Domino *inrisdictionem 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, quod imprimis eruitur ex *natura iurisdictionis*. Nam iurisdiction est essentialiter *relatio inter Superiorem*, qui habet *ius* ad obedientiam, et inter *subditum*, qui habet *officium* obediendi; cessante igitur uno termino alter necessario cessat, ut patet ex natura relationis. Quodsi iam Papa est vere et permanentemente *dubius*, in nullo subdito existit *officium* obedientiae. Nam lex: *Successori legitime electo S. Petri est obediendum*, non obligat, si sit *dubius*; porro plane *dubius* 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, *dubius* est *promulgatio*; ergo lex illa obiective et ex parte non est rite constituta vereque *dubia* existit neque ullam imponit obligationem. Imo temerarium esset tali viro obedire, 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*

*universal* Church, about whose election so many difficulties are subsequently raised that he becomes a *doubtful Pope*, who for this reason *loses* the pontifical power *already obtained*. Such an understanding of the axiom concerning “*no Pope*” seems to be reprehensible, since the *entire* Church cannot completely fall away from a Roman Pontiff *legitimately* elected, due to the unity promised by Christ to His Church. However, the other part of the axiom can have this meaning: that a Roman Pontiff, whose canonical election is not established, and concerning whom, after careful examination, *positive* and solid *doubts* exist, has *never acquired*<sup>[4]</sup> from Christ the Lord *papal jurisdiction* at all. Therefore, Bishops gathered in a general Council, if they call such a doubtful case for examination, do not judge a *true* Pope, as he is *lacking* pontifical jurisdiction.

If this axiom is understood in this latter sense, it seems to contain an entirely sound doctrine. This is primarily derived 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* to obey; therefore when one term ceases, the other necessarily ceases, as is evident from the nature of a relationship. If, therefore, a Pope is truly and permanently *doubtful*, the *duty* of obedience exists in no subject. For the law: *Obedience is owed to the legitimately elected successor of St. Peter*, does not oblige 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 the successor of St. Peter 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 we are dealing with a Roman Pontiff who is *not yet* in peaceful *possession*. Consequently, in such a man there exists no right to command, i.e., he lacks papal jurisdiction.

praecipiendi i. e. caret iurisdictione papali.

Aliunde idem efficitur ex *visibilitate* Ecclesiae. Visibilitas enim Ecclesiae in hoc 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 praecipiendi, et ideo in fidelibus deest obligatio obediendi; ergo caput esset perfecte separatum a reliquo corpore Ecclesiae. Cfr. *Suarez*, De fide disp. 10. sect. 6. n. 4. 19.

[^1]: {org. 181} 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.; *Bouix*, De Papa t. II. p. 623. sq. 629. sq.

[^2]: {org. 182} 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 reprobam (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. 183} 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 *Bouix*, De Papa t. II. p. 673. sq.; *Billot* l. c. p. 134. sq.

Furthermore, the same is proven from the *visibility* of the Church. For the visibility of the 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 found after diligent examination. Therefore, it is rightly concluded that such a doubtful Pope is not a proportionate head for the visible Church instituted by Christ. Nor is this doubtful Pope less repugnant to the *unity* of the Church, which is greatly obstructed by a body perfectly separated from its head. For a doubtful Pope has no right to command, and thus in the faithful there is no obligation to obey; therefore, the head would be perfectly separated from the rest of the body of the Church. Cf. *Suarez*, On Faith, disp. 10, sect. 6, n. 4, 19.

[^1]: {org. 181} Ch. 13. X. de iudic. II. 1.; ch. 6. X. de elect. I. 6.; *Bellarmino*, On the Authority of Councils, ch. 17, 18, 19; *Fagnani* on ch. 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.; *Bouix*, On the Pope, vol. II. p. 623 sq. 629 sq.

[^2]: {org. 182} If *Hinschius*, in the cited work vol. I, p. 296 ff., argues against Catholics such as *Kober* in the cited work that at least according to ancient law the deposition of *legitimate* Roman Pontiffs was not condemned (for regarding the *current* discipline and the deposition of *intruders* and *usurpers*, who were *never* Roman Pontiffs, there is no controversy), he manifestly confuses *facts* and *usurpations* with *rights*, the *proper* right of deposing princes with the *secular arm* required by the Church, and judgment *properly* so called with the judgment of *discretion*.

[^3]: {org. 183} Several authors have rightfully contradicted this application made by *Bellarmino*, *Suarez*, and others, including *Ballerini*, *Phillips*, *Bauer*, *Cardinal Hergenroether*, and *Cardinal Franzelin* in De Ecclesia, p. 233 ff. See also *Bouix*, De Papa vol. II, p. 673 ff.; *Billot* in the cited work, p. 134 ff.

[^4]: {org. 184} *Card. Franzelin* l. c. p. 232, n. 4. i. f.; *Camarda* l. c. p. 253. sq. 256. sq., ubi agit de legitimis exceptionibus contra electum Rom. 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. XIII., *id certum est signum* illum nunquam fuisse legitimum Papam. Cfr. *Card. Hergenroether-Kirsch* l. c. t. II. p. 867. sq.; *Bonix* l. c. p. 684. sq.; *Billot* l. c. p. 144. sq.

[^4]: {org. 184} *Card. Franzelin* loc. cit. p. 232, n. 4 in fine; *Camarda* loc. cit. p. 253 sq. 256 sq., where he treats of legitimate exceptions against an elected Roman Pontiff and rightly notes that against a Pope who is elected *and received by the whole Church* no exception is admitted. This *consensus* of the Church *is not an election nor by its own power does it make one who is not elected into one who is elected*, because one canonically elected by the Cardinals prior to the acceptance of the Church is the legitimate Pope. Cf. *Franzelin* loc. cit. 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 whole 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. *Card. Hergenröther-Kirsch* loc. cit. t. II. p. 867 sq.; *Bonix* loc. cit. p. 684 sq.; *Billot* loc. cit. p. 144 sq.