

## Historical and Legal Milestones of Medieval Papal Elections<sup>1</sup>

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The legal order of papal elections had long been governed by the traditions of early Christian communities. There had been no clear and binding rules stipulating the election steps and handling any disputes. As in many other areas of Church life, appropriate legislation was adopted as a defensive reaction to negative features – corruption, intrigue, power struggles, etc. The first legal framework for the selection of the Roman Bishop therefore came into existence quite late, at the very end of the 5<sup>th</sup> century. In 499, a synod assembled in Rome. In light of the demeaning squabbles during the previous year's papal election,<sup>2</sup> it felt a need to set binding rules stipulating the course of subsequent papal elections. The synod adopted provisions to prevent the election from becoming a power clash. It decided that as long as the legitimate Pope is alive no negotiations concerning his successor may be held. The candidate who objectively collected the most votes was to become the Pope.<sup>3</sup> Furthermore, it was allowed that the governing Pope could determine or recommend his successor. Finally, it was clearly established that if the Pope did not determine his successor, it was up to the Roman clergy to elect him.<sup>4</sup>

In the following centuries, details of the papal election were modified in various ways; however, a basic and fundamental legal rule was still missing. Basically, the principle was applied of electing a new bishop through the decision of the church community (clergy and the people) with the respective metropolitan and neighboring bishops retaining their rights (e.g. of approval and ordination). Because of the

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<sup>2</sup> After the death of Pope Anastasius II in 498, two candidates were elected – Symmachus and Lawrence. The election was evidently decided by bribes, clashes between influential groups of the city notables and private interests of the clergy.

<sup>3</sup> It was this provision in particular that was undoubtedly a reaction to the fact that Gothic rulers in Ravenna had begun to actively support different factions, thus indirectly claiming the determination of a suitable candidate.

<sup>4</sup> A synodal document presents G. D. MANSI, *Sacrorum conciliorum nova et amplissima collection*, Vol. 8: Anni 492–536, Graz 1960, p. 229. See also L. LECTOR, *Le Conclave. Origines, histoire, organisation, législation ancienne et moderne*, Paris 1894, pp. 20–21; H. J. WURM, *Die Papstwahl. Ihre Geschichte und Gebräuche*, Köln 1902, pp. 11–12; L. GAUGUSCH, *Das Rechtsinstitut der Papstwahl*, Wien 1905, pp. 9–10.

specific position of Rome and its symbolic significance for Christian society, additional legal bands were applied at the same time, whether general (Justinian's legislation) or bilateral (treaties with Carolingian and Ottonian rulers), which complemented the election with the "supervision" and "protection" of the secular power. So if we want to place papal elections on firm legal foundations, we have to go as far back as the beginning of the High Middle Ages. Election legislation, the crucial elements of which have remained valid until the present day, stands on three main pillars that need to be clearly defined. The legal order of papal elections followed three fundamental provisions – the *In nomine Domini* decree of 1059 and the constitutions *Licet de vitanda* of 1179 and *Ubi periculum* of 1274.

### **In nomine Domini (1059)**

#### ***Background***

Pope Nicholas II's reform in 1059 can undoubtedly be considered a fundamental shift in the legal stipulation of papal elections. The Roman Church was just going through its first truly fruitful period of bloom, filled with a reformative atmosphere. Through the interventions of Emperor Henry III, who was dominant but favourable to changing Church practices, popes coming from the German part of the Empire succeeded in Rome. Among them, Pope Leo IX stood out, having taken fundamental personnel steps regarding the composition of the Roman ecclesiastical hierarchy, and invited many reformers into his circle. Roman aristocracy had to retreat, which made it possible to establish a trend of purposeful reforms.<sup>5</sup>

The sudden death of Henry III and regency rule for his minor successor, Henry IV, significantly affected the plans of Church reformers. Regent Empress Agnes continued to show her support for the Roman Church, but her real power was decreasing and there was an acute danger that Roman nobility would again seize control of the highest levels of papal policy. In this uncertain situation, reformers around Leo's successor Nicholas II decided to take a crucial step that was to prevent secular interventions in selecting the head of the Roman Church in the future. In order to maintain control over papal elections, they intentionally reduced the circle of electors to a group of people that the reform supporters could actually control. The previous policy

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<sup>5</sup> The issue of accession and activity of the German popes is analyzed in the study by G. FRECH, *Die deutschen Päpste – Kontinuität und Wandel*, in: S. WEINFURTER (Ed.), *Die Salier und das Reich*, Vol. 2, Sigmaringen 1991, pp. 303–332.

of personnel control of the most important bishop positions around Rome thus came to full fruition.

The change was based on shifting the main part of the election procedure to cardinal-bishops, that is, bishops of major dioceses in the surroundings of Rome, beyond the immediate influence of Roman noble families. This was the first visible shift from the previous bureaucratic, chiefly lay structures of the papal office toward Pope-linked high clerics, who were supposed to take over control of the Church within the reform intentions. Up to then, cardinals were primarily assigned liturgical functions; cardinal-bishops managed suburban dioceses, cardinal-priests performed mass functions in the Basilica of St. John Lateran and other titular churches, and cardinal-deacons transformed into a collegium of palace deacons led by an archdeacon, with their number increasing from 7 to 12 as the city expanded. So three groups of cardinal orders (*ordines*) formed, gradually assuming a leading position in the papal administration. Previous leading bureaucrats changed more to judicial clerks in nature even though the actual functions were preserved.<sup>6</sup>

### **Content**

The Papal Election Decree came into existence at the Roman synod on 13<sup>th</sup> April 1059. Two main versions of the document have been preserved – one through the papal office and the other one from imperial production; the papal (or Roman) version being considered genuine. The text of the Decree is divided in nine sections, with the first six sections representing the core and the remaining ones stipulating criminal sanctions for the breach of the previous provisions.

The substance of the document contains several basic theses. The primary one consists in narrowing the group of electors to include so-called suburbicarian bishops, that is, cardinal-bishops from surrounding Roman dioceses. In reality, seven bishoprics obtained this privilege; however, the number was not fixed and was subject to partial changes. Generally, bishops in Albano, Porto, Ostia, Palestrina, Tusculum,

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<sup>6</sup> Basic information on the administration of the papal office is provided by B. SCHIMMELPFENNIG, *Das Papsttum. Grundzüge seiner Geschichte von der Antike bis zur Renaissance*, Darmstadt 1984, pp. 69–70, 92–93, 154–155. For the development of the College of Cardinals in the 11<sup>th</sup> century and its relation to Roman Church structures, compare in particular M. FOIS, *Papa e cardinali nel secolo XI*, in: *Archivum Historiae Pontificiae* 14, 1976, pp. 383–416; H.-W. KLEWITZ, *Die Entstehung des Kardinalkollegiums*, in: *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte Kanonistische Abteilung* (hereinafter ZRG KA) 25, 1936, pp. 115–221; R. HÜLS, *Kardinäle, Klerus und Kirchen Roms: 1049–1130*, Tübingen 1977.

Sabina and Silva Candida could be called electors.<sup>7</sup> After the bishops agreed on a candidate, they were supposed to invite the rest of the so-called clerical cardinals (priests and deacons). Finally, the remaining Roman clergy and people were to vote, completing the process of selecting the new Roman bishop. The document expressly emphasizes the leading role of cardinal-bishops, who decided on the candidate; the other participants were “merely” supposed to follow them.<sup>8</sup>

The Decree could not avoid the issue of the powers of the imperial administration, which until then had played a crucial role in the selection of the new Pope. Even the reformers did not dare to completely disregard the Emperor’s influence, and it probably was not their main objective. Nicholas wanted to get rid of the interventions of the Roman aristocracy, for which he needed effective help from the Emperor. The document therefore expressly mentions the maintenance of duly respect to Henry IV, as well as his rights after becoming Emperor. It also does not seem that this was an attempt to limit the election approval only to Henry IV, in case he reached coronation as Emperor. The text talks about loyalty to imperial rights belonging to Henry’s predecessors and successors as well.<sup>9</sup>

The third part of the document protects the election against potential obstructions by the Roman aristocracy. First, it expressly admits the possibility of electing a non-Roman, although it considers it optimal that a member of the Roman Church stands at the top. In case it was difficult or impossible for the election to be held in Rome, cardinal-bishops could carry it out at another suitable place, after inviting the other election participants. However, it is obvious from the wording of the text that the election would have been valid even if it were only the bishops gathered outside of the city who agreed on a suitable candi-

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<sup>7</sup> The last named dissolved over time, because the town was abandoned by its citizens due to adverse living conditions. Its place was taken by Segni for some time; later, the position was mostly left unfilled

<sup>8</sup> An analysis of the causes of the rise of cardinal-bishops is presented by D. HÄGERMANN, *Das Papsttum am Vorabend des Investiturstreits. Stephan IX. (1057–1058), Benedikt X. (1058) und Nikolaus II. (1058–1061)*, Stuttgart 2008, pp. 111–119, and D. JASPER, *Das Papstwahldekret von 1059. Überlieferung und Textgestalt*, Sigmaringen 1986, pp. 110–111.

<sup>9</sup> *Salvo debito honore et reverentia dilecti filii nostri Henrici, qui inpraesentiarum Rex habetur et futurus Imperator deo concedente speratur, sicut iam sibi concessimus et successoribus illius, qui ab hac apostolica sede personaliter hoc ius impetraverint* (§ 4). For more about extent and validity of the imperial rights after the edition of Decree, see W. STÜRNER, *Salvo debito honore et reverentia. Der Königsparagraph im Papstwahldekret von 1059*, in: ZKG KA 54, 1968, pp. 1–56; H. GRUNDMANN, *Der Königsparagraph im Papstwahldekret von 1059*, in: Studi Gregoriani 9, 1972, pp. 37–52.

date.<sup>10</sup> The last element divesting Roman aristocracy of its influence in the election was the provision that the selected candidate did not have to achieve enthronement and coronation in order for the election to be valid and for him to serve the pontificate.<sup>11</sup> So after being elected, he also immediately acquires the right of disposal over all property of the Roman Church.

### ***Effect and assessment***

The effect of the papal decree *In nomine Domini* caused an earthquake in the Church. There were no doubts, whom it was targeted against, namely Roman noble families that traditionally shared power influence in the city. However, the reformers were entering shaky ground, considering that Pope Nicholas II could only be elected with direct support from Empress Agnes.<sup>12</sup> The papacy indisputably counted on effective cooperation with the empire in the future. The subsequent sharp conflict in the Investiture Controversy was a product of ambitions of the two main actors, Gregory VII and Henry IV, as well as of a confrontation of two guiding principles of Christendom.

When assessing the document, it is important to realize that some consequences of the Decree only emerged subsequently and perhaps incidentally. In addition to the emphasis that gradually turned against the Empire's interventions, we can also mention the papacy's loosening its close ties to the Roman environment. The possibility of holding elections outside of Rome, as well as the fact that bishops of surrounding towns became electors, meant that the Pope was really becoming the universal head of the Church. The subsequent clashes of reformist popes with antipopes paradoxically only confirmed this "separation"

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<sup>10</sup> *Quodsi pravorum atque iniquorum hominum ita perversitas invaluerit, ut pura simncera atque gratuita electio fieri in Urbe non possit, cardinales episcopi cum religiosis clericis catholicisque laicis, licet paucis, ius potestatis obtineant eligere apostolicae sedis pontificem, ubi congruentius iudicaverint.* § 5.

<sup>11</sup> *Plane postquam electio fuerit facta, si bellica tempestas, vel qualiscunque hominum conatus malignitatis studio restiterit, ut is qui electus est in apostolica sede iuxta consuetudinem intronizari non valeat, electus tamen sicut papa auctoritatem obtineat regendi sanctam Romanam ecclesiam et disponendi omnes facultates illius, quod beatum Gregorium ante consecrationem suam fecisse cognoscimus.* § 6.

<sup>12</sup> After Nicholas II was elected by the reformist party, the Roman aristocracy nominated Antipope Benedict X. Reformers had a hard time negotiating support from the Empire. Agreement was only reached after several months, and Nicholas entered Rome. However, he certainly wouldn't have achieved anything without the help of Bishop Gilbert of Ravenna, an Italian chancellor who represented the Emperor's interests. For more on the election of Nicholas II, see J. WOLLASCH, *Die Wahl des Papstes Nikolaus II*, in: G. TELLENBACH, *Adel und Kirche. Festschrift, Freiburg 1968*, pp. 205–220.

from Rome. Antipope Clement III, in particular, who held the Eternal City for many years at the end of the 11<sup>th</sup> century, forced Urban II to move his activities to northern Italy and southern France, beyond the sphere of influence of the Emperor and Roman nobility. It is therefore very important to carefully judge the motivation and intentions of the Decree formulations. Nevertheless, it undeniably became a foundation for subsequent papal elections and, through the victory of the Gregorian Reform, also a model of how to proceed.<sup>13</sup>

### **Licet de evitanda discordia (1179)**

#### ***Background***

In the 12<sup>th</sup> century, the Gregorian Reform ideas were significantly consolidated, and most concepts of the Catholic Church transformation were implemented. Popes managed to free themselves from the influence of Roman-German rulers and develop a centralized form of the Roman Curia. Despite these successes, several important issues remained unresolved in the area of papal elections. The weak points clearly showed in the course of some elections, which disunited the Catholic Church and weakened its readiness for action. The problems were only resolved in the late 1170's, when Pope Alexander III ended a long-lasting conflict with Emperor Frederick I Barbarossa.

The Pope faced two main problems. First was the ambiguous provision on the number or quality of votes a papal candidate had to obtain in the election in order to be legitimately elected. The election of 1130, as well as events of 1159, became important precedents. In the case of the former, after Pope Honorius II died, two electoral assemblies took place on the same day, 14<sup>th</sup> February. The first, consisting of a smaller group of cardinals, elected Innocent II, while the second, taking place later but consisting of a significantly higher number of electors, elected Anacletus II. The result was an eight-year schism that divided the Church into two camps, enabling the intervention of secular authorities. The result of the two pretenders' fight was also questionable in terms of law, because Innocent II won with the help of Emperor

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<sup>13</sup> The election decree of 1059 enjoyed considerable attention from church historians. Among many monographs and partial studies, we can mention, for example, H.-G. KRAUS, *Das Papstwahldekret von 1059 und seine Rolle im Investiturstreit*, Rom 1960; F. KEMPF, *Pier Damiani und das Papstwahldekret von 1059*, in: *Archivum Historiae Pontificiae* 2, 1964, pp. 73–89; D. HÄGERMANN, *Untersuchungen zum Papstwahldekret von 1059*, in: *ZRG KA* 87, 1970, pp. 157–193; W. ULLMANN, *Zum Papstwahldekret von 1059*, in: *ZRG KA* 99, 1982, pp. 32–51.

Lothair III and the powerful regulars, St. Bernard of Clairvaux and St. Norbert.<sup>14</sup>

The second Papal Schism was also based on a dual election by cardinals on the same day, 7<sup>th</sup> September 1159. This time, the man with the higher number of votes – Alexander III – succeeded, but he had to undergo exhausting battles to do so.<sup>15</sup> Antipope Victor IV was backed by the powerful Emperor Frederick I Barbarossa, who also shielded Victor's successors Paschal III and Callixtus III. Pope Alexander had to go into exile in France, accepted numerous compromises and in 1160 faced an assembly of West European prelates in Toulouse, who were to decide his fate. It is therefore not surprising that he intended to definitively end the indecorous situation in the Church that left room for secular power interventions.<sup>16</sup>

Another problem that Alexander wanted to resolve was the mutual relations of the cardinal *ordines* (bishop – priest – deacon) to elections, as well as final clarification of previous contractual agreements on the elections between the Pope and Emperor.

### **Content**

The constitution *Licet de evitanda discordia* was adopted at the Third Council of the Lateran in 1179. Attendants of the Council sessions were quite united, with Pope Alexander III enjoying his recognized authority as the winner in fights with the Empire. Debate on the document proposal therefore did not encounter any significant difficulties.

The core of the document stipulates the number of votes necessary for a candidate to be pronounced the elected Pope. Until then, this question had not been defined clearly and with binding effect, and the required “majority” of votes could have been interpreted in different ways.<sup>17</sup> According to some canonists, the sounder part of votes (*sanior*

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<sup>14</sup> Circumstances of the divided election of 1130 were discussed in a number of works; A. KELLER, *Machtpolitik im Mittelalter – Das Schisma von 1130 und Lothar III. Fakten und Forschungsaspekte*, Hamburg 2003; F.-J. SCHMALE, *Studien zum Schisma des Jahres 1130*, Köln, Graz 1961; W. MALECZEK, *Das Kardinalskollegium unter Innocenz II. und Anaklet II.*, in: *Archivum Historiae Pontificiae* 19, 1981, pp. 27–78 can be mentioned as one of the most significant ones.

<sup>15</sup> As for the election, see W. MADERTONER, *Die zwiespältige Papstwahl des Jahres 1159*, Wien 1978.

<sup>16</sup> For negotiations between Alexander III and Frederick I Barbarossa, see F. OPLL, *Fridrich Barbarossa. Císař a rytíř*, Praha, Litomyšl 2001, pp. 231–245.

<sup>17</sup> The question of majority had only been stipulated by the old legislation of 499 by Pope Symmachus I. This so-called first election law determined that a candidate who objectively gained the largest number of votes was to become the Pope.

*pars*) was sufficient to get elected,<sup>18</sup> which were particularly the votes of cardinal-bishops pursuant to provisions of the 1059 election decree by Nicholas II. However, beginning in the mid-11<sup>th</sup> century a significant shift occurred, and holders of lower cardinal ranks (priests and deacons) also influenced papal policy to a considerable degree. The Pope ended this conflict by stipulating that only a candidate who had obtained two-thirds of the valid submitted votes could be considered a legitimately elected pope. If a minority candidate wanted to claim this title, then he and his supporters had to expect automatic excommunication. However, this punishment also applied to a candidate who achieved a majority of votes but without the required two-thirds quorum.<sup>19</sup>

Another important element was the fact that the text made no mention of the potential rights of the Emperor. All legal actions in the election depended on cardinals' decisions, while the ruler lost any ability to prevent the elected candidate from accession, by requiring his confirmation in office, for example. A precedent for Alexander's actions had already been set by the Concordat of Worms, which supposed no interventions in the papal life. And even though the Worms privilege of 1122, stipulating the issue of bishop investiture, did not apply directly to papal elections, the Pope too, as a Roman bishop, could deduce from that his right to a free canonical election.<sup>20</sup>

### ***Effect and assessment***

Alexander prevented further disputes over the number of votes and dampened disagreements between cardinals. The election decree *In nomine Domini* partially based the priority of cardinal-bishops on the metropolitans' jurisdiction over the appointment of bishops, supported by Church tradition. Since no metropolitan was available in Rome, it was logically

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<sup>18</sup> The "sanior pars" principle is analyzed in a study by B. SCHIMMELPFENNIG, *Das Prinzip des „sanior pars“ bei Bischofswahlen im Mittelalter*, in: *Concilium* 16, 1980, pp. 473–477.

<sup>19</sup> *Si quis autem de tertiae partis nominatione confisus, quia de ratione esse non potest, sibi nomen episcopi usurpaverit, tam ipse, quam ii, qui eum receperint, excommunicationi subiaceant, et totius sacri ordinis privatione mulcentur ita, ut viatici etiam eis, nisi tantum in ultimis, communicatio denegetur, et si non resipuerint, cum Dathan et Abiron, quos terra vivos absorbit, accipiant portionem.* Canon No. 1 of The Third Lateran Council.

<sup>20</sup> Commentary by W. PLÖCHL, *Geschichte des Kirchenrechts*, Vol. 3, München 1970, pp. 116–123, H. APPELT, *Die Papstwahlordnung des III. Laterankonzils (1179)*, in: *Ecclesia peregrinans. Festschrift J. LENZENWEGER*, Wien 1986, pp. 95–102.



the surrounding bishops who took his place.<sup>21</sup> However, since the role of cardinals had been so fundamentally reinforced, it was inconceivable to leave all decisive election powers in the hands of a narrow group of episcopal cardinals. The Gregorian Reform transferred the Church executive apparatus into the hands of the high-ranking Church hierarchy, endowing cardinals with extensive powers.<sup>22</sup> The Pope therefore only eliminated boundaries between episcopal and clerical cardinals that were created by Nicholas II's decree in rather wide and ambiguous terms.<sup>23</sup> In a sense, it was the emancipation of cardinals that became a precondition for the formation of a real college of cardinals. There were no longer individual cardinals but rather an authoritative group at the head of the Church body that had been increasingly asserting itself since the late 12<sup>th</sup> century.<sup>24</sup>

The legislation was detailed in the 1245 decree *Qui frequenter* by Pope Innocent IV. It stipulated that the required two-thirds majority could not include the vote of a cardinal who had himself obtained the required number of votes (he thus could not vote for himself). Furthermore, it determined that a cardinal who left the election lost the opportunity to participate again in the selection of a new Pope. On the other hand, cardinals close to the Pope were not allowed to abuse their position and commence the election after his death without duly waiting for the arrival of their colleagues. These amendments indicated that there was some tension about the exact timing of the start of the election following the Pope's death.

## Ubi periculum (1274)

### *Background*

The third legal foundation for the selection of the head of the Catholic Church, the constitution *Ubi periculum*, was in many respects crucial

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<sup>21</sup> „*Quia sedes apostolica cunctis in orbe terrarum prefertur ecclesiis, atque ideo super se metropolitanum habere non potest, cardinales episcopi procul dubio metropolitani vice funguntur, qui videlicet electum antistitem ad apostolici columnis apicem provehant.*“ The Decree In nomine Domini, § 3.

<sup>22</sup> The power of lower cardinal *ordines* had been increasing since as early as the end of the 11<sup>th</sup> century, and ultimately after 1130. This fact is pointed out by HÄGERMANN, p. 120, among others.

<sup>23</sup> The decree stipulated that after the cardinal-bishops had voted, the remaining cardinals were to be “invited” to the election, which terminologically did not pose any significant problem in the emancipation of lower cardinal orders („...*inprimis cardinales episcopi diligentissima simul consideratione tractantes mox sibi clericos cardinales adhibeant.*“ The Decree In nomine Domini, § 1).

<sup>24</sup> W. REINHARD, *Glaube und Macht. Kirche und Politik im Zeitalter der Konfessionalisierung*, Freiburg 2004, p. 43.

for the practical execution of the election. Its origination is inherently connected with the disgraceful course of the papal election in Viterbo between 1268 and 1271. Unreasonable protraction of the election, also associated with the cardinals' intrigues, arguments and pursuit of material benefit, disgusted a considerable portion of the Catholic episcopate and other segments of society. The elected Pope Gregory X took advantage of the turbulent atmosphere. As someone standing outside of the life and interests of the Roman Curia, he did not consider the partial interests of the College of Cardinals and decided to fundamentally change the course of all elections to come.

The Pope was facing one principal problem – how to overcome the expected opposition of the College of Cardinals. Enforcing the changes through a general assembly of the Church, namely at a Council (the Second Council of Lyon, 1274), seemed to be the best way. The energetic Pope also proved to be an excellent strategist. He did not include the issue of a new arrangement for papal elections in the planned Council agenda, stating only a general need for Church reform, in addition to discussions about a crusade and a union of the churches. It is therefore not quite clear whether details of the planned legal stipulation had been thoroughly discussed in the Pope's immediate circle before being published. Available sources clearly show that the election reform project took all participants aback, and it was the element of surprise that helped break down the resistance of the College of Cardinals. A decision on ending the Council sessions on a definite date, 9<sup>th</sup> July 1274, proved to be an important element as well. Even though the Pope could undoubtedly have postponed the Council's end date, the short time period eliminated delays and potential negotiations of the opposition against the proposal.<sup>25</sup>

It was only on 7<sup>th</sup> July 1274 that the Council Fathers learned about the planned modifications, after Gregory X addressed the Council with the need to deal promptly with imperfections of the papal elections. His appeal immediately gained wide support from the assembly, because disgust over the last election still persisted. In order to prevent the surprised cardinals from beginning any defensive action against the constitution's approval, he negotiated from the outset mainly with lower-ranking prelates, i.e., metropolitans and their suffragan bishops. Prudently securing the spontaneous enthusiasm of "regular" bishops for tightening the course of papal elections, the Pope drew up several cop-

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<sup>25</sup> Basic and detailed information on the Second Council of Lyon is presented by B. ROBERG, *Das Zweite Konzil von Lyon (1274)*, Paderborn 1990. For most information of the constitution *Ubi periculum*, see *ibidem*, pp. 293–309.

ies of the change proposal that he handed out to the assembled prelates. Those preliminarily agreeing with the provisions could attach their name to the document – writing it in the initial intitulation and subsequently confirming their decision by attaching a seal. With some exaggeration, this non-standard procedure may be called democratic and, in a sense, took into account tendencies that were to surface more than 100 years later within conciliarism. However, here it was undoubtedly a tactical element of bypassing the College of Cardinals, which would not have accepted the limitation of its authority without reservations.<sup>26</sup>

Gregory's organizational skills celebrated absolute success. The vast majority of Council Fathers already espoused the document in the preliminary consent stage. Cardinals negotiated backstage and certainly won some individual bishops to their side but were not able to surpass the required majority of votes. After presenting the document, the Pope additionally made the assembled bishops take an oath not to disclose their position, which left the cardinals in the dark about the final result. So the crucial constitution on papal elections came into existence in a somewhat non-standard way and with the help of lower components of the Catholic hierarchy.

### *Content*

The key element of the adopted constitution was the formal introduction of the institute of a closed electoral assembly in which the present cardinals chose a new head of the Catholic Church. The document wording insisted on quite strict conditions regarding technical and material equipment – all electors were to remain in one room, hermetically closed off from the surrounding world and only equipped with one window for the delivery of food and beverages. If agreement on the next Pope was not reached quickly (within three days), the conditions toughened even more, i.e., one meal for lunch and dinner, and after another five days food was reduced to only bread, wine and water. Another article, which divested the cardinals for the duration of the election of control over revenues from properties they managed thanks to their office, was also supposed to contribute to a prompt election.

Another part of the regulation focused on autonomy, independence and minimal outside influence on the selection. For one thing, it was not possible to significantly delay the beginning of the election and thus gain room for negotiations with secular authorities – the constitution determined that the election had to commence ten days after the

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<sup>26</sup> Ibidem, pp. 302–303.

beginning of *sede vacante* at the place where the Pope died.<sup>27</sup> The secular authority of the conclave venue assumed responsibility for the election premises being closed and safe.<sup>28</sup> It was therefore not possible to leave the conclave premises at will, but only in case of justified circumstances, most commonly illness.<sup>29</sup> However, the constitution also directly and openly insisted on preserving the free selection of the new Pope, declaring on principle all previous provisions and agreements on potential candidates invalid and non-binding.<sup>30</sup> If an elector attempted to carry the content of the session outside of the conclave premises or communicate with an outside person (receiving or sending a letter or messenger), he could expect very strict penalties, the ultimate one being excommunication.<sup>31</sup>

### ***Effect and assessment***

The motivation for drawing up the *Ubi periculum* constitution seems obvious. Primarily, it was supposed to prevent long and intrigue-filled elections where each cardinal pursued his own interests instead of the Church's welfare. Technical limitations also aimed at a prompt beginning of the election, without delays caused by the need to wait for all members of the College. Another and, in terms of our topic of secular power interventions in the election process, more significant moment was the emphasis on free canonical elections. By introducing a closed conclave, secular authorities lost the ability to immediately influence cardinals' decision-making, both at its beginning and during its course.

The latter element mentioned above clearly reflects the changing situation during the 12<sup>th</sup> and 13<sup>th</sup> centuries. National monarchies were gradually being constituted, and through their influence, the composition of the College of Cardinals also changed. Political interests and animosities spread among Church hierarchy elites and influenced the

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<sup>27</sup> Only in case of insurmountable difficulties preventing elections from taking place in the town (e.g., interdict on the town, unwillingness of the municipal authorities to accept elections on their territory, etc.) was it possible to move the election to the nearest suitable town. The election was then supposed to be held in the Bishop's palace or a suitable monastery, after the interiors had been adjusted, of course.

<sup>28</sup> The conclave "guardian" undertook, under oath and with awareness of possible sanctions, to perform the above-mentioned duties.

<sup>29</sup> The constitution allowed the cardinal to return if his health improved.

<sup>30</sup> In particular, the provision explicitly declared the legal ineffectiveness of all written contracts and obligations – at the beginning and in the course of the election, each cardinal had to have his hands free to choose a candidate solely for his qualities.

<sup>31</sup> Text of the constitution in: Zweites Konzil von Lyon. *Ubi periculum*, in: *Dekrete der ökumenischen Konzilien*, Vol. 2, pp. 314–318.

selection of the head of the Catholic Church. Gregory X tried to reverse this trend and remind cardinals what their motivation in papal elections was supposed to be. Since he had no illusions about the cardinals' compliance with mere appeals or admonishments, he set up technical conditions so strict and clear that they were very hard to get around. If all the constitution's articles had been fulfilled, the election procedure would have remained to a large degree in the hands of the Church.<sup>32</sup>

However, the problem of the constitution lay in the circumstances under which it came into existence. Gregory X's actions can be considered extraordinarily successful in terms of organization, but in order for such a fundamental legal regulation to be viable, he also needed to convince those who were affected by it, namely the cardinals, of its necessity. After Gregory X died, the subsequent conclave followed the new legal regulation (Pope Innocent V was elected after just a one-day session in 1276), but the dissatisfaction of the College of Cardinals was growing. The next Pope, Adrian V, yielded to the pressure and suspended its effect. However, since he died before issuing an official constitution, his plan was only completed by his successor John XXI, who removed Gregory's legislation with the decree *Licet felicis recordationis*.<sup>33</sup> On the other hand, the elimination of regulatory mechanisms re-opened doors to all the previous disorders. Over the next 20 years, the Catholic Church elites agreed that returning to the prudent provisions of Gregory X was the only chance for improvement. In October 1294, Pope Celestine V brought the constitution back in effect, and his successor Boniface VIII completed the work, establishing the constitution firmly in the Catholic Church's legal order by including it in the Church legislation *Liber sextus*.<sup>34</sup>

### Abstract

The subject of this study is the legal order's analysis of papal elections in the Middle Age. The author concentrates on three fundamental provisions – the *In nomine Domini* decree of 1059 and the constitutions *Licet de vitanda* of 1179 and *Ubi periculum* of 1274. The presented

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<sup>32</sup> For analysis and commentary on the decree, see ROBERG, pp. 293–309 and B. ROBERG, *Der konziliare Wortlaut des Konkleve-Dekrets „Ubi periculum“ von 1274*, in: AHC 2, 1970, pp. 231–262. See also LECTOR, pp. 91–95; WURM 38–39; GAUGUSCH 90–92; M. WALSH, *The Conclave. A Sometimes Secret and Occasionally Bloody History of Papal Elections*, Norwich 2003, pp. 85–87.

<sup>33</sup> Reasons for revoking provisions of the constitution included the hard living conditions within the conclave, which unreasonably strained the older and infirm cardinals (there was even talk about deaths).

<sup>34</sup> See LECTOR, pp. 95–99; WALSH, p. 91.

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Historical and Legal Milestones of Medieval Papal Elections

analysis of the electoral legislation includes as the legal aspects, so historical context and implications for the further development of papal elections. The considerable attention is paid to the complicated relationship between papacy and College of Cardinals, whose role in the electoral process grew steadily.

**Keywords**

Papal Elections, Papacy, Church, Canon Law