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 Canonicae Secundum Ordinem Quinque Librorum
 Decretalium Gregorii IX. PP. Max unà cum Elencho
 Titulorum (*Trismegistus of the Universal Pontifical Law, or
 Canonical Institutions According to the Order of the Five
 Books of the Decretals of Gregory IX, with a Title Index*)

by P. F. Cherubinus Mayr (Cherubino Mayr), 1742

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Latin

Ab Electione in communi ad quasdam Electiones in particulari, pergere Decretum est; primo quidem ad Electionem summi Ecclesiae Capituli, Romani Pontificis: postmodum ad Electionem Romani Imperatoris, non quasi etiam haec Canonica esse debeat, sed quia etiam haec electio originem suo modo debet Romano Pontifici, ut patet ex cap. Venerabilem 34. b. t. demum ad Electiones Regularium.

SUMMARIUM.

119. Triplex olim fuit Pontifices creandi modus, sed unicus per Electionem permansit. **120.** Qui ipse varius extitit. **121.** Hodie jus eligendi competit solis Cardinalibus. **122.** In omni latitudine. **123.** **124.** Quid in casu, quo plerique vel omnes essent mortui. **125.** An electio aliquando

English

From Elections in general to certain Elections in particular, it is Decreed to proceed; firstly indeed to the Election of the supreme Head of the Church, the Roman Pontiff: afterward to the Election of the Roman Emperor, not because this election must also be Canonical, but because this election also owes its origin in its own way to the Roman Pontiff, as is evident from chapter Venerabilem 34. under this title. Finally to the Elections of Religious Orders.

SUMMARY.

119. Formerly there were three methods of creating Pontiffs, but only the one through Election has remained. **120.** This method itself has varied over time. **121.** Today the right of electing belongs solely to the Cardinals. **122.** In its full extent. **123.** **124.** What happens in the case where most or all of them were dead. **125.** Whether election sometimes

competat Conciliis. **126. 127. 128. 129. 130.** Eligi potest quilibet viator, mas, mentis compos, atque fidelis. **131.** Etsi non sit de Collegio Cardinalium. **132.** Neque sit Clericus. **133.** Objection. **134.** Ritus Electionem Pontificiam praecedentes. **135.** Valet Electio per inspirationem, vel quasi. **136.** Similiter per Compromissum. **137.** Dubium de limitato. **138.** Communissimus modus est per Scrutinium. **139.** Ejus prosecutio. **140.** Etiam valet accessus. **141.** Electionis conclusio. **142.** Postea non licet poenitere, sed fit consecratio, & coronatio. **143.** An possit Electio impugnari. **144.** An nunquam valere possit celebrata a majori parte. **145.** Qualiter obstet extorta metu, vel simoniaca. **146.** Modificatio.

PUNCTUM XXVI.

Penes quos olim fuerit, atque hodie sit jus eligendi Romanum Pontificem?

119. RESOL. I. Triplicem Pontifices Romanos creandi modum ex scriptoribus Ecclesiasticis memorat Gonzalez in *cap. licet 6. b. t. n. 11.* videlicet per *institutionem, substitutionem, & electionem.* *Institutionis* forma semel tantum usitata est in terris, quando scilicet Christus Dominus, ipse summus Pontifex, & sacerdos, à quo sancta Romana Ecclesia, proprio Ejus sanguine redempta, accepit Principatum, *can. Ita Dominus 7. dist. 19.* D. Petrum, quem *Beatum* appellaverat & cui Primatum promiserat, *Matth. 16.* post Resurrectionem suam in terris Vicarium, summumque Pontificem instituit per verba: *pasce oves meas,* Joan 21. *can. considerandum 53. & seq. dist. 50. cap. solita 6.* de M. & O. ipsumque a se confirmandum dixit: *Ego rogavi pro te, ut non deficiat fides tua.* Luc. 22. *can. Sacrosancta 2. dist. 22.* Per *substitutionem,* seu *successionem* summum Praesulatum obtinuisse dicitur S. Clemens, quem in eo sibi successorem designaverat D. Petrus, quemadmodum refertur *can. Si Petrus 1. VIII. q. 1. & can. Simon Petrus, seq. in*

belongs to Councils. **126. 127. 128. 129. 130.** Any male traveler [on earth, i.e., living person] who is of sound mind and faithful may be elected. **131.** Even if he is not from the College of Cardinals. **132.** Nor even if he is not a Cleric. **133.** Objection. **134.** Rites preceding the Pontifical Election. **135.** An Election is valid when done by inspiration, or quasi-inspiration. **136.** Similarly by Compromise. **137.** Doubt concerning limited [compromise]. **138.** The most common method is by Scrutiny. **139.** Its procedure. **140.** The accession [additional voting] is also valid. **141.** Conclusion of the Election. **142.** Afterward repentance is not permitted, but consecration and coronation take place. **143.** Whether the Election can be challenged. **144.** Whether an election celebrated by a majority can ever be valid. **145.** How an election extorted by fear or obtained through simony might be impeded. **146.** Modification.

POINT XXVI.

With whom formerly was, and with whom today is, the right of electing the Roman Pontiff?

119. RESOLUTION I. Gonzalez in *Chapter Licet 6, under this title, number 11* mentions three methods of creating Roman Pontiffs from ecclesiastical writers, namely through *institution, substitution, and election.* The form of *institution* was used only once on earth, specifically when Christ the Lord, Himself the High Priest and Pontiff, from whom the Holy Roman Church, redeemed by His own blood, received its Principality, *canon Ita Dominus 7, distinction 19,* instituted St. Peter, whom He had called *Blessed* and to whom He had promised the Primacy, *Matthew 16,* after His Resurrection as His Vicar on earth and Supreme Pontiff through the words: *feed my sheep,* John 21, *canon considerandum 53* and following, *distinction 50, chapter solita 6,* concerning Majority and Obedience, and said that he would be confirmed by Him: *I have prayed for you, that your faith may not fail,* Luke 22, *canon Sacrosancta 2, distinction 22.* Through *substitution* or *succession,* St. Clement is said to have obtained the Supreme Pontificate, whom St. Peter had designated as his successor in this office, as is related in *canon Si Petrus 1, VIII, question 1, and*

persona ipsius S. Clementis id asseverante. Veruntamen hanc substitutionem Recentiores Juris Interpretes plerumque de sola commendatione D. Petri, vel exhortatione fidelibus facta intelligunt, addentes ipsum S. Clementem designationi de se factae postmodum ex humilitate renuntiassse, & idcirco non immediate, sed primum tertium a D. Petro, scilicet post Linum, & Cletum, ad apicem summi Pontificii ascendisse, uti docuerunt S. Augustinus *epist.* 165, Epiphanius *haeres.* 27. Gregorius Turon. *lib. I. histor. cap.* 27. & pluribus adstruunt Baronius *anno* 69. *n.* 38. & *anno* 93. *n.* 1. item Bellarminus *lib. 2. de Rom. Pont. cap.* 5. Caeteri Pontifices omnes per viam Electionis Praefecturam universalis Ecclesiae acceperunt; nec tamen semper uniformiter, ut patebit.

120. RESOL. II. Jam inde a glorioso ex hac vita ad perennem Gloriam discessu D. Petri, cum D. Clemens, etsi ab eodem Successor designatus, aut melius prophetice praedictus, ne pernicioso aliis esset exemplo, succedere noluisse, electio summi Pontificis spectare coepit ad Clerum, & populum insimul; ita ut Clericorum suffragiis, & populi consensu Pontifex crearetur, *can. Plebs 11. & passim, dist. 63.* duravitque hic electionis modus usque ad Schisma contra S. Damasum suscitatum ab Ursicino circa annum 367. quo tempore primum Imperator Valentinianus I. rejecto Ursicino, actum Confirmationi fere similem circa Damasum Pontificem exercuit, testibus Socrate, Sozomeno, & Theodoro apud Gonzalez *loc. cit. n. 12.* quem, sed non nisi in casu schismatis, imitati sunt quidam alii apud eundem, donec Justinianus Imp. recepta a Gothis Italia, noluit quemquam in Romanum Pontificem admitti, nisi quem ipse approbasset, qui mos, vel potius abusus permansit usque ad Constantinum IV. Imp. qui Benedict II. Pont. hortatu omnem Pontificis creandi potestatem remisit Clero & populo, ut refert Jo. Cabassutius in *Notit. Eccles. saecul. 13. post Conc. Lugdun. II. dissert. 2. n. 3.* At

canon Simon Petrus, following, with St. Clement himself asserting this in the first person. However, more recent interpreters of the law generally understand this substitution as merely a commendation by St. Peter, or an exhortation made to the faithful, adding that St. Clement himself later renounced this designation out of humility, and therefore did not immediately, but only as the third after St. Peter, namely after Linus and Cletus, ascend to the apex of the Supreme Pontificate, as taught by St. Augustine *epistle* 165, Epiphanius *heresy* 27, Gregory of Tours *book I, history, chapter* 27, and established at greater length by Baronius *year* 69, *number* 38 and *year* 93, *number* 1, as well as Bellarmine *book* 2, *concerning the Roman Pontiff, chapter* 5. All other Pontiffs received the Governance of the universal Church through the way of Election; yet not always in a uniform manner, as will become evident.

120. RESOLUTION II. From the glorious departure from this life to eternal Glory of St. Peter, when St. Clement, although designated as his Successor—or better, prophetically foretold—refused to succeed, lest he set a pernicious example to others, the election of the Supreme Pontiff began to belong to both the Clergy and the people together. Thus, the Pontiff was created by the votes of the Clergy and with the consent of the people, *can. Plebs 11. & throughout, dist. 63.* This mode of election continued until the Schism raised against St. Damasus by Ursicinus around the year 367. At this time, Emperor Valentinian I first, having rejected Ursicinus, exercised an act nearly similar to Confirmation regarding Pope Damasus, as attested by Socrates, Sozomen, and Theodoret, cited in Gonzalez *loc. cit. n. 12.* Certain others followed his example, though only in cases of schism, as reported by the same author, until Emperor Justinian, after Italy was recaptured from the Goths, refused to allow anyone to be admitted as Roman Pontiff unless he himself had approved him. This custom, or rather abuse, persisted until Emperor Constantine IV, who at the urging of Pope Benedict II relinquished all power of creating a Pontiff back to the Clergy and people, as Jean Cabassut reports in *Notitia Ecclesiastica, 13th century, after the*

paulo ante translatum a Graecis ad Germanos Romanum Imperium, fertur Hadrianus I. Carolo M. contra Longobardos in auxilium vocato, novum tribuisse privilegium, sua autoritate Pontificem summum pro libitu eligendi, vel (i mavis) nominandi; quod etiam Gratianus suo inseruit Decreto, *can. Hadrianus 22. dist. 63.* asserens id factum cum consensu synodi Romanae tunc congregatae: Et licet eidem privilegio Ludovicus Caroli M. filius rursus renuntiaverit, ut refertur *can. Ego Ludovicus 30. §. 1. ead. dist.* illud tamen ad prioris exemplum de novo a Leone VIII. Pontifice Ottoni I. teutonicorum Regi, ejusque Successoribus, concessum, *can. In synodo 23. dist. ead.* perhibetur. Totum quidem hoc fabulosum esse commentum, nimiaque credendi facilitate a Gratiano suae SS. Canonum compilationi insertum contendunt Baronius *Tom. 9. ad an. 774.* Bellarminus, Gretsherus, Cabassutius *l. c. n. 4.* & alii citati apud Gonzalez *d. l. n. 12.* ideoque Imperatores Germanos vel meros juris eligendi Pontificem usurpatores fuisse volunt, vel solum Designatores eligendorum postmodum a Clero Romano. Quia tamen dicti Canones a Correctoribus Romanis in Decreto sunt retenti, & ex Bulla Gregorii XIII. eidem praefixa constat, omnia in eo contenta suis originalibus correspondere, non ausim ego dictos Canones inter fabulas rejicere; quin potius credendum Imperatoribus ob magna in Ecclesiam merita hanc spartam eligendi summos Pontifices tunc temporis a Pontificibus, cum ipsius etiam Cleri & populi assensu, fuisse licet revocabiliter solum, concessam, sed postea ob abusum successorum partim revocatam, partim restituendae pacis causa ab ipsis Imperatoribus rursum resignatam, prout in Comitibus Wormatiensibus ab Henrico IV. cum consensu statuum Imperii factum esse, ex Thomasino narrat Böckhn *b. t. n. 132.* Igitur

121. RESOL. III. Electio Romani Pontificis. hodieum privative spectat ad Collegium Cardinalium S. Rom. Ecclesiae; de quo est *can. 1. dist. 79.* editus a Nicolao

Second Council of Lyon, dissertation 2, n. 3. But shortly before the Roman Empire was transferred from the Greeks to the Germans, it is said that Hadrian I granted a new privilege to Charlemagne, who had been called to aid against the Lombards, to elect or (if you prefer) nominate the Supreme Pontiff at his pleasure by his own authority. Gratian also inserted this into his Decree, *can. Hadrianus 22. dist. 63.*, asserting it was done with the consent of the Roman synod then assembled. And although Louis, the son of Charlemagne, again renounced this privilege, as referenced in *can. Ego Ludovicus 30. §. 1. in the same dist.*, nevertheless that same privilege is reported to have been newly granted by Pope Leo VIII to Otto I, King of the Germans, and his Successors, following the earlier example, *can. In synodo 23. dist. ead.* That this entire account is a fictitious fabrication inserted by Gratian into his compilation of the Holy Canons with excessive credulity is maintained by Baronius *Vol. 9, at the year 774*, Bellarmine, Gretser, Cabassut *loc. cit. n. 4.*, and others cited in Gonzalez *d. l. n. 12.* Therefore, they assert that the German Emperors were either mere usurpers of the right to elect the Pontiff, or merely Designators of those to be subsequently elected by the Roman Clergy. However, since the said Canons have been retained in the Decree by the Roman Correctors, and from the Bull of Gregory XIII prefixed to it, it is established that everything contained therein corresponds to its originals, I would not dare to reject the said Canons as fables. Rather, it should be believed that this role of electing Supreme Pontiffs was granted at that time to the Emperors by the Pontiffs, with the assent of the Clergy and people themselves, though only revocably, on account of their great merits toward the Church. But later, due to the abuse of successors, it was partly revoked and partly resigned again by the Emperors themselves for the sake of restoring peace, as was done in the Diet of Worms by Henry IV with the consent of the Imperial states, as Böckhn relates from Thomassin *in this title, n. 132.* Therefore

121. RESOLUTION III. The election of the Roman Pontiff today exclusively belongs to the College of Cardinals of the Holy Roman Church; concerning

II. Pontifice post habitam a se Romae synodum An. 1058. sequentis tenoris: *Si quis Apostolicae sedi sine concordia & canonica electione Cardinalium ejusdem Ecclesiae, ac deinde sequentium Religiosorum Clericorum inthronizatur, non Papa, vel Apostolicus, sed Apostaticus habetur.* Concordat *can. si quis pecunia* 9. *dist. ead.* & praesertim *can. in nomine Domini* 1. *dist. 23.* ubi tota forma electionis Pontificiae praescribitur. Quod Decretum ob renitentiam quorundam Imperatorum postea sub Calisto II. Pontifice in Conciliis Lateranensi I. Generali A. 1122. & Rhemensi Provinciali fuit reassumptum, & confirmatum, accedente postea totius Ecclesiae approbatione, & acceptatione generali, usque in hodiernam diem.

Proceditque haec Resolutio I. non tantum de Cardinalibus Episcopis, verum etiam de Cardinalibus Presbyteris, & Diaconis, non tamen in inferiori ordine constitutis, uti per speciales Bullas ordinarunt Pius IV. Sixtus V. & Gregorius XV. apud Fagnanum in *cit. cap. licet, n. 18. h. t.* nisi in creatione sua per speciale Papae privilegium ad habendam vocem activam in Electione Pontificia habilitati fuerint. Card. de Luca in *Relat. Cur. Rom. disc. 3. n. 10.* Schmier *lib. 1. tr. 3. cap. 1. n. 635.*

Procedit II. Etiam si insignia Cardinalatus nondum acceperint; quia nec habitus, nec alia insignia, sed nominatio Pontificis, Cardinalem efficiunt. Barbosa *J. E. U. lib. 1. c. 3. n. 73.* adde, etiam si nec os eisdem apertum, nec apertum fuerit: quia haec caeremonia non pertinet ad dandum votum in Conclavi, sed in aliis Consistoriis. Fagnanus *l. cit. n. 19.*

Procedit III. Tametsi Cardinales, rite creati, censura quadam innodati inveniantur. Clement. ne Romani 2. §. Caeterum, h. t. Gonzalez ad cap. Illa 39. n. 6. eod.

which there is canon 1, distinction 79, issued by Pope Nicholas II after a synod held by him in Rome in the year 1058, with the following content: *If anyone is enthroned in the Apostolic See without the harmonious and canonical election of the Cardinals of the same Church, and then of the following Religious Clerics, he is to be regarded not as Pope or Apostolic, but as an Apostate.* This agrees with canon “*Si quis pecunia*” 9, in the same distinction, and especially with canon “*In nomine Domini*” 1, distinction 23, where the entire form of Pontifical election is prescribed. This Decree, due to the resistance of certain Emperors, was later reassumed and confirmed under Pope Callistus II in the First Lateran General Council of 1122 and in the Provincial Council of Rheims, subsequently receiving the approval of the whole Church and general acceptance, continuing to the present day.

This Resolution proceeds I. not only regarding Cardinal Bishops, but also Cardinal Priests and Deacons, though not those established in lower orders, as ordained through special Bulls by Pius IV, Sixtus V, and Gregory XV, according to Fagnanus in the cited chapter “*Licet,*” number 18, under this title, unless they have been enabled by a special papal privilege at their creation to have an active voice in the Papal Election. Cardinal de Luca in *Relation of the Roman Curia, discourse 3, number 10.* Schmier book 1, treatise 3, chapter 1, number 635.

It proceeds II. Even if they have not yet received the insignia of the Cardinalate; because neither the habit nor other insignia, but the nomination by the Pontiff, makes one a Cardinal. Barbosa *Ecclesiastical Universal Law, book 1, chapter 3, number 73.* Add, even if their mouth has not been opened, nor has been ordered to be opened: because this ceremony does not pertain to giving a vote in the Conclave, but in other Consistories. Fagnanus in the cited place, number 19.

It proceeds III. Even though Cardinals, properly created, may be found bound by some censure. Clementine [Constitution] “*Ne Romani*” 2, §. “*Caeterum,*” under this title. González on chapter “*Illa*” 39, number 6, in the same place.

Peres tamen I. Quid si tempore electionis faciendae omnes Cardinales essent mortui, vel absentes, praeter unum, vel duos?

[Note: 122 is missing]

123. Respondetur, in hoc casu penes illum, vel illos superstites universum eligendi jus fore, sicut supra PUNCT. XVI. n. 70. generatim resolutum est; non enim minus Collegium Cardinalium, quam alia universitas, in uno vel duobus individuīs conservari potest. Gonzalez *in cit. cap. licet*, n. 13. *circa fin.* Card. de Luca l. c, n. 8. & 9. Schmier, *ubi supra*, n. 640.

Peres II. Quid si omnes Cardinales essent mortui?

124. Respondetur, hoc dubium adhuc in triplici consilio subsistere; quia aliqui cum Baldo in L. *ubi absunt*, ff. *de Tutor*, & *Curat.* dicunt electionem tunc pertinere ad Patriarchas: alii cum Hostiensi in d.cap. *licet*, in illo casu electionem Concilio Generali tribuunt (sed quis convocabit, Papa, & Cardinalibus emortuis?) Alii, & caeteris cautius, Canonici Lateranensibus istum honorem favent, utpote quorum Ecclesia est propria sedes Pontificis supra omnes Urbis & Orbis Ecclesias. Gonzalez d. l. Barbosa h.tit. n. 75. Schmier n. 642.

Peres III. An, ubi Congregatum est Generale Concilium, electio novi Papae competat illi, an solis Cardinalibus?

125. Respondetur distinguendum esse casum mortis veri & indubitati Pontificis, & casum Schismatis, in quo dubii Pontifices exauctorentur, & novus indubitatus eligatur, uti factum in Concilio Generali Constantiensi. In primo casu electio novi Pontificis privative spectat ad Dominos Cardinales; ut constat ab exemplo Concilii Tridentini, quo actu durante, cum Paulus III e vivis decessisset, soli Cardinales successorem ei Julium III. elegerunt. Ut nihil dicam de aliis Pontificibus, Marcello II. Paulo IV. & Pio IV. qui equidem Concilio illo nondum absoluto, sed tamen suspenso, a solis

You ask, however, I. What if at the time of the election to be held, all Cardinals were dead or absent, except one or two?

[Note: 122 is missing]

123. It is answered that, in this case, the entire right of election would belong to that one, or those survivors, as was generally resolved above in POINT XVI, no. 70; for the College of Cardinals, no less than any other corporate body, can be preserved in one or two individuals. González *in the cited chapter 'licet'*, n. 13. *near the end.* Cardinal de Luca in the place cited, n. 8 & 9. Schmier, *in the place above*, n. 640.

You ask secondly: What if all the Cardinals were dead?

124. It is answered that this doubt still persists in three different opinions; because some, following Baldus in L. *ubi absunt*, ff. *de Tutor*, & *Curat.*, say that the election would then belong to the Patriarchs; others, with Hostiensis in the said chapter *licet*, attribute the election in that case to the General Council (but who would convoke it, with the Pope and Cardinals deceased?). Others, and more cautiously than the rest, favor this honor for the Lateran Canons, as their Church is the proper seat of the Pontiff above all Churches of the City and the World. González in the place cited. Barbosa under this title, n. 75. Schmier n. 642.

You ask thirdly: When a General Council is assembled, does the election of a new Pope belong to it, or to the Cardinals alone?

125. It should be answered that a distinction must be made between the case of the death of a true and undoubted Pontiff, and the case of Schism, in which doubtful Pontiffs are deposed and a new undoubted one is elected, as was done in the General Council of Constance. In the first case, the election of a new Pontiff belongs exclusively to the Lord Cardinals, as is evident from the example of the Council of Trent, during which, when Paul III departed from the living, the Cardinals alone elected his successor Julius III. Not to mention other Pontiffs—Marcellus II, Paul IV, and Pius IV—who indeed were elected by the Cardinals alone while that Council was not yet concluded, though suspended. In the other case,

Cardinalibus electi sunt. In altero casu Abbas in *cit. cap. licet* n. 8. de Jure verius esse censet, quod electio spectet ad Concilium. Et quamvis oppositum cum Barbosa opinetur Schmier l. *cit.* n. 646. priorem tamen opinionem firmat exemplum Concilii Constantiensis, in quo etsi 20. Cardinales ex tribus Obedientiis Joannis XXIII. Gregorii XII. & Benedict XIII. Lunensis praesentes extiterint, praeter ipsos tamen triginta alii tanquam Nationum delecti Ao. 1417. 8. Novemb. Conclave ingressi, triduo post insimul Odonem Columnensem, postea Martinum V. appellatum, in summum Pontificem elegerunt, teste Cabassutio in *di Conc.* n. 13.

PUNCTUM XXVII.

Quisnam eligi possit in summum Pontificem?

126. RESOL. I. Eligi in summum Pontificem valide potest quicumque homo Viator, si modo sit mas, mentis compos, atque fidelis, hoc est, baptizatus, neque haereticus. Ita communis cum Fagnano in *cap. nobis, de Simon. n. 40. & seqq.* ubi ponderans verba *cit. cap. licet* 6. §. 1. quibus statuitur ut ille *absque ulla exceptione ab universali Ecclesia Romanus Pontifex habeatur, qui a duabus partibus concordantibus electus fuit, & receptus*: distinguit inter defectus intrinsecos atque substantiales, & inter defectus extrinsecos atque accidentales, atque contra priores posse quidem etiam in electione Papae exceptionem opponi, non autem contra posteriores; quianempe electio propter priores ex ipso Jure naturali & Divino irritatur, propter posteriores autem ex Jure tantum humano, cujus irritationem quoad Pontificem Jus ipsum sustulit in *cap. Licet*, exceptis iis, quae vel in Corpore Juris, vel extra illud in Constitutionibus pontificiis specialiter inveniuntur expressa, praesertim circa electionis formam, ut patebit.

127. Dixi I. *Si modo sit mas* Quippe faemina ipso Jure Divino excluditur a

the Abbot in the *cited chapter licet* n. 8 judges it to be more true according to law that the election belongs to the Council. And although Schmier in the *cited location n. 646* holds the opposite opinion along with Barbosa, the former opinion is nevertheless confirmed by the example of the Council of Constance, in which, although 20 Cardinals from the three Obediences of John XXIII, Gregory XII, and Benedict XIII of Luna were present, beyond these, thirty others as representatives of the Nations entered the Conclave in the year 1417 on November 8, and three days later together elected Odo Colonna, afterward called Martin V, as Supreme Pontiff, as attested by Cabassutius in the *aforementioned Council n. 13*.

POINT XXVII.

Who can be elected as Supreme Pontiff?

126. RESOLUTION I. Any living human being can be validly elected as Supreme Pontiff, provided he is male, of sound mind, and faithful—that is, baptized and not a heretic. This is the common opinion, in agreement with Fagnano in *chapter nobis, de Simon. n. 40 & seqq.* where, considering the words of *cited chapter licet* 6. §. 1. which establish that *the one who has been elected and received by two concordant parts is to be considered the Roman Pontiff by the universal Church without any exception*: he distinguishes between intrinsic and substantial defects, and extrinsic and accidental defects, and states that objections can indeed be raised against the former even in papal elections, but not against the latter. This is because an election is invalidated by the former defects according to natural and Divine Law itself, while it is invalidated by the latter defects only according to human law, whose invalidating power regarding the Pontiff the Law itself has removed in *chapter Licet*, excepting those matters which are found specifically expressed either in the Body of Law or outside it in pontifical Constitutions, especially concerning the form of election, as will be made clear.

127. I have said first: *If only he be male*. Indeed, a woman is excluded from the Papacy by Divine Law

Papatu; tum quia Apostolus ne quidem loqui permittit faeminas in Ecclesia *1. Cor. 14*. Tum quia Vicarium oportet ejusdem esse professionis (quanto magis ejusdem sexus?) cum Principalis, cum homines disparis professionis in ipsa etiam lege Divina prohibeantur in uno eodemque officio sociari, juxta illud Deuter 22. *non arabis in bove simul & asino*, ut refertur *can. In nova dist. XVI. q. 7*. Atqui Papa est verus Christi Vicarius, *extrav. unam Sanctam 1. inter comm. de M. & O*. Tum quia salvator nequidem Genitrici suae licet super omnes mulieres benedictae, & exaltatae, claves Regnis caelorum, & Ecclesiae suae gubernacula concessit, *cap. Nova 10. de Poenit. & remis*. Ergo si nec equus, cui semel insedit Christi Vicarius, amplius sibi insidere passus est faeminam, ut refertur in Breviario Romano die 27. Maji. lect. 2. de S. Joanne Papa & Martyre; quomodo eandem solium summi Pontificis sustinebit?

128. Neque opponas illam ipsis Authoribus, suismet erubescendam fabulam de Papissa Joanna Quae post Leonem IV. perhiennium Petri Cathedram posse disse ab eisdem fingitur. Quam mendax autem haec sit historia, vel ex eo patet, quod Anastasius S. R. E. Bibliothecarius, qui tempore Leonis IV, ejusque Successoris Benedicti III. vixit, & scripsit, non tantum illius Benedicti mentionem nullam fecerit, sed ex opposito Leonem (quem illa A. 853. e vivis excessisse asserit) usque ad A. 855. vitam produxisse, eique post 15. dies Benedictum III. non sine prodigiosis ominibus suffectum fuisse memoraverit. Idem fecere alii Historiographi temporibus illis viciniore, velut Ado Episcopus Viennensis Galliae, dicto Leonis coevus, Regino Abbas, Hermannus Contractus, Otto Frisingensis, Lambertus Schafnaburgensis, & alii; quibus utique major habenda fides, quam Sigeberto alias Pontificibus parum addicto Martino Polono, & Mariano Scoto, ex quorum scriptis (forsitan corruptis)

itself; both because the Apostle does not even permit women to speak in Church (*1 Corinthians 14*), and because it is necessary that a Vicar be of the same profession (how much more of the same sex?) as the Principal, since people of disparate profession are forbidden in Divine Law itself to be joined in one and the same office, according to that passage of Deuteronomy 22: “*You shall not plow with an ox and an ass together*,” as is referenced in *canon In nova, distinction XVI, question 7*. But the Pope is the true Vicar of Christ, *Extravagantes, Unam Sanctam 1, inter communes de Maioritate et Obedientia*. Also because the Savior did not even grant to His own Mother, although blessed and exalted above all women, the keys of the Kingdom of heaven and the governance of His Church, *chapter Nova 10, de Poenitentia et remissione*. Therefore, if even a horse, once ridden by the Vicar of Christ, would not afterward suffer a woman to sit upon it, as is related in the Roman Breviary on May 27, second reading, concerning St. John, Pope and Martyr; how shall the throne of the Supreme Pontiff support a woman?

128. Do not bring up against them that shameful fable—which the authors themselves ought to blush at—concerning Pope Joan, who is fictitiously claimed by them to have occupied Peter’s Chair for two years after Leo IV. How false this history is becomes evident from the fact that Anastasius, the Librarian of the Holy Roman Church, who lived and wrote during the time of Leo IV and his successor Benedict III, not only made no mention of this supposed Joan, but on the contrary recorded that Leo (whom she claims departed from the living in the year 853) extended his life until the year 855, and that Benedict III was appointed as his successor after 15 days, not without prodigious omens. The same was done by other historiographers who lived closer to those times, such as Ado, Bishop of Vienne in Gaul, who was contemporary with the said Leo, Regino of Prüm, Hermann of Reichenau, Otto of Freising, Lambert of Hersfeld, and others. Greater faith should certainly be placed in these writers than in Sigebert (who was otherwise little devoted to the Popes), Martin of Poland, and Marianus Scotus, from whose writings (perhaps

A catholici hanc fabulam mutuarunt.

129. Dixi II, *Mentis compos*; siquidem electio infantis, vel perpetuo, aut faltem tempore electionis, amenti, seu mente capti, est ipso Jure naturae irrita cum Electio sit velut contractus quidam, in quo Electus se obligat Ecclesiae in iis, quae spectant ad officium suum, adimplendis; inanis autem, vel amens, aut mente captus se taliter obligare non possit. Layman *For. benef. part. 1. q. 233.* citans Passerinum. Attamen certa aetas in Pontifice, rationis caeteroquin compote, non exigitur, ut bene advertit Fagnanus in *cap. Cum in cunctis 7. b. t. n. 28.* post Abbatem in *cap. licet, n. 10. b. t.* tum quod in *d. cap. licet*, aetatis est exceptio: tum quia Spiritus Sanctus, cujus organum & instrumentum est summus Pontifex, in patefaciendis suis consiliis nulli nec conditioni, nec aetati est adstrictus. Schmier *l. cit. n. 667.*

130. Dixi III. *Atque Fidelis, hoc est, baptizatus, neque haereticus*; si enim baptizatus non est, cum nec membrum Ecclesiae esse possit, multo minus ejusdem Caput: si autem haereticus ineptus est, qui doceat Ecclesiam, qua de causa plures Theologi docent, quod Papa si (quod absit) in haeresim incideret, ipso Jure Divino ex Jure Papatus excideret. Quanquam pie credendum, hoc nunquam a Deo permissum iri, cum Christus ipse pro Petro, (& quia eadem ratio pugnat, etiam pro Successoribus ejus) rogaverit, *ut non deficiat fides* ipsius, certo quidem *publica* in definiendo, probabilius tamen etiam *privata* in credendo, de quo ex professo Theologi.

131. RESOL. II. Eligi aliquis in summum Pontificem licite, & valide potest, etiamsi non sit de Collegio Cardinalium, licet, si in eo idoneus reperiatur, congruum sit eum Extraneis praeferri. Ita in Concilio Romano Nicolaus II. ut refertur, *can. 1. §. 4. dist. 23.* ubi de electione summi Pontificis loquens ait: *Eligatur autem de ipsius Ecclesiae gremio, si reperiatur idoneus, vel si de ipsa non invenitur, ex alia assumatur.* Et confirmant exempla septem Pontificum;

corrupted) non-Catholics borrowed this fable.

129. I have said secondly, *Of sound mind*; since the election of an infant, or of one who is permanently, or at least at the time of election, insane or mentally incapacitated, is by natural law itself invalid, as an Election is like a certain contract, in which the Elected obligates himself to the Church in fulfilling those things which pertain to his office; however, an infant, or insane, or mentally incapacitated person cannot obligate himself in such a manner. Layman in *For. benef. part. 1. q. 233.* citing Passerinus. Nevertheless, a certain age in the Pontiff, who is otherwise of sound reason, is not required, as Fagnanus rightly observes in *cap. Cum in cunctis 7. h. t. n. 28.* after Abbas in *cap. licet, n. 10. h. t.* both because in *the said cap. licet*, there is an exception regarding age: and because the Holy Spirit, whose organ and instrument the Supreme Pontiff is in revealing his counsels, is bound to no condition nor age. Schmier *loc. cit. n. 667.*

130. I have said III. *And [he must be] Faithful, that is, baptized and not a heretic*; for if he is not baptized, since he cannot be a member of the Church, much less can he be its Head: if, however, he is a heretic, he is unfit to teach the Church, for which reason many Theologians teach that if the Pope (which God forbid) should fall into heresy, he would, by Divine Law itself, fall from the right of the Papacy. Nevertheless, it is piously to be believed that this would never be permitted by God, since Christ himself prayed for Peter (and because the same reasoning applies, also for his Successors), *that his faith may not fail*, certainly with respect to *public* faith in defining doctrine, but more probably also with respect to *private* faith in believing, concerning which Theologians treat extensively.

131. RESOLUTION II. Someone can be elected as Supreme Pontiff licitly and validly, even if he is not from the College of Cardinals, although if a suitable candidate is found within it, it is appropriate that he be preferred to outsiders. Thus in the Roman Council, Nicholas II, as referenced in *canon 1, §4, distinction 23*, speaking about the election of the Supreme Pontiff, says: *“Let him be elected from the bosom of the Church itself, if a suitable person is found there, or if one is not found there, let him be*

extra Collegium assumptorum, videlicet Eugenii III. ex simplici Abbate, Urbani IV. ex Patriarcha Hierosolymitano, Gregorii X. ex Archidiacono, Caelestini I. ex Monacho Eremita, Clementis V. ex Archiepiscopo, Urbani V. ex Abbate, & Urbani VI. ex Archiepiscopo, ut videre est apud Platinam in Titulis Pontificum, & alios Autores passim.

132. RESOL. III. Eligi insuper valide, imo praevalentibus meritis, etiam licite ad Papatum potest Laicus. Card. de Luca d. l. n. 22. Barbosa l. 1. n. 78. Schmier p. 1. c. 3. Pirhing hic n. 433. Wiestner n. 17. Schmalzgrueber n. 97. Sumitur ex cit. cap. licet, ibi: *Absque ulla exceptione*; & ex Caeremoniali Romanae Ecclesiae, quo forma praescribitur ordinandi & promovendi Laicum, qui ad Ecclesiae universalis gubernacula fuerit sublimatus.

133. Dicis. Utrique Resolutioni huic manifeste contradicatur per can. Oportebat 3. & can. Nullus, seq. dist. 79. quibus ex Institutione ipsius D. Petri, & ejus Successorum omnis alius praeter Cardinales Presbyteros, & Diaconos a Pontificatus culmine est exclusus. Respondetur ita quidem aliquando fuisse constitutum, sed sine Clausula irritante: imo nec cum praecepto stringente in foro conscientiae, sed praecise ad inculcandum debitum congruitatis.

PUNCTUM XXVIII.

Quae forma in Electione Pontificis sit servanda?

134. RESOL. I. Ante Electionem conformiter cap. Ubi periculum 3. h. t. in 6. ex Constitutione Gregorii X. in generali Concilio Lugdunensi II. sequentia sunt servanda. I. Ut Cardinales absentes per decem dies, a morte Pontificis Praedecessoris numerandos, expectentur: ante quod tempus, si etiam sine rationabili causa acceleretur electio, dummodo a duabus tertiis Cardinalium celebrata sit,

chosen from elsewhere.” This is confirmed by the examples of seven Pontiffs who were chosen from outside the College, namely: Eugene III, from being a simple Abbot; Urban IV, from being Patriarch of Jerusalem; Gregory X, from being an Archdeacon; Celestine V, from being a Hermit Monk; Clement V, from being an Archbishop; Urban V, from being an Abbot; and Urban VI, from being an Archbishop, as can be seen in Platina’s Lives of the Pontiffs and in other authors throughout.

132. RESOLUTION III. Furthermore, a layman can be validly elected to the Papacy, and indeed, if his merits prevail, even licitly. Cardinal de Luca in the cited place, number 22. Barbosa, book 1, number 78. Schmier, part 1, chapter 3. Pirhing here at number 433. Wiestner, number 17. Schmalzgrueber, number 97. This is taken from the cited chapter “Licet,” where it states: “*Without any exception*”; and from the Ceremonial of the Roman Church, which prescribes the form for ordaining and promoting a layman who has been elevated to the governance of the universal Church.

133. You may object: Both these Resolutions are manifestly contradicted by canon “Oportebat” 3 and canon “Nullus,” which follows in distinction 79, whereby, according to the institution of Lord Peter himself and his Successors, everyone other than Cardinal Priests and Deacons is excluded from the summit of the Pontificate. The response is that indeed this was once established, but without an invalidating clause: moreover, not even with a precept binding in the forum of conscience, but precisely to inculcate a duty of congruity.

POINT XXVIII.

What form must be observed in the Election of the Pontiff?

134. RESOLUTION I. Before the Election, in conformity with chapter “Ubi periculum” 3 of this title in the Liber Sextus, from the Constitution of Gregory X issued in the Second General Council of Lyon, the following must be observed: I. That Cardinals who are absent should be awaited for ten days, counted from the death of the preceding Pontiff; before which time, even if the election is accelerated without reasonable cause, provided it is

subsistit, nec possunt reliqui agere de contemptu, ut de Electionibus, in genere dictum est PUNCT X. RESOL. 3. II. Hoc decendio elapso, sive absentes venerint, sive non, extunc omnes Cardinales praesentes convenire debent ad Palatium Pontificis, in quo interim Conclave adornatum est, nullo intermedio pariete distinctum, & undique clausum, sola fenestra ad recipiendum aperta, & exitu ad Secretam cameram reservato. Qui serius ad urbem veniunt, re adhuc integra, ad Conclave admittuntur. Card. de Luca loc. cit. n. 13. & seqq. III. Cardinales Conclavistae singuli singulis tantummodo servientibus Clericis, vel Laicis, prout elegerint, contenti esse debeant, nisi necessitas suggerat aliquibus duos indulgeri, ut in cit. cap. ubi periculum, §. 1. constituitur; aliquando tamen etiam tertius permittatur. Praeter hos nulli ad eosdem Cardinales aditus pateat, vel facultas secrete loquendi cum eisdem, nec ipsi aliquos ad se venientes admittant, nisi eos, qui de voluntate omnium Cardinalium inibi praesentium, pro iis tantum, quae ad electionis instantis negotium pertinent, vocentur. Nulli etiam fas sit ipsis Cardinalibus, vel eorum alicui nuntium mittere, vel Scripturam: qui vero contra fecerit, Scripturam mittendo vel nuntium, aut cum aliquo ipsorum secrete loquendo, ipso facto Sententiam Excommunicationis incurrat. Ita idem cap. §. 1. v. In eodem. Et haec procedunt, quando Pontifex in illa civitate, in qua cum sua Curia residebat, diem obiit supremum. Si autem Eundem Pontificem contigerit extra civitatem praedictam, in qua cum sua Curia residebat, ab hac luce migrare; teneantur Cardinales in Civitate, in cuius territorio seu districtu idem Pontifex obiit, convenire, nisi forsitan interdicta, vel contra Ecclesiam Romanam in aperta rebellione persistat: quo casu in alia viciniore convenient, in qua tam quo ad expectationem absentium, quam quoad habitationem communem, clausuram, & caetera omnia in domo Episcopali, vel alia qualibet eisdem Cardinalibus deputanda eadem observentur, quae mox ante fuerunt

celebrated by two-thirds of the Cardinals, it remains valid, nor can the remaining Cardinals claim contempt, as was stated regarding Elections in general in POINT X, RESOLUTION 3. II. Once this ten-day period has elapsed, whether the absent Cardinals have arrived or not, from that point forward all Cardinals present must convene at the Papal Palace, in which meanwhile the Conclave has been prepared, with no intervening wall to divide it, enclosed on all sides, with only a window left open to receive necessities, and an exit reserved for access to the private chamber. Those who arrive late to the city, if the matter is still open, are admitted to the Conclave. Cardinal de Luca in the cited location, number 13 and following. III. The Cardinals in Conclave should each be content with only one servant, whether clerical or lay, as they choose, unless necessity suggests that some be allowed two, as is established in the cited chapter “Ubi periculum,” §1; sometimes, however, even a third may be permitted. Apart from these, no one should have access to the same Cardinals, nor permission to speak secretly with them, nor should they admit anyone who comes to them, except those who are called by the will of all Cardinals present there, and only for matters pertaining to the pending election. It is also forbidden for anyone to send a message or writing to the Cardinals or to any one of them; whoever acts contrary to this by sending a writing or message, or by speaking secretly with any of them, ipso facto incurs the Sentence of Excommunication. Thus the same chapter §1, verse “In eodem.” And these procedures apply when the Pontiff dies in the city where he resided with his Curia. If, however, it happens that the same Pontiff departs from this life outside the aforementioned city where he resided with his Curia, the Cardinals are bound to convene in the City in whose territory or district the same Pontiff died, unless perhaps that place is under interdict or persists in open rebellion against the Roman Church; in which case they shall convene in another nearby city, in which, both with regard to waiting for those absent, as well as common habitation, enclosure, and all other matters, the same things shall be observed in the Episcopal residence or any other house assigned to

expressa. Ita rursus Pontifex in cit. cap. ubi periculum 3. §. 2. h. t. in 6.

135. RESOL. II. In actu electionis ex nova Constitutione Gregorii XV, quae incipit *Aeterni Patris*, una ex triplici Electionis forma, §. 1. h. tit. laudata, & explicata, debet observari. Et I. quidem de Electione per *inspirationem veram*, quin sufficiens sit, dubitari nequit; cum certius iudicium de Divina electione habere nequeamus, quam huiusmodi inspirationem: qualiter electum legimus S. Fabianum in ejus Vita apud Baronium ad A. 238. dum scilicet columba e sublimi delapsa, ejusque tergo insidente, audita est vox: *Tu Romae Episcopus designaberis*. Similiter tamen etiam Electio per *inspirationem praesumptam*, seu *quasi inspirationem*, approbata est, quando scilicet omnibus Cardinalibus in Conclavi praesentibus, unus, secluso tractatu praevio de certa persona eligenda, aliquem nominat, eumque caeteri omnes unanimi voce per verbum *Eligo* in Pontificem maximum assumunt, & proclamant, ut notat P. Wiestner h. t. n. 360.

136. II. De Compromisso rursus certum est ex Constitut. Gregorii XV. quae incip. Decet. 4. Id. Martii 1621. ed. & in ea clauso Ceremoniali Electionis Pontificiae, quod valeat, sive absolutum sit, sive limitatum, v. g. ut Compromissarii eligant unum ex sacro Collegio, vel extraneum, in quem omnes tres, vel duo ipsorum consenserint, vel intra certum tempus &c. Licet autem aliquando, ita compromittentibus aliis, valuerit Electio Compromissarii se ipsum eligentis (uti ex Joanne Villano *lib. 9. c. 79*. S. Antonino *Part. 3. tit. 21. c. 4.* & Alphonso Ciaconio de Joanne XXII. memorat Christophorus Ott Societatis Jesu in *Roma Gloriosa N. 268.*) de facto tamen per Constit. *Aeterni* §. 20. irritata est: adeo quidem, ut in electione Pontificis ne quidem per accessum possit unus Compromissarius ab alio Compromissario nominatus sui electionem complere, & majora facere, utut hoc valeat in aliis electionibus, juxta *cap. Cum in Jure*

the Cardinals, as were just now expressed above. Thus again the Pontiff in the cited chapter “Ubi periculum” 3, §2 of this title in the Liber Sextus.

135. RESOLUTION II. In the act of election, according to the new Constitution of Gregory XV, which begins with *Aeterni Patris*, one of the three forms of Election mentioned and explained in §. 1 of this title must be observed. And indeed, concerning Election by *true inspiration*, there can be no doubt that it is sufficient, since we cannot have a more certain judgment of Divine election than this kind of inspiration: in such a manner we read that St. Fabian was elected in his Life by Baronius in the year 238, when a dove descended from on high and, perching on his back, a voice was heard: *You shall be designated Bishop of Rome*. Similarly, however, Election by *presumed inspiration*, or *quasi-inspiration*, is also approved, namely when all Cardinals present in the Conclave, without any previous discussion concerning a specific person to be elected, one [Cardinal] names someone, and all the others unanimously assume and proclaim him as Supreme Pontiff by the word *I Elect*, as noted by Fr. Wiestner in this title, number 360.

136. II. Concerning Compromise, it is furthermore certain from the Constitution of Gregory XV which begins “Decet” (issued on the 4th of the Ides of March 1621), and in the enclosed Ceremonial of Papal Election, that it is valid whether absolute or limited, e.g., that the Compromisers elect someone from the Sacred College or an outsider, on whom all three, or two of them have agreed, or within a certain time, etc. Although at one time, with others thus compromising, the Election was valid when a Compromiser elected himself (as John Villani in *book 9, ch. 79*, St. Antoninus in *Part 3, title 21, ch. 4*, and Alphonsus Ciaconius record concerning John XXII, as mentioned by Christopher Ott of the Society of Jesus in *Roma Gloriosa no. 268*), nevertheless, by the Constitution *Aeterni* §. 20, this has been nullified. So much so that in the election of a Pontiff, not even through accession can one Compromiser nominated by another Compromiser complete his own election and obtain a majority, although this may be valid in other elections,

33. *b. 1.* & dicta superius *PUNCT. 7. RESOL. 3. n. 31.* cum votum se ipsum eligentis in *n. Considerat.* generaliter irritatum Ira P. Wiestner *h. t. n. 362.* addens tamen, ex eo solo, quod quis sibi ipsi suum dederit suffragium, electionem non irritari, dummodo ab aliis facta electio, etiam citra suum votum, numerum votorum requisitum habeat.

Dubium tamen valde perplexum est, utrum valeret Compromissum ita limitatum, ut Compromissarii in Summum Pontificem eligant eum, in quem Cardinalium praesentium major pars consenserit?

137. Respondetur cum P. Wiestner *hic n. 364. & seq.* distinguendo duplicem Compromittendi formam. Vel enim Sacrum Collegium ita compromittit, ut Compromissarii ita compromissi, exquisitis singulorum per Schedulas Secretas Suffragiis, major sacri Collegii pars consenserit, ad normam praescriptam in *cap. Cum dilectus 32. h. t.* Vel solummodo sic, ut eum eligant, in quem major Cardinalium praesentium pars quomodocunque consenserit. Si primum, cum in tali compromisso includatur forma electionis *per Scrutinium*, nec ipsum, nec electio ex eo secuta valet; quandoquidem vi Constitutionis Gregoriana *Aeterni*, §. 19. ad valorem Electionis Pontificiae *per Scrutinium* requiruntur duarum ex tribus partibus Cardinalium secreta Suffragia, in dicta autem hypothesi hoc non observaretur. Si Secundum, valet; quia Constitutio Gregoriana prae laudata pro Compromisso puro, sive electionem per Scrutinium haud includente, certam formam non praescribit, sed solum cavet, ne quoquo modo, etiam vigore *cap. Cum in Jure*, *cit.* aliquis Compromissariorum suo Suffragio eligatur. Unde Compromissum valeat de jure communi in electionibus inferiorum *cap. in Causis 30. b. t.* valebit etiam in electione Papa. Fagnanus in *cap. licet n. 57. h. t.*

according to *chapter Cum in Jure 33. b. 1* and what was said above in *POINT 7, RESOLUTION 3, no. 31*, since the vote of one electing himself is generally nullified in *n. Considerat.* Thus says Fr. Wiestner *on this title, no. 362*, adding however, that from the mere fact that someone gave his vote to himself, the election is not invalidated, provided that the election made by others, even without his vote, has the required number of votes.

However, a deeply perplexing doubt remains: whether a Compromise would be valid if it were limited in such a way that the Compromissaries would elect as Supreme Pontiff the person upon whom the greater part of the Cardinals present had agreed?

137. It is answered with Father Wiestner *here in numbers 364 and following* by distinguishing two forms of Compromise. For either the Sacred College compromises in such a way that the Compromissaries [delegates] so entrusted, having collected the secret ballot votes of each Cardinal, gain the consent of the greater part of the Sacred College, according to the norm prescribed in *chapter Cum dilectus 32 under this title*. Or simply in such a way that they elect him in whom the greater part of the Cardinals present have agreed in whatever manner. If the first, since such a compromise includes the form of election *by Scrutiny*, neither the compromise itself nor the election resulting from it is valid; inasmuch as by virtue of Gregory's Constitution *Aeterni*, §. 19., for the validity of a Pontifical Election *by Scrutiny*, the secret votes of two-thirds of the Cardinals are required, but in the said hypothesis this would not be observed. If the second, it is valid; because the aforementioned Gregorian Constitution does not prescribe a certain form for a pure Compromise, or one not including election by Scrutiny, but only cautions that in no way, even by virtue of *chapter Cum in Jure*, *cited*, may any of the Compromissaries be elected by his own vote. Wherefore, as Compromise is valid according to common law in elections of inferiors *chapter in Causis 30 under this title*, it will also be valid in the election of the Pope. Fagnanus in *chapter licet number 57 under this title*.

138. III. Communissimus eligendi modus est per Scrutinium. Equidem extra Conclave, etiamsi in Urbe existens, nullus Suffragium suum, neque per literas, neque per Procuratorem proferre permittitur; Ast intra Conclave existentes Cardinales, etsi ad Capellam, in qua Scrutinia celebrantur, prae infirmitate venire non valeant, votare tamen sinuntur conjectis in quandam arculam conclusam Schedulis, quae ante singula Scrutinia a tribus Cardinalibus sorte deputatis ad eosdem defertur; & cum Schedulis ab eisdem per foramen immissis refertur, e qua extractae postmodum Schedules in calicem recipiendis votis destinatum immittuntur. Porro ex ipso Cardinalium Collegio tres designantur Scrutatores, de triduo in triduum variandi; quorum vota, ad omnem fraudem cavendam, tres alii Scrutantur. Praestito super Evangelia juramento de servandis, quae servanda sunt, singuli Votantes per ordinem accedunt ad Altare ac Schedules, in qua votum suum hoc modo descriptum habent (*Ego N. Cardinalis N. eligo in summum Pontificem Reverendissimum Dominum N.*) ex illa parte, ubi nomen suum inscripserunt, annulo suo obsignatam: ex altera vero parte, ubi nomen electi, apertam, in calicem, qui illius diei sacrificio serviebat, iniiciunt.

139. Postea a Scrutatoribus fit singularum Schedules in Calicem conjectarum Scrutatio, lectio, & publicatio. Et siquidem collatione votorum habita, plus quam duae tertiae in unum convenerint, mox ille tanquam legitime creatus Pontifex promulgatur: Si duae tertiae tantum in unum convenerint, aperitur electi Schedules, ex qua si appareat electum sibiipsi unum votum dedisse, electio propter unius voti defectum habetur pro nulla: Si vero id in alium contulisse pareat, Electio ut canonica promulgatur.

140. Si in nullum duae partes Cardinalium consenserint, possunt illi per accessum, in quolibet Scrutinio tantum concessum, numerum duarum partium, si velint, complere, non solum accedendo ad eum, in quem major pars, sed etiam, in quem

138. III. The most common method of election is by Scrutiny. Indeed, outside the Conclave, even if present in the City, no one is permitted to cast their vote, neither by letter nor by proxy; But Cardinals present within the Conclave, even if unable to come to the Chapel where the Scrutinies are held due to infirmity, are nevertheless allowed to vote by placing their ballots in a certain sealed box, which before each Scrutiny is brought to them by three Cardinals appointed by lot; and after they have inserted their ballots through an opening, it is returned, from which the ballots are subsequently extracted and placed in the chalice designated for receiving votes. Furthermore, three Scrutineers are designated from the College of Cardinals itself, to be changed every three days; whose votes, to prevent any fraud, are scrutinized by three others. Having taken an oath upon the Gospels to observe what must be observed, each Voter approaches the Altar in order and casts into the chalice, which had served for that day's sacrifice, their ballot, on which their vote is written in this manner (*I, Cardinal N., elect as Supreme Pontiff the Most Reverend Lord N.*), sealed with their ring on that part where they have written their name, but open on the other part, where the name of the elect is written.

139. Afterward, the Scrutineers conduct the Scrutiny, reading, and publication of each of the Ballots cast into the Chalice. And indeed, if after the collation of votes, more than two-thirds have converged on one person, he is immediately proclaimed as the legitimately created Pontiff. If precisely two-thirds have converged on one person, the ballot of the elect is opened, from which if it appears that the elect gave himself one vote, the election is considered null due to the deficiency of one vote. But if it appears that he cast his vote for another, the Election is proclaimed as canonical.

140. If two-thirds of the Cardinals have not agreed upon anyone, they may, through the process of Accession (which is permitted only during any Scrutiny), complete the number of two-thirds if they wish, not only by acceding to him for whom

minor, imo unus tantum consensit; quod fit scribendo nomen illius in Scheda, in quem votum suum dirigere intendunt; qui tamen accedere non vult, non cogitur, sed potest loco nominis Papae eligendi inscribere vocem *Nemini*. Hoc punctum etiam observandum apud infirmos, ad quorum singulos folium, in quo nomina Cardinalium, & numerus nominatorum in Scrutinio est notatus, una cum nova Scheda pro accessu parata, per priores tres Cardinales defertur cum eadem arcula, in quam ab infirmo conjuncta Scheda cum inscripto a se electi nomine, vel loco illius to nemini, refertur.

141. Accessu ita peracto a Scrutatoribus fit connumeratio votorum, quae quisque in illo Scrutinio, & accessu simul habuit, & si nullus ad duas tertias ascenderit, electio est inutilis, & ad novum Scrutinium deveniri debet: si vero unus ad duas tertias vel ultra pervenerit, servatur id, quod in Scrutinio ante accessum annotavimus. Si demum in plures duae tertiae vel ultra convenerint, in paritate, votorum nullus; in imparitate vero ille, qui suffragiorum numero est Superior, habebitur electus. Quae omnia habentur ex *cap. licet* §. *h. t.* & ex *periculum 3. eod. in 6. Clem. Ne Romanis 2. d. t.* Constit. Clementis VII. quae incip. *Cum Clarissimus*, 26. Octob. 1529. Pauli IV. *Cum secundum*, 1554. Pii IV. *In eligendis*, 1562. Gregorii XV. *Aeterni*, 17. Kal. Decemb. & *Decet*. 4. Id. Mart. 1621. & Urbani VIII. Constit. *ad Romanum*, 5. Kal. Febr. 1625. juncto Caeremoniali supra memorato.

142. RESOL. III. Quamprimum Electio summi Pontificis praedescripto modo Canonice est peracta, Cardinales, tanquam officio suo functi, nequeunt amplius poenitere, sed ut dicitur in *cit. cap. licet*, a duabus partibus concordantibus electus, & nonminus, absque ulla exceptione ab

the majority voted, but also to him for whom the minority, or even just one Cardinal has consented. This is done by writing the name of the person to whom they intend to direct their vote on the Ballot. However, one who does not wish to accede is not compelled to do so, but may instead of the name of the Pope to be elected inscribe the word *Nemini* ["To No One"]. This procedure must also be observed for the infirm Cardinals, to each of whom a sheet containing the names of the Cardinals and the number of those nominated in the Scrutiny, along with a new Ballot prepared for accession, is brought by the first three Cardinals with the same small box, into which the infirm Cardinal casts his Ballot with the name of his chosen candidate inscribed, or in its place the word *nemini*, and it is then returned.

141. After the Access is thus completed, the Scrutineers tally the votes which each candidate received in both the Scrutiny and the Access combined. If no one has attained two-thirds, the election is invalid, and they must proceed to a new Scrutiny. If, however, one person has reached two-thirds or more, the procedure which we noted for the Scrutiny before the Access is observed. Finally, if more than one person receives two-thirds or more of the votes, in the case of an equal number of votes, no one is considered elected; but in the case of an unequal number, he who is superior in the number of votes shall be considered elected. All these procedures are established in *chapter Licet* §. *h. t.* and in *Periculum 3. eod. in 6. Clem. Ne Romanis 2. d. t.* The Constitution of Clement VII which begins *Cum Clarissimus*, October 26, 1529; of Paul IV, *Cum secundum*, 1554; of Pius IV, *In eligendis*, 1562; of Gregory XV, *Aeterni*, 17 Kalends of December, and *Decet*, 4 Ides of March 1621; and of Urban VIII, Constitution *Ad Romanum*, 5 Kalends of February 1625; joined with the Ceremonial mentioned above.

142. RESOLUTION III. As soon as the Election of the Supreme Pontiff has been canonically completed according to the prescribed manner, the Cardinals, having fulfilled their duty, can no longer change their minds; but as stated in the *cited chapter "Licet"*, he who has been elected by two-

universali Ecclesia Romana Pontifex habendus est; dummodo ipsius etiam Electi consensus, & acceptatio accesserit, qui omnino necessarius est, ut Conjugium spirituale inter ipsum & Ecclesiam per hujusmodi electionem initiatum, ratum fiat: quo secuto, actuum plenam administrationem a Deo immediate collatam, absque alia confirmatione consequitur, juxta *can. 1. dist. 23.* neque enim potestas ipsius est ex homine, sed ex Deo, ait Innocentius in *cap. novit 13., de judic.* Solet tunc etiam mutare nomen, exemplo Christi, qui Simonem Discipulum suum, pro regenda Ecclesia sibi designatum, *Cephas*, id est *Petrus*, novo nomine appellavit, ut qui ex ove Pastor effectus est, etiam nomine ab ovibus discerneretur. Ante Consecrationem tamen & Coronationem suam conjugium ipsius spirituale cum Ecclesia non censetur consummatum, & perfectum, unde nec tempus inter eam & electionem intercedens, *Apostolatus sui*, sed solum *suscepti Apostolatus officii* appellat, ut notat Glossa in *Datam regularum juris in 6. V. Pontificatus.*

Dubium hic exoritur; an Electio summi Pontificis ex post valeat impugnari?

Respondetur posse impugnari objicien-
143. do vel defectus ipso jure naturali & Divino reddentem inhabilem ad accipiendum Pontificatum, e. g. quod sit infans, amens, foemina, nondum baptizatus, vel haereticus, juxta Punctum praecedens; quia tales defectus sunt insupplebiles Jure humano: vel objiciendo exceptiones contra formam substantialem, aut libertatem electionis, e. g. quod non sit celebrata cum duarum partium in unum consensu, aut quod eligentium aliquis notorie caruerit eligendi potestate, utpote Laici, vel Clerici non Cardinales: aut quod electio fuerit gravi, & ad hanc personam eligendam injuste incusso metu extorta; aut quod fuerit simoniaca; quia si talis fuerit *Apostolica sede inthronizatus, non Apostolicus, sed Apostaticus habendus est, juxta can. si quis pecunia 9. dist. 79.*

thirds of those in agreement, and not less, must be regarded as the Roman Pontiff by the universal Church without any exception—provided that the consent and acceptance of the Elect himself has been given, which is absolutely necessary for the spiritual marriage between him and the Church, initiated through such election, to be ratified. Once this occurs, he immediately obtains from God the full administration of his powers without any other confirmation, according to *Canon 1, distinction 23.* For his power is not from man but from God, as Innocent states in *Chapter “Novit” 13, on judgment.* At this time he also customarily changes his name, following the example of Christ, who called his disciple Simon, whom He designated to govern the Church, by the new name of *Cephas*, that is, *Peter*, so that he who from a sheep became a shepherd might also be distinguished from the sheep by his name. Before his Consecration and Coronation, however, his spiritual marriage with the Church is not considered consummated and perfected; thus, the time between his election and these ceremonies he calls not “of his Apostolate” but only “of the accepted Apostolic office,” as the Gloss notes in *Dating of the rules of law in 6, V. Pontificate.*

A doubt arises here: whether the Election of the Supreme Pontiff may be subsequently challenged?

142. It is answered that an objection can be raised by citing either defects in natural and Divine law itself rendering one unable to receive the Pontificate, e.g., that he is an infant, insane, a woman, not yet baptized, or a heretic, according to the preceding Point; because such defects cannot be remedied by human law; or by raising exceptions against the substantial form or freedom of the election, e.g., that it was not celebrated with the consent of two-thirds united in agreement, or that some of the electors notoriously lacked the power to elect, such as laypeople or clerics who are not Cardinals; or that the election was extorted through grave fear unjustly directed toward the election of this person; or that it was simoniacal; because if such a person was *enthroned in the Apostolic See, he is to be considered not Apostolic, but Apostatical*, according to canon “*Si quis pecunia*”

Constit. Julii II. incip. *Cum tam Divino*, in Concil. Lateranensi. Sess. 5. editam, & Concil. Constantiense Sess. 39. Fagnanum in *cap. licet*, n. 20. *de elect.* Non autem impugnari potest objiendo excommunicationem sive eligentium, sive electi, defectum natalium, Ordinis sacri, Clericatus, lenitatis, aut aliam irregularitatem. Relege dicta n. 126.

Sed ulterius perquires, an ergo per unanimum Cardinalium consensum fieri non possit, ut valeat electio Pontificis celebrata a majori parte sacri Collegii?

144. Respondetur non posse extra casum supra n. 137. admissum; quia licet de Jure communi id posset defendi, quatenus post talem conventionem electus a majori parte, censeretur electus non tantum a majori parte, sed a toto Collegio, sicut ille, qui electus est a Compromissariis ex consensu praevio totius Capituli compromittentis, *arg. cap. in causis 30. h. t. ibi: propter quod unanimiter de consensu totius capituli intelligitur esse facta*, stante tamen Constitutione Gregoriana, incipiente *Aeterni Patris*, non videtur posse per conventionem, etiam unanimum Cardinalium fieri, ut talis electio valeat; quia illa penitus irritat omnem electionem summi Pontificis, praeter formam a se praescriptam; factam, §. *Quod si*, ibi: *Quod si electio hujusmodi alibi celebrata fuerit, quam in Conclavi clauso, vel aliter quam per secreta Scedularum suffragia duarum ex tribus partibus Cardinalium in Conclavi praesentium in Scrutinio, seu Scrutinio & accessu, electi suffragio non computato, vel per viam Compromissi ab omnibus Cardinalibus similiter in Conclavi praesentibus, nemine dissentiente, iniri, & ita ut nemo se ipsum elegerit, vel quasi per inspirationem nullo praecedente de persona speciali tractatu omnium pariter Cardinalium praesentium in Conclavi, communiter, nemine itidem dissentiente, per verbum Eligo intelligibili voce prolatum, aut scripto, si voce non potuerit, expressum, nulla sit, & invalida eo ipso absque ulla declaratione, & ita electo*

9, *distinction 79*, the Constitution of Julius II beginning "*Cum tam Divino*", issued in the Lateran Council, *Session 5*, and the Council of Constance, *Session 39*, Fagnanus in *chapter "Licet"*, n. 20, "*De electione*". However, an objection cannot be raised by citing excommunication whether of the electors or of the elected, defect of birth, of Holy Orders, of clerical status, of gentleness, or any other irregularity. Review what was said in n. 126.

But you may further inquire whether, therefore, through the unanimous consent of the Cardinals, it cannot be made valid that an election of a Pontiff be celebrated by a majority of the Sacred College?

144. It is answered that this cannot be done except in the case admitted above in n. 137; because although by common law this could be defended, insofar as after such an agreement one elected by the majority would be considered elected not only by the majority part but by the entire College, just as one who is elected by Compromissaries with the prior consent of the entire Chapter making the compromise, *arg. cap. in causis 30. h. t.* where it says: *on account of which it is understood to be done unanimously with the consent of the whole chapter*, nevertheless, given the Gregorian Constitution beginning *Aeterni Patris*, it does not seem possible that through an agreement, even a unanimous one of the Cardinals, such an election would be valid; because it thoroughly invalidates every election of the Supreme Pontiff conducted outside the form prescribed by it, as stated in §. *Quod si*, where it says: *But if such an election shall have been celebrated elsewhere than in a closed Conclave, or otherwise than by secret ballots of two-thirds of the Cardinals present in the Conclave in the Scrutiny, or in the Scrutiny & Access, not counting the vote of the person elected, or by way of Compromise entered into by all Cardinals likewise present in the Conclave, with no one dissenting, and in such a way that no one elected himself, or as if by inspiration with no preceding discussion about any specific person by all Cardinals equally present in the Conclave, commonly, with no one likewise dissenting, expressed through the word "I Elect" pronounced in an intelligible voice, or in writing if it could not be by voice, it is null and invalid by that*

nullum jus tribuat: quinimo is non Apostolicus, sed Apostaticus sit, & habeatur &c. Haec ibi. Ratio est; tum quia hoc Jus publicum, in favorem universalis Ecclesiae introductum est, cui pacto privatorum renuntiari non potest, cap. si diligenti 12. de for. compet. tum quia caetus Cardinalium Constitutionem Pontificiam super electione Papae immutare non potest, ut est expressum in Clem. Ne Romani, h. t. tum quia decretum irritans in Constitutione Gregoriana oppositum inducit formam. Bald. in L. 1. ff. de liber. & posthum. Formae autem renuntiari non potest, ut notat Bartol. in L. de his, ff. de transact.

145. Neque opponas, hanc, & his similes Constitutiones de electione, metu extorta, vel simoniaca, esse solum Juris humani, adeoque summum Pontificem non ligare, cum par in parem non habeat imperium, cap. innotuit 20. h. t. Nam respondetur, non quidem potuisse a Pontificibus Praedecessoribus condi Constitutiones, quae ligent Pontificem vere & canonice electum, potuisse tamen praescribi formam & conditiones necessario in ipsa electione a Cardinalibus velut inferioribus observandas, quibus non observatis, nullus quoque verus & legitimus Pontifex evadat, ut recte Wiestner hic n. 371.

146. Adverte tamen, quod licet talis electio contra formam vel condiciones Jure humano praescriptas facta, sit irrita ipso Jure, aliquando tamen, ubi defectus est occultus, ipsa universalis Ecclesiae acceptatione convalescat, ex mente Eminentiss. Palavicini de fide cap. 7. n. 104. Haunoldi, & aliorum Theologorum. Qua ratione praeteritis Saeculis plures Electiones Pontificum aut vi, aut per simoniam intrusorum, subsecuta tamen universalis Ecclesiae acceptatione sanatae, ipsique sic electi, veri & legitimi Successores D. Petri effecti sunt.

very fact without any declaration, and confers no right on the one so elected: indeed, he is not Apostolic, but Apostate, and should be considered as such, etc. Thus far the text. The reason is: both because this public law was introduced in favor of the universal Church, to which private agreement cannot renounce, cap. si diligenti 12. de for. compet., and because the assembly of Cardinals cannot change the Pontifical Constitution concerning the election of the Pope, as is expressly stated in Clem. Ne Romani, h. t., and because the invalidating decree in the Gregorian Constitution establishes an opposing form. Bald[us] in L. 1. ff. de liber. & posthum. Moreover, one cannot renounce the form, as Bartol[us] notes in L. de his, ff. de transact.

145. Do not object that this and similar Constitutions concerning an election extorted by fear, or a simoniacal election, are only of human law, and therefore do not bind the Supreme Pontiff, since an equal has no authority over an equal, as in chapter *innotuit* 20 on this topic. For it is answered that the Predecessor Pontiffs could not indeed establish Constitutions that would bind a truly and canonically elected Pontiff, but they could nonetheless prescribe the form and conditions to be necessarily observed in the election itself by the Cardinals as inferiors, which if not observed, would result in no one becoming a true and legitimate Pontiff, as Wiestner correctly states here at number 371.

146. Note, however, that although such an election conducted contrary to the form or conditions prescribed by human law is invalid by the law itself, sometimes nevertheless, where the defect is hidden, it may be validated by the acceptance of the universal Church, according to the mind of the Most Eminent Palavicini on faith, chapter 7, number 104, Haunold, and other Theologians. By which reasoning, in past centuries, many elections of Pontiffs who were intruded either by force or through simony were healed by the subsequent acceptance of the universal Church, and those so elected became true and legitimate Successors of St. Peter.