

**NOTES FOR CARDINALS/7**

## **Respect the law to ensure justice and avoid absolutism**

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The Papacy has never been so weak in modern times as it has been in the last twelve years. And this is not a human weakness, through which God very often works great things, but a weakness resulting from the absolutist turn that Francis has given to the

papacy. The more the papacy is based on arbitrary authority, detached from its fundamental link with the *ius divinum* and with the objective good, the more it becomes fragile and vulnerable to the attacks of the times.

**The perception of this pontificate as an expression of humility, simplicity and poverty** - a perception largely due to certain "populist" gestures (such as carrying his own bag on the plane, going to the optician in Via del Babuino, eating in the common dining room of Casa Santa Marta) clashes with an absolutism of substance. This is evident not only in the less than fatherly treatment reserved for many cardinals, bishops, priests and officials of the Holy See, but also and above all in the fact that Francis understands and exercises his authority without regard for the law.

**That Francis has repeatedly come into conflict with justice**, with the principle of giving everyone what is due in every social structure, including the Church, is quite evident in the case of the trial of Cardinal Angelo Becciu; the Pope had no problem changing the rules of the game once the trial had begun, inserting four *rescripta* as if nothing had happened. The Sardinian cardinal, guilty or innocent, has not received the fair treatment that respects his dignity as a man and as a prince of the Church. These anomalies raise more than a few doubts about the legitimacy of the trial and dangerously distance Vatican justice from international standards, transforming the sovereignty of Vatican City into a dark exception of judicial activism.

**The treatment meted out to numerous bishops** who have been forced to resign or removed after refusing to comply with some of the Pope's demands also shows that, in Francis' eyes, the Pope's authority allows him to act *contra iustitiam*. The 'forced removal' of Monsignor Joseph Strickland, Monsignor Roger Ricardo Livieres Plano, Monsignor Martin David Holley, Monsignor Pedro Daniel Martinez Perea, Monsignor Eduardo Maria Taussig, Monsignor Giovanni D'Ercole, Monsignor Daniel Fernández Torres and Monsignor Dominique Rey demonstrates the abuse of an authority conceived as free from any constraint of truth and justice.

**Furthermore, the motu proprio *Traditionis Custodes***, already mentioned in the previous article, is another act of an authority conceived as absolute and arbitrary, which believes it can erase reality with a legal act. An ancient and centuries-old liturgical rite cannot be abolished by papal decree, for the simple reason that law does not create reality, but recognises it. A liturgical rite which has its origins in the early centuries of the Church, which has been the form of public prayer of the Latin Church for more than a millennium, is a witness and a vehicle of the Church's sacred tradition, of which the Supreme Pontiff must be the guardian and promoter.

**It is a fact that, even after the liturgical reform of 1969-1970, the Church continued to recognise the ancient Roman rite** as a good of the Church, by approving the proper law of certain ecclesiastical and religious institutes which find their own rite in this liturgical form. Benedict XVI did no more than emphasise the goodness of this rite, extending the possibility for priests and the faithful to celebrate it, and the illegitimacy of any attempt to suppress it or make its celebration impossible. *Traditionis Custodes*, on the other hand, has taken the opposite line, declaring, contrary to reality, that the reformed rite is the only form of the Roman rite, and imposing conditions that clearly aim at the extinction of the ancient rite.

**These examples, to which could be added the frequent and often confusing interventions of the Pope in the form of Motu Proprio**, which have turned ecclesiastical law into a jungle of disharmonious and approximate laws, show the urgent need to restore the role of the Dicastery for Legislative Texts to its central place, but above all to remedy the legal positivism which now seems to prevail in the Church, neglecting the rationality of the norm and dangerously unbalanced towards the mere authority of the legislator, detached from any rational order. The binding force of the law, however, rests on conformity to the law, which is an expression of the nature of things, and not on the mere promulgation of a legitimate authority. Authority in the Church has very precise limits, and that of the Supreme Pontiff is no exception; to transform his full, immediate and universal sovereignty into absolute sovereignty is a very serious error and a harbinger of divisions and tensions; primatial power cannot be understood as legitimising unjust acts. And the problem does not only concern the obvious sphere of the Pope's moral responsibility before God, but also the rationality of law: not every law promulgated by a legitimate authority is binding.

**Speaking to the Roman Rota on 21 January 2012, Benedict XVI denounced the dangerous lack of "a sense of an objective law to be sought"**, left "at the mercy of considerations that claim to be theological or pastoral, but in the end are exposed to the

risk of arbitrariness". The Holy Father recalled the urgent need to return to the "right order of the Church", to the "regulated reality", avoiding the identification of law with positive laws, in order to anchor ourselves once again in the justice to which every legislative authority is subject.

**Prof. Eduardo Baura de la Peña**, Professor of General Canon Law at the Pontifical University of the Holy Cross and Professor at the Faculty of Canon Law of St. Pius X. Pius X, commenting on Benedict XVI's above-mentioned reflections, pointed out the danger of a positivist approach whenever one departs from the nature of reality, which is governed by laws: "It is therefore worth remembering that, although authority in the Church derives from positive divine law, it is still a matter of the capacity to fulfil a function (namely, to order the life of the community for its good), and not of personal dominion, which depends solely on the will of the holder. If ecclesiastical law is binding [...] it is so insofar as it establishes rights (of subjects or of the community itself) which have as their title the order established for the community by the one who has the task of governing it so that it may attain its good, and this order cannot be independent of the ordered reality'. He added: "The claim to give the law legal validity on the grounds that it emanates from the will of the legislator independently of the reality regulated, and consequently to consider that it must be interpreted solely on the basis of textual and logical criteria, can only be based on legal positivism, however much it may be "sacralised" by the consideration that ecclesiastical authority derives from the divine foundation of the Church". (in 'La realtà disciplinata quale criterio interpretativo giuridico della legge' [The disciplined reality as a legal criterion for the interpretation of the law], in *Ius Ecclesiae* 24, 2012, p. 715).

**Here we are touching the nerve centre of the exercise of authority in the Church**, including the supreme authority of the Supreme Pontiff. The adage "one Pope bulls, another unbulls", which unfortunately expresses the concept of Petrine power held by many, is the translation of that positivist decay which urgently needs to be healed and overcome, not by diminishing or dismantling the primatial *potestas*, perhaps under the pretext of ecumenical dialogue with the Orthodox, in the sense of a new "synodal papacy", but by anchoring it once again in divine right, natural law and the objective good and order of the Church.