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More on the alleged invalidity of Benedict XVI's Declaratio. Et de hoc satis

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N.B. The one published below is a machine translation (the original Italian version here).

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Nihil sub sole novum. This is how one could summarize the feeling aroused by reading the thirty-seven-page pamphlet, entitled I Will Not Deliver the Lion. The case of Benedict XVI's Declaratio: a canonical-historical analysis, recently disseminated by Giorgio Maria Faré through his social channels. The arguments put forward by the author, in fact, are not new and slavishly take up theories already held by others; as, moreover, he himself acknowledges where he admits that, in particular, “the inquiry of [Andrea] Cionci provided me with the fundamental elements for the legal interpretation of Benedict XVI's declaration” (p. 4).

Is Benedict XVI's act of renunciation “nonexistent” ?

Faré first of all believes that the writ of renunciation penned by Joseph Ratzinger - dated February 10, 2013 and, as is well known, read the following day in the presence of a part of the College of Cardinals gathered during an ordinary public consistory for the canonization of some blessed - would be “inexistent as a juridical act” (p. 5). In this regard, it should be pointed out, on the basis of authoritative doctrine, that nonexistence is a serious “pathology” of the juridical act that occurs, for example, when there is an absence among its essential elements either of the will, in that the one who performs it does not act freely, or of the object of the act itself (thus Eduardo Baura, Parte generale del diritto canonico. Law and normative system, Edusc, Rome, 2013, pp. 106 and 112-113). In Faré's opinion, one would derive the lack of the voluntas renuntiandi from the title of the document (Declaratio) and from the formula used by Benedict XVI (“declaro me ministerio [...] renuntiare”), who should have resorted to the aside, the only correct one as well as one that has become invalid in “legal jargon” (p. 5), “I renounce.” Indeed, one cannot help but point out that these reasons are merely and reductively not formalistic, but formalistic, and therefore absolutely unsuitable to stand as decisive “tools” for the correct understanding of the substantive substratum of the renunciation. The heading of an act, on the other hand, constitutes an index which, taken individually, reveals nothing about its content, especially and precisely in the canonical order, as is universally known; one need only think of the debate that animated twentieth-century canonistics about the juridical qualification of the sixteen documents of the Second Vatican Ecumenical Council, for which it was unanimously considered wholly insufficient to take an approach that was limited to the titles assigned to them of Constitutio, Declaratio and Decretum. With regard to the words used by the pontiff, it should be recalled that renunciation gives rise to a declaration of will with constitutive efficacy, that is, aimed at innovating the juridical reality by determining - in the case in point - the cessation of an ecclesiastical office, the Petrine office: what integrates, with obvious clarity in the context of Declaratio, the object of the act of

renunciation (precisely of the office) on which the consequences of the decision taken fell. Therefore, it is unclear for what plausible reason it should have been required that the pope use a different, and legally ultroneous, expression such as "'I declare that I renounce, as in fact I renounce' or similar formula" (p. 5). Such a conclusion, on the one hand, purports to introduce a limitation of primatial power, thus being contrary to positive divine law; on the other hand, it in no way reaches the demonstration that the renunciation lacked the "will to abdicate" (p. 5) and was therefore even non-existent on the level of law; moreover, the explicit reference to the vacancy of the Apostolic See dispels any doubt on this point and, in any case, it cannot be ignored how on several occasions Ratzinger 2 reiterated his intention to leave the pontificate: circumstances, these, which corroborate the iuris tantum presumption of the validity of the renunciation (cf. can. 124 § 2 of the Codex Iuris Canonici - CIC -). Faré disregards these elements, citing in footnotes in support of his thesis the publication of an Argentine priest who claims to specialize in theology and Youtube clips of lawyers practicing in Italy, obnubilating, therefore, the numerous and consistent academic works given to print in recent years by authoritative jurists who not since today are industrious in the analysis of Church law and who have examined in detail and with acrimony the juridical profiles of Benedict XVI's Declaratio.

This is a serious shortcoming that emerges ictu oculi from the final bibliography (pp. 32-37) and incontrovertibly proves the non-existence of a rigorously scientific method, which must necessarily guide the expository itinerary of an intervention on complex and delicate issues, widely disseminated online and therefore capable of disorienting a not inconsiderable number of christifideles. One has, in fact, the impression that Faré's "pamphlet" has been packaged in support of a preconstituted thesis, the contrary opinions not even being mentioned, which also deserve careful consideration and - it is worth stressing - certainly do not come from the so-called "confundists," "legitimists of Bergoglio." "enemies of the Church and the pope," 'followers of the Church of the Antichrist,' 'courtiers,' or those who would be on the 'payroll' of the reigning pontiff, according to deplorable labels that some often and lightly attribute, in order not to counter ideas but to denigrate people, thus revealing a disconcerting lack of arguments. The criteria superintending a research activity that can truly be considered scientific, on the other hand, demand first of all a full mastery of the subject investigated, then the neutral analysis of the stances expressed on the quæstio disputed and, finally, the elaboration of a reasoning that refutes point by point the assertions that are considered less reliable. All these are "qualities" that do not connote Faré's reconstruction, where in some passages there are real macroscopic canonistic 'slips': as when it is argued that

the renunciation would be juridically nonexistent since it was not “succeeded by any ratification” (p. 5). Yet, can. 332 § 2 CIC, in continuity with what is provided in can. 221 of the Pius-Benedictine Code of 1917, but indeed with the entire canonical tradition, provides that the pope's act is not required to be accepted by anyone (“non vero ut a quopiam acceptetur”): a clarification anchored in the constitutional structure of the Church and aimed at reaffirming the governing prerogatives of the successor of Peter, holder of supreme power (can. 331 CIC), which cannot be abstracted from constraints prescribed by norms of human law (cf. Geraldina Boni, Sopra una rinuncia. Pope Benedict XVI's Decision and the Law, Bononia University Press, Bologna, 2015, p. 82 ff., and the extensive doctrine cited there). Consequently, one cannot force the acceptance of the “resignation,” since it would empower the person or authority who would receive it to be able to reject it, which is not conceivable; nor can one force the pope to ratify his decision, having already unequivocally manifested his will to the whole Church and, moreover, not being obliged to a fulfillment that would unduly limit that supreme power of which he has full availability. For these reasons, therefore, neither positive law nor practice will ever be able to impose an obligation to ratify, crossing the impassable boundaries drawn by the ius divinum.

There is, moreover, a blatant short-circuit in Faré's reasoning, which, while on the one hand laments the failure to ratify the renunciation, nevertheless not established by law, on the other assumes a questionable positivist view, notoriously foreign to the nature of ius Ecclesiæ, in order to denounce the transgression of can. 189 § 3 CIC, according to whose tenor the renunciation without acceptance takes effect by means of the communication of the renouncer made in accordance with the law. The objective pursued by the author is to 3 challenge Benedict XVI's apposition in the act of renunciation of an initial term (dies a quo) from which it took effect. Significantly, he considers that this would not be possible before a “‘pure juridical act’ [...] which, because of [its] importance and in order to avoid possible uncertainties and ambiguities, does not [admit] the presence of accidental elements, which are usually the condition and the term,” otherwise the act itself would also be “non-existent” (p. 5). Premised on the fact 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, the inapplicability of some codicil provisions to the pope's acts, resulting from an interpretation of the normative dictate in accordance with the ius divinum, is again not taken into account. Only through a rough investigation, in fact, can it be inferred from the text of can. 189 § 3 CIC that the renunciation should produce an “immediate effect,” since “no provision is

made for a possibility of deferment" (p. 5). But what is not explicitly stated in canon law does not mean that it is implicitly forbidden: efficacy, on the contrary, could legitimately be deferred in time, given that renunciation is an act of government by which one determines only the cessation of the ownership of the apex office of jurisdiction in the Church, not detecting in any way the divine investiture of the office and on the understanding that the papacy does not represent the fourth degree of the sacrament of order (cf. Geraldina Boni, Sopra una rinuncia. The Decision of Pope Benedict XVI and the Law, cit., p. 116 ff., with mention of the not scarce literature on the point). This, moreover, happens, mutatis mutandis, also when the pope accepts the renunciations presented by diocesan bishops upon reaching the age of 75 pursuant to canon 401 § 1 CIC, although usually the clause "nunc pro tunc" is introduced, that is, deferring the effectiveness of the accepted renunciation to the moment when the appointment of the new bishop in charge of the diocese concerned is publicly announced (cf. Congregation for Bishops, The Bishop Emeritus, Libreria editrice vaticana, Vatican City, 2008, p. 26; see on this point Manuel Ganarin, Reflections regarding the provisions on the renunciation of diocesan bishops and holders of offices of pontifical appointment, in Revista general de derecho canónico y derecho eclesiástico del Estado, no. 47 [2018], pp. 1-48). Joseph Ratzinger, therefore, was likely inspired by the practice followed by the Holy See, having well in mind the fundamental distinction between power of order and power of jurisdiction, which also justifies the affixing of the initial term to papal renunciation. The observation that "in jurisprudence in general and in canonical literature in particular this possibility is not contemplated" (p. 5) is then evidently found to be unfounded.

Munus and ministerium

The alleged distinction between munus and ministerium now rises to a leitmotif, admittedly a little smoky and abortive, of the lucubrations of all those who contest the validity of Pope Benedict XVI's resignation and, consequently, the election of Pope Francis on March 13, 2013. There are, however, two crucial elements that an analysis that is as objective as it is complete of the issue should by no means overlook. First, one must take note of the existing synonymy between the two terms in light of the normative and magisterial documents published especially following the Second Vatican Ecumenical Council. It is surprising, in this regard, how Faré cites an essay dating back to 1989 by Péter Erdő, where the distinguished author-now a cardinal-excluded with an eloquent and peremptory statement: "Ministerium, munus et officium sunt vocabula non parva ex parte synonima" (Ministerium, munus et officium in Codice Iuris Canonici, in Periodica, LXXVIII [1989], p. 411); in this case, as in many others in which one 4 refers back to the distinguished canonist to evince (unwittingly) confirmations to one's own

extravagant reconstructions, the suspicion arises irrepressibly that the cardinal's non-simple writing (in Latin) was not even leafed through (for a minute examination of it cf. Geraldina Boni, Sopra una rinuncia, cit, p. 172 ff.). Similarly, another internationally renowned canonist, Juan Ignacio Arrieta, in unsuspected times, found “the fluctuating use of notions such as ‘munus,’ ‘ministry,’ and ‘office’” which “do not find unambiguous content both in the two Latin codes of canon law - the one of 1917 and the current one of 1983 - and in the documents of Vatican II, and which often turn out to be expressions used indiscriminately in the same context” (Public Function and Ecclesiastical Office, in Ius Ecclesiae, VII [1995], pp. 92-93). These are assertions, these, with the explanations with which they are exhaustively accompanied, that an intellectually honest scholar cannot help but take into consideration, at least because of the authority of those who wrote and published them: so as to avert, quite hopefully, the forcing of the meaning of the Church's legal and magisterial texts, by the obsessive search for the source that can legitimize a clumsily invented conceptual distinction. In addition, it would have been appropriate to take into account what is reported in the book by Benedict XVI's former personal secretary, Georg Gänswein, where in some salient passages the influence of Joseph Ratzinger's theological training that led him to use the term “ministerium” in his resignation statement is emphasized, being “the right and strongest word in the theological tradition,” while “munus,” in the teachings of the Second Vatican Council, has “the aim of explaining more precisely the concept of the tria munera, that is, the participation of all the faithful in the threefold function of Christ, priestly, prophetic and kingly” (Nothing but the truth. My Life at the Side of Benedict XVI, Piemme, Milan, 2023, p. 277). These clarifications, made in the awareness of the polemically and artificially raised fuss about the binomial munus/ministerium, cannot be intentionally ignored by those who, while never having known or frequented Joseph Ratzinger, claim to be able to authentically interpret and decode his thought. Along the strictly juridical side, then, an exact exegesis of the word “ministerium” in the overall context of the writ of renunciation (cf. can. 17 CIC) is as necessary as ever, so as to directly link the willingness to renounce it to the effect that resulted from Benedict XVI's decision, namely the vacancy of the Roman See. The express reference to the vacant Petrine See (“sedes Romæ, sedes Sancti Petri vacet”) - understood by some erroneously, according to an meaning foreign to the world of law, as “empty,” since the pope from 8:00 p.m. of February 28, 2013 would have found himself in a situation of a totally impeded See - is therefore decisive in the hermeneutical operation aimed at assigning to the renunciation its correct and unambiguous meaning: the most immediate and intuitive one, moreover, because it is centered on the causal link between the pope's choice (renunciation of the Petrine office) and what is juridically derived from it (vacancy of the

“See of Rome,” an expression, moreover, equivalent to that of Holy See or Apostolic See, as can also be deduced from a reading of the Apostolic Constitution Universi Dominici Gregis). Therefore, it is not tenable that munus and ministerium have “different meanings” and therefore Joseph Ratzinger's renunciation is invalid insofar as, on the basis of an approach that forgets at least the incidence of positive divine law, can. 332 § 2 CIC “introduces the necessity of explicitly renouncing the munus petrino” (p. 6). The pope, after all, could indifferently use one word rather than the other, as long as his willingness to relinquish the Petrine throne was clearly manifested: which indeed 5 happened, since it cannot be assumed that he renounced “exercising the role of pope while remaining pope” (p. 7). It is therefore useless and misleading to invoke the precedent of Pope Celestine V's 1294 renunciation, about which, moreover, Ratzinger himself had declared in 2018 that he was “well aware that the situation of Celestine V was extremely peculiar and therefore could in no way be invoked as a precedent” (Peter Seewald, Benedict XVI. A Life, Garzanti, Milan, 2020, p. 1202). Or allege the nullity of the Declaratio due to substantial error (cf. can. 188 CIC) of the renouncer, the victim of an absurd “trial of intentions” to be ruled out at root, given the multiple occasions on which Ratzinger peremptorily reaffirmed the validity of his “resignation” and recognized the full legitimacy of his successor; o theorizing about an “anti-usurpation plan” that would have been prepared forty years ago by pontiffs John Paul II and Benedict XVI, when the accounts of the preparatory work of the 1983 Code, published beginning in 1969 in the semi-annual journal Communicationes, show that both were in no way involved in the drafting phase of can. 332 § 2 CIC. Just as it is juridically completely irrelevant to recall what Cardinal Angelo Sodano pronounced following the reading of the act of renunciation, where the cardinal referred to “pontifical service,” to fancifully infer that he was alluding to “ministerium” (p. 7), despite the fact that Sodano himself had later convened, as dean of the College of Cardinals, on March 1, 2013, the first general congregation of cardinals (electors and non-electors), evidently assuming that the Apostolic See was vacant (and certainly not impeded). Or, again, to instrumentalize to one's own advantage the thinking of some scholars, such as that of Stefano Violi, who, in a contribution cited by Faré and published online in 2019, pointed out-perhaps in the awareness that a somewhat perfunctory and superficial previous writing of his had fueled deleterious chaos-how Benedict XVI's gesture determined “the loss of the office and of the annexed powers.

From this it follows that the see of the bishop of Rome becomes vacant by reason of the resignation, and the Pope-elect exercises in full the munus petrino, the ecclesiastical office of Roman pontiff with all the powers attached. Renunciation, however, does not

entail in the resignant the loss of ontological participation in the sacred munera and in the exercise of those ministries related to the munus that do not require the exercise of the power attached to the office" (Officium and munus between canonical order and ecclesial communion, in State, Churches and Confessional Pluralism [www.statoechiese.it], 2019 issue no. 31, pp. 141-142).

The "pope emeritus"

The excerpt from Violi's contribution, moreover, allows us to focus attention on a further aspect, relating to the juridical status of "pope emeritus," which, although it is "absolutely unprecedented in the history of the Church" (p. 9), has been distinguished by certain similarities with the condition of the bishop emeritus who governed the diocese until the communication of the acceptance of the renunciation presented once he had reached 75 years of age (cf. cann. 185 and 402 § 1 CIC). In both cases, in fact, the pope and the renouncing bishop no longer retain the power of jurisdiction over the universal and particular Church respectively, but the power of order remains, that is, "the grace and sacramental character of the episcopate, on which rest properly possible tasks and missions peculiar to [them] still reliable" (Congregation for Bishops, The Bishop Emeritus, cit., p. 4; cf. extensively Geraldina Boni, Above a Renunciation. Benedict XVI's Decision and the Law, cit., passim). And Benedict XVI reiterated this unchangeable arrangement when he specified that the institution of the "emeritus" would avert a diarchy at the top of the Church: since "the word 'emeritus' indicated not the incumbent holder of a certain bishopric, but the former bishop who 6 continued to have a special relationship with his former see" (Peter Seewald, Benedict XVI. A Life, cit, p. 1205), a peculiar bond by virtue of the munus received with episcopal consecration which, imprinted with an indelible character, would not cease with the renunciation of the Petrine office. Therefore, the thesis put forward by the Colombian lawyer Estefanía Acosta and taken up by Giorgio Maria Faré, for whom only in the case of the diocesan bishop munus and ministerium would be separable from each other, seems incomprehensible: "For a bishop this possibility exists and this is what happens when he retires: he retains the munus, that is, being a bishop, which was conferred on him through a Sacrament and which is therefore not erasable, but he does not retain the ministerium, that is, the task of administering a diocese.

Conversely, for the Supreme Pontiff to renounce the ministerium alone while retaining the munus is a legal impossibility "insofar as it leads to a splitting of functions which, by divine law, are necessarily inseparable (because the integral titularity of the same by a single person is essential to guarantee the unity of the Church)" (p. 8). Rebus sic

stantibus, if this were indeed the case and according to Acosta's theorizing, the pope could in no way, given the similarities between the canonical status of “bishop emeritus” and that of “pope emeritus,” renounce the office of Roman pontiff; yet all this does not correspond to the consistent and cohesive tradition of the Church as well as the actual intentions of Joseph Ratzinger, who wanted to leave the throne of Peter paving the way for the election of his successor: while retaining, like his brethren in the episcopate, the munus deriving from the third degree of the sacrament of order. This key of interpretation, moreover, turns out to be indispensable for fully understanding and not altering the sense of part of the speech delivered during the general audience of February 27, 2013 and recalled by Faré, where Benedict XVI, albeit in language that is not legally unimpeachable, had in some way foreshadowed the characteristic features of the status of “pope emeritus,” into which he would “enter” the following day, implying the loss of the office of Roman pontiff and the preservation of a bond of a spiritual nature, in hiddenness and prayer, with the See of Rome and thus with the universal Church: “The 'always' is also a 'forever'-there is no more returning to the private sphere. My decision to renounce the active exercise of ministry does not revoke this. I do not return to private life, to a life of travel, meetings, receptions, conferences and so on. I do not abandon the cross, but remain in a new way with the Crucified Lord. I no longer carry the power of the office for the government of the Church, but in the service of prayer I remain, so to speak, in the enclosure of St. Peter.” As for the reasons that convinced Benedict XVI to resign his 'resignation,' it is surprising and not a little surprising that Faré firmly recuses how advanced age alone can ground it on a causal level-“this justification is unacceptable” (p. 8)-since in the 1990s such a possibility was ruled out by Cardinal Vincenzo Fagiolo (cf. La rinuncia al papato e la rinuncia all'ufficio episcopale [The Case of Pope Celestine V], University of Teramo, Teramo, 1995, pp. 11-24). It is evident that the convictions-which were in truth more a wishful thinking: cf. Geraldina Boni, Sopra una rinuncia, cit., p. 64 ff. - matured by a scholar, albeit an authoritative one, cannot be translated into a prohibition delimiting the discretionary evaluation of the Church's supreme authority. The latter, at the time of renunciation, is accountable to no one for its decision - the principle Prima Sedes a nemine iudicatur (can. 1404 CIC) unleashes all its juridical force in this field as well -, citing reasons that could, if anything, invalidate the profiles of lawfulness, but not those of validity of the act; in fact, the pope assumes his responsibilities regarding the existence of a cause for the renunciation, rooted, in the last resort, in the sole good of the Church, exclusively coram Deo (cf. Geraldina Boni, Sopra una rinuncia, cit, p. 31 ff.). 7

The validity of the 2013 conclave

Given the counter-arguments set forth so far, the arguments that support the overall structure of Giorgio Maria Faré's writing are in no way supportable. There are, in fact, insufficient and legally grounded elements that could seriously question the validity of Benedict XVI's resignation: and the succession of ambiguous circumstances - “Benedict XVI continued to call himself ‘His Holiness Benedict XVI,’ to dress in white [indeed, without wearing the symbols of actual Petrine jurisdiction anymore: N. ed.], to sign himself P.P. and impart the papal blessing, kept the coat of arms he had as pope while expressly rejecting a new one” (p. 9) - does not constitute decisive evidence, given that Ratzinger neither was in the impeded seat nor, from 8 p.m. on Feb. 28, 2013, did he ever until his death adopt an act of government stricto sensu. Therefore, what is stipulated in can 153 § 1 CIC, according to which the provision of an ecclesiastical office that is not vacant de iure - but only de facto, because it is occupied by a holder who would be considered abusive - is null and void by the law itself and does not become valid by subsequent vacancy of the office itself, is not applicable in the present case.

In 2013 there was a legitimate and regular turnover in the office of Roman Pontiff through the resignation of Benedict XVI and the election of Francis, both of which are fully valid under current law. In this regard, one cannot help but point out how the objections to Joseph Ratzinger's renunciation have intensified especially since 2020, thus a full seven years after the beginning of Jorge Mario Bergoglio's pontificate, proving that their proponents were and still are probably moved by a prejudice and ideological aversion to the reigning pope and especially to the programmatic lines of direction adopted by him, rather than by the need for the law to be correctly understood and applied in some very delicate moments in the life of the Church. Yet, if there had been manifest anomalies, as is insistently attempted to be shown, each of them would have been promptly pointed out and denounced by canonists: many of whom are certainly not accusable of servility or omertà, and who have not been tender or indulgent in stigmatizing certain legally claudicant reforms or in condemning certain intolerable abuses of authority perpetrated in the Church in the last five decades. Be that as it may, beyond Declaratio, now there has been a tendency to challenge, with questionable arguments, also the validity of the 2013 conclave, artfully seeking legal loopholes that would demonstrate the violation of the Apostolic Constitution Universi Dominici Gregis (UDG) of St. John Paul II of Feb. 22, 1996, that is, the special law that regulates the matter, and not the impeded See, which also deserves an ad hoc law, referred to in can. 335 CIC, but as yet unpromulgated (cf. Synodality in the normative activity of the Church.

The contribution of canon science to the formation of law proposals, edited by Ilaria Zuanazzi, Maria Chiara Ruscazio, Valerio Gigliotti, Mucchi editore, Modena, 2023, pp. 506, in which can be consulted two proposals for laws drafted by an international group of canonists on the totally impeded Roman See and the juridical status of the bishop of Rome who has renounced), modified by Benedict XVI with the Motu Proprio of June 11, 2007 (De aliquibus mutationibus in normis de electione Romani Pontificis) and February 22, 2013 (Normas nonnullas). Faré in particular takes up the reconstruction of journalist Jonathan V. Last to denounce that the last papal election was allegedly influenced to a decisive extent by four cardinals who were part of the so-called "St. Gallen group" and constituted, during the voting in the Sistine Chapel, the ""Team Bergoglio"" (p. 10). The author, therefore, appeals to nos. 79-82 of Universi Dominici 8 Gregis, which "forbid the Cardinal electors from promising votes, making decisions about the successor in private conventicles, welcoming interference from secular authorities, etc." (p. 10): and violation of these prohibitions, in some cases sanctioned with the penalty of excommunication latæ sententiæ, would, in his opinion, have caused the "nullity" (p. 10) of Francis' election under No. 76 of the same Apostolic Constitution. Granted that no direct evidence has ever been produced with which one would prove the actual ability of the restricted "St. Gallen group" to have "piloted" the more than one hundred cardinals participating in the 2013 conclave, delving into the complex electoral legislation with the help of the elucidations of canonistics actually leads to a diametrically opposite interpretative outcome. In fact, the prescriptions Faré refers to are not irritants, that is, their transgression does not give rise to the invalidity of the election (cf. can. 10 CIC): the same No. 76, moreover, is placed in Chapter V of Part II, dedicated to the conduct of the electoral phase (De electionis explicatione) and therefore, employing the hermeneutical canon of the context of the law (cf. can. 17 CIC), "we cannot consider that the Legislator with this No. 76 intends to declare all the laws contained in the UDG to be irritating," having intended, if anything, to attribute invalidating efficacy to 'only the norms strictly related to election' (Ivan Grigis, La Costituzione Apostolica Universi Dominici Gregis, Pontificia Università Lateranense, Rome, 2004, pp. 343-344), to deprive the cardinal electors of the "power of reform or innovation on the procedures [...], to be observed stricto iure" (Mario Francesco Pompedda, Sub n. 76 UDG, in Commentary on Pastor Bonus and the Subsidiary Norms of the Roman Curia, edited by Pio Vito Pinto, Libreria editrice vaticana, Vatican City, 2003, p. 359). Among the latter, one cannot include those in nos. 79-82 UDG, not coincidentally placed in a separate chapter, VI (De iis quæ servanda vel vitanda sunt in electione Romani Pontificis), in which there are a series of prohibitions, the violation of one of which is not in any way sanctioned (notably no. 79, which prohibits anyone, not excluding cardinals, from bargaining, while the pontiff is

alive and without having consulted him, about the election of his successor or from promising votes or making decisions in this regard in private conventicles), while another merely declares the nullity and invalidity of "capitulations," which occur when cardinals before the election make commitments by mutual agreement, obligating themselves to carry them out if one of them is elected to the papal throne (No. 82).

Finally, the Apostolic Constitution punishes with excommunication latæ sententiæ those cardinal electors who fail to safeguard the conclave "ab externo," that is, from the veto or interference of secular authorities (No. 80), or who endeavor to conclude pacts, agreements, promises or other commitments of any kind, even under oath, that compel them to give or deny to one or some their vote, providing also in this case for the nullity and invalidity of such pacts (No. 81). In both cases, moreover, it should be remembered that the participation in the conclave of cardinals affected by the penal sanction of excommunication does not in any way invalidate the election, as provided for in No. 35 UDG, which precludes the exclusion of the active and passive voice of cardinal electors "nulla ratione vel causa," except as stipulated in Nos. 40 (refusal to take part in the election or to remain in the election without manifest reason of illness) and 75 (ballot hypothesis, whereby only the two names that received the most votes in the previous ballot but the candidates in question cannot cast their votes) enjoy passive voice. Nos. 35 and 75 UDG were, among other things, reformed by Benedict XVI with the Motu Proprio Normas nonnullas, which amended a fundamentally important "preconclave" provision, namely No. 37, to give the College of Cardinals the power to anticipate the beginning of the conclave before fifteen days have elapsed since the Apostolic See is legitimately vacant, provided that all the cardinal electors are present. 9 Recently, there have been those who have objected to the nullity of the canonical provision of the Petrine office on the grounds that the College of Cardinals would have violated this requirement to initiate the conclave two days in advance despite the fact that two cardinals were not present. But even this reconstruction is legally unfounded, this time in light of no. 38 UDG, which obliges all cardinal electors to comply with the announcement of convocation unless they are held back by infirmity or other impediment brought to the attention of the entire college of cardinals: what happened on March 8, 2013, when the eighth general congregation of cardinals (electors and non-electors) decided that four days later, on March 12, the conclave would begin, while the record of the seventh general congregation reports that "the Cardinal Dean, in accordance with no. 38 of the Apostolic Constitution Universi Dominici gregis, informed the College of Cardinals about the reasons presented by two cardinal electors to justify their absence: they are Card. Julius Darmaatmadja (health reasons) and Card. Keith

Michael Patrick O'Brien (personal reasons). Card. Dean asked if the College agreed to recognize these reasons. The answer was in the affirmative. The final number of electors was thus 115. Card. Dean then noted that as a result of this, since there were no other electors to wait for, there was no need to wait a full fifteen days for the Conclave to begin, since no. 37 of the Apostolic Constitution as amended by Pope Benedict XVI's recent Motu Proprio, which states, '...I leave, moreover, to the College of Cardinals the faculty to anticipate the beginning of the Conclave if it is satisfied that all the Cardinal electors are present'" (Briefing on the Sixth and Seventh General Congregation of the College of Cardinals, March 8, 2013, available at https://press. vatican.va; on the alleged anomalies of Bergoglio's election see Geraldina Boni, Sull'elezione di Papa Francesco, in Archivio Giuridico Filippo Serafini, CCXXXV [2015], pp. 179-191).

The Universi Dominici Gregis, therefore, was perfectly observed; and the cardinals, having recognized the impediment of the absent cardinals, quite congruously resorted to the power of No. 37 UDG, which was likely introduced by Benedict XVI precisely for the hypothesis of vacatio consequent to a valid papal resignation: a case in which the cardinals could have gathered 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'.

Papa dubius, papa nullus

At the end of the 'juridical part' of the work made public by Giorgio Maria Faré, the author recalls the principle, “coming from the canonistic tradition” (p. 11), according to which in case of doubt about the election the pope must necessarily be considered null (papa dubius, papa nullus). Although reference is made to a contribution by Gianfranco Ghirlanda, published in La Civiltà Cattolica in 2013 (see Cessation of the Office of Roman Pontiff, in La Civiltà Cattolica, CLXIII [2013], I, pp. 445-462) and in which the noted canonist argues that this principle applies only in the presence of a “positive and insoluble doubt,” Faré departs from the well-established acquisitions of canonistics by noting that “if there is even a single doubt (not a certainty!) that the superior does not actually hold the office he claims to hold, he is not owed obedience” (p. 11, italics added). It would therefore be enough for someone in the Church to harbor more or less well-founded suspicions about the legitimacy of the papal election to “break” the bond of communion that unites the people of God to the hierarchy (cf. can. 205 CIC); indeed, it would constitute “a fact that the election of Card. Bergoglio has been questioned 10 from several quarters, and each of these hypotheses has had no official denials,” with

the Holy See failing to respond to the ”copious arguments advanced throughout the years.” Consequently, “Pope Francis is certainly a dubious pope” (p. 11), and even for “Bergoglio and at least part of the College of Cardinals [...] one cannot even presume good faith” because “they have always been aware of the invalidity of the election” (p. 13). These are entirely peregrine considerations. A dubium about the validity of an election, including that of the bishop of Rome, can undoubtedly arise: but it should first and foremost be distinguished by certain pregnant features that outline the contours of an objective state of uncertainty, possibly propagated in a substantial part of the community of christifideles scattered throughout the world (although the degree to which a doubt is spread does not constitute a revealing “index” of its objective foundation). On the contrary, the theories revived by Faré do not integrate the extremes of an objective, positive and probable doubt, relying on apodictic and preconceived assertions, unsupported by a robust argumentative framework, that is, such as to stand as a reliable alternative to what is hastily labeled as the “vulgata,” that is, the official version falsely conveyed by the mass media (on the types of doubt relevant in the canonical system see, for all, Eduardo Baura, General Part of Canon Law. Law and the normative system, cit., pp. 369370). In essence, the level of credibility of the theses propounded appears visibly insubstantial: and there is little or no use in lamenting the alleged bad faith of the cardinals or in bringing misguided and counterproductive initiatives such as the petition to the Tribunal of First Instance of the State of Vatican City, filed to request “the recognition of the nullity of the abdication of Pope Benedict XVI” (p. 24). In this regard, one still waits for the initiators to elucidate what would be the legal grounds of the petitio, forwarded to the organ of justice operating in the tiny State beyond the Tiber, which, however, has no competence to deal with such issues, pertaining by their nature to the Holy See and therefore to the canonical order, and certainly not to the Vatican's: distinct orders, though peculiarly interrelated. The canonistic improvisation is compounded by the speciousness of statements with which one hastily dismisses opposing arguments, such as pacifica universalis Ecclesiæ adhæsio about the election of Francis, to be unscrupulously disregarded since there would be “numerous discordant voices persisting over time, however minority” that would rule out “a ‘peaceful and universal’ consensus” (p. 12). But it is not possible that anyone's misgivings, as fragile as they are questionable, could undermine the formation of such a consensus and result in the nullity of the election of an allegedly “dubious” pope: the universal scope of adherence does not equate to a unanimity of existing convictions in the people of God, and where there are dissenting minorities, they must make themselves the bearers of seriously reasoned and adequately supported suppositions, for otherwise only confusion and disorientation are engendered, to the serious

detriment of both salus animarum and unitas Ecclesiæ, which conversely should be preserved with the utmost care.

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