

## THE APOSTOLIC SEE AND THE STRUCTURE AND FUNCTIONING OF THE ROMAN CURIA

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The Roman Curia, its functioning, the reforms it underwent in the past and is undergoing now are topics of serious discussion and deliberation today. Pope Francis constituted a committee to reform the Roman Curia which is functioning according to the articles of Pastor Bonus. PB describes the Roman Curia as the complex of dicasteries and institutes which help the Roman Pontiff in the exercise of his supreme pastoral office for the good and service of the whole Church and of the particular churches. In this article the author highlights how this organism strengthens the unity of the faith and the communion of the people of God and promotes the mission proper to the Church in the World (PB 1). The author concentrates also on the historical development, structure, and competence of the various congregations and tribunals of the Curia.

### **Introduction**

The Roman Curia is a juridical body comprising of the Secretariat of State and the congregations, tribunals, pontifical councils, administrative services and other institutes that assist the Roman Pontiff in the day-to-day administration of the entire Catholic Church. Insofar as the Curia serves as an instrument to assist the

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Pope in his Petrine ministry in service to all the churches, its nature is said to be ministerial or instrumental.<sup>1</sup> All categories of the Christian faithful share responsibility for this service. John Paul II emphasized in Article 8 of *Pastor Bonus* that consultors are appointed from among clerics or other Christian faithful outstanding for their knowledge and prudence, taking into consideration, as much as possible, the international character of the Church. In earlier times, the laity played an important role in the Church's growth; however, subsequent clericalization minimized lay participation in its governance. After the Second Vatican Council, however, the Catholic Church has become more open to lay collaboration in ecclesial governance. The laity's involvement is greatest in the Curia's pontifical councils and other offices, but minimal in its congregations and tribunals. For this reason, and because a study of the entire Roman Curia would be too vast an undertaking, this essay mainly focuses on the historical development, structure, and competence of the Curia's various congregations and tribunals.

## 1. Apostolic See

The term "Apostolic See" directly refers to the apostolic succession to the Petrine primatial office, and this primacy is the essential context within which the notion finds its ontological explanation. It is an expression whose understanding filtered out and developed in various phases: the settlement of the head of the Church in Rome (then political centre of the world),<sup>2</sup> the gradual recognition of papal

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<sup>1</sup> Cf. J. H. Provost, "Pastor Bonus: Reflections on the Reorganization of the Roman Curia," in *The Jurist* 48 (1988), p. 509.

<sup>2</sup> With the fall of Rome as the imperial capital, Constantinople, which by the first half of the 4<sup>th</sup> century was already a patriarchal seat of the Catholic Church, took over. When this See wished to transfer the primatial Apostolic See to the eastern part of the Empire, the Roman Church did not acquiesce. The refusal was because it was detrimental to the unity of the Church and jeopardized the position of the venerable nature of the Sees of Jerusalem, Antioch and Alexandria. Cf. S. Z. Ehler -J. B. Morrall, *Chiesa e Stato attraverso i secoli*, Milano 1954, pp. 6-7.

Among the successors of Leo the Great who continued to maintain Rome's juridical primacy were Gelasius I (492-496), Symmachus (498-514) and Gregory the Great (590-604). When called to appear before a council for a hearing regarding charges by a papal contender, Lawrence, Pope Symmachus refused ("*Prima Sedes a quoquam Iudicatu*"). Cf. A. Fliche - V. Martin, *Storia della Chiesa*, vol. IV, Torino 1972, p. 340.

primacy and the role it was meant to play in ecclesial organization, its various forms of expression - each corresponding to the different stages of understanding -, and finally the juridical affirmation of this competence in synodal and conciliar decrees.

Constituted as head of the Church by Christ, Peter the Apostle established the seat or "see" of his office in Rome. It then followed that this "See," occupied in a continuous sequence by his successors, became a symbol of continuity in actualizing this primatial function such a way that the See and its occupant are bound together. In establishing Petrine authority, Christ did not intend that such leadership over his Church would end with Peter's death, but that it would be transferred to his successors.<sup>3</sup>

The structure and the authority of this ecclesiastical juridical order must be understood from the context of the unique mission which Peter received from the Divine Founder of the Church. This mission is understood in terms of primacy of authority over the other Apostles and a mandate to govern the entire Church, and it seeks to express itself in the religious, social and normative characters by which the Apostolic See is today identified.<sup>4</sup> By the council of Sardinia (342 A.D.), the Apostolic See gained juridical reorganization and affirmation of its competence, especially over other bishops. The canons of this council enunciated the rights and duties of bishops in relationship to the Bishop of Rome.<sup>5</sup> The exercise of this jurisdiction,

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Emperor Justinian (527-565), retaining the notion of the relevance of the Apostolic See both to the Church and to the Empire, sought to protect the Christian faith. He, therefore, included previous papal pronouncements in his code (*Codex Iustinianus* I, I, 1). He recognized that this See was a juridical, religious reality that transcended the state's provisions. Although Vigilius (538-555) took the papacy by illegitimate means, he nevertheless reaffirmed the primacy of Peter within the Church.

<sup>3</sup> Cf. H. Denzinger - A. Schönmetzer (eds), *Enchiridium Symbolorum Definitionum et Declarationum de rebus Fidei et Morum*, Roma, 1973, pp. 3055-3058.

<sup>4</sup> Cf. H. Denzinger - A. Schönmetzer (eds), *Enchiridio Symbolorum. Definitionum et Declarationum de rebus Fidei et Morum*, p. 662.

<sup>5</sup> In the letter *Quod Semper* of this Council, it was written: "*Hoc enim optimus ... esse videbitur, si ad caput, it est ad Petri Apostoli sedem, de singulis quibusque provinciis Domini referant sacerdotes*". Cf. Idem, Epistola LV, 65, in *Corpus Scriptorum Ecclesiasticorum Latinorum* (CSEL), Academiae Vindobonensis, Vindobonae, 1866, p. 127; P. Coustant (ed.), *Epistolae Romanorum Pontificum a S. Clemente usque ad Innocentium III*, Parisiis, p. 395.

the fruit of tradition and history, was to continue in various ways, especially in pastoral consultation<sup>6</sup> and in the clarification or proposal of pastoral and theological matters.<sup>7</sup> Therefore, the Apostolic See is established from the Petrine primacy, organized as the pastoral means of papal ministry and service, structured as a seat or "See" of government, and empowered with jurisdiction over the whole Church.

The term "Apostolic See," also designated officially as the "Holy See,"<sup>8</sup> refers to:

- (a) The Pope in his office as the Supreme Pontiff: the visible head of the Catholic Church and the successor of Peter the Apostle;<sup>9</sup>

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The Eastern bishops' recognition of the juridical primacy of Pope Julian (337-352) motivated their appeals to him. This council, which decreed many acts implying recognition of papal jurisdiction and competence, used the following terms: "Bishop of Rome," "Roman Pontiff," and "See of the Apostle Peter." Cf. J. Mansi, *Sacrorum Consiliorum Nova et Amplissima Collectio*, Paris-Leipzig-Arnheim, 1901-1927, vol. III, col. 40b; For similar acts of recognition, see also the decrees of the Council of Arles, *Ibid.*, vol. II, col. 469-470; the Council of Nicea (325), *Ibid.*, vol. II, col. 670.

<sup>6</sup> Cf. H. Denzinger - A. Schönmetzer (eds), *Enchiridion Symbolorum. Definitionum et Declarationum de rebus Fidei et Morum*, p. 235.

<sup>7</sup> "Si majores causae in medium fuerint devolutae, ad sedem apostolicam, sicut synodus statuit, et beata consuetude exigit, post iudicium episcopale referantur." Innocent I (401-417): *Epistola II*, cap. III, *MPL* 20, 475.

St. Augustine mentioned the Apostolic See as the highest authority: «Jam enim de hac causa duo concilia missa sunt ad Sedem Apostolicam: inde etiam rescripta venerunt. Causa finite est: utinam aliquando finiatur error!» St. Augustine, *Sermo CXXXI*, cap. X, *MPL* 38, 734. Elsewhere he said: «...ad omnia nobis ille rescripsit eo modo, quo fas erat atque oportebat apostolicae Sedis antistitem». St. Augustine, *Epistola CLXXXVI*, cap. I, *MPL* 33, p. 817.

<sup>8</sup> The term "Holy See" is of more recent usage than "Apostolic See," which was in vogue in previous centuries. Pope John IV first used the term "Holy Apostolic See" cf. *Epistola Prima*, *MPL* pp. 80, 601. The meanings are all the same. Canon Law maintains this term especially in cc. 113, 361, 365, 455, and so on. "Holy See is used especially (but not exclusively) in the political and diplomatic context". Cf. L. Spinelli, *Diritto Ecclesiastico*, (2ed.), Torino 1987, p. 341.

<sup>9</sup> It is strange enough to see that in the constitution *Pastor Aeternus* of the First Vatican Council, the Holy Apostolic See and the Roman Pontiff are

(b) The Pope together with the dicasteries or departments of the Roman Curia that assist him in the spiritual organization and government of the Universal Church;<sup>10</sup>

(c) The spiritual organization of papal government.<sup>11</sup>

The first notion considers the papal office abstractly while the others bring out its concrete manifestation.<sup>12</sup> While there seems to be a very close affinity between the first and third notions, the three notions are different features and manifestations of the same juridical figure. The meaning, therefore, depends on the contexts within which they are used.

The Church as a visible structure is the entire community of the people of God, and the Holy See is its supreme organ of government. Both entities are related in their respective juridical capacities which are derived from the same source,<sup>13</sup> but distinctly affirmed, especially by reason of their respective nature and purposes.<sup>14</sup> It is the juridical entity that often acts effectively as the Church's international representation because of the organic and inherent unity between the two.<sup>15</sup> For this reason, the Holy See is capable of active and passive rights of legation (*ius legationum*) and has the

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distinguished from each other. Cf. H. Denzinger - A. Schönmetzer (eds), *Enchiridion Symbolorum. Definitionum et Declarationum de rebus Fidei et Morum*, pp. 3050-3075, especially in p. 3060 passim; AAS 6 (1970), pp. 40-47.

<sup>10</sup> Cf. *PB*, art. 1; cf. *CIC* c. 361.

<sup>11</sup> Cf. F. Cammeo, *Ordinamento Giuridico dello Stato della Città del Vaticano*, Firenze 1932, p. 10; P. V. Pinto, "Rilevanza giuridica della Chiesa Cattolica e del Consiglio ecumenico di Ginevra nell'ordinamento internazionale," in *Apollinaris* 46 (1973), p. 191.

<sup>12</sup> A. Ranaudo opines that the power of government in the Church is not merely abstract: "La potestà di governo nella Chiesa non rimane allo stato astrato.... A. Ranaudo, *Le Persone Morali Ecclesiastiche nel Diritto Canonico e nel Diritto Concordatario Itaiano*, Roma 1966, p. 26.

<sup>13</sup> Cf. G. Lajolo, *I concordati moderni. La natura giuridica internazionale dei concordati alla luce di recente prassi diplomatica*, Brescia 1968, pp. 495-496.

<sup>14</sup> Cf. P. V. Pinto "Rilevanza giuridica della Chiesa Cattolica e del Consiglio ecumenico di Ginevra nell'ordinamento internazionale," in *Apollinaris* 46 (1973), p. 191.

<sup>15</sup> Cf. L. Spinelli, *Diritto Ecclesiastico*, (2ed.), UTET, Torino 1987, p. 348.

competence of signing treaties, concordats, and conventions with other international subjects on behalf of the Catholic Church.<sup>16</sup>

The sovereign nature of the Holy See implies that it does not depend on any state as long as it operates within its own juridical order. This sovereignty extends to the spiritual sphere of the care of souls and to the temporal order, which includes the government of the Vatican City and the temporal organization of ecclesial institutions. This sovereign capacity has a venerable prestige that is not conferred on this See by law but by history and age-old traditions. But some authors dispute the notion that the Church has temporal power. For example, G. Catalano insists that the Church's sovereignty is only within the spiritual order and has nothing to do with the temporal.<sup>17</sup> But many authors do not accept this. The Holy See has sovereignty over the Church's spiritual as well as temporal affairs. It is the supreme sovereign organ of the Church's government in spiritual and temporal diplomatic affairs, and the sovereignty of the Vatican City inheres in it also. This sovereignty is derived from the "divine institution" (CIC c. 113 §1). Robert T. Kennedy states:

To afford continuity and stability, the legal system of the Church, like other legal systems, creates artificial entities known as juridic persons on which the law confers certain rights, such as the right to own property, the right to enter into contracts, and the right to sue, and imposes certain obligations, such as regard for the common good, accountability to ecclesiastical authority, and liability for debts and for the faithful fulfilment of the intention of donors. Such entities include dioceses, Episcopal conferences, parishes, institutions of consecrated life, societies of apostolic life, seminaries, and some colleges, universities, hospitals, and other educational, charitable, or apostolic endeavours.<sup>18</sup>

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<sup>16</sup> Cf. P.V. Pinto, "Rilevanza giuridica della Chiesa Cattolica e del Consiglio ecumenico di Ginevra nell'ordinamento internazionale," pp. 190-191.

<sup>17</sup> Cf. Catalano, *La Sovranità dello stato e l'Autonomia della Chiesa nella Costituzione repubblicana*, Milano, 1968, p. 155.

<sup>18</sup> R. T. Kennedy, "Physical Juridic Persons," in J. P. Beal, J. A. Coriden, T. J. Green (ed.), *New Commentary on The Code of Canon Law*, Bangalore 2004, p. 154.

The Holy See also has the international identity of the Vatican city-state, so it is also governed by customary and written laws of international order. These laws apply to it insofar as they are compatible with its special nature. They affect the activities which the Holy See is capable of carrying out; and of course combatant activities and enterprises that are political and competitive in nature are excluded.<sup>19</sup> Moreover, it is an ecclesiastical institution whose end is unity of faith, whose authority is for the pastoral service of the Church, and whose means are indefectibility, infallibility, and universal power of Holy Orders and pastoral jurisdiction.

## 2. Structure And Functions Of The Roman Curia

### 2.1. Nature of the Roman Curia

The Roman Curia is the Church's governing body. Paul VI wrote in his motu proprio *Integre Servandae*:

...the Church, which is of divine institution and deals with divine matters, is made up of men and lives among people: thus, in order to fulfil her duties, she employs different instruments according to the various times and human cultures, having to treat numerous and important matters, because the Roman Pontiffs themselves and the Bishops, concerned innumerable matters, would not be able to provide for them alone. It is therefore from the very nature of things that administrative organs have come into being, that is the Curia: to them was entrusted the task of facilitating the government of the Church by supervising the observance of laws promulgated, by promoting initiatives in order to realize the Church's proper finality, and by resolving any controversies that might arise.<sup>20</sup>

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<sup>19</sup> Cf. G. Morelli, *Nozioni di Diritto Internazionale*, Padova 1967, p. 149.

<sup>20</sup> Paul VI, Motu proprio, *Integre Servandae*, 7 December 1965 in AAS, 57 (1965), p. 952; «Ecclesia porro, quae divinitus est instituta et divina pertractat, ex hominibus constat et in homines degit: unde ad explenda munera sua, pro temporum humanique cultus diversa ratione, diversis est usa instrumentis, cum nempe tot tantaque negotia dirimenda suscepisset, ad quae et ipsi Romani Pontifices et Episcopi, innumeris distenti sollicitudinibus, per se non suffecissent. Ex rerum igitur natura instituta administrationis seu Curiae ortum duxerunt: quibus id muneris est attributum, ut expeditiorem redderent Ecclesiae gubernationem, legum conditarum tuendo observantiam, inceptis favendo, quae ad Ecclesiae finem adipiscendum conducirant, controversiae forte subortas solvendo».

According to *Pastor Bonus*, the Roman Curia is the complex of dicasteries and institutes which help the Roman Pontiff in the exercise of his supreme pastoral office for the good and service of the whole Church and of the particular Churches. It, thus, strengthens the unity of the faith and the communion of the people of God and promotes the mission proper to the Church in the world (*PB*, art. 1). *CIC* c. 360 and the Apostolic Constitution *Pastor Bonus* treat the Roman Curia as a juridical, organizational instrument that depends on the primacy of the Petrine office. Since the Roman Curia is an instrument by which the pope governs the universal Church, its organizational structure is theologically connected to Petrine primacy.<sup>21</sup> This primacy of the Roman Pontiff is very much highlighted in number 9 of *Christus Dominus*, the Decree on the Pastoral Office of the Bishops in the Church:

In exercising his supreme, full and immediate authority over the Universal Church the Roman Pontiff employs the various departments of the Roman Curia, which act in his name and by his authority for the good of the churches and in the service of the sacred pastors.<sup>22</sup>

The function of the Roman Curia has an ecclesial character because the Curia derives its existence and competence from the supreme pastor of the Universal Church; it exists and operates only insofar as it has a relation to the Petrine ministry and is based on it.<sup>23</sup> Therefore, the Roman Curia is to help the Petrine activities of the Roman Pontiff. The activity of the Roman Curia and other institutes of the Holy See is a true ecclesial service marked with a pastoral character. As it is a sharing in the worldwide mission of the Roman Pontiff, all to whom this ministry is entrusted must discharge it with a deep sense of duty and in a spirit of service.<sup>24</sup>

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<sup>21</sup> Cf. J. I. Arrieta, *Governance Structures within the Catholic Church*, Montreal 2000, pp. 145-146.

<sup>22</sup> Vatican Council II, Decree on the Pastoral Office of the Bishops in the Church *Christus dominus* 28 October 1965, no. 9, in *AAS* 58 (1966), p. 676; English translation in A. Flannery, (ed.), *Vatican Council II: The Conciliar and Post-Conciliar Documents*, Bombay 1991, p. 513 (Hereafter *CD*).

<sup>23</sup> Cf. *PB*, art. 7.

<sup>24</sup> Cf. John Paul II, *Address to the Cardinals and Collaborators of the Roman Curia*, 28 June 1984, in *L'Osservatore Romano* English edition, 16 July 1984, p.6; J. I. Arrieta, *Governance Structures within the Catholic Church*, p. 146.



The apostolic constitution *Pastor Bonus* highlights the Roman Curia's important ministerial role, specifying that the Curia's identity is expressed as service and assistance to the successor of Peter in such a way that, in his name and by his authority, it can fulfil its duty "for the good of the churches and in the service of the sacred pastors" (CD 9). The spirit of service that must motivate all those who collaborate in the pastoral work of the Roman Curia is presented.<sup>25</sup> The introduction of *Pastor Bonus* emphasizes the ministerial character of the Roman Curia.<sup>26</sup> Drawing upon the spirit of *Lumen gentium* 4, it states:

The main thrust of this service or *diaconia* is for *more and more communion or fellowship to be generated* in the whole body of the Church, and for this communion to thrive and produce good results. As the insight of the Second Vatican Council has taught us, we come, with the gentle prompting of the Holy Spirit, to see the meaning of the mystery of the Church in the manifold pattern within this communion: for the spirit will guide "the Church in the way of all truth (Jn 16:13) and [unify] her in communion and in the work of ministry, he bestows upon her varied hierarchic and charismatic gifts."<sup>27</sup>

The dicasteries of the Roman Curia have a vicarious character. In other words, the power they exercise is not ordinary power but vicarious power which they receive from the Roman Pontiff. The dicasteries of Roman Curia fulfil their function "in the name and by the authority of the Pontiff himself for the good of the Churches and in the service of the sacred pastors."<sup>28</sup> This is a commonly affirmed principle in canonical doctrine<sup>29</sup> which the preamble of *Pastor Bonus* uses to define the juridical position of the Curia with respect to the pope. The Roman Curia "receives its power from the Roman Pontiff

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<sup>25</sup> Cf. A. Cattaneo, "The Roman Curia" in A. Marzoa, J. Miras and R. Rodríguez-Ocña (ed.), *Exegetical Commentary on the Code of Canon Law*, Montreal 2004, p. 673.

<sup>26</sup> Cf. *PB*, art. 1.

<sup>27</sup> *PB*, art. 1.

<sup>28</sup> Cf. A. Viana, "The Roman Curia," in A. Marzoa, J. Miras and R. Rodríguez-Ocña (ed.), *Exegetical Commentary of the Code of Canon Law*, vol. II/I, Montreal 2004, p. 679.

<sup>29</sup> Cf. John Paul II, *Motu Proprio, Inde a Pontificatus*, 25 March 1993, in *AAS* 85 (1993), pp. 550-552.

and exercises it within its own essential and innate dependence on the Pontiff. It is of the nature of this power that it always joins its own action to the will of the one from whom the power springs. It must display a faithful and harmonious interpretation of his will and manifest, as it were, an identity with that will, for the good of the Churches and service to the bishops. From this character the Roman Curia draws its energy and strength, and in it too finds the boundaries of its duties and its code of behaviour" (PB 8).<sup>30</sup> The Curia adheres to a code of behaviour in its union with the Roman Pontiff because it must be a faithful interpreter of his will and must be fully identified with it. It is this identity that legitimizes the concrete decisions made by the Curia.<sup>31</sup> The Curia is called to express the pope's will in fostering the good of the particular Churches and serving their bishops. Such subsidiarity and subordinate relationship to the pope gives the Curia its distinctive authority but also limits its prerogatives.<sup>32</sup>

According to J. I. Arrieta, the prefects or presidents of the dicasteries can receive habitual faculties from the Pope *ad personam* (PB 18, CIC c. 132). In this way, they can perform acts of governance without first submitting themselves to Roman Pontiff. Even if the term "vicarious" technically pertains to the exercise of the power of governance, the expression also more broadly applies to all organs which carry out governance functions proper to the Petrine ministry in the area of promotion and development (such as pontifical councils).<sup>33</sup> The principal characteristic of each and every dicastery of the Roman Curia is ministerial. The ministerial dimension of the Roman Curia, within the framework of ecclesiastical communion, is manifested in collaborating regularly with the Pope in his mission of service to the unity of the entire Church and its members.<sup>34</sup> The Roman Curia is to be a means of unity and communion between the head and the members of the College of Bishops, between the

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<sup>30</sup> Cf. J. I. Arrieta, *Governance Structures within the Catholic Church*, p. 146.

<sup>31</sup> Cf. *Ibid.*, p. 146.

<sup>32</sup> Cf. T. J. Green, "The Cardinals of the Holy Roman Church", in J. P. Beal, J. A. Coriden, T. J. Green (ed.), *New Commentary on The Code of Canon Law*, Bangalore 2004, p. 478.

<sup>33</sup> Cf. T. J. Green, "The Cardinals of the Holy Roman Church," p. 147.

<sup>34</sup> Cf. A. Viana, "The Roman Curia," 2004, p. 679.

universal Church and particular Churches.<sup>35</sup> By taking the spirit of *Pastor Bonus* Article 15, A. Viana states: "The functions of the Roman Curia must be exercised always 'according to law, be it universal law or the special law of the Roman Curia, and according to the norms of each dicastery, yet with pastoral means and criteria, attentive both to justice and the good of the Church and especially for the salvation of soul' (*PB* art. 15)."<sup>36</sup> The nature of the Roman Curia is therefore ministerial and pastoral and its function should facilitate the Petrine ministry of the Supreme Pontiff.

## 2.2. *Dicasteries of the Roman Curia*

According to *Pastor Bonus* Article 1, the Roman Curia is made up of dicasteries and other institutions. The term "dicastery" denotes a specific juridical entity that assists the Roman Pontiff in the exercise of his supreme pastoral ministry.

Curiae Romanae complexus est Dicasteriorum et Institutorum, quae Romano Pontifici adiutricem operam navant in exercitio eius supreme pastoralis ad Ecclesiarumque particularium bonum ac servitium, quo quidem unitas fidei et communionis populi Dei roboratur atque missio Ecclesiae propria in mundo promovetur.<sup>37</sup>

The dicasteries are divided into four, namely, congregations, tribunals, councils, and offices. They are distinguished as follows:

- a) *the Congregations* are specifically entrusted with the vicarious, executive power of the Roman Pontiff for matters within their competence, although their activity actually goes well beyond this.

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<sup>35</sup> Cf. A. Cattaneo, "La fundamentacion eclesiologica de la Curia romana en la 'Pastor Bonus,'" in *Ius canonicum* 30 (1990), pp. 39-57; also cf. A. Viana, "The Roman Curia," pp. 679-680.

<sup>36</sup> A. Viana, "The Roman Curia," p. 680.

<sup>37</sup> *PB*, art. 1; The Roman Curia is the complex of dicasteries and institutes which helps the Roman Pontiff in the exercise of his supreme pastoral office for the good and service of the whole Church and of the particular Churches. It thus strengthens the unity of the faith and the communion of the people of God and promotes the mission proper to the Church in the world.

b) The Roman Pontiff exercises his judicial power through the *supreme tribunals*, which also perform duties of an administrative nature connected with their judicial function.

c) Pontifical Councils are specifically responsible for the promotion, coordination, and study of matters that do not concern the exercise of the supreme power of governance, but have to do with the pastoral governance of the Church.

d) The Offices perform economic or general administrative functions for the benefit of the governmental structure of the Curia.<sup>38</sup>

### 2.3. *Juridical Status*

Based on the general principle all the dicasteries are juridically equal in relation to one another.<sup>39</sup> This was first decreed by Paul VI in his Apostolic Constitution *Regimini Ecclesiae universae*.<sup>40</sup> This principle does not apply to the institutions that are not dicasteries. At least in theory, the hierarchical principle will apply to these institutions with varying degrees of subordination.<sup>41</sup> For example, the Secretary of State could convene the heads of various dicasteries for regular meetings; or the second section of the Supreme Tribunal of the Apostolic Signatura could determine competencies among the dicasteries and hear appeals from dicasterial decisions. Moreover, under the current norms all documents which other dicasteries propose to issue are subject to a prior judgment on faith and morals by the Congregation for the Doctrine of Faith (*PB* art. 54), which gives that dicastery a somewhat higher standing than the others.<sup>42</sup> *Pastor Bonus* refers to this oversight function several times, and it receives special mention as limiting the competence or activities of

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<sup>38</sup> Cf. J. I. Arrieta, *Governance Structures within the Catholic Church*, pp. 147-148.

<sup>39</sup> Cf. *PB*, art. 2, 3.

<sup>40</sup> Cf. Paul VI, Apostolic Constitution *Regimini Ecclesiae universae*, 15 August 1967, in *AAS* 59 (1967), Art.1 §2, p. 890; *Congregationes sunt inter se iuridice pares*.

<sup>41</sup> Cf. J. I. Arrieta, *Governance Structures within the Catholic Church*, pp. 147-148.

<sup>42</sup> Cf. J. H. Provost, "Pastor Bonus: Reflections on the Reorganization of the Roman Curia," p. 512.

other dicasteries, as in *Pastor Bonus* articles 62, 94, 137 and 161. *Pastor Bonus* article 62 states:

The Congregation for Divine Worship and the Discipline of the Sacraments does whatever pertains to the Apostolic See concerning the regulation and promotion of the sacred liturgy, primarily for the sacraments, without prejudice to the competence of the Congregation for the Doctrine of Faith.<sup>43</sup>

Since the Roman Curia is composed of numerous autonomous organs, the legislator cannot avoid establishing a certain juridical superiority for the purposes of directing and coordinating the Curia's activity.<sup>44</sup>

#### **2.4. Competence of the Dicasteries**

According to *Pastor Bonus* Article 14, the competence of each dicastery is defined on the basis of subject matter unless some other basis is explicitly provided. Such other basis is provided, for example, in matters involving Eastern Catholics. Except for certain issues, such matters are generally handled by the Congregation for the Eastern Churches (*PB* art. 58). The territory subject to the Congregation for the Evangelization of Peoples, which replaces the Congregation for Bishops in the erection of dioceses and naming of bishops, is another example (*PB* art. 89).<sup>45</sup>

Article 13 of *Pastor Bonus* gives a general principle for the functions of the dicasteries within their areas of competence. Mainly there are four functions: 1) addressing and frequently deciding questions relating to the Holy See; 2) studying the pastoral problems that arise within the activity of the Church; 3) promoting initiatives for the good of the Church; and 4) examining (resolving and judging) the contentious cases deferred to the Apostolic See.<sup>46</sup> All the dicasteries

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<sup>43</sup> *PB*, art. 62: *Congregatio ea agit quae, salva competentia Congregationis de Doctrina Fidei, ad Sedem Apostolicam pertinent quoad moderationem ac promotionem sacrae liturgiae, in primis Sacramentorum.*

<sup>44</sup> Cf. J. I. Arrieta, *Governance Structures within the Catholic Church*, p. 148.

<sup>45</sup> Cf. J. H. Provost, "Pastor Bonus: Reflections on the Reorganization of the Roman Curia," p. 514.

<sup>46</sup> Cf. *PB*, art. 13; see also J. I. Arrieta, *Governance Structures within the Catholic Church*, p. 148.

may have all these four functions, but some are not empowered to deal with contentious matters, and others do not need to exercise ordinary juridical power in addressing the issues that have been entrusted to them.<sup>47</sup> Decisions of major importance are to be submitted for the approval of the Supreme Pontiff, except those for which special faculties have been granted to the moderators of the dicasteries and, within the limits of their proper competence, the sentences of the Tribunal of the Roman Rota and the Supreme Tribunal of the Apostolic Signatura.<sup>48</sup>

Dicasteries possess only executive power of governance.<sup>49</sup> Therefore, besides issuing general administrative acts, the dicasteries are also competent to issue general executive decrees and instructions, as set out in *CIC* cc. 31-34.<sup>50</sup> However, the dicasteries cannot issue laws or general decrees that have the force of law, nor derogate from the prescriptions of current law, except in individual cases and with the specific approval of the Supreme Pontiff.<sup>51</sup> This framework relates only to the Latin Church, as the concept of general decrees does not exist in the Eastern Catholic Churches. As a result, every general act of the dicasteries regarding the jurisdiction of these Churches must assume the form of a true and proper legislative delegation or decree of law, according to that established by *Pastor Bonus* art. 18 (CCEO c. 985 §2).<sup>52</sup>

Conflicts of competence among the dicasteries are resolved by the Supreme Tribunal of the Apostolic Signatura unless the matter is

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<sup>47</sup> Cf. A. Viana, "La potestad de los dicasterios de la Curia romana," in *Ius Canonicum* 59 (1990), p. 84.

<sup>48</sup> *PB*, art. 18.

<sup>49</sup> Cf. M. R. Moodie, "General Decrees and Instructions," in J. P. Beal, J. A. Coriden, T. J. Green (ed.), *New Commentary on The Code of Canon Law*, Bangalore 2004, p. 99.

<sup>50</sup> Cf. John Paul II, *Regolamento generale della Curia Romana*, 30 April 1999, in *AAS* 91 (1999), p. 679: I Dicasteri, nell'ambito della propria competenza, possono emanare decreti generali esecutivi e istruzioni, a norma dei cann. 31-34 del Codice di Diritto Canonico e tenuto presente l'Art. 156 della Cost. Ap. *Pastor bonus* (Art. 125 §1).

<sup>51</sup> Cf. *PB*, art. 18.

<sup>52</sup> Cf. J. I. Arrieta, *Governance Structures within the Catholic Church*, p. 150.

reserved to the Supreme Pontiff.<sup>53</sup> Matters over which two or more dicasteries have competency (i.e., mixed competency) are to be examined together by the dicasteries concerned.<sup>54</sup> For example, the Congregation for the Doctrine of Faith is necessarily involved whenever a question addressed to another dicastery has doctrinal or moral implications, for example, ecumenical policy. In such circumstances there are two possibilities: an inter-dicasterial consultation followed by an independent decision from each dicastery, or a single solution by joint commission (*PB*, art. 21).<sup>55</sup>

Conflicts of competence between the dicasteries can be *positive* or *negative*. They are *positive* when two or more dicasteries assert their own competence over a certain question; *negative* when no dicastery admits its own competence. When there is a positive conflict of competence, the Apostolic Signatura assumes jurisdiction with the petition of resolution presented by any one of the dicasteries claiming to be competent in the matter. Whereas when the conflict of competence is negative, the Apostolic Signatura assumes jurisdiction with the petition of the interested subject. Once the petition for the resolution of the conflict has been presented, the Apostolic Signatura hears the concerned party, and, after studying the question, renders a decision in the form of a decree.<sup>56</sup>

### ***2.5. Specific Structure of the Dicasteries of the Roman Curia***

The dicasteries of Roman Curia have a well-organized structure for the purpose of government.<sup>57</sup> Unless they have a different structure in virtue of their specific nature or some special law, dicasteries are generally composed of a cardinal prefect or presiding archbishop, a body of cardinals and some bishops, a secretary, consultants, senior administrators, and a suitable number of officials.<sup>58</sup> *Pastor Bonus* Article 3, §2 states, "According to the specific nature of certain

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<sup>53</sup> Cf. *PB*, art. 20.

<sup>54</sup> Cf. *PB*, art. 21.

<sup>55</sup> Cf. T. J. Green, "The Cardinals of the Holy Roman Church", p. 479.

<sup>56</sup> Cf. J. I. Arrieta, *Governance Structures within the Catholic Church*, p. 150.

<sup>57</sup> Cf. J. I. Arrieta, "Funzione pubblica e attività di governo nell'organizzazione centrale della Chiesa: il Regolamento generale della Curia Roma," in *Ius Ecclesiae* 4 (1992) p. 589.

<sup>58</sup> Cf. *PB*, art. 3 §1.

dicasteries, clerics and other faithful can be added to the body of cardinals and bishops.” But paragraph three adds that, strictly speaking, the members of the congregation are only the cardinals and bishops (*PB* art. 3 §3). Moreover, *Pastor Bonus* Article 7 adds that “matters requiring the exercise of power of governance be reserved to those in holy orders.”

The Supreme Pontiff appoints the prefect or president, the secretary, and the other senior administrators as well as the consultants for terms of five years.<sup>59</sup> “The members of the body mentioned in Article 3, §1, are taken from among the cardinals living in Rome or outside the city, to whom are added some bishops, especially diocesan ones, insofar as they have special expertise in the matters being dealt with; also, depending on the nature of the dicastery, some clerics and other Christian faithful, with this provision that matters requiring the exercise of power of governance be reserved to those in holy orders.”<sup>60</sup> While there is provision for lay involvement in dicasterial activity, matters that involve the power of governance are reserved to clerics with the power of orders.

## ***2.6. Administration of the Dicasteries of the Roman Curia***

The internal structure of the dicasteries of Roman Curia can be grouped into four different levels, namely, the collegial organs of governance, the body of consultants, the personal organs, and the administrative staffs.<sup>61</sup>

### ***2.6.1. The Collegial Organs of Governance***

A cardinal prefect or archbishop president heads the dicastery (cf. *PB* art. 3, §1) and the dicastery secretary supervises its personnel and expedites its business.<sup>62</sup> There are three categories of meetings in each dicasteries. The first category of meeting, a *coetus*, is attended by the head of the dicastery – its cardinal prefect or archbishop president – the senior prelate (secretary), the undersecretary and the officials named by the head of the dicastery. The second category of meeting is known as a congregation, or ordinary session. To these

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<sup>59</sup> Cf. *PB*, art. 5 §1.

<sup>60</sup> *PB*, art. 7.

<sup>61</sup> Cf. J. I. Arrieta, *Governance Structures within the Catholic Church*, pp. 151-152.

<sup>62</sup> Cf. T. J. Green, “The Cardinals of the Holy Roman Church”, p. 479.



are convoked the members of the dicastery present in Rome.<sup>63</sup> The third category is the plenary session, which is to be held on dates coordinated with the Secretary of the State after informing the Supreme Pontiff.<sup>64</sup> In a plenary session, certain significant questions, such as policy decisions, are reserved to the plenary assemblies.<sup>65</sup> *Pastor Bonus* Article 11, §2 insists that all the dicastery's members must be called in due time to the plenary session, held once a year insofar as possible, to deal with questions involving general principles and others for which the prefect or the president deems it necessary. For ordinary sessions it is sufficient to convoke members who reside in Rome.

### 2.6.2. The Consultors

All dicasteries have a body of consultors, each of whom is appointed for a five-year term by the Roman Pontiff.<sup>66</sup> Consultors are to make a diligent study of the matter at hand and are to subsequently present their opinion, usually in writing.<sup>67</sup> Consultors are appointed from among clerics or other Christian faithful outstanding for their knowledge and prudence, and taking into consideration, as much as possible, the international character of the Church.<sup>68</sup> For the individual cases, Persons outside the dicastery with relevant expertise can be consulted in individual cases, but are not considered consultors.<sup>69</sup>

### 2.6.3. The Category of Persons in the Dicastery

There are three key figures involved in the operations of a dicastery. The first category of person in the dicastery is the prefect or

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<sup>63</sup> Cf. John Paul II, *Regolamento generale della Curia Romana*, Art. 112 § 2, p. 679: *Alle Sessioni ordinarie sono convocati i Membri residenti a Roma e possono prendervi parte anche gli altri Membri.*

<sup>64</sup> Cf. J. I. Arrieta, *Governance Structures within the Catholic Church*, p. 152.

<sup>65</sup> Cf. T. J. Green, "The Cardinals of the Holy Roman Church," p. 480.

<sup>66</sup> Cf. *PB*, art. 5 §1; also cf. D. J. Andres, "Consigli e consiglieri al diretto servizio del Romano Pontefice," in *Utrumque ius* 21, 1991, p. 23.

<sup>67</sup> Cf. *PB*, art. 12.

<sup>68</sup> Cf. *PB*, art. 8.

<sup>69</sup> Cf. *PB*, art. 12; also cf. J. I. Arrieta, *Governance Structures within the Catholic Church*, p. 152.

president, who heads the dicastery and by law directs and represents it. The Roman Pontiff appoints them for a five-year term (*PB* Art. 5 §1). They cease from the office when they have completed seventy-five years of age (*PB* Art. 5 §2) or upon the death of the Supreme Pontiff (*PB* Art. 6). The second category of person in the dicastery is the senior prelate, who sometimes holds the office of vice-president and other times that of secretary. He assists the prefect or president in carrying out his function. The senior prelate is also appointed for a five-year term by the Roman Pontiff and ceases from his office at seventy-five years of age. He participates with the right to vote at all the ordinary or plenary sessions of his dicastery (*PB*, art. 11, §3). The third important person in the dicastery is the undersecretary, who aids the other two officials by managing the dicastery's business and its human resources (*PB* Art. 4).<sup>70</sup>

#### 2.6.4. Administrative Staff

The administrative staff of each dicastery is composed of clergy and laity who are divided into different levels.<sup>71</sup> "Officials are taken from among the Christian faithful, clergy or laity, noted for their virtue, prudence, and experience,<sup>72</sup> and for the necessary knowledge attested by suitable academic degrees,<sup>73</sup> and selected as far as possible from the various regions of the world, so that the curia may express the universal character of the Church.<sup>74</sup> The suitability of the applicant should be evaluated by test or other appropriate means, according to the circumstances."<sup>75</sup> The terms of employment of those employed by the Curia are specified both in the *Regolamento generale*

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<sup>70</sup> Cf. J. I. Arrieta, *Governance Structures within the Catholic Church*, p. 153.

<sup>71</sup> Cf. John Paul II, *Regolamento generale della Curia Romana*, art. 7 §§ 1, 3, pp. 632, 695: Art. 7 §3: *Il personale di tutti i dieci livelli funzionali dipende e per lo stato giuridico e per la sua attività dal proprio Capo Dicastero.*

<sup>72</sup> Cf. John Paul II, *Regolamento generale della Curia Romana*, art. 14 § 1, p. 636.

<sup>73</sup> Cf. John Paul II, *Regolamento generale della Curia Romana*, art. 14 §2, p. 637.

<sup>74</sup> Cf. John Paul II, *Regolamento generale della Curia Romana*, art. 13 §3, p. 636.

<sup>75</sup> Cf. *PB*, art. 9; also cf. J. I. Arrieta, *Governance Structures within the Catholic Church*, p. 153.

*della Curia Romana* and in the corresponding internal regulation of the dicasteries.<sup>76</sup>

### **Conclusion**

The Roman Curia is the juridical body that assists the Roman Pontiff in the governance of the Catholic Church. The nature of the Roman Curia is said to be ministerial in that it assists the Pope in his Petrine ministry in service to all the churches, and instrumental in that the pope exercises his Petrine ministry through it.

The structure and authority of this ecclesiastical juridical entity must be understood in light of the special mission which Peter received from the Divine Founder of the Church. This mission is understood in terms of Peter's primacy of authority over the other Apostles and a mandate to govern the Church, and it seeks to express itself in the religious, social, and normative characters by which the Apostolic See is identified today. The different congregations and tribunals of the Roman Curia are governmental bodies entrusted to exercise pope's authority. These bodies are to help the Roman Pontiff in the day-to-day administration of the entire Catholic Church. Each of them has different functions: the Congregations and Tribunals exercise the power of executive and judicial governance, respectively. Generally, vicarious executive and judicial power is exercised in the Roman Curia through the Secretariat of State, the Congregations and the Tribunals. The Holy Father nominates consultors to assist each dicastery. They are appointed from among clerics or other Christian faithful outstanding for their knowledge and prudence, taking into consideration the international character of the Church as much as possible. In examining the Roman Curia's nature, its function, and the competence of its different dicasteries, one finds a well-organized system of governance that has been modified and restructured in accord with the needs of the times.

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<sup>76</sup> Cf. John Paul II, *Regolamento generale della Curia Romana*, art. 10 §§1, 6, 7, pp. 633-634; also cf. J. I. Arrieta, *Governance Structures within the Catholic Church*, p. 153.