

Papal Designation

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Choosing a new head of the Catholic Church is a very complex and scientifically complicated topic. Historians study the circumstances of the election of popes, search for motivations and behind-the-scenes pressure within the conclave, and deal with the extent to which secular powers interfere with the freedom and autonomy of elections. What has remained at the margin of interest, however, are the actual principles for selecting the Bishop of Rome. Although we have regarded electoral competition as the only acceptable and traditional method, the history of the church offers numerous contrary examples. We are speaking mainly of so-called papal designation, which refers to the prior determination of a specific candidate for the papal office during the lifetime of the current pope. This study both concentrates on mapping the historical developments in this area, and reflects on the legal aspects of the issue and interpretative perspectives on the designation.¹

An historical view

A brief look at the evolution of the designation of bishops attests to the fact that the early church frequently resorted to directly appointing the superior of a religious community by a qualified authority. Concerning the Roman church, sources also say that the Apostle Peter was supposed to choose a suc-

1) This article has been published as a part of the research project The Czech Science Foundation (GACR) GP401/09/P128 *The right of exclusion and the possibilities to influence of papal elections.*

cessor and authorise him to head the local church.² Other Bishops of Rome acted likewise. For example, the religious historian Eusebius of Caesarea said that after Peter died, the apostles passed the management of the Roman church to Linus; he in turn to Clement; he to Evaristus, etc.³ This was undoubtedly a non-standard process; the Apostle Paul also chose religious leaders personally. Designation certainly existed in the early church and was frequently applied, but that does not mean it should be a model and norm when choosing new bishops. This is documented by the synod held in Antioch in 341, which ruled out the possibility of bishops designating their suc-

cessors prior to their own death.⁴ The conclusions of synods in Rome in both 462 and 465 spoke in the same vein.⁵

The reference to the Roman practice is crucial for understanding designation, because the functional models of the Roman religious community affected the conduct of the rest of the Latin Church. The key edict of interest to us is the decree on papal election, in which Pope Symmachus (498–514), as part of the synod in 499, established designation as a form of selecting his successors. Specifically, we are interested in the 4th canon, forbidding clerics to negotiate and elect the pope's successor while the pope is alive; later on, it specified that should the pope die unexpectedly without having determined the method of selecting his successor, an election should be held in which an absolute majority of votes would be decisive, unless the election were unanimous. According to the wording of the decree, it is the pope's task to take care, along with the rest of the Roman clergy, of appointing his successor.⁶

The interpretation of the aforementioned document may not be entirely evident. We could view it as a mere instruction for popes to not permit any confusion concerning the selection of their successors, and to take

2) See *Apostolic Constitutions*, VII, 46: „Of the church of Rome, Linus the son of Claudia was the first, ordained by Paul; and Clemens, after Linus' death, the second, ordained by me Peter.“ <http://www.ccel.org/ccel/schaff/anf07.ix.viii.iv.html>; or *Rufini Aquileiensis presbyteri in S. Clementis recognitionum libros. Praefatio ad Gaudentium episcopum*. G. GERSDORF (ed.), Leipzig 1838, p. 2: „Cuius rei hanc accepimus esse rationem, quod Linus et Cletus fuerunt quidem ante Clementem Episcopi in urbe Roma, sed superstite Petro, videlicet, ut illi Episcopatus curam gererent, ipse vero Apostolatus impleret officium. Sicut invenitur etiam apud Caesaream fecisse; ubi cum ipse esset praesens, Zachaeum tamen a se ordinatum habebat Episcopum. Et hoc modo utrumque verum videbitur: ut et illi ante Clementem numerentur Episcopi, et Clemens tamen post obitum Petri docendi susceperit sedem.“ See also P. SCHAFF, *Ante-Nicene Fathers*, Vol. 3, Buffalo 1885, p. 258.

3) Ireneus speaks in the same vein: „1. The blessed apostles having founded and established the church, entrusted the office of the episcopate to Linus. Paul speaks of this Linus in his Epistles to Timothy. 2. Anencletus succeeded him, and after Anencletus, in the third place from the apostles, Clement received the episcopate. He had seen and conversed with the blessed apostles, and their preaching was still sounding in his ears, and their tradition was still before his eyes. Nor was he alone in this, for many who had been taught by the apostles yet survived. 4. A little farther on he says: Evaristus succeeded Clement, and Alexander, Evaristus. Then Xystus, the sixth from the apostles, was appointed. After him Telesphorus, who suffered martyrdom gloriously; then Hyginus; then Pius; and after him Anicetus; Soter succeeded Anicetus; and now, in the twelfth place from the apostles, Eleutherus holds the office of bishop. 5. In the same order and succession the tradition in the Church and the preaching of the truth has descended from the apostles unto us.“ Eusebius Caesariensis, *Historia Ecclesiastica*, V, 6 (Engl. Translation see <http://www.newadvent.org/fathers/250105.htm>). See also A. EHRHARDT, *The Apostolic Succession: in the first centuries of the Church*, London 1953, p. 39.

4) K. J. HEFELE, *Conciliengeschichte*. Vol. I., Freiburg am Breisgau 1855, p. 500: „Einem Bischof ist nicht erlaubt, für sich einen Nachfolger zu bestellen, auch wenn er an das Ende seines Lebens kommt. Geschieht aber Solches, so soll die Aufstellung ungültig sein. Es soll aber die kirchliche Regel bewahrt werden, welche enthält: es dürfe ein Bischof nicht anders bestellt werden als durch eine Synode und nach dem Urtheil der Bischöfe, die nach dem Tode des Vorigen das Recht haben, den Würdigen zu befördern.“

5) K. J. HEFELE, *Conciliengeschichte*. Vol. II., Freiburg am Breisgau 1875, pp. 590, 593.

6) J. D. MANSI, *Sacrorum conciliorum nova amplissima collectio*. Vol. VIII. Synodus Romana sub Symmacho Papa, c. 4, p. 232: „Si, quod absit, transitus papae inopinatus evenerit, ut de sui electione successoris, ut supra placuit, non possit ante decernere, si quidem in unum totius inclinaverit ecclesiastici ordinis electio, consecratur electus episcopus, si autem, ut fieri solet, studia coeperint esse diversa eorum de quibus certamen emergerit, vincat sententia plurimorum, sic tamen ut sacerdotio careat, qui captus promissione non recto iudicio de electione decreverit.“

proper care of everything in due time.⁷ However, the words about co-operating with the Roman clergy suggest that the pope was not meant to act individually. Theoretically, he might have only recommended one or more candidates, who would then ascend to the papal throne via a regular election. Yet most scholars do not doubt that Symmachus' decree opened a path towards papal designation.⁸ It might not have been the regular selection method, but rather a measure that the pope could have used if confusion or ambiguous voting were a threat. Symmachus in fact would not proceed to designation: his successor was established in an election.⁹ By contrast, one of his successors, Pope Felix IV (526–530), boldly designated Roman Archdeacon Boniface on the basis of the decree.

It seems that it was mostly political circumstances that decided whether to use designation. It was not a purely organisational or theological/legal issue. Quite to the contrary, it was significantly influenced by the current political and religious situation. The designation of Boniface was opposed by both the Roman Senate and a significant portion of the Roman clergy.¹⁰ They saw a preordained candidate for the papal throne in the Italian context of an ongoing struggle between the Gothic and the Byzantine parties. Any possible reservations concerning the new pope's character or optimum intellectual and organisational capacities did not play a role in the

critique of the designation.¹¹ With respect to the Ostrogoth government, the opposition could not argue on political grounds, so they built on the legal view of Dionysius Exiguus, the chief legal authority of the Roman Church, who regarded negatively any method of appointing bishops other than through an election.¹² It seems that under the circumstances, the combination of Boniface's power, influence and indubitable capacity to lead the Roman Church resolved the situation. The opposition did achieve the election of Dioscorus as a counter-candidate, but they gave up following his early death and accepted Boniface (530–532).¹³

Only at that moment did designation begin to play a key role. The new pope consolidated his position by formally condemning Dioscorus and his followers, and elevated the instrument of his own promotion – designation – to a standard element of appointing the Bishops of Rome. The Roman clergy had to pledge to not act against any other preordination of a successor in the future. At the same time, a synod summoned by the pope presented Deacon Vigilus as the newly-designated successor. The attending priests had to sign the designation and then affirm their approval with an oath on the tomb of St. Peter in St. Peter's Basilica.¹⁴

With regard to likely further developments, there can be little doubt that the firm position of designation would bring fatal consequences to the functioning of the Roman Church. Although designation guaranteed the peace and stability of the church in the reality of the early 6th century, in the longer term it opened the door to harmful nepotism, family politics, and

7) Hinschius understood the decree as Symmachus' attempt to leave the process of selecting new popes in papal hands. See P. HINSCHIUS, *Das Kirchenrecht der Katholiken und Protestanten in Deutschland*. Vol. I, Berlin 1869, p. 227: „Ende des 5 Jahrhunderts hat aber Papst Symmachus auf der römischen Synode von 499 den Versuch gemacht die Regierung der Nachfolge auf dem päpstlichen Stuhl der Entscheidung oder doch mindestens einem entscheidenden Einfluss des lebenden Papstes vielleicht durch Abforderung eines eidlichen auf die Wahl des Designierten gerichteten Versprechens der Wähler zu unterwerfen.“

8) See summary of authors in F. J. FÜHR, *Probleme des Rechtsinstituts der Papstwahl und ihre Lösung im Laufe der Jahrhunderte*, Köln 1936, pp. 21–22.

9) *Le Liber Pontificalis. Texte, introduction et commentaire*. Vol. I., L. DUCHESNE (ed.), Paris 1886, p. 269.

10) This is clearly documented by a resolution of the Roman Senate forbidding any negotiations concerning a future pope while the current one was still alive. If anyone violated that ban, he could expect serious monetary sanctions or even expulsion. *Liber pontificalis I*, p. 281.

11) Sources reveal that Boniface was of Gothic descent and, being an archdeacon of the Roman Church, a person experienced with financial management and church organisation. To Felix, he was a safeguard against blunders: Boniface was capable of forming a consensus with the Ostrogoth government and, as a man of considerable personal wealth, could take care of the material needs of the Roman Church.

12) HEFELE, *Conciliengeschichte I*. Die sogenannten Apostolischen Canonen, c. LXXVI, p. 797: „Episcopum fratri suo, aut filio vel propinquo episcopatum largiri, et quos ipse vult, ordinare non decet, aequum enim non est, ut Dei dona humano affectu dividantur, et ecclesia Christi, episcopatusque haereditatum jura sequatur. Si quis ita fecerit, ejus quidem ordinatio sit irrita, ipse vero segregationis ferat poenam.“

13) *Liber pontificalis I*, p. 281.

14) *Liber pontificalis I*, p. 281: „Hic congregavit synodum in basilica beati Petri apostoli et fecit constitutum, ut sibi successorem ordinaret. Quod constitutum cum cyrographis sacerdotum et jusjurandum ante confessionem beati apostoli Petri in diaconum Vigilium constituit.“

lobbying pressure. At that time, designation was not enforced: Boniface soon had to yield, recall his designation and personally burn the appointing decree.¹⁵ Designation was dismissed as a violation of the rights of the Roman clergy, which again meant a full enforcement of elections.

No similar attempt to enforce designation in the proper sense can be found in subsequent periods. Naturally, individual popes used various supporting measures to prepare the advent of their favourites, but none of them attempted a legal codification of designation. An example is Pope Stephen II (752–757), who shortly before his death had to face efforts by the pro-Byzantine party to achieve the election of a candidate who would deviate from the policy of papal collaboration with Frankish kings. However, Archdeacon Theofylaktos, favoured by the Byzantines, was confronted with Pope Stephen's opposition: the pope recommended his own brother, Deacon Paul, in conjunction with the majority of the Roman clergy. This was evidently not a binding designation, yet the delegation of the pope's brother was so powerful that it sufficed for him to be elected after Stephen's death. The opposition party surrendered, although the anti-Frankish hostility among a substantial part of the Roman clergy would remain.¹⁶

The so-called Tusculan Papacy, which defined the religious atmosphere in Rome in the first half of the 11th century, can be viewed as a form of designation. After the first pope of the aforementioned family, Benedict VIII, (1012–1024) ascended, he launched an epoch of familial occupation of the papal throne. After his death, he was succeeded by his brother John XIX (1024–1032), and he in turn by his nephew Benedict IX (1032–1044). The elections of 1024 and 1032 were undoubtedly decided by the power of the Tusculans and bribery, but a direct designation by predecessors cannot be ruled out. Despite this, I should be a bit more cautious in my assessment: John XIX (born Romanus) was a mere laic when he ascended, and had to quickly accept all ordinations prior to his coronation. If Benedict VIII had endeavoured to be succeeded by his brother, he would probably have given

15) *Ibidem.*, pp. 281: „Eodem tempore, factum iterum synodum, hoc consuerunt sacerdotes omnes propter reverentiam sedis sanctae et quia contra canones fuerat hoc factum et quia culpa eum respiciebat, ut successorem sibi constitueret; ipse Bonifatius papa reum se confessus est majestatis, quod in diaconum Vigilium sua subscriptione cyrographi; ante confessionem beati apostoli Petri ipsum prasentia omnium sacerdotum et cleri et senatus incendio consumpsit.”

16) *Liber pontificalis* I, pp. 462–463.

him better preparation. However, designation cannot be ruled out. In the case of Benedict IX, Pope John himself was less influential than his brother and the actual sovereign of Rome, Senator Alberic III, who nominated and put through his own son.¹⁷

Another interesting designation attempt came during the Gregorian Reform. A generally well-known way in which the Reform papacy secured control over papal elections was to restrict the electors to a narrow group of cardinal bishops. However, this measure provided cover for another instrument: designation. Starting with Gregory VII (1073–1085), each pope in office prepared the way for promoting the person whom he regarded as a guarantee of maintaining the current reform trend. In a period of severe struggle for investiture, in which the papal court was also opposed by the majority of national episcopates, the popes would not rely on coincidence, and preordained their chosen successors in the cardinals' council, clearly and regularly. This motive can be attested for Gregory VII, who designated Abbot of Monte Cassino Desiderius; Victor III (1086–1087) did the same for Odo of Ostia, who then continued the reform as Urban II (1088–1099).¹⁸

17) More about the Tusculan Papacy see K.-J. HERRMANN, *Das Tuskulanerpapsttum (1012–1046)*, Stuttgart 1973.

18) „...on the 9th of March 1088, there assembled in the Church of Ss. Peter and Cæsarius, attached to the palace of the bishop of Terracina, some forty bishops and abbots, Benedict, the papal prefect of Rome, and a certain number of representatives of the ultramontane bishops and of the Countess Matilda. After the wishes of Popes Gregory and Victor as to their successors had been made known to the assembly, the usual three days of fasting and prayer were proclaimed, and the meeting adjourned till Sunday. On that day, when the prelates were again gathered together in the same church, the bishops of Tusculum, Porto and Albano mounted the ambo together, and together proposed that Otho, bishop of Ostia, should be elected. Mindful of the wishes of the two late popes, and attracted by his amiable character, his ability, and his fine tall figure, the whole assembly, “with wonderful and complete accord, and with loud voice”, signified its assent. Then, no sooner had the bishop of Albano announced that the new pope wished to be called Urban, than all rose to their feet, crowded round the object of their choice, stripped him of his mantle of wool (cappa lanea), clothed him in purple, and with acclamations of joy and invocations of the Holy Ghost hurried him to the altar of Blessed Peter the apostle, and placed him on the pontifical throne. Nor did the assembly break up till after Urban had said Mass, and had been duly installed.” H. K. MANN, *The Lives of the Popes in the Middle Ages. The Popes of the Gregorian Renaissance, St. Leo IX. to Honorius II., 1049–1130*. Vol. VII (1073–1099), London 1925, pp. 256–257.

Designation was clearly manifested in the circumstances of the appointment of Pope Callixtus II (1119–1024). Since the current Pope Gelasius II (1118–1119) had to leave Italy following serious conflict with Roman opposition and find refuge in southern France, his succession had to be dealt with before it turned into a power struggle. The ageing Gelasius proposed Cuno, the Bishop of Palestrina, to the cardinals. However, he refused the designation and instead proposed Archbishop Guy de Vienne, whom the cardinals elected at Cluny. The remarkable fact is that Gelasius really did change his designation in favour of Guy, and the rest of the cardinals, who lingered in Rome, agreed with the election later on without protest.¹⁹ All of that would seem to attest to a relatively stable and respected method of nomination. However, any further continuation of the designation practice came up against a complicated situation in Rome, where two factions of the nobility – the Frangipane and the Pierleoni – struggled. Notorious is the intervention against cardinal Teobaldo Boccadipeccora, whom the Frangipane forced to abdicate immediately after he was formally elected (1124),²⁰ and also the papal schism in which each of the competing families enforced the election of their “own” pope (Innocent II vs. Anacletus II, 1130).²¹

Historians agree that it was only the legislation of Alexander III (1159–1181), who established at the 3rd Lateran Council the obligation to receive 2/3 of the valid votes to be elected, that stabilised the process of selecting new popes. The subsequent establishment of an election conclave further restricted the chances of designation by popes. Cardinals of the late 12th century consistently insisted on their right to determine the new popes, and would not allow any papal designations.²² Although the power and authority of the Bishops of Rome increased in the later period of the Late Middle Ages, the position of the cardinals and the curial officials appears to have been equally stable. There was no change to the selection of new popes through conclave negotiations; to the contrary, the growing conciliarism led instead to an appreciation of the religious authorities outside the Roman curia.

Modern times brought a new stage of evolution to the issue of papal designation. There could be no speculation about new attempts to

nominate one’s successor, yet numerous indirect measures were implemented. Nepotism – preference to the pope’s relatives in cardinals’ nominations – became the fundamental element.²³ Given that a new pope was selected from the cardinals’ council, the dominance of that group by followers of the current pope was a form of designation. However, the process of selecting the new head of the Catholic Church was influenced by numerous other factors; above all, the pressure of Catholic monarchs and regular bribes to electors made it difficult to promote “chosen” members of the pope’s family. From the end of the 16th century, the power struggle of the leading Catholic monarchies became the chief obstacle to nepotistic designation. Each of them kept a jealous eye on the ambition of the other royal courts, and any potential nepotist had to make patient compromises. Frequently, the leader of the nepotistic party had to fight hard even to achieve the election of a member of his faction, while his personal or familial ambition had to yield.²⁴ Moreover, we must not forget the respected right of three Catholic monarchies – the Roman-German Empire, Spain, and France – to veto the election of a candidate they regarded as dangerous (so-called *jus exclusivae*).²⁵ The notion that a pope could nominate a candidate at his own discretion and choice under these circumstances was a vain one. The election procedure had become the only feasible option for choosing new popes, all the more so because so many different interests and players were involved in the election process.

23) W. REINHARD, *Nepotismus: der Funktionswandel einer päpstgeschichtlichen Konstanten*, in: Zeitschrift für Kirchengeschichte 86 (1975), pp. 144–185; A. MENNITI IPPOLITO, *Il tramonto della Curia nepotista. Papi, nipoti e burocrazia curiale tra XVI e XVII secolo*, Roma 2008.

24) For more about Papal Policy see G. SIGNOROTTO/M. A. VISCEGLIA (eds.), *Court and Politics in Papal Rome, 1492-1700*, Cambridge 2002.

25) Basic characteristics of *jus exclusivae* can be found, for example, at L. LECTOR, *Le Conclave. Origines, histoire, organisation, législation, ancienne et moderne*, Paris 1894, pp. 469–475; A. GIOBBIO, *Austria, Francia e Spagna e l’Esclusiva nel Conclave*, Roma 1903, pp. 4–6; J. B. SÄGMÜLLER, *Die Papstwahlen und die Staaten von 1447 bis 1555. Eine kirchenrechtlich-historische Untersuchung über den Anfang des staatlichen Rechtes der Exklusive in der Papstwahl*, Aalen 1967, pp. 1–3; D. SUCHÁNEK, *Jus exclusivae a zásahy státní moci do papežských voleb*. In: *Totalitarismus IV: Interdisciplinární pohled*, I. T. Budil/T. Zíková (eds.), Praha 2008, pp. 49–57.

19) M. STROLL, *Calixtus II. (1119–1124): A Pope Born to Rule*, Leiden 2004, pp. 58–76.

20) *Liber pontificalis* II., p. 327; R. HÜLS, *Kardinäle, Klerus und Kirche Roms*, Tübingen 1977, pp. 106–107.

21) E. MÜHLBACHER, *Die streitige Papstwahl des Jahres 1130*, Aalen 1966.

22) FÜHR, p. 25.

A legal view

An accurate classification of designation within the legal aspect of the Catholic Church requires the distinction of several forms of preordination. Direct designation (in the narrow sense) is the most important: it stands for an explicit and legally binding ordination by a qualified party of a person for an office that is to become vacant in the future. Through this designation, the person is given a so-called *ius ad rem*, which changes to *ius in re* in case the preordained office is attained. A weaker form is indirect designation (in the broader sense), referring to a recommendation made for a certain person before an office becomes vacant. The qualified authorities deciding on assigning the office feel bound to reflect the recommendation. Unlike direct designation, the indirect form conveys no more than a moral, not legal obligation: those who decide on assigning the office retain some freedom of action from a legal point of view. This is why literature frequently speaks of commendation rather than designation. The lowest form of designation is a mere recommendation, expression of support, or other partial action in favour of a person; however, designation is not a relevant category for this type.²⁶

Gratian remains the key authority for the legal assessment of designation. He concludes that designation should not be ruled out for selecting popes as well as other episcopal offices. Admittedly, it was banned by later regulations, but only with regard to incompetence and possible abuse. Gratian dealt with the issue in the context of both papal elections and the assignment of episcopal offices. In the former instance, he built upon Pope Symmachus' decree, from which he inferred that the selection of a Roman pope can also be legally determined by the current pope.²⁷ In the latter instance, he agreed that a bishop may ordain his successor, at least in the form of appointing a coadjutor, who is given full powers after the bishop's death.²⁸ Gratian therefore did not doubt the actual legal "purity" of designation. If he did not rely on it too much, it was out of respect for religious prohibitions which

excluded it from religious practice. Still, it cannot be denied that these bans are grounded "merely" in religious law, not divine law. This means that designation cannot be rejected once and for all: if external conditions change and an opposite situation arises, designation may be restored without committing lawlessness.

If church lawyers have still considered designation inadmissible, it was due to its being refused by religious authorities and established religious practice. The opinion that designation is legally admissible but less appropriate than election was held by canonical law throughout the Middle Ages and modern times (election is the *modus plurimum magis conveniens*). If needed, however, the pope could temporarily suspend the election procedure and open a path for designation (popes are above the canonical law, i.e. *supra ius*).²⁹

However, designation has not always been regarded as an exceptional and extreme form of appointing popes and bishops. For example, the outstanding lawyer Francisco de Vitoria in his *Relectiones theologicae de potestate ecclesiae* argued that designation is a natural method of selecting successors. Since Jesus Christ did not stipulate or recommend any binding method, we shall regard as crucial the method preferred by the one whom Jesus entrusted with managing the church and the related powers: St. Peter. That is why Peter could set designation as a permanent method for selecting successors. When Peter's actions are analyzed, designation really becomes apparent as a method of selection.³⁰ However, such strong support for designation is only found quite exceptionally in interpretations of canonical legal issues. The overwhelming majority of lawyers have acknowledged the pope's right to use designation, but only as an exceptional measure, which cannot be labelled as desirable and standard.³¹

Legally, designation is based on the exceptional position of the pope within the church. This presumption is evident from the earliest examples of ordaining the successors we have quoted. New Testament references speak about ordaining superiors of emergent religious communities

26) See J. HOLLWECK, *Kann der papst seinen Nachfolger bestimmen?*, in: *Archiv für katholisches Kirchenrecht* 74 (1895), pp. 331-334; FÜHR, p. 20; L. GAUGUSCH, *Das Rechtsinstitut der Papstwahl*, Wien 1905, pp. 214-219.

27) *Electio Romani Pontificis, etiam cum deliberatione praedecessoris fieri debet* (c. 2, D. 79).

28) Besides Symmachus' decree, he refers chiefly to Pope Zachary, who allowed the Archbishop of Mainz to ordain his successor with full successor rights (*„...in plenitudine succederet potestatis.“*) C. VIII. qu. 1.

29) HOLLWECK, pp. 334-349.

30) J. F. Schulte, *Die Geschichte der Quellen und Literatur des Canonischen Rechts von Papst Gregor IX. bis zum Concil von Trient*, Vol. II., Stuttgart 1877, p. 714. See also HOLLWECK, pp. 349-351.

31) However, the designation refused K. HOLDER, *Die Designation durch die Päpste*, Freiburg im Breisgau 1898.

through apostles and their disciples, and about examples from Rome, where several successors of Peter (regardless of whether part of a monepiscopate or a wider group of superiors³²) attained their offices through direct appointment by their predecessors. There was a rule that through Jesus' delegation, the pope disposes of a jurisdiction over the rest of the church, making him the supreme legislator with the right to stand above all provisions of canonical law (*supra ius*); he is only bound in the realm of divine law (*ius divinum*). Since there is no proof in the New Testament or the tradition of the early church that Jesus prohibited designation, the pope may treat the issue of ordaining his successors in any way he prefers. If election has become superior to designation, the reasons probably lie outside legal theory.³³

Can a pope designate his successor today?

With respect to the evolution of the religious-political context, designation can only be admitted theoretically. There would have to be exceptional circumstances that would render the existing forms of selecting a new pope, i.e., through an election conclave, impracticable. Even if the election conclave, the constituent cardinals, or the election venue, for instance, were at risk, the emergency legal form would aim instead at modifying the existing electoral process. Examples could include the crises in the late 18th and early 19th centuries, the Napoleonic period, and the emergency legislation following the dissolution of the Papal State in the latter half of the 19th century. Pius VI (1775–1799) tried to secure an election for the time when Rome would not be in the hands of the church, and the possibility for cardinals to attend would depend on the generosity of the secular powers.³⁴ Pius IX (1846–1878), in turn, was confronted with the possibility of the Italian government finally destroying his refuge in the Vatican. He therefore put an emphasis on commemo-

rating the freedom of the papal election and protested against any secular interference.³⁵ His successor Leo XIII (1878–1903) acted in a similar way.³⁶

The pope could also suspend the election form temporarily under an immediate wartime threat, and secure his succession by a designation. However, as far as we know, neither Pius XI (1922–1939) nor Pius XII (1939–1958) counted on that option when the Apostolic Throne was under pressure. Indirect designation – commendation – is more likely. Experience has shown that many popes have indirectly prepared their fellows for their potential candidacy to the papal throne by selecting and delegating them to prominent offices within the Papal curia. The 20th century has even provided us with direct evidence: explicit words of support in favour of a specific person. Leo XIII, for instance, openly expressed his full support for his Secretary of State Marianno Rampolla, and Pius X made it no secret that his choice would be Secretary of State Merry del Val. Likewise, Pope Pius XI made his support for Eugenio Pacelli no secret, and labelled him directly as his chosen successor. He also appointed him to the three most prominent positions in the Vatican hierarchy, which made him the most influential man in the Catholic Church on the eve of the 1939 election conclave – he held the offices of a cardinal state secretary, and both Camerlengo (chamberlain) offices: the Sacred College of Cardinals and the Holy Roman Church.³⁷

All three examples clearly demonstrate the differences between designation and commendation. A moral obligation will always come up against the oath of each cardinal to elect according to his conscience and best conviction, always with a regard to the benefit of the church. The will of the previous pope may admittedly play a role, but as long as election remains the foundation, cardinals are obliged to follow their conscience, which should not (and must not in principle) be superseded by the personality and will of the deceased pope. Out of the men referred to above, only Eugenio Pacelli was elected as Pius XII. Undoubtedly, it had more to do with his exceptional abilities, high church authorities and the unsettled time of his election. The will of the previous pope alone could not have sufficed for him to be elected.

32) A. EHRHARDT, *The Apostolic Succession: in the first centuries of the Church*, London 1953, p. 63; H. CHADWICK, *The Church in Ancient Society: from Galilee to Gregory the Great*, Oxford 2001, p. 64; T. DOWLEY (ed), *Eerdmans' Handbook to the History of Christianity*, Michigan 1977, p. 125.

33) J. B. SÄGMÜLLER, *Lehrbuch der katholischen Kirche*, Vol. II., Freiburg im Breisgau 1902, p. 317.

34) The Papal Bulls *Christi ecclesiae regendae* (1797) and *Cum nos superiori anno* (1798).

35) The Papal Bull *In hac sublimi* (1871) and the Constitution *Consulturi* (1877).

36) The Constitution of Leo XIII *Praedecessores nostri*.

37) Basic characteristics of the Papal Conclaves of 1903, 1914 and 1939 see G. SCHWAIGER, *Papsttum und Päpste im 20. Jahrhundert*, München 1999, pp. 105–110, 161–164, 271–272.