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Discussion  
**Papers**

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## ABSTRACT

### **Combining Autocracy and Majority Voting: The Canonical Succession Rules of the Latin Church**

The autocratic turn of the Latin Church in the XI-XIII century, a reaction to the secular power interferences, concentrated the decision-making power in the hands of the top hierarchy, and finally in the hands of the pope. A fundamental step was the change and the constitutionalisation of the procedures for leadership replacement, which were open successions where the contest for power was governed by elections. The autocratic reform limited the active electorate to the clergy only and gradually substituted the episcopal elections by the pope's direct appointment. Besides, the voting rules changed from unanimity to the dual principle of *maioritas et sanioritas* (where the majority was identified with the greater part by number and wisdom) and finally to the numerical rule of qualified majority. This evolution aimed at preserving the elections from external interferences and at eliminating the elements of arbitrariness. The most important succession, the papal election, was protected by institutionalising a selectorate and its decision-making rules. The selectorate and the elections did not insert accountability and representation mechanisms but only protected the quality of the autocratic leadership and its autonomy.

Keywords:

Theocracies  
Economics  
Relation between Church and States

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# Combining Autocracy and Majority Voting: The Canonical Succession Rules of the Latin Church

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## Abstract

The autocratic turn of the Latin Church in the XI-XIII century, a reaction to the secular power interferences, concentrated the decision-making power in the hands of the top hierarchy, and finally in the hands of the pope. A fundamental step was the change and the constitutionalisation of the procedures for leadership replacement, which were open successions where the contest for power was governed by elections. The autocratic reform limited the active electorate to the clergy only and gradually substituted the episcopal elections by the pope's direct appointment. Besides, the voting rules changed from unanimity to the dual principle of *maioritas et sanioritas* (where the majority was identified with the greater part by number and wisdom) and finally to the numerical rule of qualified majority. This evolution aimed at preserving the elections from external interferences and at eliminating the elements of arbitrariness. The most important succession, the papal election, was protected by institutionalising a selectorate and its decision-making rules. The selectorate and the elections did not insert accountability and representation mechanisms but only protected the quality of the autocratic leadership and its autonomy.

**Keywords:** theocracy, autocracy, autocratic succession, majority voting

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## 1. Introduction

*Numerantur enim sententiae, non ponderantur, nec aliud in publico consilio potest fieri*<sup>1</sup> (Plinius, *Epistulae*, Book II, 12,5): the Latin Church opposed for centuries the application of this principle to the procedures for its leadership replacement, which were essentially based on elections. Unanimity and the weighting of votes had dominated the ecclesiastic elections during the first millennium, until the pure numerical rule of majority was given juridical (canonical) form<sup>2</sup> and was finally adopted, in coincidence with the major institutional reform of the Church in the XI-XIII century.

In those centuries, the Latin Church faced and reacted to the secular powers repeated and serious attacks to its own autonomy. To support their policies and consolidate their position, kings and emperors severely interfered with the succession of bishops and abbots (the investiture), exerted pressures on the papal elections, dismissed popes and bishops, caused schisms, autonomously summoned ecclesiastic Councils. The Church reacted to emancipate the clergy from the control of emperors and feudal lords and to sharply differentiate itself as a political and legal entity from the secular polities. This represented a radical discontinuity in European history: the Papal Revolution<sup>3</sup>, which began in 1075, when Gregory VII (1073-1085) proclaimed the papal supremacy and independence from the secular power, and ended in 1122, when a compromise was reached between the papacy and the emperors.

The Papal Revolution caused also a sharp turn towards absolutism and autocracy in the governance of the Church, with the concentration of power in the hands of the pope and the elaboration of theocratic doctrines on the papal infallibility<sup>4</sup>, the papal primacy, the pope's *plenitudo potestatis*<sup>5</sup>. This essay aims at interpreting the links between the autocratic regime of the Latin Church, and its

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<sup>1</sup> [Votes must be counted and not weighted: there is no other alternative in public decisions]

<sup>2</sup> The Latin Church is a structure governed by rules and laws, although a deep antinomy between its inner nature, a community grounded on faith, and the nature of law has been repeatedly pointed out. The Lutheran canonist Rudolf Sohm (1892) stated that the nature of the canonical law is in contradiction with the nature of the Church. Other scholars acknowledge the existence of the laws of the Church only when the State grants it the *ius statuendi*: this implies a primacy of the laws of the State and that the canonical rules depend on the secular approval.

<sup>3</sup> The historical importance of the Papal Revolution is thoroughly discussed by H.J. Berman (1983). According to Berman (1983), the term "reform" is a "serious understatement, reflecting the desire of the papal party itself to play down the magnitude of the discontinuity between what had gone before and what came after. The original Latin term, *reformatio*, may suggest a more substantial break in continuity.[...] Another term used to denote the same era, namely the Investiture Struggle, .. connect the conflict between the papal and the imperial (or royal) parties with the principal slogan of the papal reformers: 'the freedom of the Church'. But even this dramatic slogan does not adequately convey the full dimensions of the revolutionary transformation,.... the disengagement of the two spheres of the sacred and the profane, from which there stemmed a release of energy and creativity analogous to a process of nuclear fission" (Berman, 1983, 87-88).

<sup>4</sup> The collection of twenty-seven propositions by Gregory VII, known as the *Dictatus Papae* (1095), firmly restated an old idea (already expressed in the collection known as False Decretals or Pseudo-Isidore of the IX century), that the Roman Church can never err. Canonists initially distinguished between the Church (*sedes*), which can never err, and the pope (*sedens*), who may err. However, at mid XIII centuries the doctrine of the pope's infallibility was more firmly grounded by St. Bonaventura and the Franciscan Pietro Olmi: the latter wrote in 1279 that all Roman Catholics should obey the pope *tamquam regulae inerrabili* [as if he were an infallible rule].

<sup>5</sup> Although it had already been employed in the XI century, the term *plenitudo potestatis* [the fullness of power] became the principal expression of the pontifical almightiness in the XIII century .

anomalous procedures for the autocratic succession, namely elections by majority voting, which are usually associated with democracy.

### 1.1 The issue of autocratic succession

The growing political economy literature on autocracies<sup>6</sup> is increasingly aware of the institutional heterogeneity of these regimes, which includes the mechanisms for leadership replacement. Tullock (1987) first focused on the constitutional modes of autocratic succession (open, hereditary, appointed) and on the relationship between them and the occurrence of coups against the incumbent autocrat. Tullock (1987) and Kurrild-Klitgaard (2000) account for the evolution of the constitutional rules of autocracies towards hereditary succession. The main focus of some recent trends of research is instead on the variables (in particular, growth and welfare-enhancing policies) that affect the probability of a dictator's survival (Grossman and Noh, 1994; Overland et al. 2005; Acemoglu and Robinson, 2006) and on the institutions that make autocratic governments accountable (Bueno de Mesquita et al., 2003; Besely and Kudamatsu, 2007). Bueno de Mesquita et al. (2003) have emphasizes the role of the 'selectorate', i.e. of the group of individuals on whom the leader depends to hold onto power and who play a role in shaping his policy incentives. Besely and Kudamatsu (2007) state that autocracies are successful if the selectorate can credibly remove poorly-performing leaders and that an autocratic regime with a high rate of leadership change is more likely to be successful on average than those with less turnover, as it has been able to generate accountability mechanisms in the absence of open contests for power.

The Latin Church which was shaped by the Papal Revolution of the XI-XIII centuries, is a religious autocracy and a successful one in terms of its time survival. Its constitutional rules provide for open succession, where "no singular particular individual is designated ex ante as being the automatic successor upon vacancy" (Kurrild-Klitgaard, 2000, 66). Open succession is however regulated by elections at the death of the autocrat (the pope) and of the top hierarchy (bishops and abbots), an element which is atypical in an autocratic regime.

Since its origin, the leadership replacement in the Church has been elective. However, in the ancient Church, the term *electio* referred more to a collective choice than to a real voting procedure: the word itself, *eligere*, means 'to choose' and not to 'elect'. In a religious perspective, the electoral moment was conceived as the expression of the whole community, acting under the influence of

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<sup>6</sup> The term autocracy is employed as in Tullock (1987) in relatively broad terms: a political regime where an individual is *de facto* – and often *de jure* – the ultimate decision-maker. This does not imply that the advice or preferences of other institutions (an executive council, a parliament) or individuals (a counsellor) are not taken into account or that there are no legal restrictions to action. Other studies, especially empirical analyses, define autocracies according to the presence or absence of elections or regularized contests for leadership and on polity scores measuring the degree of democracy (Besely and Kudamatsu, 2007)

God's will: voters were defined by Dante *denuntiatores divinae providentiae*<sup>7</sup>. Besides, the elected candidates were not considered the representatives of their constituency, as their life-long and unconditioned mandate, the transmission of the true faith and of the protection of the Church unity, was meant to come from a divine source. This rather mystical characters were not lost even later, when the electoral moment took the traits of a juridical act and the theological concepts adapted to the needs of politics.

This change was set up by historical circumstances, the break-up of the Roman Empire, the invasions and the political situation under the Merovingian and Carolingian kings and under other rulers, which compromised the spiritual power of the Church with the exercise of temporal powers. The bishops frequently remedied for the lack of civic governance and provided the cities with essential services: justice, administration, defence, food and water supply. The temporal rulers often complained for such an extensive power: "Our treasury is void: our richness have gone to the Church. Nobody reigns but the bishops. Our honour is dead: it has gone to the bishops of the cities" was the complaint of the Merovingian king Chilperic I in the VI century.

The ecclesiastical involvement in both civic and spiritual competences raised the question of the appointment: who had the right to appoint a bishop, given that he was the spiritual guide of the city but that he also performed governance functions<sup>8</sup>? The temporal rulers aimed at the controlling these independent authorities and challenged the Church in its appointment functions, by influencing the selection procedures and by making the validity of the elections dependent on their consent (§ 2.1). This sparked off the reaction of the Church and notably Gregory's VII Reform, i.e. the consolidation of the autocratic structure and of its dogmatic foundations (§.2.2), and the Investiture Struggle.

Although the Church was increasingly moving towards an autocratic regime, it did not renounce elections to regulate its leadership succession, rather it constitutionalised them by the draft of canonical procedures (§.3). The evolution of the canonical electoral laws is an example of the relationship between the search for stability in autocratic regimes and their constitutional rules governing succession, as illustrated by Tullock (1987). However, the electoral rules of the Church in the XI-XIII centuries did not evolve into hereditary succession, as Tullock's analysis assumes, but preserved their open succession character, although modified in order to grant stability, to avoid multiple equilibria and to isolate the electoral process.

The canonical rules provided for precise definitions of the active electorate (§. 3.2), which was gradually restricted to the clergy only, and for the introduction of numerical voting rules (§. 3.3).

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<sup>7</sup> [Those who reveal the divine will]

<sup>8</sup> The Latin word employed to indicate the institution of the bishop is *ordinari*, which means 'to install in a charge and in a social category'. This term was the same employed by the administrative language of the imperial bureaucracy.



The pure rule of majority, inherited from the Roman law codes<sup>9</sup>, was deemed inadequate with respect to the needs of the Church, whose character is strongly spiritualistic, transcendent and rigidly hierarchical. The solution of the canonical law was to associate a qualitative criterium to the pure numerical criterium: votes had not to be just counted, they had also to be weighted according to voters' merits and wisdom. Majority was identified with the *maior et sanior pars*, the greater part by number and wisdom. The paper describes the application of the principle to the different types of canonical elections and its various interpretations. The papal elections will deserve particular attention (§.4), as they represent an exception to the double principle of the *maioritas et sanioritas*. The whole electoral system designed by the canonical laws is ideally at the opposite of the modern individualistic, rational approach to the problems of collective choice and voting and it is also anomalous with respect to the secular autocracies. The present analysis aims at accounting for the differences between a religious autocracy and other autocratic regimes and at employing, when possible, the results provided by the political economy literature (§.5 and 6).

## **2. The foundations of autocracy in the Latin Church during the XI-XIII centuries**

The competition between the papacy and the temporal powers developed in the Middle Ages both on doctrinal and on political grounds (Figure 1): when the temporal powers tried to make the Church an *instrumentum regni* (Pacaut, 1957; Levillain, 1994), they aimed at the appropriation *de facto* and *de jure* of the appointment of its leadership. The Church reacted by structuring itself as an autocracy, which implied political countermoves, the elaboration of a theory of its supremacy, the theocratic doctrine (§ 2.2), and the setting of appropriate institutions, including the succession procedures (§.3 and 4).

### **2.1 The political conflict at the origin of the autocratic reform**

The situation of the Church in the high Middle Age Europe was marked by the continuous interferences of the secular power. The feudal regime, simony (the sale of ecclesiastical benefices) and nicolaism (clerical marriage) contaminated the clerical and, especially, the episcopal status. The succession of the bishops in large parts of Europe largely depended on the temporal power<sup>10</sup>,

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<sup>9</sup> The Roman jurists applied the majority principle to the institutions (*collegia*) ruled by the public law. The principle was thus expressed: *Refertur ad universos quod publice fit per maiorem partem*, [what is publicly decided by the greatest part is to be ascribed to the whole] and *Quod major pars curiae effecit, pro eo habetur ac si omnes egerint* [what the majority decides, must be assumed to have been decided by the whole assembly].

<sup>10</sup> The *Formula* (instructions) used by king Louis the German (843-876) for the episcopal elections states that the electoral right is granted by the king: « Prêtant à cette demande l'assentiment de notre pouvoir, par cet acte, nous concédons à titre bienveillant à cette église le droit de choisir un évêque dans son clergé ou dans celui du diocèse » [Giving the assent of our power to this request, by this act, we kindly grant this church the right to choose a bishop

although this practice was explicitly condemned by the Cluniac reformers in the tenth century, by single bishops, like St. Ambrose of Milan in the fourth century, and popes (Nicholas I, 856-867), by local and ecumenical councils of the Church (since the Council of Paris in 556).

In Italy, the papacy had difficulty in maintaining its autonomy with respect to the Byzantine empire and to the ancient Roman families. Supporters of the different parties strenuously strove to obtain the election of their leader, sometimes causing schisms and civil conflicts, as on the occasion of the double elections of Ursinus and of pope Damasus I in 366, of Eulalus and of pope Boniface I in 418, of pope Symmachus and the of deacon Laurentius in 498. The Byzantine emperors interfered with the elections, sometimes imposed by force their anti-popes or exiled incumbent popes who were not loyal to them (pope Liberius in the fourth century, pope Silverius in 536). Since the ninth century, the pope's autonomy began to be challenged also by the increasingly powerful Frankish rulers:

« Some historians argue that Pope Leo III made Charlemagne emperor, but it is closer to the truth to say that Charlemagne made Leo pope; and in 813 Charlemagne crowned his own son emperor without benefit of clergy. In fact, later German emperors required the pope, on his election, to swear an oath of loyalty to the emperor. Of the twenty-five popes who held office during the hundred years prior to 1059 (when a church synod for the first time prohibited lay investiture), twenty-one were directly appointed by emperors » (Berman, 1983, p.91).

A serious attempt to the autonomy of the Church was the investiture, i.e. the transfer of the bishopric by the king's bestowing the symbols of the territorial and administrative jurisdiction, the pastoral staff and the ring upon the elected bishop. The investiture implied the right of the king to transfer the whole charge, with its functions, rights and properties (Blumenthal, 1994) and voided of meaning the election *a clero et populo* [by the clergy and the laity], which was the legitimate source for the exercise of the episcopal function.

On many occasions the Church could not react to the secular challenges which came from more powerful institutions. However, since the XI century it showed increasingly eager to defend its own autonomy: popes Leo IX (1048-1054), Nicolas II (1059-1061) and Gregory VII (1073-1085) started to oppose the secular investitures and in 1075 Gregory VII severely forbade them, thus setting off a long conflict with the emperors, which was ended by pope Callistus II and Henry V with the Concordat of Worms in 1122. In England and Normandy, the Concordat of Bec (1107) provided for

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within its clergy or among the diocese priests] (quoted in Gaudemet, 1997, 70). Other royal *praecepta* entrusted the bishop the governance of the diocese or ordered the consecration of the king's preferred candidates.

a similar but temporary solution to the issue, which was definitely settled only after the martyrdom of the Archbishop Thomas Becket in 1170.

The compromise implied a division of the sources of legitimacy. The emperor renounced to the investiture of the bishops by bestowing the ring and the staff and committed to respect free canonical elections. The pope accepted that the emperors could attend the elections of bishops, could grant them feudal rights of property, justice and secular government (*regalia*) and receive their homage and fealty before the liturgical consecration. Conflicts were to be judged by the metropolitan bishop<sup>11</sup> and by the bishops of the ecclesiastical province, but the emperor kept a certain decision-making power on the disputes inside his Empire. To draft the compromise the Church had to renounce to the well-established concept of the indissoluble unity of the episcopate (which included the functions, the properties and the rights) and to separate the spiritual jurisdiction from the temporal jurisdiction<sup>12</sup>. The pope acknowledged a generic royal right on the possessions and rights of the Church<sup>13</sup>. It was not clear whether the granting of benefits corresponded to the emperor's veto power over the election and this opened new disputes under the emperors Lothar III and Frederic I. However, the Church substantially managed to protect its own autonomy, by making the election a separate moment in which the emperor could not interfere.

When the competition for legitimacy involved the election of the highest rank in the ecclesiastical hierarchy, the pope, no compromise could be found and the conflict repeatedly resulted in schisms, when two popes were simultaneously appointed, or in mutual disavowals. In both cases the stalemate was usually solved by the death, more rarely by the renunciation of one of the parties. In some instances the contest escalated into mutual disavowals by the emperor and the pope: Gregory VII and Henry IV deposed each other. Frederic II (1212-1250), after having been twice excommunicated by Gregory IX (1127-1241), tried to depose the pope and was finally deposed himself by pope Innocent IV in 1245<sup>14</sup>. Mutual disavowals characterized also the papacy of Boniface VIII (1294-1303) and his conflict with the French king Philippe the Fair.

The autonomy of the Church was strengthened by the development of the dogmatic foundations of the religious autocracy, the theocratic doctrine of the supremacy of the spiritual power over the temporal powers, and by the constitutionalisation (canonisation) of the succession procedures. This

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<sup>11</sup> The Metropolitan is the head of an ecclesiastical province, which gathers some dioceses. The term became synonymous of archbishop, even if there were some differences at the origin.

<sup>12</sup> Berman (1983) and other scholars consider that the separation, concurrence and interaction of the spiritual and temporal jurisdictions enacted by the concordats have been the principal source of the Western legal tradition. The concordats thus "gave rise to the formation of the first modern Western legal system, the 'new canon law' of the Roman Catholic Church, and eventually to new secular legal systems as well – royal, urban and others" (Berman, 1983, 2).

<sup>13</sup> This was the legal bases that turned the imperial episcopates and abbeys into elective principalities, fiefs of the Empire.

<sup>14</sup> The pope's legitimacy in deposing the emperor stemmed from his being the vicar of Christ: "Christ could not have been fully acknowledged as the Lord, unless he had left behind himself a vicar entitled to pass a sentence or a judgement against the emperor or any other person" (*Apparatus*, II, 27, quoted in Camelot et al. 2001, 155).

aimed at isolating elections (rules for the electorate, conclaves for papal elections, timing of the elections) and at avoiding multiple equilibria (rules of the conclave, simple or weighted majority rule) which could be the pretext for the secular intervention.

## **2.2 The ideological foundations of the autocracy: the doctrine of theocracy**

The Gregorian Reform was accompanied and supported by thorough revision of the Church doctrine. The Church justified its autonomy by sacralizing its leadership and by elaborating a doctrine of its own supremacy: the concept of the papal infallibility and primacy and of the pope's *plenitudo potestatis* founded the constitutional autocratic reform and influenced also the rules for the autocratic succession.

The Church had asserted its supremacy over the temporal powers already in the V century, when St. Augustine's theory of the two Cities opposed the doctrine of Constantine, which entrusted the ecumenical council, supervised by the emperor, the supreme teaching on dogmatic issues and conceived the pope's power as just sacramental and disciplinary. According to St. Augustine, the heavenly City has a supernatural essence, while the earthly City depends on it and is contingent: thus the Church pre-exists to the earthly kingdoms and can exert its power over them with the purpose to lead the peoples to salvation. The high Middle Age theologians limited the power of the Church on secular affairs to the settlement of moral questions and the pope's intervention was justified to correct the human sins (*ratione peccati*).

The theocratic doctrine was resumed at the beginning of the second millennium and was elaborated during the reign of about forty popes, from Leon IX (1049-1054) to Boniface VIII (1295-1304). The Gregorian reform was the first attempt to restate the complete spiritual and temporal independence of the Church. Any secular link had to be broken: the pope did not acknowledge the clergy that had received their power from a temporal authority. Gregory VII went further, stating that, given the Church responsibility for the world salvation, *ratione peccati* the temporal power is submitted to the spiritual power. The Church can control the moral behaviour of the temporal authorities, judging both their private life and their political action: on these grounds, the emperor Henry IV was twice excommunicated and then deposed in 1080.

The emperor's party replied by advocating the historical independence of the temporal power from the Church and by founding the existence of temporal power in God's will. The two opposite doctrines further developed during the XII century: the canonists of the university of Bologna, Honorius of Autun, Hugues de Saint-Victor and St. Bernard reduced the temporal rulers to the role of mere executors.

In 1204 Innocent's III decree *Novit* asserted the *plenitudo ecclesiasticae potestatis*, i.e. the absolute and full power of the pope over all churches and over the whole clergy. The pope's power is distinct from the civil power, which is subject to the law, and qualifies instead as an absolute power, free from any legal constraints: *Secundum plenitudinem potestatis de iure possumus supra ius dispensare*<sup>15</sup>.

The temporal power is independent in the administration of the human affairs but inferior to the spiritual power (*Deliberatio* 1199 and decree *Venerabilem* 1202) and receives its legitimacy from it, "like the moon receives its light from the sun". The pope has the right to interfere with the political decisions that have consequences on the spiritual and moral life. The pope thus cannot interfere with the election of the emperor, but he can and must examine his moral qualities and he can excommunicate him, if he is unworthy or if he menaces the ecclesiastical order. In Innocent's III view, the pope is no more the vicar of St. Peter, but the vicar of Christ himself and thus his power comes directly from God.

The doctrine was completed by Innocent IV's canonists (Henry of Susa), stating the permanent authority of the pope on the temporal governments, while Innocent III had limited it to urgent and special cases: the pope is the ordinary judge of everybody (*judex ordinarius omnium*), he is at the top of the whole civil construction and his power is higher and beyond any other spiritual and temporal power.

Boniface VIII (1294-1303) increased the level of the dogmatic statements<sup>16</sup>. The bull *Ineffabilis amor* (1296) restated the superiority of the Church and the bull *Unam sanctam* (1302) completed the theocratic construction. God is the only source of authority, the Church is God's city on earth and his chief, the vicar of Christ, is the master and judge of the temporal princes. The independence of the temporal power is heretical as it would imply the dualism of the sources of authority. Therefore, the supremacy of the Church is not just *ratione peccati*, as it has *plenitudo potestatis* on the whole temporal and spiritual governance.

The theocratic doctrine began to decline since the middle of the XIV century, when confronted with the theological attacks from university scholars (Marsilius of Padua, William of Ockham) and with the increasingly powerful nation-States, that entailed the decline of the feudal structures but also of their menace to the autonomy of the Church. However, the theocratic ideas survived inside the Church for a long time after the doctrine had been dismantled:

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<sup>15</sup> [According to our fullness of power, we can lawfully decide above the law itself]

<sup>16</sup> The occasion was the conflicts with Philippe the Fair, when he tried to raise a tithe on the French clergy without previous permission from the pope and then when he prosecuted the bishop of Pamiers charged with treachery.

« Si les transformations historiques conduisent rapidement à la détérioration de l'édifice théocratique, l'Eglise ne renonce pas aussi vite à certains principes qui en furent le fondement. Car il est clair que jusqu'à la fin du XIX siècle, elle persiste à considérer que l'Etat n'a pas de fin en soi et qu'il doit seulement aider les hommes à atteindre la cité céleste par la pratique religieuse et le respect de la morale »<sup>17</sup> (Pacaut, 1957, 220).

### 3. The evolution of the succession rules

As Figure 1 illustrates, the development of the theocratic doctrine was accompanied by the evolution of the succession rules, which, once established, showed much greater resistance. Elections had been for centuries the usual way to appoint the ecclesiastical hierarchy. The autocratic turn of the XI-XIII centuries reserved them for the papal succession, while direct appointment by the pope became the common practice for the bishops. At the same time, the electoral rules evolved from unanimity to majority principle.

#### 3.1 Unanimity as the optimal rule in the ancient Church

In the Latin Church of the origins the episcopal succession required the election from the clergy and the laity<sup>18</sup>: “*post divinum iudicium, post populi suffragium, post coepiscoporum consensum*”<sup>19</sup> wrote Cyprians (*Epistulae*, 59, 5). The Roman synod of 499, the *Statuta Ecclesiae antiqua* (end of V century), the Apostolic constitutions (end of IV century) all explicitly recognize the laity's role, which was essentially a proof (*testimonium, suffragium*) of the quality of the candidate:

« ..doit être ordonné comme évêque ..une personne en tout irréprochable, élu par tout le peuple. Celui-ci ayant été désigné et bénéficiant de l'assentiment général, le peuple s'étant réuni avec les prêtres et les évêques présents, celui qui est à la tête du groupe interroge les clercs et le peuple pour savoir si c'est bien celui-là qu'ils demandent comme un chef. Ceux-ci ayant fait un *signe d'assentiment*, il leur demande ensuite *si tous témoignent que il est digne d'un gouvernement si grande et illustre* »<sup>20</sup> (Apostolic Constitution, quoted in Gaudement, 1979, 20).

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<sup>17</sup> [Although the historical events rapidly destroyed the theocratic construction, the Church did not give up some of its fundamental principles altogether. Until the end of the XIX century, the Church still considered that the State is not an end in itself and that it must help its citizens to attain the heavenly city by the religious practice and the respect of the public morals]

<sup>18</sup> The Eastern Churches and their councils in the first half of the IV century (Nicea, Antioch, Sardica, Laodicea) prescribed the episcopal appointment by cooptation.

<sup>19</sup> [After the divine judgement, after the voting of the laity, after the consensus of the bishops]

<sup>20</sup> [...the appointed bishop must be an irreproachable person, chosen by all the people. When he has been appointed and the people has been gathered together with the priests and the other bishops, the leader of the group asks the laity and the clergy to test whether they really want the candidate as their chief. If they make a sign of assent, he asks them if they all witness that he is up to such a great and important task].

The Christians of Rome chose their bishop, the pope, in the same way. The first three popes (Lino, Cleto, Clement) were naturally appointed as they had been co-operators of St. Peter. Alexander I (106-115) was the first pope to be elected after the consultation of the whole community. The laity was progressively restricted to the civic notables, the imperial executives, the municipal magistrates, the garrison officials and the noble families, who took the leadership of the *vox populi* (Zizola, 1993; Alberigo, 1989, Levillain, 1994).

Unanimity dominated these elections, as documented by the ancient texts of the first centuries referring to *electio concorditer* or *unanimitate facta*, *unanimis conclamaverunt*, *pari voto et unanimi consensu*<sup>21</sup>. Pope Leo the Great wrote in 445: “*Qui praefuturus est omnibus, ab omnibus eligatur*”<sup>22</sup>. One reason for the request of unanimity was certainly that the ancient Church was a rather primitive political and juridical body with unsettled decision-making procedures. The laity’s consensus was expressed in a disordered and sometimes violent way, as there was no regular scrutiny.

A second fundamental reason was that the Church considered itself not an ethnic, but a mystic body, the body of Christ himself: therefore, its members had to the duty to agree on a unanimous decision (*consensio una et simplex et iuncta concordia* said Cyprian, *Epistulae*, 11,3) inspired by God, as in the first community of the Apostles (2 Co. 8, 19 and 23; 1 Co. 16,3; Ac. 4,32 and 6,3). Basically, only God can elect: “*solus eligit Deus, solus ipse confirmat, cum superiorem non habet*”<sup>23</sup> (Dante, *De Monarchia*, III,16: 13).

Unanimity in the ancient Church did not imply granting the individual a veto power and thus the opportunity for strategic behaviour in order to extract side payments from the other voters (Klick and Parisi, 2003). Rather it was the expression of the assembly as a whole, from which the individual was neither separated nor protected<sup>24</sup>. Such a concept of unanimity implied that deciding was a collective and spontaneous act of coordination on a focal point, God’s will. Historical and narrative sources extensively account for the emergence of the focal point (Gaudement, 1998). Symbolic events often helped the assembly to focus its attention on the best candidate and thus revealed God’s will: a dream, the sun ray, the apparition of a dove, a child’s voice. God sometimes indicated a totally unknown candidate or put a halt to the pious hesitancy of a saint or showed the place where he was hidden. God’s intervention stopped the conflicts between the clergy and the

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<sup>21</sup> [An election made consensually, at unanimity; they unanimously acclaimed; with both unanimous voting and consensus]

<sup>22</sup> [The one who will be the head of everybody, be elected by everybody]

<sup>23</sup> [Only God chooses, only He confirms, as there is no higher authority]

<sup>24</sup> Grossi (1958) states that the concept of unanimity in the Church was opposed to the concept of unanimity in the ancient German societies, where it meant the consent of all single individuals. Unanimity in the ecclesiastical sphere was the essence of the mystical body, a duty for the believers. The dissenting minority was generally considered heretical.

laity and turned into legal elections what would otherwise be illegal appointments, such as those made by the predecessor or by the king.

Rules for governing a mystic body, where individual interests merge in the search for the collective or divine will, proved frail when secular influences added: however, the fascination of unanimity did not decrease in time and it continued to be considered the only desirable rule also when it had to be necessarily substituted. In the papal elections, beside the procedures *per scrutinium* [by voting] and *per compromissum* [by compromise], the election *per inspirationem* [by inspiration] reminded of the ancient *electio concorditer facta* and of the unanimous will of the assembly: “*Aliter electio facta non valeat, nisi forte communiter esset ab omnibus quasi per inspirationem sine vitio celebrata*”<sup>25</sup> (VI Lateran Council, 1215).

### **3.2 Consolidating the autocracy: the direct appointment of the bishops**

As a first step to reduce the external influences on the successions, the Church limited the size of the electorate: this mitigated the pneumatic aspects of the elections, which became an increasingly political act. The electorate was restricted to the clergy and the laity was excluded: *Ducendus est populus, non sequendus*<sup>26</sup>, was the principle that grounded the belief that the laity has not the right to choose, but only to consent to the choice. At the end of the XII century, even this final consent was no more required (*Summa Reginensis*, 1191).

Nevertheless, the regime for the episcopal succession remained highly permeable by secular interferences during the XII and XIII century. The counter-moves of the Church was the further restriction of the episcopal electorate only to the priests of the cathedral (pope Alexander III in 1180 and IV Lateran Council); the direct appointment by the metropolitan bishop or by the pope when the local electoral college was inactive or unable to elect the new bishop within three months (the so called ‘devolution’; IV Lateran Council, 1215); finally, the direct appointment of loyal bishops by the pope, as pope Innocent IV did in his conflict with Frederic II.

Supported by the theocratic doctrine of the *plenitudo potestatis*, the direct appointment by the pope became the usual practice at the end of the XIII century. From 1295 and 1301 in France, only one bishop out of 16 was chosen after an election and during the papacy of John XXII (1316-1324) there were 9 elections in the 127 French dioceses but 230 direct appointments by the pope.

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<sup>25</sup> [Other electoral procedures are invalid, but for the case when the election is regularly held and all voters jointly decide as under inspiration].

<sup>26</sup> [The people must be guided and not followed]. The principle was stated by pope Celestin in his Letters to the bishops of Puglia and Calabria (in 429) and was confirmed by the Decree of ‘Gratian’ in 1140.



### 3.3 Sub-optimal decision-making rules: from the double principle of *maioritas et sanioritas* to the pure numerical rule

Not only the electorate, but also the electoral procedures were modified to speed up the elections and to avoid inefficient results. When the laity and clergy could not coordinate on a focal point, as either there was no suitable candidate or there was more than one, the solution was the appeal to the hierarchical superior authority, the metropolitan bishop, who appointed the more zealous and virtuous candidate<sup>27</sup> and confirmed the election. Along with the restriction of the electorate, the appeal to the superior authority was gradually substituted by a majority rule, which granted a quicker procedure and avoided external interferences. The elections were thus changing from the transcendent revelation of the divine will into a pure juridical act. The Roman majority principle imposed itself as the optimal ‘non-unanimity’ rule (Buchanan and Tullock, 1962; Mueller, 2003) to isolate the decision-making process of this restricted electorate.

However, the pure rule of the number was not apt to the needs of the Church, which required a final control over the electoral outcome. The solution was to associate a qualitative criterium: votes had not just to be counted, they had also to be weighted according to the merits either of the electors (*sanioritas*<sup>28</sup>) or of the candidate and a double criterium of majority and *sanioritas* was applied in the canonical elections<sup>29</sup>. A true majority was made by the simultaneous presence of a *pars numerosior* and of a *pars sanior*: *Non sufficit maioritas numeri sine sanioritate..... Non ergo sufficit sanioritas nisi etiam concurrat maioritas*<sup>30</sup>, Panormitanus wrote (*Commentaria*, ch. 57 and 42). The principle of *sanioritas* had also the positive feature of avoiding cyclical results in the application of the majority voting.

The application of the principle, however, still required the *arbitrium boni iudicis*, i.e. that an impartial and superior authority could weight the votes and decide which part was *sanior*. In St. Benedict’s rule, the arbitrator was the bishop, who confirmed the election of the abbot and evaluated the coexistence of both a *numerosior et sanior pars*. The metropolitan bishop did the same for the episcopal elections. The judgement on the *sanioritas* could overturn not only a

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<sup>27</sup> One of the more ancient document is a letter by pope Leo I to the bishop of Thessalonica in 446: “*Si forte,.... vota eligentium in duas se diviserint partes, is metropolitani iudicio alteri preferatur, qui maioribus iuvatur studiis et meritis*” [In case the voters divide in two groups, the metropolitan bishop will choose the candidate with greater zeal and merits] (quoted in Gaudemet, 1998).

<sup>28</sup> *Sanioritas* consisted of *auctoritas, zelus, sapientiae doctrina* and *meritum*. Authority derived from the position of the voter, his ecclesiastic rank, his age. *Zelus* meant the uncorrupted disposition of the voters. *Meritum et doctrina* referred to the qualities of the candidates. These positive requirements for both voters and candidates are in sharp contrast with the current practice of admitting only negative moral requirements in elections.

<sup>29</sup> The principle of *sanioritas* was introduced in times when unanimity still dominated, as the guiding rule for the exceptions to unanimity. In St. Benedict’s rule (ch.64) the choice of the abbot required the unanimous consent of the congregation. If unanimity failed, the right to elect had to be entrusted to the wiser part of the congregation, independently of its size (*pars congregationis, quamvis parva, sanioris consilio*). This *sanior pars* would elect the most eminent member. Thus *sanioritas* of the voters was a guarantee of the *sanioritas* of the elected one and vice versa.

<sup>30</sup> [Numerical majority is insufficient without merits... However, merits are insufficient without numerical majority]

majority result, but also a unanimous voting, if this had been inspired by bad feelings, malice, animosity, partisan interests. *Minor pars maior respectu sanioris consilii praevalet*<sup>31</sup> stated the Hostiensis, who continued saying that even one single individual could make his own judgement prevail over the preferences of all other voters: *unus ergo potest contradicere totae universitati, si habet rationabilem causam*<sup>32</sup> (Glossa ch.11 D.31).

It was obviously difficult to have positive results in elections, unless *maioritas et sanioritas* coexisted in the same group of voters. This difficulty gave birth to a new doctrine, introducing the presumption that, unless the contrary was proved, the part with numerical majority coincided with the part with the wiser opinion: *Maior pars numero praesumitur sanior, praesumitur enim in dubio pro numero. Haec tamen praesumptio admittit probationem in contrarium*<sup>33</sup> (Glossa ch.1 X, 3, 11).

The minority, which claimed to be greater in wisdom, could demonstrate its *sanioritas* in front of the hierarchical superior. However, the element of arbitrariness implied by the recourse to the impartial arbitrator was still troublesome, as it could subject the election to external influences. In the collection *Elegantia in iure divino* (or *Summa Coloniensis*) written in 1169, the risks due to the judge's arbitrariness are so described:

« We may ask whether the metropolitan bishop can refuse the unanimous election of a unworthy candidate. If the electors persist in their votes, the judge must approve the election or prove something against the candidate [...] The superior authority [...] cannot repeal the election, unless he has very good reasons to do it or unless the voters change their opinion. The possibility to repeal an election could give a corrupted judge a splendid occasion to act by malice and thus the right would be changed into injustice » (ch.49).

To avoid this risk, the presumption of *sanioritas* of the majority was further strengthened: a great numerical majority (*numerus multo excedens*) implied *iuris et de jure* that it was also the greater part with respect to the wisdom of judgement (*pars maior respectu sanioris consilii*).

A 'great majority' was soon identified with a 2/3 majority. In 1274, Gregory X extended to all canonical elections the principle that a majority of 2/3 wins independently of the proof of *sanioritas*. The canonists stated that the principle of *sanioritas* could still apply in two cases:

- 1) when a majority of 2/3 could not be reached and the minority was clearly the wiser part of the electorate (Goffredi de Trano);

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<sup>31</sup> [A minority, which is however wiser in its judgement, is to prevail]

<sup>32</sup> [One single voter can oppose the whole assembly, provided he has reasonable justifications]

<sup>33</sup> [Numerical majority is presumed to coincide with the healthier part; in dubious cases the presumption is in favour of the number. However, this presumption allows for proof to the contrary]

- 2) when an unworthy candidate was elected by voters knowing of his indignity: in this case they would be deprived of their voting rights for three years, their votes would be spoiled and the right to decide would be entrusted to the minority (III Lateran Council, 1179).

The secrecy of the votes was the final step towards the dominance of the numerical principle, as the *sanior pars* was no more recognisable: the ancient presumption that the majority was also the wisest part did not allow for proof to the contrary. This practice was sanctioned in the Trent Council (1520-1563), where the secrecy of votes was imposed to the papal and to the monastic successions, the only ones where elections still took place, as the bishops were definitely directly appointed by the pope.

#### **4. The papal elections: the establishment of a selectorate**

The papal election was originally entrusted to the clergy and the laity. A common practice in the first centuries was, however, that the pope himself indicated his successor to avoid disorders after his death: the indication was however often disregarded<sup>34</sup>. Given the conflicts that since the second half of the fifth century marked the papal elections<sup>35</sup> and that originated in the contest between Rome and Constantinople, in 498 pope Symmachus declared that, in case the incumbent pope could not indicate his successor, unanimous voting was required: majority voting could be applied only in the last resort.

To isolate the election from external influences, a synodal decree by pope Gregory III in 769 reserved the papal election only to the clergy, (*electio clericorum*), that chose from a list of names prepared by the Roman notables (*honoratorum arbitrium*) and was finally approved by the population (*testimonia populorum*). However, for nearly five centuries the election was prey of the influences of the ambitious Roman families, of the pressures exerted by the Byzantine emperors, by the Ostrogoth, Lombard and Frankish rulers. The pope could then be consecrated only after the political approval. King Lothar imposed the presence of the emperor's ambassadors during the election, granted the active electorate only to the Romans and the passive electorate only to the noblemen, required a fidelity oath from the newly elected pope.

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<sup>34</sup> The history of the V century is emblematic. Pope Felix IV appointed the archdeacon Boniface as his successor in 530. The Roman clergy however elected the deacon Dioscorus, who was loyal to Byzantium. At Dioscorus's death, Boniface was elected pope and he appointed the deacon Vigilius as his successor. The indication was disregarded, as the Ostrogoth court oriented the election in favour of the priest Mercurius, who became pope John II in 533. Vigilius became pope two years later, in 535.

<sup>35</sup> The first electoral dispute dates back to the III century and it was occasioned by the election of pope Cornelius (in 251), which was challenged by the secretary of the Roman presbyters Novatian. The disputes was settled by the bishop Cyprian and by the decision of a Roman Synod.

The Papal Reform of the XI century began with the return to the free election of the popes. In 1059, Nicolas II radically reformed the electoral system. The emperor was deprived of the right to approve the election. To guarantee the voters' independence, the electorate was restricted to the cardinal-bishops, the dignitaries of the Roman clergy who assisted the pope in the liturgical celebrations and who formed the consistory. The cardinal-priests had to 'assist' the cardinal-bishops in the election, while the consensus of the clergy and of the population was no more essential<sup>36</sup>. The consistory was exalted as the heir and successor of the Apostles' college, with the role of co-operators of Peter's successor<sup>37</sup>.

A selectorate was thus legally established with the specific purpose of maintaining the papal succession within the autocracy. Although direct appointment and hereditary succession were forbidden, the pope could exercise an influence on the choice of his successor by appointing new cardinals to his liking. He could not however totally renew the consistory, as the cardinals' appointment is a life-long one. The electoral outcome thus remained highly unpredictable and very often the most favoured candidates were not elected.

Against the consolidation of the autocratic regime played, however, the fact that the creation of a selectorate, charged with the succession of the autocrat, concentrated on it the external pressures to influence the papal election. All European kingdoms tried to acquire their partisans among the cardinals<sup>38</sup> and simoniac practices of vote buying became common among the cardinals (the election of Alexander VI Borja in 1492 was the paroxysmal case), until Julius' II bull, *Cum tam divino*, invalidated any simoniac election.

The strategy of the Church to consolidate the autocratic succession included also rules for the selectorate, namely the introduction of qualified majority voting and the institution of the conclave (§. 4.1). However, the frequent and long schisms of the XII and XIII centuries proved the insufficiency of the autocratic and rule-based approach to defend the autonomy of the Church. The constitutional crises were then the occasion for the conciliar movement to enlarge the selectorate and to try to introduce accountability mechanisms (§.4.2).

#### **4.1. The decision-making rules of the selectorate**

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<sup>36</sup> Only the public announcement (*pronuntiatio ad clerum et populum*) of the electoral result remained compulsory until pope Innocent III.

<sup>37</sup> The biblical and theological justification of the cardinals college was given in the Decree *Per venerabilem* by Innocent III in 1202. Reference was also made to elderly appointed by Moses as his counsellors: this Leviticus priesthood was founded in the Ancient Testament and arrived at perfection with the Roman consistory.

<sup>38</sup> The national States interferences with the papal election continued all along the history of the Church and took also the form of a veto power against single candidates. The habit of the so called 'exclusive' allowed the Austrian, Spanish and French governments to exclude one name from the list of the candidates to the papacy. The practice was employed frequently in the XIX century and was definitely interrupted in 1904, when Pius X menaced the excommunication of the cardinals who expressed a veto against a candidate during the conclave.

The ideal requirement of unanimous voting, which was the proof of the divine intervention, when transferred to the restricted body of the cardinals, lost much of its spiritual traits and much more resembled the modern concept of unanimity, i.e. the granting of a veto power to the voters. The significant impact of transaction costs, side payments and strategic behaviours can be detected from the long vacancies of the papal See, due to the difficulty to converge on one single candidate: pope Gregory X was elected after a vacancy of two years and nine months.

A voting rule less strict than unanimity was thus necessary: qualified majority voting (2/3 majority) was introduced by the III Lateran Council in 1179. A candidate, obtaining less than 2/3 votes but nevertheless claiming the papacy, was to be excommunicated together with those who supported him. The IV Lateran Council (1215) constitutionalised the three electoral systems that had been in use since the beginning of the XII century: *per scrutinium*, *per compromissum* and *per inspirationem* (the remnant of the unanimous choice). The system *per scrutinium* was a secret voting and ballot papers were first distributed to the cardinals who elected Innocent III in 1198.

The double principle of *maioritas* and *sanioritas* was not applicable to papal elections, because no hierarchical superior could be invoked above the pope and because, under the dominant autocratic tendency, the general councils were not considered a suitable supreme instance. Thus, automatically, the *maior pars* was identified with the *pars saniori consilii*. Only the emperor Frederic I tried to apply the principle of *sanioritas* to judge on the double election of Alexander III and Victor IV, his preferred candidate, in 1159. Unsuccessfully, the emperor summoned a Council in Pavia in 1160 to demonstrate that Victor IV, who had received five votes out of twenty-eight, was the expression on the *sanior pars*.

The selectorate of the Church was not left acting on its own greed, as its inaction and the consequent long vacancies of the apostolic See could endanger the autonomy of the Church. To accelerate the negotiations, a set of 'incentives' was first spontaneously applied<sup>39</sup> by the population and by the local civil authorities<sup>40</sup>, then they were specified by the canonical law and, in particular, by pope Gregory's X constitution *Ubi periculum* (1274)<sup>41</sup>. The cardinals were obliged to close themselves in the papal palace within ten days after the pope's death. Nobody could approach them

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<sup>39</sup> The first papal conclave was probably the Perugia conclave of 1216 that elected Onorio III and that ended in a compromise *arctantibus perusinis*, i.e. because of the pressures exercised by the people of Perugia. Zizola (1993) anticipates the first conclave to the Roman one that elected Innocent III in 1198. The first time that the pope's election took place in a segregated place was on the occasion of the election of Gelasio II in 1118.

<sup>40</sup> The first conclaves were endured by the cardinals as an imprisonment. During the conclave that elected pope Celestin IV, a seventy days seclusion during the Roman summer caused collapses among the cardinals and the death of the candidate of the majority: the new pope himself survived only seventeen days after his election. Pope Gregory X was elected in Viterbo after a two years vacancy in 1271: the cardinals found a compromise only when the civil authorities and the people of Viterbo closed them in the papal palace, cut their food supplies and removed the roof of the palace, exposing the cardinals to bad weather.

<sup>41</sup> Gregory's X constitution was strongly opposed by the cardinals and abolished for nearly eighteen years, until pope Celestin V restated it and pope Boniface VIII definitely inserted it in the Book VI of the Decretali.

nor communicate with them and they were deprived of all their income during the conclave days. If, after three days the new pope had still not been chosen, the cardinals' meals would have been limited to one dish for seven days. If, during this time, the new pope was not elected, the meals would have been limited to bread, water and wine.

As in the other canonical elections, the modern concept of electoral representation cannot be applied. As a matter of fact, the electing body, the cardinals, cannot govern the Church during the See vacancy, the period elapsing from one pope's death to his successor's election. In this time the Church is headless: the cardinals are just the substitutes of the pope (*vice capitis*), as their power is a human one, while only the pope is God's vicar. This concept met the resistance of the selectorate, which repeatedly tried to assert its own full power during the See vacancy. It was however finally established in 1311 by pope Clemens V.

Besides, the cardinals always failed in their repeated attempts to impose the elected pope the respect of the so called *Capitolazioni*, a pre-electoral formal commitment behind the veil of ignorance: all cardinals committed that the one of them who would have been elected, would then respected an agreed upon political platform. The commitment was however not credible, as the absolute power of the pope could easily disregard it. The *Capitolazione* agreed in the conclave of 1352 was rejected by pope Innocent IV, who had signed it as a cardinal. The pope alleged that it was contrary to the *Decretali* of Gregory IX, that granted the cardinals only the electoral right. Other *Capitolazioni* were not explicitly rejected but simply unapplied (as for the one that committed Eugene IV, 1431-1447), until in 1505 Julius II declared that elections under conditions were invalid.

#### **4.2 An irrevocable appointment?**

The autocratic reform did not admit any accountability mechanisms. Gregory's VII *Dictatus papae* (1075) stated that, as the pope is God's vicar on earth, nobody could judge or dismiss him, neither the consistory nor the ecumenical council: "no judgement of the pope may be revised by anyone and he alone may revise the judgement of all" (*Dictatus papae*, proposition 18). The religious nature of the papal power and of the electoral moment made irrevocable the choice of the selectorate. An open overthrow of God's vicar by the selectorate was constitutionally unacceptable<sup>42</sup>. The one occasion in which the selectorate reneged on its own choice opened, in fact, a deep constitutional crises.

In 1378, five months after the appointment of Urban VI (1379-1389), the cardinals alleged the invalidity of his election, claiming that they had been induced by the mob to quickly appoint an

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<sup>42</sup> However, attempts to overthrow a pope have not been infrequent in the history of the Church, as demonstrated by the violent coups performed by the rival Roman families during the VIII-IX centuries or by the poisoning of some popes in VIII-IX century

Italian pope and proceeded to elect Clement VII (1378–94). The constitutional rules for the papal succession proved then their limits: as both the pope and his anti-pope were backed by a part of the consistory and refused to abdicate and as no superior authority could be indicated by the canonical law to judge on the dispute, a schism opened, which lasted for thirty-nine years (the Great Schism, 1378-1417). It ended when the cardinals decided to appeal and summon an ecumenical council in Pisa (1408-1409).

Backed by the doctrines of the university scholars, according to which a general council could judge and in case dismiss an heretic or an incompetent pope, the Pisa Council affirmed that a prolonged schism could be likened to an heresy, it dismissed both popes and elected a new one. As the two incumbent popes did not obeyed the council and the schism continued, the same decision was repeated in the subsequent Council of Constance (1413-1418), which definitely dismissed the three previously elected popes (John XXIII, Benedict XIII and Gregory XII) and canonically elected a new one, Martin V (1417-1431). Some years later, the Council of Basel, Ferrara-Florence (1431-1442) deposed the canonically elected pope Eugene IV who did not recognise its supreme authority. The conciliar movement however found little support in the Church and among the secular rulers and was dispersed in 1449<sup>43</sup>: “apparently the conciliarists at Basel had overplayed their hand in the game of the Church power politics” (Gordon, 1999,120)

The councils raised the issues of representation and accountability, that the autocratic reform had excluded. The conciliar theses were not uniform, however the accountability issue was central in most of them. Marsilius of Padua (*Defensor pacis*, 1324) stated that the legitimisation of the power comes from the people both in the civil society and in the Church, where is it delegated to the general council. William of Ockham (*Dialogus*, 1343) said that the Church was the congregation of the believers which, not being able to directly exercise its power, delegates it to the council. Konrad of Gelnhausen stated that only the universal Church and its representative, the council, cannot err. The power of the militant Church comes from Christ, stated the *Haec sancta* decree (1415) of the Council of Constance, adding that each Christian, and the pope too, must obey the council in matters that touch faith and the reform of the Church. In the mid XV century, the canonist Nicola de' Tedeschi wrote:

“The foundation of jurisdiction lies in the universal Church; however, as the universal Church, that consists of the universe of the believers, cannot be summoned together, ... the Church exercises this jurisdiction by means of the council, that represents it”.

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<sup>43</sup> The councils soon became a political weapon in the hands of the national states, which in the XIV-XV century contributed to their summoning, organization and results (Camelot et al., 2001). Pope Pius VII formally condemned the doctrine of conciliar supremacy in 1460.

Even without seeing in the conciliar movement the first seeds of modern parliamentarism and of a mixed form of government (Gordon, 1999), it however represented an attempt to profit from a constitutional crises to generate accountability mechanisms inside the autocracy and to enlarge the electorate. The autocratic tendency of the Church finally prevailed: the electorate was restricted to the consistory, the popes restated their supreme authority and new generations of canonists supported the idea of a monarchic papacy. The councils were then interrupted for three centuries.

## 5. Some remarks

Some observations about the peculiar traits of the autocratic regime of the Latin Church can be drawn from the above historical account. The first remark concerns the exceptional stability of the autocracy and of its rules for succession, which bears no comparison with other secular autocracies.

### 5.1. Why so much stability?

The amazing stability of the canonical succession rules, established in the XI-XIII century and substantially kept unchanged until today, can be certainly explained by the taste for tradition of the Church. Besides, the Church does not need to fear that excess stability generates opportunistic strategies of the elected representatives, as it happens in modern democracies, where

“[...] permanency can encourage investment in devices apt to bypass the rules, leading to a zero- or negative-sum outcome. It is with time that the agents learn how to adjust to the constraints they face, so that a change of rules can at times be better than the best of rules to keep the proper set of incentives” (Galeotti, 2003, 194)”.

In the Church, a change of the rules would not provide for better incentives, as the incumbent leadership does not feel the spur of competition: their life-long and irrevocable charge protects them against the risk of not being re-elected, while they are accountable not to their constituency but only to their hierarchical superior, be it the bishop, the metropolitan or God.

Other explanations can be found in history, in the decreasing challenges to the Church autonomy from the secular powers and, we believe, in the quite satisfactory results obtained in isolating the leadership replacement: as a matter of fact, the appointment of anti-popes (forty in all) ceased with Felix V in 1449. Besides, qualified majority voting, with the implicit acknowledgement that the *maior pars* is also the *sanior pars*, is a good second best solution with respect to the first best unanimity rule. It provides for a large consensus that mimics the original *consensio una et simplex*



*et iuncta concordia*, which was the proof of the divine will in the transmission of the religious power.

## 5.2 Sticking to elections: the concern for quality

Tullock (1987) points out the advantages of hereditary succession for the autocracies and the defects of the other replacement mechanisms, in particular the direct appointment. Hereditary succession, reducing competition and risks for the successor, reduces also the probability of a violent overthrow of the autocrat: “hereditary succession does not guarantee a peaceful succession, it [however] seems to be more peaceful than other methods” (Tullock, 1987, 162). Direct appointment, on the contrary, puts the autocrat on a very risky position, as the appointed successor’s expected benefits from a coup can be very high and the costs negligible.

With the exception of the first centuries, the direct appointment of the successor was severely forbidden in the autocratic papacy of the Middle Ages: when in 1197 Celestin III unsuccessfully tried to break the rule, the cardinals objected that the pope is not the owner (*dominus*) of the Church, but only its administrator (*dispensator*). The same limit was restated by St. Bernard, besides a strong supporter of the *plenitudo potestatis* doctrine. However, the reason for excluding the direct appointment should not be seen in the personal risks for the incumbent pope, much more in the concerns for a legitimate transmission of power and for the quality of the appointment.

Legitimate transmission of ecclesiastic power requires a connection with the original divine mandate and the election, with the flavour of mystical convergence of the electors’ will on one single candidate, sacralises the succession.

The concern for the quality of the appointee is also relevant, as a bad choice can be dangerous for the institution. A collective choice is better than the incumbent’s decision in granting that a suitable candidate is appointed: “*Per plures melius veritas inquiritur*”<sup>44</sup> (*Apparatus*, ch. 42, X), wrote pope Innocent IV. Likewise, the Council of Antioch (341), which explicitly forbade the incumbent bishops to appoint their successors, feared not so much that the successor could murder the incumbent, rather that the successor could not be worthy:

« The bishops are not allowed to appoint their own successor, when they are approaching the end of their life. If something like this has been done, the appointment will be invalid. On the contrary the ecclesiastic rule must be respected, according to which the appointment is made after summoning a synod and hearing the opinions of the bishops who, after the death of the incumbent, have the authority to choose a suitable successor » (Council of Antioch, ch.23; quoted in Gaudemet, 1998, 18).

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<sup>44</sup> [Truth is more effectively pursued by many]

The same concern for quality can be detected from the requirement of the laity's consent to the elections, which was a proof of the qualities of the appointee, from the introduction of the principle of *sanioritas* and from the unusually long list of qualities a candidate must have to be eligible according to the canonical law. As the core concern of the autocracy is its own survival and autonomy, this implies not only the peaceful transmission of power, but also the appointment of candidates who are up to the tasks, have a sense of mission and are faithful to the institution. Although the results in the Church history have sometimes been disappointing, this concern for the institution survival seems to differentiate religious autocracies from secular autocratic regimes.

## 6. Conclusions

The autocratic turn of the Latin Church in the XI-XIII century was born out the need to protect its unity and autonomy and to preserve the legitimacy of its power. The Latin Church answered to the challenges of the secular power by means of direct political countermoves (excommunication of kings and emperors, search for political allies, summoning of crusades), by concentrating the decision-making power in the hands of the top hierarchy and finally in the hands of the pope and by waving a protection net around the core of its legitimacy. This latter included a doctrinal support, theocracy, stating the supremacy of the spiritual power over the temporal powers, and the constitutionalisation of the procedures for leadership replacement.

In particular, the active electorate was limited to the clergy and the episcopal election was gradually substituted by the pope's direct appointment. Besides, the voting rules changed from unanimity, conceived as the expression of the divine will, to the dual principle of *maioritas et sanioritas* and finally to the numerical rule of qualified majority. This evolution aimed at preserving the election from external interferences and at eliminating the elements of arbitrariness (the evaluation of an external judge).

The most important succession, the papal election, was protected by institutionalising a selectorate and its decision-making rules: qualified majority voting (no *sanioritas* principle could be applied), no electoral mandates and the conclave. The concerns for autonomy and for the quality of the electoral results conditioned the evolution of the canonical rules for the papal succession, avoiding the direct appointment and sticking to an electoral process dominated by the pure rule of the numbers.

At least partly, the Church meets Besely and Kudamatsu's (2007) criteria for a successful autocracy. In particular, the leadership turnover is controlled by a selectorate which appoints the

autocrat's successor without losing its power<sup>45</sup>. However, the Latin Church autocracy is also anomalous with respect to secular autocracies: the contest for power, in the form of an open succession, is an electoral contest, where the selectorate decides by qualified majority voting. Combining a selectorate and elections does not insert accountability and representation mechanisms in the autocracy, rather it protects the autonomy of the regime and the quality of the appointed leadership.

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<sup>45</sup> Leadership turnover, which according to Besely and Kudamatsu (2007) is higher in successful autocracies, is more difficult to detect. Data on the popes' precocious deaths are not always reliable, while the selectorate reneging on its own choice is constitutionally impossible.

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Figure 1 – The Latin Church in the XI-XIII centuries

