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Benedict XVI renouncement was authentic not faked as some claim

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Geraldina Boni, Full Professor of Ecclesiastical and Canon Law at the Department of Legal Sciences at the University of Bologna *Alma Mater Studiorum*, and Manuel Ganarin, Associate Professor of Ecclesiastical and Canon Law at the same Department, have

kindly sent us a rebuttal study of the recent publication by Fr. Giorgio M. Faré, *I Will Not Deliver the Lion. The case of Benedict XVI's Declaratio: a canonical-historical analysis*, a refutation that readers will be able to download and read in its full version and of which we offer a summary view.

The authors first address the thesis put forward by Faré on p. 6 of his paper, according to which "Benedict XVI's act of renunciation is 'non-existent'" because "the will to abdicate" is missing in it. According to Faré, that the Pope did not intend to abdicate would be inferred from the fact that he chose to make a simple declaration (*declaratio*), as well as to use the formula "I declare that I renounce" and not instead "I renounce." Moreover, according to Faré, what would make the renunciation act "not only null and void but even nonexistent" would be the affixing of the postponement of the entry into force of the renunciation pronounced on Feb. 11 to the 28th of the same month.

According to Boni-Ganarin, "the header of an act [...] constitutes an index which, taken individually, reveals nothing about its content, especially and precisely in the canonical order, as is universally known"; moreover, the law does not require the renouncing pope to make any precise binding declaration, which moreover is impossible in the canonical order, since it would introduce "a limitation of the primatial power, thus resulting contrary to positive divine law." Put differently: the pope is not bound to use one formula rather than another. Instead, it is sufficient for him to make known his intention to abdicate, which Benedict did in his explicit reference "to the vacancy of the Apostolic See," which therefore "dispels on the point any doubt." By the same primatial power, in no way can "the pope be compelled to ratify his decision, having already unequivocally manifested his will to the whole Church and, moreover, not being obliged to a fulfillment which would unduly limit that supreme power of which he has full disposal." The alleged need for ratification, argued by Faré, thus constitutes one of the many "macroscopic canonistic 'slips'" in his publication that does not adequately take into account the specific ecclesial order.

These "slips" also include the issue of deferring the entry into force of the renunciation. The authors premise "that it seems difficult if not impossible, according to the principles of the general theory of law, that the presence of an accidental element can in itself determine the non-existence of a legal act, thus overwhelming its essential elements." more specifically, the idea that Benedict XVI's renunciation would be inexistent due to such deferral fails to take into account "once again the inapplicability of certain codicil provisions to the acts of the pope," who can legitimately defer the effectiveness of one of his own acts over time, which, moreover, already happens when

the pope accepts renunciations from diocesan bishops upon reaching the age of 75, but deferring their effectiveness to the moment of notification of the appointment of the new bishop.

The study also addresses the well-known and repeated objection that Pope Benedict would have renounced *the ministerium*, but not the *munus* petrino. This is indeed a “clumsily invented conceptual distinction,” since many canonists, not least Cardinal Péter Erdő, whom Faré also quotes *pro domo sua*, note that *ministerium*, *munus* and *officium* are terms often used synonymously. The meaning of the use of the term*ministerium*, as used by Benedict XVI, must be - according to elementary hermeneutical criteria - inferred from the context, which is explicitly that of leaving the Apostolic See vacant, resulting in the convocation of a conclave. Therefore, it has no consistency to consider Benedict's renunciation a null legal act, on the grounds that he would not have used the term *munus*, or would not have made use of a formulation similar to that of Pope Celestine V, or even to consider it null and void “for substantial error.”

Again, Faré reports on the opinion of Cardinal Vincenzo Fagiolo, in 1994 commissioned by John Paul II to carry out a study on the pope's resignation; Fagiolo asserted that the pope cannot resign because of age alone. Prof. Boni and Prof. Ganarin point out, however, that the Cardinal's opinion-which still remains an opinion, albeit an authoritative one-can at most refer to the lawfulness of the act of renunciation and not to its validity; the Supreme Pontiff, “at the moment of renunciation, answers to no one for his decision-the principle *Prima Sedes a nemine iudicatur* (can. 1404 CIC) unleashes all its juridical force in this field as well.” If, therefore, Benedict XVI's motives were not proportionate to the act he was about to perform, he had to answer for it - and he has already done so - to God alone.

Thus falls the fundamental argument of Faré, but also of other well-known exponents in the media world, that Francis' election was invalid because Benedict XVI was still legitimate pope, due to the alleged invalidity or nullity of his renunciation. But the authors also challenge another popular argument about the invalidity of Bergoglio's election. Indeed, Faré endorsed U.S. journalist Jonathan Last's reconstruction that the 2013 election was the result of “a campaign planned in advance by four radical cardinals” from the so-called “St. Gallen group.” This planning would render the election null and void, as it conflicts with No. 76 of *Universi Dominici Gregis (UDG)*, an apostolic constitution that precisely regulates the conclave. But the paragraph invoked is not, according to canonistic interpretation, among the irritating prescriptions, that is, among

those prescriptions that, if not observed, would render the election null and void. Besides the fact that neither is the famous maneuvering of the four cardinals proven, nor is it able to know how much it would actually affect the conclave.

The authors also recall that the possible "participation in the conclave of cardinals affected by the penal sanction of excommunication does not in any way invalidate the election, as provided for by no. 35 UDG"; just as the thesis of a nullity of the conclave insofar as it was initiated in advance and in the absence of two cardinal electors is "legally unfounded" since no. 38 UDG "obliges all cardinal electors to comply with the announcement of convocation unless they are held back by infirmity or other impediment brought to the knowledge of the entire college of cardinals"; a case in which the two absent cardinals were included. The anticipation of the conclave also appears to be in accordance with No. 37, amended precisely by Benedict XVI. In summary, it can be said that the UDG "was perfectly observed; and the cardinals, having recognized the impediment of the absent cardinals, quite congruously had recourse to the power provided by No. 37 UDG, which was probably introduced by Benedict XVI precisely for the hypothesis of *vacatio* consequent to the valid papal resignation: a case in which the cardinals could have met before the prescribed time, since it was not necessary to celebrate the solemn funeral of the deceased pontiff. A further element, the latter, which implicitly but irrefutably confirms Joseph Ratzinger's actual intention to leave office and certainly not to simulate it in order to 'place himself in sede impedita.'"