

# **The Exercise of the *Potestas Vicaria* of the Roman Pontiff: Perfect and Harmonious Interaction of *Fides, Ratio atque Ius***

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**Abstract:** The juridical consequences of the canonical procedure for the dispensation from the natural and divine positive laws are directed to the dissolution of the natural and supernatural bond validly contracted either in marriage or in the religious profession.

A supernatural power may dissolve both the natural and supernatural bonds through the exercise of the '*Potestas Vicaria*' of the Roman Pontiff who exercises it not as the Supreme Head of the Universal Catholic Church but in virtue of his prerogative as the "*Vicarius Christi*" on earth. The correct exercise of the divine power is based on theology and grounded in canonical science. Its right understanding and interpretation are harmonious employment of the metaphysical principles applied in theological and canon sciences.

The author traces the theological foundation of the *potestas vicaria* in Sacred Scriptures and Sacred Traditions constantly interpreted and enriched by the Church living Magisterium. The '*potestas divina et vicaria*' exercise is based on the canonical provisions and praxis starting from the 7th century.

The vicarious power exercised by the Church in the name of God is also referred to as '*Potestas Instrumentalis*', i.e., Instrumental Power. A clearer understanding of the philosophy of this instrumental causality applied in theology and canon law implies a great deal of comprehension of some notion of causality proper of metaphysics. The employment

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of the ontological principles in both the theological and canonical tradition and doctrine assures the conclusion that it is not *'mere humana sed potestas divina.'*

The author illustrates that a perfect and harmonious interaction of *fides, ratio atque ius* is indeed possible in the modern institutional structures like in the exercise of the *potestas vicaria* of the Roman Pontiff.

**Keywords:** dispensation, *potestas vicaria, instrumentalis, clavium, pascendi*, Vicar of Christ, dissolution of natural and supernatural bonds of marriage, ontology, metaphysics, causality, canon law, theology, natural and divine positive law

## Introduction

The Church has a peculiar and yet concrete manner of resolving pastoral difficulties involving both the *Christifideles* and the non-believers. Her intervention is aimed at safeguarding the welfare of the faithful *pars pro toto*. The Church's message and accurate manner of intervening are resolute because it has its origin in God revealed through Jesus Christ, and which at times surpasses and perfects all that the human *mens* can understand of the Christian meaning of life through *ratio*. Only the *ratio* enlightened by *fides* can unveil the flux of events under the Divine Providence's guidance at work in the history of humanity. Herein lies the *truth* about the nature of God's intervention for the salvation of individuals in the history of salvation.

*Fides et Ratio* number 30<sup>1</sup> illustrates various modes of ascertaining the truth. One of these modes is the experiential and pragmatic method that leads toward the empirical truth. It is proper for daily life and is the purpose of almost all scientific endeavors. It is considered such insofar as the ascertainment of truth depends upon the direct evidence verified by *ad hoc* experimentations. The quest for the pragmatic truth should continue sans discarding the *sapiential dimension*, wherein scientific and

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<sup>1</sup> Ioannes Paulus II, Litt. Encycl. *Fides et Ratio*, 14 sept. 1998, in: AAS, XCI (1999), 5 – 88. From then onward, *Fides et Ratio* is abbreviated as *FR*. In the encyclical letter, John Paul II concentrates attention on the theme of truth and its foundation in relation to faith, continuing the reflection already made in the Encyclical Letter *Veritatis splendor* (6 August 1993) regarding truth on the moral level (cf. *FR*, 6), which also embraces some fundamental rational truths. Cf. English translation in: *Origins* 28 (22 October 1998) 314 – 347 and the Vatican Website number 30: "It may help, then, to turn briefly to the different modes of truth. Most of them depend upon immediate evidence or are confirmed by experimentation. This is the mode of truth proper to everyday life and to scientific research. At another level we find philosophical truth, attained by means of the speculative powers of the human intellect. Finally, there are religious truths which are to some degree grounded in philosophy, and which we find in the answers which the different religious traditions offer to the ultimate questions."

technological achievements are intertwined with the metaphysical and ethical values which are distinctive and indelible marks of *persona humana* in its entirety.<sup>2</sup>

The second method is the philosophical one that is processed by the speculative human power of the *intellectus*. It involves metaphysical principles proper to the *Infinite* and *finite* beings as they delve into that which exists; thus, it is the quest for philosophical truth. It behooves that this kind of *investigatio* embraces a widely and genuinely metaphysical range, capable of transcending empirical data to attain *quaedam* ‘absolute, ultimate and essential’ in its search for truth.

The third kind is religious discernment of truth. The most sublime of this kind of truth is the Divine Revelation - the Revealed Truth, i.e., the Truth *par excellence* - that to some degree is grounded in philosophy. Theology, thus, is the most effective instrument to discern the truth that comes from God. In fact, by its very nature, theology is sustained in the search for truth by its *ecclesial context* grounded in the Sacred Scriptures and the Sacred Tradition of the *populi Dei*.

The *FR* affirms that we can reach the objective truth, i.e., ‘*adaequatio rei et intellectus*,’ through philosophy.<sup>3</sup> Thus, our philosophical affirmation is true to the extent that it is a daily existential experience that is adequate to what we refer to in theology.

Henceforth, we can understand the concept of the *Potestas vicaria* of the Roman Pontiff in the dissolution of the natural and supernatural bond by examining its philosophical nature. It is only through the metaphysical principles employed in this canonical process that we can grasp its theological significance and its socio-religious relevance. Ergo, its metaphysical passage is a cogent argument to understand

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<sup>2</sup> St. John Paul II, in his review of the 19<sup>th</sup>-century philosophers, singles out two, in particular, namely John Henry Newman and Antonio Rosmini (cf. *FR*, 93). Antonio Rosmini, (1797–1855), Italian priest, philosopher, theologian and patriot, and founder of a religious congregation, aimed principally in his philosophical work at re-addressing the balance between reason and religion which had largely been lost as a result of the Enlightenment. In solution to the fundamental problem of knowledge, he has offered a perspective that places the *human person* on a transcendent level. His thought on human beings is that they share in the finality of being itself and, in some finite way, participate in its infinite characteristics. See his works and related readings: A. Rosmini, *A New Essay: Concerning the Origin of Ideas*, edited by Antonio Belsito, Catholic Life International 2017, 482; IDEM., *Introduction to Philosophy*, trans. Murphy, R., Durham, UK: Rosmini House 2004; C. BERGAMASCHI, *Bibliografia degli scritti editi di Antonio Rosmini Serbati*, 1815–1998, 4 vols., Milan-Stresa 1970–98; R. POZZO, *The Philosophical Works of Antonio Rosmini in Translation in: American Catholic Philosophical Quarterly*, LXXIII no. 4, 1999. Blessed John Henry Newman (1801 – 1890), beatified on September 19, 2010, was known to deliver the “*Parochial Sermons*,” without eloquence but with a thrilling earnestness and a profound knowledge of *human nature* seldom equaled. See J. H. NEWMAN, *Parochial and Plain Sermons*, Ignatius 1997, 178.

<sup>3</sup> Cf. *FR*, 82.

the real nature of the Supreme Pontiff's exercise of divine power for the good of the *Christifideles*.

Metaphysics is thus, in our case, a theological mediation because a theology sans a metaphysical involvement could not move beyond an analysis of this particular religious experience. In fact, without the mediation of metaphysics, the *intellectus fidei* cannot adequately give a coherent account of the Revealed Truth's universal and transcendental value, especially on the divine power exercised by the Roman Pontiff in the dissolution of the matrimonial bond.

Canon Law guarantees the proper and lawful exercise of God's power entrusted to His Vicar on earth, who is the Roman Pontiff. However, its validity and legitimacy depend on theologically well-founded principles elaborated with metaphysical schemes.

Let us analyze the very nature of this divine power (*infinite*) validly exercised by a human person (*finite*) by examining its theological, philosophical, and canonical nature.

It seems that it is only recently that the theory of the divine *potestas vicaria* (vicarious power) was elaborated and expanded by theologians-canonists to explain the theologico-canonical process observed by competent ecclesiastical authorities, specifically the Supreme Pontiffs, when they dispense from natural and divine positive laws. However, some authors<sup>4</sup> point out that this doctrine is already well known to classical and ecclesiastical authors who already elaborated on the triple nature of this power. To make the concept clearer, we can divide the topic into three sub-topics: the *first* - its theological nature; the *second* - its metaphysical nature; and the *third* - its juridical nature.

### **The Theological Nature - *Fides***

Let us limit our discussion by highlighting the theological bases that illustrate the doctrine accepted over the centuries. These are the scriptural foundations -

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<sup>4</sup> Some of the renowned theologians and canonists who delved into this subject with clarity are the following: A. Abate, *Lo scioglimento del vincolo coniugale nella giurisprudenza ecclesiastica*, Roma 1970, 7-127; Idem, *La Potestà Ministeriale della Chiesa nel vincolo coniugale*, in: *Sapienza*, 12, Roma 1959, 406-433; F. Cappello, *Tractatus Canonico-Moralis De Sacramentalis Vol. V -De Matrimonio*, Romae 1950, 736-79; J. Casoria, *De matrimonio rato et non consumato*, Roma 1979, 5-85; J. Castaño, *Introductio ad ius matrimoniale. I De matrimonio natura: Appendix III: De potestate vicaria seu ministerialis*, Roma 1979, 333-353; Idem, *Il Sacramento del matrimonio*, Roma 1992, 473-506; A.C. De Lery, *Quousque se extendat ecclesiae vicaria potestas solvendi matrimonium*, in: *Periodica* 48, Roma 1959, 335-348; F. Lambruschini, *Disputatio de potesta vicaria romani pontificis in matrimonium infidelium*, in: *Apollinaris* 26, Roma 1953, 175-197; U. Navarrete, *Potestas Vicaria Ecclesiae. Evolutio historica conceptus atque observationes attenda doctrina Concilii Vaticani II*, in: *Periodica* 60, Roma 1971, 99-140.

passages from the *Sacred Scriptures* that lay the foundation of its theological nature; the traditional bases - elaborations above all from the Sacred Traditions of the Fathers of the Church and Ecclesiastical Writers; and the magisterial declarations - as the permanent and living assurance of the original *fontes* from which the living *Church Magisterium* consolidates its authentic doctrinal interpretations and pronouncements.

### *The Sacred Scriptures*

The scriptural source is the basis of the theological certainty of the existence of the divine vicarious power. In fact, from the very start, the Fathers of the Church and Ecclesiastical Writers made use of the scriptural passages to illustrate its existence and the validity of its exercise. To date, the contemporary theologians and canonists continue to rely on these propositions in elaborating the theological nature of this divine power humanely exercised by the competent ecclesiastical authority. It is sufficient to cite a few of them.

#### 1. *Matthew 11, 16 -18<sup>5</sup>: the power to bind and to loose*

It is the metaphor of binding (*ligandi*) and dissolving (*solvendi*). This metaphor mentions the twofold power given to the Church: the one that governs her as a *societas iuridice perfecta*, i.e., perfect legal society and that she exercises in her very own name; and the other one that regulates her as a supernatural society governed by God. The latter is more divine than the former.<sup>6</sup> It is considered as *potestas divina et vicaria*,<sup>7</sup> i.e., divine and vicarious power. It is right from this very source that springs forth the faculty to dispense from the divine positive laws.<sup>8</sup> In fact, *clavium, ligandi,*

<sup>5</sup> Matthew 16: 16 -18: «*Et ego dico tibi quia tu es Petrus... et quodcumque ligaveris super terram, erit ligatum et in coelis et quodcumque solveris super terram, erit solutum et in coelis*».

<sup>6</sup> Cf. R. Cosio, *De Vicaria Ecclesiae Potestate*, Roma 1959, 42: «*Hodierna Ecclesiae doctrina constata potestatem huiusmodi metaphoris designatam ad duplicem scopum obtinendum ordinari, nempe: ex una parte ad regendam Ecclesiam qua societatem externam, perfectam..., ideoque quodam sensu humanam esse quamvis divinitus concessa, atque ab Ecclesia exercitam nomine proprio; altera ex parte dirigi ad spirituale bonum internum singulorum fidelum promovendum, per ablationem quoquoque obligationum erga Deum immediate contractarum, ideoque vero sensu divinam esse*».

<sup>7</sup> Cf. *Ibid.*: «*Hodierna Ecclesiae doctrina constata potestatem huiusmodi metaphoris designatam ad duplicem scopum obtinendum ordinari, nempe: ex una parte ad regendam Ecclesiam qua societatem externam, perfectam..., ideoque quodam sensu humanam esse quamvis divinitus concessa, atque ab Ecclesia exercitam nomine proprio; altera ex parte dirigi ad spirituale bonum internum singulorum fidelum promovendum, per ablationem quoquoque obligationum erga Deum immediate contractarum, ideoque vero sensu divinam esse*».

<sup>8</sup> *Ibid.*: «*It refers to] the power of loosing, whereby the Church is able to dispense in the matter of vows and oaths and, in general, to release a man from the obligations he has freely contracted, and which bind him before God and in conscience.*»

and *solvendi* are expressions from the rabbinic language, in which “to bind and unbind means to put or remove an obligation, or even to declare licit or illicit.”<sup>9</sup>

It is a divine and ecclesial investiture, that is, the conferral of the divine power and prerogatives onto the person of Peter, the Prince of the Apostles, who was thereby invested with the fullness of power that he exercised above all for the supernatural end. It can easily be deduced from the foregoing that the Roman Pontiff, insofar as the Successor of Peter, enjoys this power not only as the Supreme Pastor of the Universal Church but also as the Vicar of the Lord Jesus Christ on earth. What has been handed on to Peter personally is consequently handed on uninterruptedly to his successors *sicut statuente Domino*. This is clear in canon 330 of the Code of Canon Law: “The bishop of the Roman Church, in whom continues the office given by the Lord uniquely to Peter, the first of the Apostles, and to be transmitted to his successors, is the head of the college of bishops, the Vicar of Christ, and the pastor of the universal Church on earth.”

It is a dogmatic principle, yet it implies canonical consequences of enormous importance. The canon contemplates the Roman Pontiff as the Successor of Peter and that the bishops are Successors of the Apostles, but the mode of succession has a different character. The Roman Pontiff succeeds Peter directly, inheriting his personal prerogatives and offices as universal Pastor of the Church and Head of the College of Bishops.<sup>10</sup> On the other hand, bishops succeed the Apostles through the College of Bishops, of which they are part and do not inherit the special prerogatives they had from Christ. Consequently, while the power of each Apostle extended to the whole Church, that of individual bishops is limited to a particular Church. The power of the bishops over the whole Church is only collegial in nature and has as its condition the hierarchical communion with the Head of the College, the Roman Pontiff.

Moreover, the Roman Pontiff possesses *iure divino* the fullness of pastoral power, indicated theologically by the term «primacy»: a primacy that is not merely of ‘honor’ nor ‘presidential’ character but in the proper sense of jurisdiction and government over the whole Church (DS 3053 and 3055).<sup>11</sup> He is the Successor of Peter, vested with the same function of pastoral government, conferred by Christ on the Apostle for the salvation of all and transmitted individually to the Successor of the Apostle (DS 3071). He is the Head of the College of Bishops, as Peter was the

<sup>9</sup> P. Grasso, *Il Primato di Pietro, fondamento biblico e storico*, Roma 1960, 28.

<sup>10</sup> Cf. L. Chiappetta, *Il Codice di Diritto Canonico - Commento giuridico-pastorale*, Vol. I, Napoli 1987, 1764.

<sup>11</sup> Cf. Congregatio Pro Doctrina Fidei, *Considerations of the Primacy of the Successor of Peter in the mystery of the Church*, 31 October 1998, in: *Communicaciones* 30 (1998) 207-216; *EV* 17, 1197-1207; *Origins* 28 (1999) 560-563.

Head of the Apostolic College. Likewise, he is the Vicar of Christ for the universal Church: a title reserved to the Supreme Pontiff from the 13th century onward.<sup>12</sup>

It should be noted, however, that this kind of power – *potestas vicaria* -is divine and not human because it is exercised *in nomine Dei*. Therefore, it is God who acts through the Supreme Pontiff and not vice versa.

## 2. John 21, 15 -17<sup>13</sup>: the *potestas clavium* and *pascendi*

This passage is strictly connected to the metaphor of the power of the keys entrusted to the Prince of the Apostles. In reference to the *potestas clavium*, i.e., ‘power of the keys,’ this passage extends the exercise of the power given to Peter not only to a small group, specifically to the Church but also to all men regardless of their belief; therefore, not only to the baptized but to the entire humankind as well. It is undeniable: “There is but one Peter who has been chosen in the whole world to call all nations to be apostles under one pastor so that, although there are many priests and shepherds, all are governed by Christ who rules in the person of Peter.”<sup>14</sup>

The metaphor of ‘*pascendi*,’ i.e., ‘feed my lambs and my sheep,’ has a precise meaning. Having to leave the earth, the Lord entrusts to Peter, the care of all his flock. Peter certainly does it, but always in the Redeemer’s name, always with Christ’s assistance. Jesus, the Lord, remains the real *Pastor bonus* and Peter is his ‘*ecclesial deputy*,’ i.e., the Vicar of Christ on earth.

The Lord Jesus Christ enjoins Peter in Matthew 18:18: “Truly I tell you, whatever you bind on earth will be bound in heaven, and whatever you loose on earth will be loosed in heaven.” Henceforward, all the affirmations of Christ refer to the double efficacy of this power because every action performed by the Vicar of Christ on earth will also have the very same effect and consequence in heaven.

Moreover, its preexistence is affirmed, and it is now up to the Church, as interpreter and guardian of Divine Revelation, to expose the content and the limit of this power either through a formal declaration or by constant and uninterrupted tradition and praxis.

<sup>12</sup> Likewise, the title of ‘Vicar of Christ,’ relatively to a particular Church, is attributed by the Second Vatican Council to the bishops (LG 27).

<sup>13</sup> John 21: 15 - 17: «*Cum ergo prandissent, dicit Simoni Petro Iesus: Simon Iohannis, diligis me plus his? Dicit ei: Etiam, Domine, tu scis quia amo te. Dicit ei: Pasce agnos meos. Dicit ei iterum: Simon Iohannis, diligis me? Ait illi: Etiam, Domine, tu scis quia amo te. Dicit ei: Pasce agnos meos. Dicit ei tertio: Simon Iohannis, amas me? Contristatus est Petrus, quia dixit ei tertio: Amas me et dixit ei: Domine, tu omnia nostis; tu scis quia amo te. Dixit ei: Pasce oves meas*».

<sup>14</sup> R. Cosio, *op. cit.*, 49: “*De toto mundo unus Petrus eligitur, qui et universarum gentium vocationi, et omnibus Apostolis, cunctisque Ecclesiae pastoribus praeponatur: ut quamvis in populo Dei multi sacerdotes sint, multique pastores, omnes tamen proprie regat Petrus, quos principaliter regit et Christus.*”

### *The Sacred Tradition*

More than the Fathers of the Church, the Ecclesiastical Writers, who were mostly canonists, contributed to the elaboration and clarification of the concept.

1. Baldus de Ubaldis, an Italian jurist and a leading figure in the Medieval Roman Law (1327- 1400), developed the doctrine of the divine vicarious power by explaining the pontifical reservations: “In papal reservations, what is accomplished by the pope is not done by man but by God.”<sup>15</sup> He affirmed that the prerogative of the Roman Pontiff as Vicar of God is reserved solely to him; thus, every exercise and action performed by him is always ascribable to this divine prerogative: “The pope is the only Vicar of Jesus on earth; and although his act may have the nature of man; nonetheless, it solemnly entails the celestial power.”<sup>16</sup>
2. Antonius de Butrio (1338-1408) was an Italian jurist and a noted *magister* of law in the *Scuola Giuridica di Bologna*. He composed numerous commentaries on the Decretals of Gregory IX and on the *Liber Sextus*, which provide a comprehensive understanding of canon and civil’s law contemporary practice. He affirmed: “That which is done by the pope as the Vicar of God is interpreted as accomplished by God alone, and that action done through the Vicar is seen as the action of the Lord.”<sup>17</sup> This kind of affirmation highlights the true meaning of the function of the *potestas ministerialis* as an action deliberated and performed by the Vicar of God but, in effect, confirmed and accomplished only by God. This is the ministerial power, i.e., the exercise of divine power at God’s service and for the salvation of men. The use of this power is in line with the principle of causality elaborated in metaphysics.
3. Peter of Ancarano (1333- 1416) was an Italian jurist, a noted student of Baldus de Ubaldis, and a professor of Antonius de Butrio. Taking into consideration the limitation of the exercise of this faculty, the jurist affirmed that the Vicar of God, in certain circumstances, can relax the

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<sup>15</sup> Baldus De Ubaldis, the article cited in: M. Maccarrone, *La Teologia del Primato Papale dal IV all’VIII secolo delle relazioni con le Chiese occidentali*, Spoleto 1960, 237, note 7: “*Reservata papae, non facit papa tamquam homo, sed tamquam Deus.*”

<sup>16</sup> *Ibid.*, note 8: “*Solus papa in terris est vicarius Jesu Christi, et licet naturalia hominis habeat, tamen habet quiddam solemniter agit in virtute celesti.*”

<sup>17</sup> Antonius De Budrio, in: M. Maccarrone, *op. cit.*, note 9: “*Quod factum est a papa, ut vicario Dei, interpretatur factum a solo Deo; et quae gesta per vicariam, videntur gesta per dominum.*”



obligation of the law concerning only the secondary or inferior precept of natural and divine positive law, excluding thereby the superior precept that belongs only to God and to the Redeemer. In the case of the law's relaxation, it is God who dispenses it: "so it seems to be in contradiction: the inferior neither has the power to dispense from the law of the superior, nor the vicar can oppose the law of his Lord. On the other hand, the answer to the previous is that what is needed to be performed by God and the Redeemer Himself is said to be accomplished by His *vicarius*."<sup>18</sup>

4. Thomas Sánchez (1550 – 1610), a Spanish Jesuit and a famous casuist, illustrates the very nature of the power described above: "It is, therefore, said that the marriage contracted in natural law is indissoluble because no human and private authority can dissolve it; however, the divine or public authority of the Church before reaching its perfection can dissolve it. This is because the Supreme Pontiff as the Vicar of God, discerning the will of God for the greater good such as in favor of faith, dissolves the conjugal bond. In the case of Matthew (on the verse: "What God has joined together, no man put asunder.") is explained by the experts, especially in the dispensation of a marriage between non-believers that is not considered sacrament; it is not really man that separates the parties, but God through His Vicar who in this case interprets the mind of God."<sup>19</sup>
5. The *Salmanticenses* is utterly clear: "I respond by saying: the Supreme Pontiff has the power to grant the dispensation, so that the ratified marriage is dissolved, not by the ordinary power he has as Supreme Pontiff, but by the extraordinary and special power granted to him for the good and proper governance of the Church and the good of the faithful ... Such dissolution of marriage is allowed by the Supreme Pontiff

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<sup>18</sup> Petrus De Ancarano, in: M. Maccarrone, *op. cit.*, note 11: "*Et per ista tolluntur contraria, quia inferior non potest tollere legem superioris..., nec vicarius irritare statuta domini sui... Nam respondetur per proxime dicta, quia ipse Deus Dominus et Redemptor dicitur facere quod facit eius vicarius.*"

<sup>19</sup> *Memoriale*, Archivio segreto Vaticano, cit. in: E. Lazcano, *Potestad del Papa en la disolución del matrimonio de infieles*, Madrid 1945, 242-243: "*Dicendum est igitur omne matrimonium esse de iure naturae insolubile quia humana et privata contrahentium auctoritate solvi non potest, quamvis divina seu publica auctoritate Ecclesiae solvi possit antequam fiat perfectum sacramentum: Et hoc quia Summus Pontifex, ut Vicarius Dei, interpretatur mentem Dei esse, ut propter maius bonum, qualis est casus fidei, cesset vinculum coniugale. Nam illud Matthei (Quod Deus coniunxit, homo non separet) exponitur a Doctoribus, quod intelligitur de sacramento matrimonii quale non est matrimonium infidelium cum praesertim in dispensatione non homo proprie separet coniuges, sed Deus per Vicarium suum qui mentem Dei hanc esse interpretatur.*"

not as man but as the Vicar of God who gave the extraordinary power to the Supreme Pastor for this specific reason.”<sup>20</sup>

6. Richard of Middleton (1249 – 1308) was a member of the Franciscan Order, a theologian, and a scholastic philosopher. He illustrated that the faculty to dispense in matters of divine natural and positive law is not *mere humana sed divina* through the Supreme Pontiff: “Moreover, when the Pope established that a non-consummated marriage might be dissolved through the profession in religious order by one of the parties, this is not established by human power but by that of Christ who granted it to [the Pope] insofar as His Vicar.”<sup>21</sup>
7. Thomas Aquinas, the Angelic Doctor, contrary to those who believe that the Roman Pontiff cannot dispense from a vow because he has no such power, clearly affirms: “To clarify a law does not mean to legislate another new one, but to manifest what the law was all about. In other words, it should be said that he likewise can dispense from the vows insofar as the dispensation is the relaxation of the law for some legitimate reason.”<sup>22</sup> It is evident that the dispensation from the religious vows is part of the exercise of the divine *potestas vicaria*; it is a widely accepted doctrine.<sup>23</sup>

### *The Church Living Magisterium*

The Magisterium of the Church is the indisputable source from which the clarification and application of the doctrine on the exercise of this power are acknowledged, and thereby, successively and systematically expounded. The *divina potestas vicaria* was already ontologically existing right from the very beginning, although its exercise and elaboration gradually evolved, thanks to the Church Magisterium’s timely and direct intervention.

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<sup>20</sup> Salmanticenses, *Cursus theologiae et moralist*, Lugduni 1679, tract. IX, cap. IV, punct. II, dub. III, n. 61: “Respondeo igitur dicendum, Summum Pontificem habere potestatem ad praebendam dispensationem, ut Matrimonium ratum dissolvatur, non quidem ex potestate ordinaria, quam habet ut Princeps Supremus, sed ex extraordinaria potestate, et specialiter concessa propter bonum regimen Ecclesiae, et pacem suorum subditorum... Non dispensari a Summo Pontifice dissolutione talis matrimonii tamquam ab homine, sed tamquam a vicegerente Dei, qui dedit Summo Pastori hanc extraordinariam potestatem propter rationem datam.

<sup>21</sup> Ricardo Di Mediavilla, cit. in: R. Cosio, *op. cit.*, 78, note 90: “Cum autem Summus Pontifex statuit matrimonium non consummatum solvi per alterius coniugis professionem in religione, hoc non statuit potestate humana, sed divina sibi a Christo data in quantum est vicarius eius.”

<sup>22</sup> In *IV Sententiarum*, d. 38, q. 1, a. 4, q. 1, a. 1, sol: “Declarare ius non est novum ius facere, sed illud quod in iure erat manifestare. Et ideo aliter dicendum, quod in voto potest dispensari etiam secundum quod dispensatio est iuris relaxatio ex aliqua legitima causa.”

<sup>23</sup> Cf. P. Pianton, *Sulla Dissolubilità*, Venezia 1858, 24.

1. Gregory II (669 – 731), in the year 726, introduced the dissolution of the matrimonial bond in conformity with the doctrine of Hincmarus Rhemensis and Gratian on the dissolution of “*matrimonii initiati ob impotentiam... Nihil proinde exigit quod recurratur ad conceptum dispensationis super rato et non consummato.*”<sup>24</sup>
2. Alexander III (1100 - 1181) began to dissolve the marriage, but he did not exercise the *potestas vicaria* because the dissolution was based on the antecedent impotence. Thus, it was indeed the declaration of the nullity of marriage for the impediment above of natural law that renders the marriage invalid and illicit *ab initio*.
3. Innocent III (1160 - 1216) taught with erudition: “*Quod Deus coniunxit, homo non separet: ut nec liceat homini carnali matrimonio legitime copulatos dividere... cum non humana sed divina fiat auctoritate quod in hac parte per Summum Pontificem adimpletur, qui non hominis puri, sed veri Dei vere vicarius appellatur. Nam quamvis simus apostolorum principis successor, non tamen eius aut alicuius apostoli vel hominis sed ipsius sumus Vicarii Iesu Christi. Unde quos Deus... ligavit, non homo, quia non vicarius hominis, sed Deus, quia Dei Vicarius separat.*”<sup>25</sup>
4. Gregory IX (1170 - 1241), in his Decretals, recognized the entrance to the Christian Religion as a legitimate dissolution of a ratified marriage.
5. Martin V (1369 - 1431) introduced the exercise of the *potestas vicaria* on the dissolution of marriages, causing a long controversy that would be definitively resolved by his successors.
6. Clement VIII (1530 - 1605) convened a special commission for the elaboration and in-depth study of the question concerning this

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<sup>24</sup> Cf. J. Casoria, *De matrimonio rato et non consummato, Dispensationis processus canonici doctrina et praxis*, Roma 1959, 23, note 33: “Initiated marriage or impotency... Thus, there is no demanding reason not to have recourse on the concept of dispensation from *super rato et non consummato*.”

<sup>25</sup> S. Balbitius, *Epistolarum Innocentii III, Libri undecim*, t. I, col. 2, Paris 1682, 181: “It is not allowed for a man to divide the marriage when it has already reached its carnal copulation... but not with a human but a divine power that is so accomplished in this way by the Supreme Pontiff who is called the true Vicar and who acts not merely as human but indeed as God. For though we are considered the Successor of the Prince of the Apostles, nonetheless, we are not the vicar of any apostle or man, but we are the Vicar himself of Jesus Christ. Hence, those whom God united, not man because he is not a vicar of another man, but God who separates through His true Vicar.” Cf. J. Castaño, *Introductio ad Ius Matrimoniale*. Vol. I *De matrimonii natura*: Appendix III: *De Potestate Vicaria seu Ministerialis*, Roma 1979, 336; M. Maccarrone, “Il sovrano ‘Vicarius Dei’ nell’alto medio evo,” in: *Studies in the History of Religion*, an. 4, Leiden 1959, 109-124; J. Coriden, *The Indissolubility added to Christian Marriage by Consummation*, Rome 1961, 45-53.

extraordinary pontifical power. On 16 July 1599, the Commission described above was established and composed of men who were experts in the field of canonical and dogmatic sciences to deal with all the aspects of the considered dispute: *“praefata Commissio virorum, in scientia canonica et dogmatica excellentium, mature perpensa controversia, responsum affirmativum.”*<sup>26</sup>

7. Benedict XIV (1675 - 1758), in the year 1714, finally declared with certainty that the Roman Pontiff could validly exercise this faculty: “There is nothing more to add to the question on the power of the Supreme Pontiff on the dispensation *super matrimonio rato et non consummato*, especially with today’s concurring opinion common among theologians and canonists and likewise widely accepted praxis.”<sup>27</sup> Moreover, he asserted that: *“Cessat quoque indissolubilitas matrimonii rati in aliis casibus extra Professionem religiosam, in quibus Summus Pontifex, iustis et gravissimis de causis censet ejus dissolutini esse locum, ita suadente traditione, ita exposcente observantia, ita demum convincente continuata plurium saeculorum praxi sedis Apostolicae, ex quibus interpretatio juris divini optime colligi potest.”*<sup>28</sup>
8. Pius XII (1876 - 1958), based on the teaching of his predecessors, with great eloquence and authority, proclaimed that: “It is superfluous to repeat that the ratified and consummated marriage is by divine right indissoluble insofar as any human power cannot dissolve it; while other marriages, although intrinsically indissoluble, do not however have an absolute extrinsic indissolubility, but given certain necessary presuppositions, they can, it is known as relatively well-known cases, be dissolved, in addition to the power of the Pauline privilege, by the Roman Pontiff, by virtue of his ministerial power.”<sup>29</sup>

From the preceding, no one will dare to deny the existence and valid exercise of the *potestas vicaria divina* considering the exposition of existing facts and practices meticulously observed over the centuries and specifically consolidated by the living

<sup>26</sup> J. Casoria, *op. cit.*, 26.

<sup>27</sup> *Ibid.*, 26, note 50: “Nullam de potestate S. Pontificis moveri amplius posse quaestionem, in quod attinet ad dispensandum super matrimonio rato et non consummato, cum hodie opini affirmativa sit communis inter theologos et canonistas, et in praxi recepta, ut notorium est.”

<sup>28</sup> *Ibid.*, 27: “In other cases, aside from the Religious Profession, the indissolubility of ratified marriage also ceases. In these cases, the Supreme Pontiff, considering the just and serious causes for the dissolution, by observing the tradition and heeding the request; and thus, finally establishing an uninterrupted and long-standing secular practice of the Holy See. As a result, it can be summed up that this is the best way of interpretation of the divine law.”

<sup>29</sup> Pius XII, Alloc. «Già per la terza volta», in: AAS, XXXIII (1941) 424-425.

Magisterium of the Church. As a final clarification, we must say that although there is no certainty that it is part of the articles of faith, it must be considered as “a proposition next to an article of faith.”<sup>30</sup> *Catholica doctrina est.*<sup>31</sup> “Therefore, we can consider such teaching as the official doctrine of the Pontifical Magisterium.”<sup>32</sup>

### The Metaphysical Nature - *Ratio*

The vicarious power exercised by the Church in God’s name is also referred to as *Postestas Instrumentalis*, i.e., Instrumental Power. To understand in a more precise manner the philosophy of this instrumental causality applied in theology and canon law, we must at least comprehend some notion of causality proper of metaphysics.

The common element that illustrates the quasi definition of causality is that the cause is for which something exists and that which is. “The cause is a principle that affects the existence and nature of the *ens*, which will be called the effect,”<sup>33</sup> while vice versa, the effect, as such, is that which depends on the being and essence of the cause. It is clear that the cause precedes the effect in the ontological order. Francisco Suarez defines cause: “*est id a quo aliquid per se pendet. Quae quidem quoad rem spectat mihi probatur; libentius autem ea sic describerem; causa est principium per sé influens esse in aliud.*”<sup>34</sup> This definition emphasizes the influence of the cause on the being of the effect, or viceversa, the dependence of the being of the effect on the cause.

The Angelic Doctor describes the cause with some significant variation: “*est ad quam sequitur esse alterius; nemo cause importat influxum quemdam ad esse causati.*”<sup>35</sup> The definition of Suarez, taken in full rigor, induces to infer that only God is the true cause, i.e., an Absolute Being that produces being as *esse*; and consequently, denies the notion of secondary causes. Whereas, the Angelic Doctor’s definition, while affirming the true cause as the First Cause and Uncaused Cause, however, admits true causality - distinct from the first - also to creatures, which could be considered as secondary causes, instruments, or occasions of divine action. This affirmation is crucial for theology and the subject we are discussing. In fact, W. Kane affirms categorically: “God indeed acts in all things as the first cause, but creatures themselves have their proper operations and are secondary causes.”<sup>36</sup>

<sup>30</sup> Cf. A. Abate, *Lo scioglimento del Vincolo Coniugale nella Giurisprudenza Ecclesiastica*, Roma 1970, 29.

<sup>31</sup> Congregatio Pro Disciplina Sacramentorum, Decretum: «*Catholica Doctrina*,» in: AAS, XV (1923) 389.

<sup>32</sup> J. Castaño, *Il Sacramento del Matrimonio*, Roma 1992, 478.

<sup>33</sup> W. Kane, “Existence and Causality” in: *The Thomist*, an. 28, Washington 1964, 82.

<sup>34</sup> F. Suarez, *Disputationes Metaphysicae*, disp. XII, sect. 2, n. 4, Venezia 1761, 384, b.

<sup>35</sup> Cf. St. Thomas, cit. in P. Dezza, *Metaphysica generalis*, Roma 1948, 195.

<sup>36</sup> W. Kane, *op. cit.*, 87.

In order not to have a complication, it would be better, for now, to accept the definition of the cause as reformulated by P. Dezza concerning the various Thomists, i.e., “*principium per se influens ad esse alterius*.”<sup>37</sup>

The cause in common parlance is also understood as an efficient cause, i.e., as a principle from which proceeds primarily any action that causes something to be or to be in a certain manner. It is an extrinsic principle that influences the being of an entity distinct from the cause itself. Every efficient cause acts in a similar way to itself (*omne agens agit simile sibi*) and pre-contains the effect it communicates (*nemo dat quod non habet*). Thus, “*causa efficiente è il principio attivo che dà l’essere; effetto invece (è) la novità esistenziale o modo d’essere ricevuto*.”<sup>38</sup>

For Aristotle, the proper and formal effect of the efficient cause is the movement that must be understood not only in the primitive sense of local motion but also as a qualitative and substantial mutation, alteration, generation, and corruption, briefly and generally as its own becoming.<sup>39</sup>

For St. Thomas, on the other hand, who admits not only the philosophical but also the theological concept of creation, the cause can also be directly the cause of the being of the effect. God, in fact, is the first Efficient Cause, universal and total of every particular being (*ens*), since the latter in any way participates in the Being for Himself who is God.<sup>40</sup> Indeed, being insofar as being, the *esse simpliciter* of every creature is God’s own and exclusive effect, who alone is Subsistent Being *per sé*. The underlying principle in this process signifies an act of participation. Henceforth, causality is understood only in terms of participation, and without this, it is impossible to give an intelligible sense to the real causality of beings.

We shall not delve into this controversial subject. It is sufficient for us to understand the notion that the causal *nexus*, the causality in its various types, and the cause’s action must be conceived solely and simply as a real and essential dependence of the effect on virtue and effectiveness of the cause. This analysis shows and clarifies the abstract concept of causality and action, which is a critical concept for understanding the notion of the *primary* or *principal* cause and of the *secondary* or *instrumental* cause that applies in theology and canon law, specifically to the metaphysical nature of the divine vicarious power.

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<sup>37</sup> P. Dezza, *op. cit.* 195.

<sup>38</sup> E. Zoffoli, *Principi di Filosofia*, Cipi 1988, 119.

<sup>39</sup> Cf. C. Fabro, “Esegesi Tomistica, Tomismo e pensiero moderno,” in: Coll. *Cathedra Sancti Thomae*, Roma 1969. Idem, “Dall’ente di Aristotele all’«esse» di S.Tommaso,” in: *Aquinas*, an. 1, Roma 1958, 5-39; C. Giacom, “Il platonismo di Aristotele e S.Tommaso,” in: *Doctor Communis*, an. 27, Roma 1975, 153-170.

<sup>40</sup> Cf. W. Kane, *op. cit.*, 84 e 87.

### *The Principal Cause*

The *first cause*, which is likewise called *principal*, is that which acts by its own virtue. It pre-contains and possesses absolutely every perfection, that is, the pure and perfect act. The agent produces something similar to itself; it acts from its own form and strength. Applying it to God, He is the “*causa delle cause, perché quale Essere-per-essenza, è il sovrano Principio dell’ente-in-quanto-ente.*”<sup>41</sup> God alone is the first and primary cause, while finite causes act and produce effects only as God’s instruments. As God’s instruments, they are moved by the Prime Mover, and their effects depend more on the latter (God) than on themselves. It is excluded that the created agent is the principal cause, independent of *esse* insofar as being is concerned, and at the same time the simple instrumental cause of a specific effect.<sup>42</sup> For this reason, the effect of an instrumental action must be attributed to the agent and not to the instrument itself. In fact, in the canonical process of beatification and canonization, the required miracles must not be attributed to saints but properly to God alone. Therefore, we can affirm that the dissolution of the matrimonial bond is more an effect of God, that is, of the principal cause rather than of the Roman Pontiff, who is the instrumental cause.

### *The Instrumental Cause*

Instrumental causality has a remarkable value, not only for ordinary life but also for the supernatural dimension of human existence in its relationship with God, who wants to use His creatures’ natural actions to obtain supernatural effects. This is one reason why it is widely applied in theology, specifically in the seven sacraments of the Church.

The cause that produces an effect is called instrumental, not by virtue of its form but only by the movement with which a principal agent moves it.<sup>43</sup> It does not produce the effect in its entirety, nor does it act by its own force but depends on the principal agent.

The instrument is appropriately a cause, precisely because it is an intermediary between the first cause and the ultimate effect. This process, in turn, presupposes two actions, i.e., two causalities in action: first, the action or causality of the primary cause that moves the instrument; and second, the action or causality that the instrumental cause carries out under the motion of the principal cause. There is, therefore, a real dependence of the effect on the efficacy of the cause. The relationship of dependency

<sup>41</sup> E. Zoffoli, *op. cit.*, 113.

<sup>42</sup> Cf. W. Kane. *op. cit.*, 58.

<sup>43</sup> Cf. *Ibid.*

is identified not only with the movement in action, but likewise merely with the effect insofar as an effect; the effect as such, formally considered, is nothing but a reality produced by another. In other words, it is nothing but that of being produced, a dependence on being or becoming from another entity, which is the principal cause. It is essential to understand that the relation subsequent to the causative fact refers subject to subject and is permanent even beyond the duration of the action itself; therefore, the marriage bond that is dissolved remains such not only at the time of the declaration that gave rise to the new status of life of the couple but the previous marriage that gave rise to marital status as dissolved in a definitive and indeterminate manner.

Simplifying the concept: the instrumental cause is the agent that is moved by another. Specifically, as an instrument, it moves only through the movement caused by the principal cause. The finite agents are instruments moved by another, which is the Prime Mover, therefore the former act under God's influence.<sup>44</sup> They cause the effect as agents moved by the Primary Mover, and thus, act as instruments of God.

Let us look at an example of how the instrumental cause works by applying it to marriage. The Roman Pontiff's concession of the dispensation restores the free status to a couple previously bound by the matrimonial bond - the cause's primary efficacy is based on the fact that the obligation is dissolved by a cause that is utterly superior to the instrumental cause.<sup>45</sup>

At this point, we need to make some clarifications to understand the salient points of the notion of causality:

1. The instrumental causality is limited both in terms of species and intensity of form and the intensity in terms of its active virtue. The perfection of the effect, as such, cannot supersede the perfection of the cause, but it must be pre-contained in it, not individually, but specifically or virtually.
2. The instrument's causality is not always in primary and immediate act, but in turn, must be reduced in the act through the action of another superior cause.
3. The physical agent's materiality moves in such a way that every action provokes an equal reaction with respect to the first and second causes but has a contrary effect to the passive subject, i.e., the receiver. Thus, "causality always requires a disparity that distinguishes the *act* of those

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<sup>44</sup> Cf. *Ibid.*, 88: "finite agents are not independent of God, who is the first cause... they act under the power and influence of God."

<sup>45</sup> Cf. E. Zoffoli, *op. cit.*, 122.



who have and can give from the *potency* of those who do not have and can receive.”<sup>46</sup>

4. Finally, “The action of the agent, so that it can be translated into the becoming of the receiver, must take place not outside (= far) of the receiver, but in itself, that is, it must penetrate it; otherwise, it would not establish that relationship of efficacy-dependence that explains the existential novelty”<sup>47</sup> intended by both the primary and secondary causes.

### *The Effect*

The effect is not and absolutely cannot be a ‘part’ of the cause as if a piece detached from it; thus, producing effects does not mean and cannot mean that the cause distributes parts of itself. The effect, instead, is a reality, distinct from the reality of the cause, which results from the virtue or efficacy of the cause and which, for that very reason, takes part not of, but to its perfection. The effect, as such, reproduces in a new manner and all its own perfection that the cause possesses in its own and anteriorly.

Therefore, the effect produced by the instrumental cause is not distinguished from the primary cause since the same effect proceeds from the first cause through the secondary cause.<sup>48</sup> Any attempt to separate the effect produced by two separate causes would mean excluding the achievement of the perfection required by such a process. From this, it can be affirmed that there is only a single effect from the principal cause and instrumental cause. In mind, instead, when it comes to the effect of instrumental causality, there are two manners of dividing it:

1. *Proper Effect* is that which is originated by the instrument, thanks to its proper form.
2. *Instrumental Effect* is that which arises from the influence that the principal cause proposes or intends on it.

The proper effect of a brush is to apply color to the canvas; its instrumental effect, instead, is the landscape painted by the painter, who is precisely the principal cause. Thus, the effect, precisely in the exercise of vicarious power, is the granting of dispensation or grace while the instrumental effect is the dissolution from the conjugal bond and the other obligations deriving from the divine law; the dissolution

<sup>46</sup> *Ibid.*, 120.

<sup>47</sup> *Ibid.*

<sup>48</sup> Cf. W. Kane, *op. cit.*, 88: “The same effect is from both the first and secondary cause, because divine providence produces its effects through the operations of secondary causes.”

that causes a new way of being and existence, i.e., the legitimate passage from marital to single status.

As far as the action performed by two causalities is concerned, it must be highlighted that the effect of “the action of the instrument as a tool is not distinct from the action of the principal agent,”<sup>49</sup> since the same virtue that is found permanently in the principal agent is assumed temporarily by the instrument, as far as it is moved by the former. Therefore, in the “dissolution of the matrimonial bond, the Roman Pontiff does not limit himself to declaring with authority that the bond has been dissolved by God, but it is God Himself who truly dissolves it.”<sup>50</sup>

### *The Free Cause*

Another causality that gives strength to this theologico-canonical formulation is the Free Cause,<sup>51</sup> i.e., he who produces the effect by dominating the operation, being able to produce it or not by virtue of internal freedom of deliberation and decision. In fact, the essential element of causal perception in its specificity is the efficiency of the action: the action produces the effect intended by the free cause. To deny the free cause means to deny human freedom with all its consequences in psychology, ethics, human and divine freedom.

However, the finite agent (free cause) “can only determine, specify, modify the being, but not create it, reduce it to nothing.”<sup>52</sup> This is, in fact, the limitation of free causes as secondary causes as W. Kane clarifies it: “secondary causes are those which, as it were, particularize and determine or specify the influence of the first cause, and they produce as their proper effects, not existence itself, nor being simply as caused and existing, but other effects which limit and determine existence.”<sup>53</sup>

Free causes have dominion over the purpose that they propose, since they know it and focus on it with their own will. The Supreme Pontiff, as Christ’s Vicar, participates in His function as *auctor naturæ* and *auctor gratiæ*.<sup>54</sup> Therefore, the Roman Pontiff, as a human instrument and finite agent, is a free cause that, with

<sup>49</sup> *Summa theol.*, III, q.19, a.1, ad 2.

<sup>50</sup> J. Castaño, *Il Sacramento*, 481.

<sup>51</sup> The following reading materials are recommended to have a deeper understanding of the topic: T. Alvira, *Metafisica*, Firenze 1987; H.D. Gardeil, *Introduction to the Philosophy of St. Thomas Aquinas*, St. Louis 1956; C. Fabro, *La nozione metafisica di partecipazione secondo S.Tommaso*, Torino 1939. Idem, *Partecipazione e causalità*, Torino 1961.

<sup>52</sup> E. Zoffoli, *op. cit.*, 119.

<sup>53</sup> W. Kane. *op. cit.*, 88.

<sup>54</sup> Cf. *Ibid.*, 91: “It pertains to God’s power to communicate his causality, and to the dignity of creatures to share in this causality.”

its cognitive and voluntary faculties, participates in a rational fashion through his own deliberation by evaluating the opportunity of granting the requested grace, i.e., the dispensation from the marital obligations and/or the dissolution of a valid and sacramental bond of marriage.

Therefore, the mandate and the intention of both God and the Roman Pontiff are united to produce a single efficient and binding effect, thanks to the *proper power* of God and the *vicarious power* of the Roman Pontiff. Precisely in the exercise of this power, with all its philosophical and theological dynamism, that an effect provoked by the granting of grace produces an existential novelty, that is, a new state of life for the persons concerned.

### **The Legal Nature - *Ius***

Cognizant of the distinction between the *humana potestas regiminis* and the *divina potestas vicaria*, it follows that the *divina potestas vicaria* does not derive from the *public ecclesiastical law of governance*, which also exists in the Church by divine institution.<sup>55</sup> To understand the juridico-canonical and legal concepts, let us illustrate the two powers in a nutshell.

#### *The Potestas Regiminis* in the Church as a *societas iuridice perfecta*

The Code of Canon Law does not give the definition of the *potestas regiminis*, but taking into account its elements, L. Chiappetta defines it as “the public power conferred by Christ on the Church to govern and organize pastorally the people of God, for the attainment of the ends that are proper to them and of the supreme end which is eternal life.”<sup>56</sup> The power of governance is exercised within the Church as in any other society, and in fact, according to canon 204 § 2 of the Code of Canon Law: “*haec Ecclesia, in hoc mundo ut societas constituta et ordinate.*” However, the Church has its own structure distinct from any civil society because, by its Founder’s will, it is a hierarchical society in which the authority derives directly from Christ and is exercised by the Successors of the Apostles. This concept is in line with *Lumen Gentium* number 27 that clarifies the nature of such power: “*By divine disposition, this power resides in the Pope and individual bishops albeit to a different extent, but with equal origin. It is a power that, in every case, proceeds directly from Christ, so that even the bishops hold the particular churches entrusted to them, as legates and vicars of Christ.*”

<sup>55</sup> Cf. D. J. Andres, *Il Diritto dei Religiosi*, Roma 1984, 34.

<sup>56</sup> L. Chiappetta, *op. cit.*, 172.

The power of governance is traditionally divided into two classifications contemplated in canon 131 of the 1983 Latin Code<sup>57</sup> and also in canon 981 of the 1990 Eastern Code.

By nature, it can be two: ordinary and delegated power.

1. *Ordinary* power is legally joined or annexed to an office in virtue of the same law. Ordinary power, in turn, can be either:
  - 1.1. *Proper* if this power is exercised *in nomine proprio*, i.e., in its own name; or
  - 1.2. *Vicarious* if the power is exercised *in nomine alterius*, i.e., in the name of another.
2. *Delegated* power is when it is granted to a person without the mediation of the office. It is a power granted:
  - 2.1. *ab iure / ab homine* whether it is conferred by the law itself or by a competent superior; and
  - 2.2. *ad actum* for one or more single acts or special delegation.

By areas and for matters on which they are exercised lawfully as envisioned and contemplated in the Latin Code canon 135 and Eastern Code canon 986, the power may fall in one or all of the following functions:

3. *Legislative*, that is, the power to legislate laws;
4. *Judicial*, that is, the power to settle disputes, administer justice or the power to judge whether the laws have been observed or not; and
5. *Executive*, that is, the power to execute the mandate of laws.

#### Distinctions between *Divina Potestas Vicaria* and *Humana Potestas Vicaria*

Distinct from the *humana potestas regiminis*, the *divina potestas vicaria* proceeds not from the nature of the Church as a *societas iuridice perfecta*, but as a supernatural society governed not by human power but by divine power.<sup>58</sup> While Christ Redeemer has the fullness of the power in an ordinary divine manner, the Successor of Peter as

<sup>57</sup>The Code of Canon Law promulgated by Saint John Paul II on January 25, 1983, is oftentimes referred to as the *Latin Code* to distinguish it from the *Eastern Code*, i.e., Code of Canons of the Eastern Churches, likewise, promulgated by the same Pontiff on October 18, 1990.

<sup>58</sup> Cf. Congregazione per la Dottrina della Fede, *Lo scioglimento del Matrimonio in Favorem Fidei – A vent'anni dall'Istruzione Potestas Ecclesiae (2001 – 2021) Norme e Commenti*, Libreria Editrice Vaticana 2022, 61 – 62; 74 – 80.

Vicar of the Lord, instead, possesses this power in an extraordinary divine manner that he exercises, especially in the dispensation from the natural and divine positive laws. It is traditionally called the *potestas vicaria extraordinaria* of the Roman Pontiff.

While the *potestas vicaria ordinaria* belongs evidently to the power of governance and, therefore, is exercised in the name of another who enjoys human *potestas propria ordinaria*, the *potestas vicaria extraordinaria* belongs in turn to *potestas divina* and, therefore, is exercised by the *Vicarius Christi* in the name of the Lord Redeemer, i.e., *in nomine Christi*.

The juridico-canonical nature of the *Divina Potestas Vicaria*

In the past, strictly related questions were raised on whether or not the exercise of the divine vicarious power had a jurisdictional character and on whether the provisions concerning the dispensation belonged to the administrative or jurisdictional law. These legal issues had already been clarified insofar as the entire canonical doctrine acknowledges its divine nature, that is, consequently exercised in an extraordinary divine manner.

In order to be familiar with its use, it is worth keeping in mind the following:

1. The dispensation is an exclusive competence of the Apostolic See as established by the Latin Code (*Codex Iuris Canonici*, 1983) in canons 1142 and 1698 and the Eastern Code (*Codex Canonum Ecclesiarum Orientalium*, 1990) in canons 862 and 1384. The Apostolic See acts through the Roman Curia, specifically designating the Roman Rota concerning the non-consummated marriage, i.e., *super rato*,<sup>59</sup> and the Congregation for the Doctrine of Faith for the dissolution *super vinculo*, that is, *in favor fidei*.<sup>60</sup>
2. The exercise of the canonical-administrative praxis has always been

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<sup>59</sup> Pope Benedict XVI, with the Apostolic Letter *motu proprio datae Quærit semper* modified the Apostolic Constitution *Pastor Bonus* abrogating the articles 67 - 68 and modifying article 126; thereby transferring this function from the Congregation for Divine Worship and the Discipline of the Sacraments to a new office established in the Tribunal of the Roman Rota: "Article 2, § 2. An Office has been set up at this Tribunal to examine the fact of non-consummation in a marriage and the existence of a just cause for granting a dispensation. It, therefore, receives all the acts, together with the *votum* of the bishop and the remarks of the Defender of the Bond, weighs them according to its own special procedure and, if the case warrants it, submits a petition to the Supreme Pontiff requesting the dispensation." Cf. Benedictus XVI, Apostolic constitution *motu proprio, Quærit semper*, 30 aug. 2011, in: *AAS*, CIII (2011), 569 – 571.

<sup>60</sup> Cf. Congregazione per la Dottrina della Fede, *Lo scioglimento*, 91 – 105; L. Sabbarese – E. Frank, *Scioglimento in favorem fidei del matrimonio non sacramentale: Norme e Procedura*, Urbanian University Press 2016, 99 – 104.

reserved to the Roman Pontiff. The legal luminaries in canonical science have different opinions on whether the power to dispense may be delegated or not by the Supreme Pontiff to other ecclesiastical authorities. Some canonists believe that it can be delegated. However, the Roman Pontiffs have always reserved it for themselves, excluding the bishops from the faculties of dispensing from the general law of the Church, that is granted to them by the Second Vatican Council.<sup>61</sup> In fact, the Supreme Legislator reserved it to the Roman Pontiff by the provisions in canons 87, 1142, and 1698 of the Latin Code and by the provisions in canons 862, 1384, 1537, and 1538 §1 of the Eastern Code.<sup>62</sup>

The exercise of the *divina potestas vicaria* for the dispensation of the ratified and non-consummated marriage, the consummated but non-sacramental marriage, and other variety of cases of the dissolution in *favorem fidei*, is governed by the Code of Canon Law, the Code of Canons of the Eastern Churches and the new Apostolic constitution that replaced the *Pastor Bonus*, that is, *Praedicate Evangelium* articles 74 and 201 §3<sup>63</sup>, and specifically by the *Normae* promulgated in 2001 by the Congregation of the Doctrine of Faith by the authority of St. John Paul II.<sup>64</sup>

The first question, i.e., whether the exercise has jurisdictional character, recalls the problem of the distinction between the ordinary power of jurisdiction and the extraordinary vicarious or ministerial power. After a series of debates in both theological and canonical science and doctrine, it is now widely accepted that the criterion for the exercise of the extraordinary divine power is solely for the dispensation from the divine positive law and not from merely ecclesiastical law, which is a characteristic proper of the ordinary jurisdictional power. This is the

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<sup>61</sup> Cf. Dogmatic Constitution on the Church *Lumen Gentium* n. 27: The power that the bishops “personally exercise in Christ’s name, is proper, ordinary and immediate, although its exercise is ultimately regulated by the supreme authority of the Church, and can be circumscribed by certain limits, for the advantage of the Church or of the faithful.”

<sup>62</sup> The Roman Pontiff in granting dispensations from ratified and non-consummated marriages is assisted by the competent «Officium» of the Roman Rota, and the latter promptly replies with pastoral solicitude to aid the bishops in their office of instructing this type of process by issuing norms and instruction to be observed. See Congregation for the Sacraments, May 7, 1923, Decr. *Catholica doctrina* and *Regulae servandae in processibus super matrimonio rato et non consummato*, in: AAS, XV (1923) 389-413; Id, June 15, 1952, *Litterae ad Exc.mos Archiepiscopos, Episcopos atque locorum Ordinarios*, prot. no. 4830/52; *Leges Ecclesiae*, vol. 2, col. 3042- 3044. See Instruction, March 7, 1972, *Dispensationis matrimonii*, in: AAS, LXIV (1972) 244-252.

<sup>63</sup> Cf. Francesco Papa, Costituzione Apostolica «*Praedicate Evangelium*», 19 marzo 2022, Città del Vaticano, in: L’Osservatore Romano, Year CLXII, n. 74, I – XII, 31 marzo 2022, Art. 74 (p. vi), Art. 201 §3 (p. x).

<sup>64</sup> Congregatio Pro Doctrina Fidei, “*Potestas Ecclesiae*”: *Normae de conficiendo processu pro solutione vinculi matrimonialis in favorem fidei*, 30 apr. 2001, Civitate Vaticana, 2001. English version at the Vatican Website: [shorturl.at/hmoxG](https://shorturl.at/hmoxG).

benchmark enunciated since the beginning by the ecclesiastical writers, elaborated later on by renowned theologians-canonists, and consequently solidified by the Supreme Pontiffs.

Starting from this criterion, it can be deduced that the dispensation of the ratified and non- consummated marriage or, in any case, the *relaxio legis* from the natural and divine positive laws is considered as an exercise of divine vicarious power. It is entrusted to the Roman Pontiff not only because he enjoys jurisdictional power as the Supreme Head of the Catholic Church or in a precise manner as the head of the Diocese of Rome who like others is an Ordinary of his particular church<sup>65</sup>, but also because it is the exercise of extraordinary power over the dispensation from the natural and divine law that pertains to him alone insofar as Vicar of Christ on earth ex can. 331. The Supreme Pontiff exercises it *in nomine Christi*; therefore, it is “*non humana sed potius divina potestate*” (Pope Innocent III).

This conclusion is validated by the divine-pontifical character that the Supreme Legislator has attributed to all matters regarding the dispensation of the ratified but not consummated and natural marriages. Likewise, the mere fact that the Latin Code (canons 1142-1149; 1697-1706), the *Praedicate Evangelium* (articles 74 and 201 §3), and the Eastern Code (canon 1384) discipline it in the ways and with the forms that are proper of the administrative procedure lead toward the assumption that it is indeed an extraordinary exercise of divine power. Finally, the nature of the local ordinaries’ power to introduce the canonical procedure only as a preliminary phase of the entire process and to refer the rest of the proceedings to the competent Roman Congregation on the matter is an affirmation of its exercise as divine vicarious power.<sup>66</sup>

After having recognized the special, divine, ministerial, extraordinary, instrumental, and pontifical nature of the exercise of this power, a considerable step has been taken to resolve the question of the branch of the canonical order to which it belongs. The thorough theological and metaphysical evaluation of this canonical institution leads to the arguments in favor of the divine character of the exercise of this power. As a consequence, it seems evident that the theory that this dispensation would belong to the jurisdictional authority of the Church is eventually discarded.

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<sup>65</sup> Can. 331: “*Ecclesiae Romanae Episcopus, in quo permanet munus a Domino singulariter Petro, primo Apostolorum, concessum et successoribus eius transmittendum, Collegii Episcoporum est caput, Vicarius Christi atque universae Ecclesiae his in terris Pastor; qui ideo vi muneris sui suprema, plena, immediata et universalis in Ecclesia gaudet ordinaria potestate, quam semper libere exercere valet.*”

<sup>66</sup> Cf. Aa.Vv., *Lo Scioglimento del Matrimonio Canonico*, in: Studi Giuridici, CI, Liberia Editrice Vaticana, 2013.

The dispensation from the natural and divine positive law is part of the divine or extraordinary *potestas vicaria*, both because it is foreseen and disciplined by the extraordinary and another power distinct from the human ordinary vicarious power of governance, and especially because its exercise is reserved by the *Corpus Iuris Canonici* (Latin Code, *Praedicate Evangelium*, Eastern Code) of the Catholic Church<sup>67</sup> solely to the Roman Pontiff as the Vicar of Christ on earth.<sup>68</sup>

The juridical consequences of the canonical procedure for the dispensation from the natural and divine positive laws are directed to the dissolution of the natural and supernatural bond validly contracted either in marriage or in religious profession; they cannot, therefore, belong to a different power than that of the divine.

A decisive confirmation of this conclusion led to the common legislation contemplated in *Corpus Iuris Canonici* by which the norms established for the subject under examination preserve the unity in attributing to the Roman Pontiff alone the exercise of the *potestas vicaria* for the dispensation of natural and divine laws. In fact, the disposition of the Congregation for Divine Worship and Discipline of the Sacraments in its “*Circular letter on the process of ratified and non-consummated marriage*” (Prot. N. 1400/86 of December 20, 1986)<sup>69</sup> and, recently, of the Congregation for the Doctrine of Faith with “*The Norms ‘Potestas Ecclesiae’ on which the instruction of the process for the dissolution of matrimonial bond in favorem fidei*”<sup>70</sup> should be based, clarify and complete the administrative process and praxis.

## Conclusion

The preceding exposition clearly illustrated that the *Potestas Vicaria* of the Roman Pontiff is indeed an exercise of God’s power to dissolve a valid and sacramental marriage as well as a valid natural marriage. This pontifical praxis conforms with the

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<sup>67</sup> Cf. Ioannes Paulus II, Alloc. «*Memori animo*,» in: AAS, LXXXIII (1991) 490. Cf. J. Abbass, *Two Codes in Comparison*, in: *Kanonika* 7 an. 7, Roma 1997, 13; 15; 18; 279-294. The *Pastor Bonus* of St. John Paul II is replaced by the *Praedicate Evangelium* of Pope Francis on March 19, 2022.

<sup>68</sup> Cf. E. Frank, “In favorem fidei Dissolution of Marriage Bond: Case Study,” in: *Ius Missionale*, XV (2021) 134.

<sup>69</sup> Cf. Congregatio pro Sacramentis, Litterae Circulares “*De Processu super matrimonio rato et non consummato*, 20, dic. 1986 in: *Communcationes* 20 (1988) 78 -84; *Monitor Ecclesiasticus*, 112 (1987), 423-429. See also, William H. Woestman, O.M.I., *Special Marriage Cases, Non-Consummation, Pauline Privilege, Favour of the Faith, Separation of Spouses, Validation-Sanation, Presumed Death*, 3<sup>rd</sup> ed., Saint Paul University 1994, 121-128. After the transfer of this function from the Congregation of Divine Worship and Discipline of Sacraments to the Apostolic Tribunal there is a specific «*Officium*» at the Roman Rota that deals with the *Super rato*, thereby, *congrua congruis referendo* implement the norms abovementioned.

<sup>70</sup> Congregatio Pro Doctrina Fidei, “*Potestas Ecclesiae*,” *op. cit.*



evangelical injunction on marriage, i.e., “therefore, what God has joined together, let not man put asunder” (Mark 10:9). In fact, with the exercise of the divine vicarious power, the dissolution of marriage is effected not by the Supreme Pontiff but by God Himself.

The Roman Pontiff is an instrumental cause moved by God, who is the Primary Cause in the dispensation of the natural and divine positive law. It would have been complicated to comprehend how this takes place in reality without the mediation of theology and metaphysics. The exercise of the *divina potestas vicaria* is theologically founded through scriptural passages consolidated by the sacred traditions of the Fathers of the Church and Ecclesiastical Writers and punctually confirmed by the direct interventions of the living Magisterium of the Church.

The theological propositions coming from the Revealed Truth have been proven to conform with the Church’s supernatural end, which is the *salus aeterna animarum*. Therefore, the exercise of the divine vicarious power aimed at dispensing from the natural and divine positive law has a particular purpose, i.e., for the couple’s socio-religious and spiritual welfare.

The mediation of metaphysical principles has made it easier and simpler to comprehend how the divine will for the good of the persons can be discerned theologically and put into a reality through the canonical process. It is the divine saving action materialized through the mediation of the competent ecclesiastical authority observing the canonical procedures. This is obviously contrary to the modern philosophical movements that recognize only what can be mathematically or scientifically proven and deny any metaphysical proposition of reality.

St. John Paul II was right when he asserted that we could come to a *unified and organic vision of knowledge* like the “*divina potestas vicaria*” by employing philosophical mediations.<sup>71</sup> In fact, by employing metaphysical schemes, we came up with a comprehensive vision and proper understanding of the power to dissolve valid matrimonial bonds both natural and supernatural. Eventually, in the light of the foregoing, the Church as *Mater et Magistra* can interpret the Revealed Truth and regulate relevant matters pertaining to the life of her faithful. In fact, the *metaphysica*, that is, *ratio*, articulated this knowledge in logical concept and valid arguments<sup>72</sup>; thus, we arrived at the truth about the ‘*divina potestas vicaria*,’ i.e., the truth by way of *ratio* enlightened by *fides*.<sup>73</sup>

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<sup>71</sup> Cf. *FR*, 85.

<sup>72</sup> Cf. *FR*, 66.

<sup>73</sup> Cf. *FR*, 29.

*Ergo*, the illustration on the triple nature of the exercise of the *Potestas Vicaria* of the Roman Pontiff in the dissolution of a matrimonial bond is indeed a perfect and harmonious interaction of *Fides, Ratio atque Ius*.<sup>15</sup>

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