

CANON LAW

The Pope's power is supreme, but not absolute or unlimited

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**Geraldina
Boni***



Several more or less recent events have contributed to sharpening the question of the perimeters of the Supreme Pontiff's power. Traditionally we speak of plenitudo potestatis, an expression that, however, perhaps aided by 20th century and contemporary ideologies, is increasingly understood, even by the holder himself, as absolute and arbitrary power. We therefore asked Prof. Geraldina Boni, Full Professor of Canon Law, Ecclesiastical Law and

History of Canon Law at the Department of Legal Sciences of the Alma Mater Studiorum University of Bologna, to direct us in this very delicate and urgent topic. Prof. Boni is also President of the Interministerial Commission for Agreements with Religious Confessions and Religious Freedom and Consultant of the Dicastery for Legislative Texts.

"The Pope does not stand, alone, above the Church; but within it as one Baptised among the Baptised and within the College of Bishops as a Bishop among Bishops, called at the same time - as Successor of the Apostle Peter - to lead the Church of Rome which presides in love over all the Churches". This sentence, pronounced by Pope Francis on 17 October 2015, is entirely and harmoniously inscribed in the secular evolution of the progressive penetration of the substance of the munus entrusted by Christ to Peter and his successors by the Catholic Magisterium as well as by theological and canonical science. A gradual understanding of the Petrine office that has also been cadenced and influenced by the different historical contingencies experienced by the Church (cf. my latest book *Il diritto nella storia della Chiesa. Lezioni, Morcelliana, 2023*).

Thus, the particularly incisive and propulsive role deployed by the papacy from the beginning of the second millennium and that led to a decisive centralisation and a rigid verticalisation in the regiment of the entire Church must be viewed in the context - as well as the medieval mentality - of the "gigantic duel" engaged by the Church to free itself from subjection to the empire and recover its libertas. And yet, even the immediately subsequent elaboration - in the classical era of canon law - of the papal plenitudo potestatis [plenitude of power], while significantly accentuating the jurisdictional content of the primacy and greatly increasing its prerogatives, never harboured any doubts in firmly proclaiming the non-arbitrariness of papal power. Enunciating, for example, the rightful observance by the successor of Peter of the status generalis Ecclesiae [i.e. the disciplinary and hierarchical rules that constitute the intangible order of the Church, ed.

Thus, the Pope's freedom and emancipation from the laws is perimeterised and specified, on the one hand, in the sole superiority to positive law and, on the other, in the indispensable rationality of any dispensation granted by him: without ever compromising the foundations of ecclesiastical order and discipline solidly anchored to the ius divinum. On the other hand, there is a lively conviction that the delimitation of the Petrine function in no way weakens the authority of the Vicar of Christ, but strengthens and reinforces it, rooting it in the genuine ecclesial traditio and, especially, in the authentic mandate received superiorly.

Without being able to dwell now on the stages of the secular maturation in order

to the *munus petrinum*, it should be noted again, only incidentally, how at the First Vatican Council, which defined the "doctrine relative to the institution, perpetuity and nature of the sacred apostolic primacy" (Pius IX, Dogmatic Constitution *Pastor æternus*), the references to divine law as source and inspirational criterion of the primacy are recurrent and repeated, fixing and imposing a constitutive bond on it. The Constitution *Pastor æternus* specifies, in particular, that "this power of the Supreme Pontiff is in no way prejudicial to the power of ordinary and immediate episcopal jurisdiction of the individual bishops", revealing a clear awareness of the intrinsic aggregating and essentially servant function of the Petrine ministry, and thus distancing itself from that despotic and autocratic prototype contested by its adversaries.

Vatican II, finally emancipated from defensive and apologetic concerns

(especially with regard to secular interference), then integrated and perfected that framework according to which the Roman Pontiff is not master, but administrator and custodian of the salvific goods and of the *societas Ecclesiæ*, among other things highlighting the diaconal imprint of the entire ecclesiastical ministry, not excluding the papal one, aimed at the *bonum commune*, as well as adding the strong solicitation to safeguard the rights of the faithful.

Subsequently, the Considerations of the Congregation for the Doctrine of the Faith on the Primacy of the Successor of Peter in the Mystery of the Church (1998) once again correlates the determination of the extension of the Petrine ministry to the *necessitas Ecclesiæ* [necessity of the Church, a recurring canonical expression to indicate the limits of papal power, ed. d.r.], once again clearly explicating the non-arbitrariness of the exercise of the command and outlining a responsibility of the Pope inextricably aimed at the edification of the Church and guaranteed by the service of unity, by maintaining and promoting communion with the other bishops and with the entire People of God. The evaluation of the *necessitas Ecclesiæ*, also mentioned in canon 333 § 2 of the current Code of Canon Law, although referred to the Pope's unquestionable discernment, cannot for this reason be translated into his hypothetical dictatorial caprice: on the contrary, the principle of *necessitas Ecclesiæ* is properly and exquisitely juridical, since the successor of Peter is irrefragably bound to it precisely by virtue of the task he has undertaken.

Even from such meagre hints, it emerges how in the Church the awareness that the power of the successor of Peter is certainly supreme, but by no means absolute, has been constant over the centuries and has therefore become granitic. No express prohibitions or peremptory prohibitions are distilled, but commitments and conditions

are outlined, without hesitation, that fully insert the Petrine office in the constitutional structure of the Church: that is, the limits are inherent and connatural to the Petrine ministry in itself, they configure it, nourish it and strengthen it rather than reduce or even erode its supreme character. Even holding the office of Pope, therefore, cannot be attributive of a personal status of superiority or dominion - "baptised among the baptised", asserted Francis, evoking the radical and fundamental equality of all the christifideles, and going so far as to declare that "in this Church, as in an inverted pyramid, the summit is below the base" - but confers a task of care and service, reflecting the Christological matrix (Mt 20:28; Lk 22:27) and communion of power, according to Gregory the Great's beautiful definition that the bishop of Rome is servus servorum Dei [servant of the servants of God].

First of a series of two

*** Full Professor of Canon Law, Ecclesiastical Law and History of Canon Law at the Department of Juridical Sciences of the Alma Mater Studiorum University of Bologna.**