CONCLAVE: A DEMOCRATIC EXPERIMENT

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Abstract

The article deals with one of the most important topics in Canon law: the regulation of the Conclave. Historical research questions the transition from acclamation to electoral experience, analyzing its rules and related legal institutions.

Keywords

Canon law. Electoral system and democracy. Rules of Roman Catholic Church.

Summary

Introduction. 1. Legal regulation of secrecy. 2. Legal axiology and principology of the conclave. 3. Specific legal rules. 4. Conclusion: the realization of the conclave according to current law. References.

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INTRODUCTION

With the death of the Pope, the conclave begins, which is perhaps the most complex and standardized electoral process in all of humanity. Throughout the Church's thousand-year history, norms have been established to make the election of the new Pope, Pontiff, and supreme head of the Roman Catholic Church ever more suitable and fairer. Each norm has its raison d'être and is always based on the experience accumulated over the centuries, on ecclesial reasons and on theological principles. This is the case, for example, with the obligation of secrecy, the prohibition of any outside interference and even the choice of the Sistine Chapel as the place for voting. At the heart of all the regulations relating to the Conclave is the quest to guarantee the full exercise of the Church's sovereignty in its fidelity to Christ, to the People of God and to the principles and values of the faith. It is therefore a unique manifestation of authentic democracy. Although popes over the centuries, and even after the Second Vatican Council, have made changes to the process to be followed in the conclave, we can say that there is a central core that remains unchanged². In addition to the juridical-canonical aspect, there are elements typical of the present day, such as the diversity in the geographical origin of the cardinal-electors; the concern for dialogue between the Church and society; the need to face the challenges of the present time.

In November 1268, the cardinals met in the Palace of the Popes, located on top of a hill that overlooks the city of Viterbo, Lazio, then part of the Papal States, to elect the successor to Pope Clement IV, who had died shortly before on 29 November in the same city. By tradition, the college of cardinals met in the city where the pope died to elect his successor. On that date, the longest conclave in history began. Divisions, political interests, and internal disputes meant that the election lasted almost

² The remote source of the current rules on the conclave is Pope Gregory XV's Bull **Aeterni Patris Filius** (15 November 1621).

three years. Throughout the conclave, illnesses and even deaths reduced the number of electors.

Since the cardinals were unable to agree on a name, the authorities in the city of Viterbo took the extreme measure of closing the doors and locking them in the room of the Palace of the Popes where they were gathered to vote, until they reached a definitive result. This episode consecrated the use of the term "conclave", meaning "under lock and key" (cum clavis), as the name used to designate the process of electing the pontiff, in which the electors remain under lock and key for the entire voting period. Even so, after more than a year, they still haven't managed to elect a new Pontiff.

Pressurized by the high cost to the city of maintaining the cardinals with their respective courts, the "Podestà" of Viterbo (the ruler of the city) tried to force a result by sanctioning the stomach. To do this, he cut off all food supplies and sent only bread and water to the voters. With no result, and trying to force the cardinals even further, the "Viterbese" went to the extreme measure of removing the roof tiles from the hall where they were meeting, leaving them exposed to the sun, rain and cold. Unable to go outside to protect themselves, the cardinals were forced to erect tents right there in the meeting hall itself (whose marks are still on the pavement today) to shelter from the weather. The famous jurist Cardinal Enrico de Susa, who was ill, asked to be allowed to leave the conclave. These extreme measures, however, were not enough to immediately overcome the divisions between the Italian and imperialist factions on one side and the French on the other. Finally, after 1006 days of "Sede Vacante", the white smoke announced on 1 September 1271 the election of Cardinal Tedaldo Visconti as the new pope, who adopted the name Gregory X.

1. LEGAL REGULATION OF SECRECY

The ancient tradition of secrecy in the election of the Pontiff was enshrined in Pope Gregory XV's Bull "Aeterni Patris Filius" (15 November 1621). Whenever there was an election by ballot, the votes for the election

of a new pope had to be secret and the cardinal-electors could only vote for a single candidate³. Furthermore, it was forbidden for an elector to vote for himself.

In 1623 Pope Urban VIII Barberini was elected, applying for the first time in the history of the Church the norms promulgated two years earlier by Gregory XV. It was an election that marked the history of the papacy, as he was the first pontiff to be elected by secret ballot.

One of the reasons for imposing the duty of secrecy on conclaves was to prevent the electors, members of the College of Cardinals, from suffering external and internal pressures. In a broad sense, the institution of the secret ballot was intended to ensure greater fidelity of the College of Cardinals to the proper purposes and mission of the Church, independently of political and worldly interests. At the same time, it aims to preserve the College of Cardinals from divisions and partisanship, favoring the freedom of choice of the cardinal-electors. According to current law, anyone who violates the secrecy of the conclave will be severely punished with automatic excommunication⁴. Even those who exercise auxiliary functions during the conclave and for this reason enjoy access to the cardinal-electors and the places of confinement, must take a public oath to maintain secrecy by uttering a formula defined by the legislation itself.⁵

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³ BAUMGARTNER 2003, p. 165-181.

⁴ "n. 58. Those who in any way, as provided for in no. 46 of the present Constitution, serve in tasks inherent in the election, and who therefore, directly, or indirectly, could violate the secret - by words or writings, by signs, or anything else - must absolutely avoid it, because otherwise they would incur the penalty of excommunication *latae sententiae*, reserved to the Apostolic See". Apostolic Constitution of the Supreme Pontiff John Paul II, *Universi Dominici Gregis* - Concerning the Vacancy of the Apostolic See and the Election of the Roman Pontiff; John Paul, Bishop, Servant of the Servants of God, 22 February 1996.

⁵ No. 48. "I, N.N., promise and swear to observe absolute secrecy with every person who is not part of the College of Cardinal Electors, and this in perpetuity, unless I receive a special faculty expressly given by the newly elected Pontiff or his successors, concerning all that directly or indirectly concerns the voting and the balloting for the election of the Supreme Pontiff. In the same way, I promise and swear to abstain from making use of any

Deeply damaging and deplorable was the practice of simony, which had already been vehemently condemned by Pope Julius II in 1505^6 and repeatedly by his successors to this day⁷. In short, these were measures designed to protect the conclave from all undesirable influences that were contrary to the basic principles governing it.

2. LEGAL AXIOLOGY AND PRINCIPOLOGY OF THE CONCLAVE

In addition to organizational and political motivations, the evolution of the rules for the conclave was also marked by theological reasons. A fundamental role in the implementation of the forms was played by a group of cardinals called the "Zealots", made up of influential members such as Roberto Bellarmino and Federico Borromeo.

instrument for recording, hearing, or seeing what, during the period of the election, takes place within the confines of Vatican City, and particularly what, directly or indirectly, has to do in any way with the operations connected with the election itself. I declare that I take this oath, aware that any violation of it will entail for me the penalty of latae sententiae excommunication reserved to the Apostolic See. So, help me God and these Holy Gospels, which I touch with my hand." Apostolic Letter in the form of Motu Proprio **Normas Nonnullas** - on some changes in the norms for the election of the Roman Pontiff, Pope

⁶ "The simoniacal election of the Pope is null and void, and he who is elected by the practice of simony, even with the unanimous consent of the cardinals, is an apostate, and is to be considered a simoniac and a heresiarch; to be deprived of every office and benefice, as well as of the cardinal's rank which he formerly held, becoming perpetually unfit for all such honors, offices and emoluments, ..." Bull *Cum tam Divino*, Pope Julius II - decrees the nullity of the pontifical election through simony, 14 January 1505.

Benedict XVI, 25 February 2013.

⁷ "N. 78 If the crime of simony were perpetrated in the election of the Roman Pontiff - God forbid - I resolve and declare that all those who become guilty of it incur *latae sententiae* excommunication, but that the nullity or non-validity of this same simoniac provision is abolished, so that for this reason - as already established by my Predecessors - the validity of the election of the Roman Pontiff may not be impugned." Apostolic Constitution of the Supreme Pontiff John Paul II, *Universi Dominici* Gregis...."

Seeking to grant the conclave immunity from influences that were not exclusively evangelical, the members of this group advocated the adoption of reforms to the process of electing the pontiff, favoring freedom of conscience. For the "zealous", the election in the Conclave could be vulnerable to secular interests or patronage relationships. In contrast, according to this group, the great "voter" in a conclave is the Holy Spirit himself, who guides the cardinal-electors in choosing a virtuous candidate for the good of the Church.⁸

It was under the influence of this group's line of thought that the seat of the conclave in the Vatican Palace was moved from the Pauline Chapel to the Sistine Chapel. According to the new concept, the election of the new pontiff should be an act of individual conscience on the part of the cardinals. That's why there was nothing more fitting than holding the conclave in front of Michelangelo's fresco of the Universal Judgement. The choice of the new Pope, far from political and worldly influences, would take place under the gaze of the majestic, imperious, and serene figure of Christ, represented now when the Son of Man, surrounded by all his angels, passes the final judgement (Matthew 25:31-46).

The choice of the city of Rome as the only place ordinarily possible for the celebration of a conclave is based on legal, political, and theological reasons. By obliging the conclave to be held in a single seat, Rome, the aim is to prevent multiple elections from taking place and, at the same time, to prevent the possibility, however unlikely nowadays, of simultaneous popes, as recorded in the history of the Church. In theological terms, Rome has profound historical and theological significance as the seat of the Church and the place where the apostles Peter and Paul were martyred. It also refers to the Petrine primacy and the unity of the Church.

Although the changes brought about by the "zealous" movement were not able to radically eliminate the existence of groups, factions, or

⁸ BAUER 2010.

power struggles, they did serve as a deterrent and produced a clear moralizing effect.

Values that are considered absolute today, exalting democracy as a principle to be pursued by states and society in governing peoples, are echoed in the Conclave's centuries-old rules. This certainty is supported by the elements described above, which aim to democratically preserve the election of the successor of the Apostle Peter in the government of the Church from any influence that is not exclusively for the good of the People of God, fidelity to its mission and its principles.

3. SPECIFIC LEGAL RULES

In addition to the secret election by ballot, which is currently the only way of electing the pope in the conclave, in the past there were other ways, by adoration, by acclamation and by compromise. These last three have been abolished and can no longer be adopted.

3.1. FOR WORSHIP

With the Bull of Gregory XV, the "election by adoration" (when the choice was made by general agreement without scrutiny or debate) was abolished. This method, in use in the past, consisted of the following: during the conclave, the leader of one of the various factions would gather a majority of cardinals who would follow him into the Pauline Chapel (where popes were elected before the Gregorian reform) and placing the chosen one on the throne in front of the altar, they would "worship" him by bowing their bodies. If other groups of cardinal-electors joined in, practiced the same gesture and reached two-thirds of the electors, the candidate subject to the "adoration" was automatically considered elected pope. Afterwards, usually on the following day, a ballot with paper ballots

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⁹ WASSILOWSKY 2024.

was held as a mere act of confirmation. By abolishing this form of election and imposing secrecy, the aim was to prevent political forces from crossing the threshold of the conclave.

3.2. BY ACCLAMATION AND BY COMMITMENT

In the election by acclamation or inspiration, all the electors, unanimously and without prior articulation or commitment, expressed their agreement with the same name, which was acclaimed. Subsequently, the name of the chosen one had to be submitted for confirmation by the members of the College of Cardinals, by secret ballot. By way of example, Pope Gregory XV himself was elected by acclamation on 19 February 1621.

Another form of election in the conclave, which was maintained by the reform of Gregory XV, was the election "by compromise", in which the College of Cardinals delegated the choice of the future pope to a group of cardinals. In this way, the election of the new pontiff was entrusted to a committee (with the power to choose). In this case too, the name of the chosen one had to be confirmed by a written vote of the electors.

3.3. ACCESS

The right of "access" was also maintained. If an elector voted for a candidate and after the votes had been counted he or she was not elected, the elector could use the right of "access" and renounce his or her vote and express his or her preference for another of the candidates voted for in that ballot. Traditionally, "access" was expressed publicly, but this practice would be a violation of the secrecy so dear to the reform of the conclave. The solution was to maintain the right of access, as long as the voter's wish was expressed in writing and only once in each ballot.

3.4. *IUS EXCLUSIVÆ*

Traditionally, some Catholic nations enjoyed the right to exercise exclusive powers during the conclave. The most important Catholic powers held the *Ius Exclusiva*, "right of exclusivity" or "right of veto"¹⁰, by which they could veto a name legitimately elected by the Conclave. According to this right, the ruler could exercise the right of veto against the choice of any of the cardinals. If exercised, the conclave would have to hold a new vote and choose another name. Today this practice is forbidden and punishable by immediate excommunication.¹¹

CONCLUSION: THE REALIZATION OF THE CONCLAVE ACCORDING TO CURRENT LAW

When the pope dies or is unable to fully fulfil his duties, or is prevented from doing so by illness, there is a period called the "Sede Vacante", which lasts until a successor is elected. During this period, both the universal church as such and the Vatican state itself¹² are governed by the authority of the College of Cardinals.

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¹⁰ Until 1904, the kings of some Catholic nations enjoyed the *Ius Exclusiva* (exclusive right or right of veto) in the election of the new Pope. In practice, this was the right of the rulers of Catholic nations to veto the choice of names contrary to their interests. In short, it was the right of Catholic monarchies to veto (once only) the name of one of the candidates in the conclave. It was last exercised in 1903, when Cardinal Jan Maurycy Pawel Puzyna of Kosielsko, Cardinal Archbishop of Krakow, Poland, on behalf of Emperor Franz Joseph of Austria, vetoed the name of Cardinal Mariano Rampolla del Tindaro, then Secretary of State, during the election of Leo XIII's successor. With Pope Pius X's Apostolic Constitution *Commissum Nobis* of 20 January 1904, this right was abolished in all its forms. LAMACCHIA 2018.

¹¹ N.80. Apostolic Constitution of the Supreme Pontiff John Paul II, *Universi Dominici Gregis*, 1996

^{12 &}quot;1. The Supreme Pontiff, Sovrano dello Stato della Città del Vaticano, has the pienezza dei poteri legislativo, esecutivo e giudiziario. During the vacant seat, the same powers are vested in the Sacred College, which may issue legislative provisions only in cases of urgency

During this time, the Cardinal Camerlengo takes possession of the Apostolic Palaces, takes care of the funerals of the deceased pontiff and, together with the College of Cardinals, begins the procedures for holding the conclave.

Once the state of "sede vacante" has been declared, the conclave must begin within "a full 15 days", allowing enough time for the absent cardinal-electors to arrive in Vatican City. If, however, all the cardinal-electors are present before this deadline, the College of Cardinals can bring forward the start of the conclave. Likewise, for serious reasons, it can postpone it for a few more days, but it cannot exceed 20 days, after which those present are obliged to begin the conclave. ¹³

According to ancient tradition, the Pope is elected exclusively by the College of Cardinals gathered in conclave¹⁴. The election is by ballot, and the one who obtains two-thirds of the votes of the cardinal-electors present at the conclave is considered elected¹⁵. According to the current rule, cardinals under the age of 80 have a say in the conclave. Previously non-existent, the age limit was established by Pope Paul VI in 1970 in the wake of the post-conciliar reforms. Pope Montini, in addition to the age limit,

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and to take effect not beyond the duration of the vacancy, unless they are conferred by the Supreme Pontiff successively elected in accordance with the sacred constitutions." Motu Proprio del Sommo Pontefice, Pius XI, Legge Fondamentale della Città del Vaticano, 7 June 1929.

¹³ Apostolic Letter given in the form of a Motu Proprio **Normas Nonnullas** of the Supreme Pontiff Pope Benedict XVI - On Certain Modifications of the Norms Relating to the Election of the Roman Pontiff, 22 February 2013.

¹⁴ With the Decree *In Nomine Domini* of 13 April 1059 (http://www.conclave.it/documenti.php?id= innominedomini), Pope Nicholas II determined that only cardinals could elect a new pontiff. On 19 March 1179, Pope Alessandro III, with the *Licet de Vitanda Decree (http://nnw.conclave.it/documenti.php?id=licetdevitanda)*, determined that all votes would have the same weight.

¹⁵ ALEXANDER III Supreme Pontiff Apostolic Constitution **Licet De Vitanda** March 19, 1179. In http://www.geocities.ws/caleb1x/documents/licet.html (on 10.10.2024).

limited the maximum number of cardinal-electors to 120. This restriction, however, does not prevent a cardinal who has passed the age of 80 from being elected as the new pontiff, as he only loses the active voice and continues to enjoy the passive voice.¹⁶

"II. Upon reaching the age of eighty, Cardinals: 1) cease to be members of the dicasteries of the Roman Curia and of the other bodies mentioned in the previous article; 2) lose the right to elect the Roman Pontiff and therefore also the right to enter the conclave. However, if any Cardinal reaches the age of eighty during the conclave, he will continue to enjoy, for that conclave, the right to elect the Roman Pontiff...IV. The provision of art. II above also applies to Cardinals who, after having reached the age of eighty, exceptionally continue to govern a diocese and even retain the title without the government. ... V. Cardinals, even after having reached the age of eighty, continue to be members of the Sacred College for all other purposes, and retain all other rights and prerogatives linked to the cardinal's office, including the faculty to participate in the General and Particular Congregations which, in the Sede Vacante, are held before the start of the conclave "17

At the opening of the conclave, with the cardinal-electors gathered in the Sistine Chapel, the Pontifical Master of Ceremonies pronounces the Latin expression, *extra omnes*, literally meaning "all out". Then all those who

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¹⁷ Litterae Apostolicae Motu Proprio Datae **Ingravescentem Aetatem** Patrum Cardinalium Aetas ad Maioris Momenti Munera Exercenda Statuitur, Paulus PP. VI, 21 November 1970. In https://www.vatican.va/content/paul-vi/it/motu_proprio/documents/hf_p-vi_motu-proprio_19701120_ingravescentem.html (on 20 December 2024).

are not members of the Conclave leave the Sistine Chapel, the doors are closed and the process of electing the new pope begins.

Once the conclave has begun, the cardinal-electors cannot leave the areas reserved for them or have contact with the outside world until the new pope is elected. Both the place where the voting takes place, the Sistine Chapel, and all the areas set aside for food, circulation, and accommodation for the cardinal-electors¹⁸, are considered "closed-off", i.e. restricted, for the entire duration of the conclave until the election of the new pontiff. Cardinal-electors gathered in conclave are therefore forbidden any contact with the outside world, except in the case of an extreme emergency.

For this reason, the cardinal-electors necessarily stay on Vatican territory itself. Traditionally, they were housed in improvised dormitories near the Sistine Chapel. During the pontificate of Pope John Paul II in 1996, however, the Casa Santa Marta (*Domus Sanctae Marthae*) was inaugurated within Vatican territory, to the left of St Peter's Basilica. St Martha, the sister of Mary and Lazarus (Lk 10:38-42) is the patron saint of the building, which has around 130 rooms. It is a structure built specifically to serve as accommodation for the cardinal-electors on the days of the conclave. Normally, the building serves as a residence for ecclesiastics in the service of the Apostolic See or passing through Rome. During the conclave, the rooms and all the spaces used by the cardinal-electors are deprived of any instruments of communication or contact with the outside world, such as newspapers, telephones, computers, radio, television, and others. Special buses transport the cardinal-electors between Santa Marta House and the Sistine Chapel.

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¹⁸ Since 1996, the electors have stayed at Casa Santa Marta, in the territory of Vatican City: "42. At the time fixed for the beginning of the operations of the election of the Supreme Pontiff, all the Cardinal electors must have received and occupied decent lodging in the designated *Domus Sanctae Marthae*, recently built in Vatican City." Apostolic Constitution of the Supreme Pontiff John Paul II, *Universi Dominici Gregis*, 1996

Strictly speaking, any Catholic can be elected pope, but according to the canonical norm in force, the pontiff must have or receive episcopal ordination. In practice, however, the elected pope has been one of the members of the College of Cardinals. According to the norm of can. 332, § 1, two hypotheses can occur after the legitimate election of a new pope and his acceptance: a) if he is already endowed with the episcopal character, he acquires this power from the moment of acceptance; b) if the elect does not enjoy the episcopal character, he must be immediately ordained a bishop.

In 1996, with the entry into force of the Apostolic Constitution *Universi Dominici Gregis*, only the suffrage by vote of the cardinal-electors presents at the conclave remained as the only way of electing a new pope, for which a quorum of two thirds is required. It is important to note that with the Motu Proprio *De aliquibus mutationibus in normis de electione Romani Pontificis of* 11 June 2007, two years after his election to the *solium pontificius*, Pope Benedict XVI revoked the norm of his predecessor¹⁹, which gave the cardinal-electors the possibility of changing the necessary quorum after several unsuccessful votes. Pope Ratzinger thus restored the obligatory two-thirds majority, as determined by the Church's millennia-old tradition. He determined that after 33 votes, excluding the first day's vote (if it was held), in successive ballots, only the two candidates who received the most votes in the previous ballot have a passive voice, and both are prohibited from voting.

For the votes, the rule applies according to which, if after three days of voting none of the candidates has obtained the required two-thirds majority, the voting is suspended for up to a full day so that the cardinal-

¹⁹ "n. 75 If the voting is unsuccessful, even after having proceeded as stipulated in the preceding paragraph, the Cardinal electors will be invited by the Camerlengo to give their opinion on how to proceed and will proceed according to what their absolute majority has established." Apostolic Constitution of the Supreme Pontiff John Paul II, *Universi Dominici* Gregis, 1996.

electors can devote themselves to prayer and hear an exhortation from the most senior cardinal of the Order of Deacons. If there is no result after the seven successive ballots, the conclave will be interrupted again, but this time the exhortation will be given by the most senior Cardinal Presbyter. If seven more votes are cast without a satisfactory result, the conclave is interrupted again for prayers and the third exhortation is made by the oldest of the cardinal bishops. If, after seven successive votes, no result has been achieved, there will be a day of prayer, reflection and dialogue. In the following votes, only the two candidates whose names received the most votes in the last ballot will be eligible. Of the two, the name that obtains a two-thirds majority will be considered elected.

The day begins with the celebration of the sacred functions or prayers that are indicated in the *Ordo Rituum Conclavis*²⁰. Every day, two votes are cast, in the morning and in the afternoon, after which the ballots are incinerated in a furnace in the Sistine Chapel itself, from whose chimney smoke comes out indicating the result of the election. Black smoke indicates that the new pope was not elected in that ballot. If white smoke comes out, it means that the new pope has just been elected.

When a name is canonically elected, "the last" of the Cardinal Deacons invites the Secretary of the College of Cardinals, the Master of the Pontifical Liturgical Celebrations and two Ceremonials to enter the conclave. In front of them and in the name of all the cardinal-electors, the Cardinal Dean, or the first of the Cardinals according to the order and years of cardinalate, pronounces the following sentence: *Do you accept your canonical election as Supreme Pontiff?* If the Cardinal accepts, and it should be noted that the person elected may refuse to accept the office, he should be asked: *How do you want to be called?* Acting as a notary, the Master of the Pontifical Liturgical Celebrations, together with the two ceremonials as witnesses,

²⁰ n. 74 Apostolic Constitution of the Supreme Pontiff John Paul II, *Universi Dominici Gregis*, 1996.

records in the minutes the acceptance of the new Pontiff and the name he has chosen.

A detailed ceremonial determines how the voting takes place. The electors themselves are chosen: three cardinals responsible for collecting the votes of those who are ill, three responsible for counting the votes and finally three others who read out the results. Each of the electors receives a white ballot paper on which they must write the name of their choice. Having written their name, the cardinal-electors, one by one, go to the altar and swearing to fulfil their duty honestly, insert the ballot into the ballot box. After everyone has voted, the ballots are counted and the votes read out. The cardinal-electors are informed of the result. Excluding the vote on the first day, until a quorum of two thirds has been reached, up to four votes can be taken on the same day, two in the morning and two in the afternoon, to preserve secrecy, immediately after each ballot the ballots are incinerated.

Finally, the cardinal protodeacon (dean of the order of deacons), from the balcony of St Peter's Basilica, announces to the people gathered in the square:

- Nuntio vobis gaudium magnum ("I announce to you a great joy");
- Habemus Papam ("We have the Pope");
- Eminentissimum *et* Reverendissimum *Dominum* ("Most Eminent and Most Reverend...") ...;
- qui sibi imposuit nomen... ("who chose for himself the name of ...") adding the name chosen by the new pontiff.

At this point the new Pope is presented to the people, he is acclaimed and for the first time he gives the *Urbi et Orbi* blessing (to the city and the world). A new pontificate begins.

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