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THE POWER OF GOVERNANCE ENJOYED BY THE SUPREME TRIBUNAL OF THE APOSTOLIC SIGNATURA WITH HISTORICAL ANTECENDENTS

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Introduction

One of the major innovations introduced into the canonical system by the *Codex iuris canonici* promulgated in 1983 was the distinction of the power of governance into legislative, judicial, and administrative power (c. 135, §1). Many authors have reflected upon the power of governance enjoyed by the Roman Curia in general,[1] and they largely agree that this power is vicarious power of the Roman Pontiff (c. 131, §2) and that it is directed toward the promotion of the communion of all the Churches, since the Successor of St. Peter stands as the visible source of unity. Beyond this, the nature of the power and the areas of competence of the individual dicasteries are worthy of singular scientific attention; for only in this way can one perceive

[1] For example, see F. J. Argelich Casals, *La regulación de la actividad administrativa ejercitada en la Curia Romana*, Thesis ad Doctoratum in Iure Canonico, Rome, 2002; J. I. Arrieta, *Funzione pubblica e attività di governo nell'organizzazione centrale della Chiesa: il Regolamento generale della Curia Romana*, «Ius Ecclesiæ», 4 (1992), pp. 585-613, esp. 602-613; Idem, *Il valore giuridico della prassi nella Curia Romana*, «Ius Ecclesiæ», 8 (1996), pp. 97-117; P. A. Bonnet, *La natura della potere nella Curia Romana*, in P. A. Bonnet and C. Gullo (eds.), *La Curia Romana nella Cost. Ap. «Pastor bonus»*, Studi Giuridici 21, Città del Vaticano, 1990, pp. 83-122; A. Viana, *La potestad de los dicasterios de la curia romana*, «Ius Canonicum», 59 (1990), pp. 83-114; Idem, at *Canon 360*, in *Exegetical Commentary on the Code of Canon Law*, Á. Marzoa, J. Miras, R. Rodríguez-Ocaña (eds.), vol. iv/1, Gratianus Series, Montréal-Chicago, 2004, pp. 677-686.

their specific juridical contributions toward the pursuit of the unity of the Church.

Among the dicasteries of the Roman Curia, the Supreme Tribunal of the Apostolic Signatura is especially notable for its widespread juridical and moral authority. What is the nature of its power, and how is its power concretely manifested? Also, what kind of jurisdiction has been enjoyed by the Signatura throughout its history? In this study, after recalling the historical evolution of its jurisdiction, we will offer a detailed analysis of the nature of its power in the *ius vigens* by identifying and classifying its juridic acts of power as they are presented in the law, especially in its recently issued *Lex propria*.

While the title of this study refers to the *potestas regiminis*, we admit that the application of this expression to the Signatura of the past is anachronistic. It is appropriate, however, since our ultimate concern is the nature of the power exercised by the Signatura *today* as a fruit of its dynamic history; and of course this power is described by the canonical legislator as the *potestas regiminis seu iurisdictionis* (c. 129, §1). Because of the intimate relationship between the terms *potestas*, *competentia*, and *iurisdictio*, some preliminary remarks on their seemingly interchangeable usage throughout this study is necessary.

It may at first seem more fitting to speak of the *competence* of the Signatura, not its *power* or *jurisdiction*. Indeed, these concepts are closely connected. The exercise of power is restricted to certain areas of competence, and competence is a term that refers to the range within which a titular can exercise his power. *Power*, or jurisdiction, is a more general term that refers to a legal capacity to place certain acts of a given character – for example the promulgation of a law, having a legislative character; the granting of a favour, having an administrative character; the definitive procedural resolution of a conflict, having a judicial character. *Competence* refers to the specific circumscription within which power may be validly exercised – for example, erection of certain institutes in a given territory, or the resolution of certain kinds of conflicts concerning a given subject matter (e.g., doctrine, rights).[2] Frequently this study will refer to the competence of the Signatura, since one cannot speak of its power outside of the context of its competence established by the law. Our more frequent use of the term power, though, is intended to direct our attention to the nature of the binding juridic acts

[2] See J. Hervada, *El ordenamiento canónico. Aspectos centrales de la construcción del concepto*, Pamplona, 2008, p. 74, note 97, citing L. Pérez Mier. See also J. Llobell, at *Introduction* to *Title 1. The Competent Forum*, in *Exegetical Commentary*, *cit.*, vol. IV/1, pp. 625-628, where the author highlights the essentially judicial character of the traditional notion of *iuris dictio*, despite the unclear assimilation of the terms *potestas* and *iurisdictio* in c. 129, §1.

that the Signatura places when it handles matters that fall within its competence. These acts are not appropriately called "acts of competence" but *acts of power* or *jurisdictional acts*.

1. The Jurisdiction of the Apostolic Signatura in the 13th-19th Centuries

The pre-1908 history of the Apostolic Signatura attests that a diversity of power has been native to this dicastery approximately from its inception. In the 13th century, the referendaries of the Apostolic Chancery had the function of examining and referring to the Roman Pontiff petitions for certain favours (e.g., absolutions, grants, derogations), the granting of which favours was reserved to the Pope; the first referendary was appointed by Innocent IV (1243-1254). While there was already a vice-chancellor who could sign petitions for the Pope, his role diminished when Eugene IV (1431-1447) established the already existing function of referendaries as a stable apostolic office under a head, giving them the *facultas signandi supplicationes*.

The sheet containing the prepared papal response and the Pope's signature itself came to be called a *signatura*, and the college of referendaries and other prelates entrusted with the preparation of papa responses began to be known as the *Signatura*. They would sign for him with the words *concessum in præsentia domini nostri papæ*. Later, they signed even in his absence, that is, in virtue of their own office. While the referendaries were typically understood to present *supplicationes gratiæ*, the distinction between favours and matters of justice gradually gained emphasis. This distinction led to a functional division among the referendaries: some were entrusted with examining requests for favours and others with petitions for justice.[3]

Under the reign of Sixtus IV (1471-1484), the college of referendaries began to be called the *Signatura gratiæ et commissionum* since its function was twofold:

[3] V. Cárcel Ortí, *Il Supremo Tribunale della Segnatura Apostolica. Cenni storici*, in Z. Grocholewski and V. Cárcel Ortí (eds.), *Dilexit iustitiam. Studia in honorem Aurelii Card. Sabattani*, Città del Vaticano, 1984, pp. 177-179; I. Gordon, *De iudiciis in genere. I. Introductio Generalis: Pars statica*, Rome, 1979, p. 285, n. 415; Idem, *Normæ speciales Supremi Tribunalis Signaturæ Apostolicæ. Editio aucta introductione, fontibus et notis*, «Periodica», 59 (1970), p. 77, n. 4; B. Katterbach, *Sussidi per la consultazione dell'Archivio Vaticano. Vol. 2: Referendarii utriusque Signaturæ a Martino V ad Clementem IX et Prælati Signaturæ supplicationum a Martino V ad Leonem XIII*, 2nd ed., Studi e Testi 55, Città del Vaticano, 1931, pp. xi-xiii; M. Lega, *Prælectiones in textum iuris canonici de iudiciis ecclesiasticis in scholas pont. sem. rom. habitæ*, Book I, vol. 2, Rome, 1898, p. 29, n. 33; G. Lobina, *La competenza del Supremo Tribunale della Segnatura Apostolica con particolare riferimento alla «Sectio altera» e alla problematica rispettiva*, Tesi de Laurea, Rome, 1971, pp. 2-3, n. 2; F. Roberti, *De processibus*, vol. 1, Rome, 1941, p. 379; P. Santini, *De referendariorum ac Signaturæ historico-iuridica evolutione*, Rome, 1945, pp. 6 (note 30), 9-10, 17, 18.

the papal granting of favours and the administration of justice.[4] In his Bull *Apostolicæ Sedis specula*, Alexander VI (1492-1503) founded the *Signatura gratiæ* and the *Signatura iustitiæ*, providing specific norms and areas of competence for each. In this era, one observed within both Signaturas a distinction of referendaries. Some were called *votantes*, and they offered the Pope advice by a collegial, majority vote. Others were simple referendaries, who prepared questions for presentation before the Pope together with reasons both in favour of and in opposition to the possible responses, without making any recommendation. The *Signatura gratiæ*, also called the *Signatura Sanctissimi*, was a college of curial officials (the referendaries) presided over by the Supreme Pontiff which handled petitions for papal favours or other provisions which were reserved to the Pope. The *Signatura iustitiæ*, for its part, was a true tribunal of judges presided over by the Cardinal Prefect, which enjoyed jurisdiction over matters of a contentious-judicial character.[5]

In his creation of the modern Roman Curia – which he accomplished by means of *Immensa æterni Dei* (22 January 1588) – Sixtus V refined various details pertaining to the competence and personnel of the two Signaturas. Its purpose was to establish the *Signatura gratiæ* as a congregation, while continuing to have the *Signatura iustitiæ* function as a tribunal.[6] The Cardinals of the *Signatura gratiæ* would «assist and offer opportune counsel» to the Supreme Pontiff, advising him about whether it was fitting to grant or deny the requested favour. Sixtus V himself described the purpose of this Signatura thus: «Those things which cannot be arranged for by the ordinary faculty of judges are to be extended and granted regarding just causes by the power of the prince, who is the living law».[7] The *Signatura gratiæ* was involved in the preparation of a great medley of extrajudicial pontifical acts (both favour-

[4] Katterbach, *op. cit.*, p. xiv; M. Lega and V. Bartoccetti, *Commentarius in iudicia ecclesiastica iuxta Codicem iuris canonici*, vol. 1, Rome, 1938, p. 186, note 1; Lobina, *op. cit.*, p. 3, n. 3; Roberti, *De processibus*, *cit.*, p. 379; J. J. Coughlin, *The Historical Development and Current Procedural Norms of Administrative Recourse to the Apostolic Signatura*, «Periodica», 90 (2001), p. 463. The distinction between requests for favours and for matters of justice was already noted in the *Ordinationes* of Benedict XIII issued in 1404 (Cárcel Ortí, *op. cit.*, p. 178).

[5] Cárcel Ortí, *op. cit.*, p. 179; I. Gordon, *De Signaturæ iustitiæ competentia inde a sæc. XVI ad sæc. XVIII*, «Periodica», 69 (1980), pp. 355-357, 360-369; Lega-Bartoccetti, *op. cit.*, p. 186, note 1; Lobina, *op. cit.*, pp. 4-9; Santini, *op. cit.*, p. 39; A. Stickler, *Historia juris canonici latini. Institutiones Academicæ. I. Historia fontium*, Studia et textus historiæ juris canonici 6, Rome, 1985, p. 344. Cf. J. I. Bañares, *Función judicial y supremacía de la Signatura de justicia en el siglo XVII: en torno al testimonio del Cardenal De Luca*, «Ius Canonicum», 28 (1988), pp. 329-347.

[6] Gordon, *Normæ speciales*, *cit.*, p. 78, n. 7; Lega, *Prælectiones*, *cit.*, pp. 31 and 34 (n. 38); Santini, *op. cit.*, p. 42.

[7] Sixtus V, institutio *Immensa æterni Dei*, 22 January 1588, in *Bullarum diplomatum et privilegiorum sanctorum Romanorum Pontificum taurinensis editio*, tomus VIII, Augustæ Taurinorum, 1863, p. 988. (All translations are the author's.)

able and coercive) and pontifical acts of contentious-judicial jurisdiction.[8] In keeping with tradition, Sixtus V for the most part entrusted to the *Signatura iustitiæ* judicial jurisdiction; most of its acts dealt with contentious causes, while certain acts were more akin to extrajudicial provisions for the good of a local Church or a private party.[9]

Having been modified in particular ways by the Supreme Pontiffs of the late 17th century and the 18th century, by the end of the 18th century the scope of the competence of the *Signatura iustitiæ* was universal. It was for the most part restricted to the exercise of ecclesiastical judicial power, though it extended also to civil causes touching on the temporal patrimony of the Church. It was at this moment considered the supreme tribunal. The *Signatura gratiæ*, for its part, had a rather restricted ambit of jurisdiction at this time, namely, «only in those matters which require the supreme, extraordinary power of the Prince [the Pope]», as Cardinal De Luca put it. This included especially recourses of the highest gravity as well as any other cause reserved to it by the Pope.[10]

With Pius VII's legislative restoration of the Papal States (1816) subsequent to Napoleon's invasion and deposition, he attributed several judicial powers to the *Signatura iustitiæ* vis-à-vis the provinces of the Papal States; he subjected to it all the Roman tribunals, including the Rota.[11] By the time of the Gregorian reform in the early 1830s, the competence of the two Signaturas was limited to acts of judicial power or those pertaining to the judicial forum and therefore to the *Signatura iustitiæ* alone. Indeed, in that decade, the *Signatura gratiæ*, in practice, ceased. Its competencies had become so narrow and those of the Sacred Congregations, the Secretariats, or other officials of the Roman Curia were so broadened that virtually all of the matters formerly subject to the *Signatura gratiæ* were entrusted to these other dicasteries. The *Signatura gratiæ* became completely inactive by 1839, and it disappeared from lists of the dicasteries of the Roman Curia in 1847; it was formally suppressed in 1908.[12]

In the 1834 *motu proprio Elevati appena*, Gregory VII reiterated the past com-

[8] Gordon, *Normæ speciales*, *cit.*, p. 83, n. 13; Santini, *op. cit.*, pp. 47-49, 65-67; Stickler, *op. cit.*, p. 344.

[9] Cf. Bañares, *op. cit.*, pp. 310-311. The author notes that the *Signatura iustitiæ* was bound to act *secundum legem* (or *prout de iure*), while the *Signatura gratiæ* could grant favours *præter* or *contra legem*. Cf. Lega, *Prælectiones*, *cit.*, pp. 28-29.

[10] Cárcel Ortí, *op. cit.*, pp. 180-181, 184.

[11] Gordon, *Normæ speciales*, *cit.*, p. 80, note 18; Lobina, *op. cit.*, p. 14, n. 1.

[12] Cárcel Ortí, *op. cit.*, p. 187; Gordon, *Normæ speciales*, *cit.*, p. 84, n. 15; Roberti, *De processibus*, *cit.* p. 381, n. III.3; F. X. Wernz, *Ius decretalium ad usum prælectionum in scholis textus canonici sive iuris decretalium*, tomus II, Rome, 1899, p. 776, n. 672, I. It has been observed that the *Signatura gratiæ* was inactive even decades before the Gregorian reform. See Cárcel Ortí, *op. cit.*, p. 184; Lega, *Prælectiones*, *cit.*, p. 37; Stickler, *op. cit.*, p. 344.

petencies of the *Signatura iustitiæ*, and he called it the Supreme Tribunal. All judges of the States were subject to the Signatura, including the Apostolic Camera and the Sacred Rota. Bringing greater emphasis to its involvement in administrative controversies, he empowered it to decide contentions arising between Sacred Congregations and between tribunals, as well as those that originated in Congregations.[13] These prescriptions would remain in force only until 1870.

2. 20th Century Legislation Preceding 1983

a) *Pre-1917 Legislation*

On 29 June 1908, Pius X (1903-1914) would promulgate the *Lex propria* together with his Apostolic Constitution *Sapienti consilio*, only eight months after he initiated its elaboration.[14] One of his most notable accomplishments on this occasion was the establishment of a clearer distinction between the administrative dicasteries (sacred congregations and offices) and the judicial dicasteries (tribunals). As Lega observed in November 1913, «... the distinction between administrative and judicial organs is profitable, and it has been recognised for the first time in the Constitution *Sapienti consilio*». He goes on to say:

> There arises an historical difficulty entirely proper to our [juridical] systems. How is it that the majority of Sacred Congregations have always issued truly judicial sentences as well, even though their nature is joined to the *administrative* order? The response is very simple: judicial power, either delegated or ordinary, has been attributed to the Congregations. It follows from an examination of these notions that the will of the legislator in the Constitution *Sapienti consilio* is to attribute purely administrative affairs to the Congregations, that is, those that concern *the spiritual interests of the faithful* … and to remit all judicial controversies to the tribunals.[15]

This distinction found expression in the promulgation of two separate bodies of proper law in application of *Sapienti consilio*: the proper law of the

[13] Gordon, *De iudiciis*, *cit.*, pp. 286 (n. 417) and 289; Idem, *Normæ speciales*, *cit.*, pp. 81-83; Lega, *Prælectiones*, *cit.*, p. 30; Santini, *op. cit.*, pp. 75, 91-94, 99, 102-104, 108.

[14] Pius X, constitutio apostolica «*Sapienti consilio*» *de Romana Curia*, 29 June 1908, «aas», 1 (1909), pp. 7-19; Secretary of State, *Lex propria Sacræ Romanæ Rotæ et Signaturæ Apostolicæ de mandato speciali SS.mi*, 29 June 1908, in *ibidem*, pp. 20-35 (= *Lex propria/1908*). On the redaction process for the *Lex propria*, see J. Llobell, E. De León and J. Navarrete, *Il libro «De processibus» nella codificazione del 1917. Studi e documenti. Vol. I: Cenni storici sulla codificazione «De iudiciis in genere» il processo contenzioso ordinario e sommario, il processo di nullità del matrimonio*, Milan, 1999, pp. 130, 138, 140, 1236.

[15] Text found in J. Llobell, *Il diritto al processo giudiziale contenzioso amministrativo*, in E. Baura and J. Canosa (eds.), *La giustizia nell'attività amministrativa della Chiesa: il contenzioso amministrativo*, Milan, 2006, pp. 225, 227.

Sacred Roman Rota and the Apostolic Signatura on the one hand, and the *regolamento* of all the dicasteries in general on the other hand.[16] The Pian reform of 1908 suppressed «the old system of the tribunals *of the papal Signatura of Favour and of Justice*» and thus created a new, unified Apostolic Signatura endowed strictly with judicial power.[17] Its competence was delineated as pertaining to contentious, judicial causes, namely, exceptions of suspicion made against Rotal Auditors, allegations of a violation of secrecy or of damages caused by Rotal Auditors, plaints of nullity against Rotal sentences, and petitions for a *restitutio in integrum* against Rotal sentences. These areas of competence were described as *propria et præcipua* to the Signatura, that is, innate and unique to the Supreme Tribunal (*Lex propria/1908*, c. 37).

In early 1912, the new procedural norms (*regulæ servandæ*) for the Signatura approved by Pius X reiterated the titles of competence *propria et præcipua* to the Signatura. They would also introduce a new area of competence, one for which the Signatura did not enjoy proper judicial power: «Beyond these cases», that is, those of c. 37 of the *Lex propria*, «it also makes a judgement *by commission of His Holiness* (*ex commissione Ss.mi*) about a *restitutio in integrum* against a sentence issued by a Sacred Congregation».[18] The Signatura therefore did not have ordinary power for adjudicating such causes, but this power could be entrusted (*commissa*) to it by the Supreme Pontiff; such causes had a judicial character, and so the Signatura continued to enjoy only judicial power.

The Signatura's competence established by Pius X, however, would presently be broadened by his successor, Benedict XV (1914-1922). On 28 June 1915, the Prefect of the Apostolic Signatura, Michele Cardinal Lega, wrote to the pope emphasising that the *Lex propria* and *Regulæ servandæ* did not taxatively articulate the competence of the Signatura but stated only what powers were proper and particular to the Supreme Tribunal.[19] He explained at length the need for clarification of certain points regarding the Signatura's competence. The Supreme Pontiff responded by adopting all of Lega's proposals.[20]

[16] Secretary of State, *Ordo servandus in Sacris Congregationibus Tribunalibus Officiis Romanæ Curiæ de mandato speciali SS.mi*, 29 September 1908, «AAS», 1 (1909), pp. 36-108.

[17] Gordon, *Normæ speciales*, *cit.*, pp. 84-85, nn. 17-19; Pius X, *Sapienti consilio*, n. II, 3°, p. 15.

[18] Apostolic Signatura, *Regulæ servandæ in iudiciis apud Supremum Signaturæ Apostolicæ Tribunal approbatæ et confirmatæ a Pio Papa X*, art. 1, 6 March 1912, «AAS», 4 (1912), p. 188. See Gordon, *Normæ speciales*, *cit.*, p. 84, note 39.

[19] "Re sane vera competentia nonnulla capita laudata constitutio assignat (in Lege Propria, can. 37), hæc tamen non *taxative*, sed quæ *propria et præcipua* esse dixit" (M. Lega, *Relatio*, «AAS», 7 [1915], p. 320).

[20] Benedict XV, chirographum *«Attentis expositis» ad instantiam Em.i Cardinalis Præfecti S. Trib. Signaturæ Apostolicæ, huius competentia certius definitur et augetur*, 28 June 1915, in «AAS», 7 (1915), p. 325.

For the purposes of our discussion, the most significant development in this new law was the conferral upon the Signatura of an area of non-judicial competence, namely, to determine whether or not a certain requested pontifical favour (e.g., a prorogation of competence) was to be presented and recommended to the Supreme Pontiff. At this moment, therefore, the newly established Apostolic Signatura first assumed administrative power. And so, the Supreme Tribunal, even if not in name, once again became also a papal organ for granting favours and resolving some non-Rotal controversies.[21]

This was confirmed in the procedural norms of the so-called *Appendix* to the *Regulæ servandæ* of 1912, which was issued on 3 November 1915 and approved by Benedict XV, who attributed it the force of law.[22] For it recognised the Signatura's faculty to admit and examine «petitions ordered toward obtaining pontifical commissions *and other rescripts* of this kind» (art. 3, emphasis added). If the Roman Pontiff assented to the Signatura's handling of the request (art. 4), the examination commenced; as part of the examination, the Signatura was legally capable of placing several administrative acts (e.g., see artt. 5, 7, 9-10, 13-14). And so, the administrative power of the Signatura was beginning to find concrete normative expression.

b) *The Codification of 1917*

In order to conform with the general norms on the power of jurisdiction in Title V of Book I of the 1917 Code (cc. 196-210) and to promote consistency of expression in what would be c. 1603, the competence of the Signatura that was considered *propria et præcipua* was described in the promulgated text as ordinary power (*potestas ordinaria*). And so, in virtue of ordinary power, the Signatura had the power to adjudicate the causes indicated in *Lex propria*, c. 37, as well as recourses against the Rota's decrees rejecting the new examination of a cause and conflicts of competence arising between lower tribunals (c. 1603, §1). In virtue of "delegated power" (*potestas delegata*), it could handle petitions for a pontifical commission of a cause before the Rota (c. 1603, §2).[23] What was intended by the adjectives *ordinaria* and *delegata*?

[21] See Gordon, *Normæ speciales*, *cit.*, pp. 85-86, n. 20; Lega, *Relatio*, *cit.*, p. 323; Stickler, *op. cit.*, p. 345.

[22] The *Appendix* consists of the *Chirographum* of 1915 and 37 additional procedural norms. It can be found in P. Gasparri (ed.), *Codicis iuris canonici fontes*, vol. 8, Rome, 1938, pp. 608-618. Gordon explains that the *Appendix* was issued «ad ordinandam activitatem *gratiosam* et *administrativam* Signaturæ» (*Normæ speciales*, *cit.*, p. 89, n. 24, emphasis added).

[23] The possibility of the Supreme Pontiff entrusting petitions for a *restitutio in integrum* against decisions of the Sacred Congregations was not received into the 1917 Code. On the evolution of these titles of competence in the drafting process, see Pontificium Institutum utriusque iuris, *Codicis iuris canonici schemata. Lib. IV: De processibus. I. De iudiciis in genere*, Città del Vaticano, 1940, pp. 78-81.

In the 1917 Code, like in the *ius vigens*, power could be ordinary or delegated; ordinary power – whether proper or vicarious – was connected to an office and was conferred on a person by the law itself upon assumption of the office. Delegated power was granted to a person, whether *a iure* or *ab homine*, but not by means of an office (c. 197). The latter Code maintained a distinction between judicial and "voluntary" or non-judicial (administrative) power (c. 201, §3), both of which could be both ordinary and delegated (cf. cc. 201, §2; 1606).[24] The ordinary power of the Signatura was clearly judicial in nature since it was exercised for the most part within the context of contentious processes.[25] This power was called ordinary since it was conferred upon the Supreme Tribunal by the legislator himself as a stable element of its jurisdictional constitution; it was connected to the very *"officium"* of the Signatura (cf. c. 197, §1). The delegated power of the Signatura concerned only one matter: petitions to the Supreme Pontiff for the commission of causes to the Roman Rota (c. 1603, §2). When the Signatura handled these petitions, was it truly exercising delegated power?

In fact, the law itself granted the Signatura the power to handle these causes, as is evidenced also by c. 1604, §4; the Pope did not have to delegate this power for individual cases.[26] Nevertheless, the character of the faculty mentioned in c. 1603, §2 does appear to be distinct from the faculties named in c. 1603, §1. Why is this? The answer lies in the nature of the power being exercised. While the Signatura exercised judicial power in the causes mentioned in c. 1603, §1, it exercised administrative power when it handled requests directed toward the Supreme Pontiff pertaining to the judicial forum, such as the one mentioned in c. 1603, §2.[27] It was not merely performing clerical tasks in preparation for the Pope's intervention; its actual participation in papal administration was evident. While the favours that were ultimately

[24] On the distinction of powers in the 1917 Code, see L. Bender, *Potestas ordinaria et delegata. Commentarius in canones 196-209*, Rome-Paris-New York-Tournai, 1957, pp. 19-20, nn. 25-26; P. G. Marcuzzi, *Distinzione della «potestas regminis» in legislativa, esecutiva e giudiziaria*, «Salesianum», 43 (1981), pp. 275-304, esp. 275-285.

[25] The one exception to this can be found in c. 1603, §1, 6°, since conflicts of competence can on some occasions be resolved extrajudicially. Cf. Llobell, *Introduction*, *cit.*, pp. 702-703; W.L. Daniel, *The Strictly Judicial Function of the Supreme Tribunal of the Apostolic Signatura*, «Studies in Church Law», 5 (2009), pp. 162-168.

[26] See Lega-Bartoccetti, *op. cit.*, p. 189, n. 2; Lobina, *op. cit.*, p. 25. While the power to handle these requests pertained to the Signatura in virtue of its office, the power to grant the request could be delegated to the Signatura by the Roman Pontiff. Roberti maintains that this is why the Code used the word *delegata* (*De processibus*, *cit.*, p. 400); this is difficult to sustain, however, since c. 1603, §2 stated that the Signatura handled the petitions in virtue of delegated power (*videt … de petitionibus*); it did not say that the Signatura granted the favour.

[27] Gordon, *De iudiciis*, *cit.*, pp. 303-304, n. 458e; Lega-Bartoccetti, *op. cit.*, p. 193, n. 13; Santini, *op. cit.*, pp. 118, 127; Roberti, *De processibus*, *cit.*, pp. 395-401, n. 138.

granted were acts of the Supreme Pontiff, the Signatura exercised true jurisdiction over the petitions. Indeed, the following would be asserted by the Signatura itself in its jurisprudence from the early 1920s:

> And a two-fold power belongs to the *Congresso* of the Apostolic Signatura: the one is *administrative*, and the other is *judicial*: inasmuch as it is an administrative organ of the Holy See, it receives petitions to obtain pontifical commissions and other rescripts of this kind, and it examines, instructs and admits or rejects them. As a judicial organ, though, it enjoys power concerning the administration of justice; and here it can recall judicial decrees of the Sacred Roman Rota for examination and ... decide on the merit of their decrees – confirming, overturning or correcting them.[28]

c) *Developments Preceding the Second Vatican Council*

Once the 1917 Code was in force, the Apostolic Signatura began to be granted some additional faculties. In several instances it was granted a certain authority in virtue of concordats between the Holy See and civil nations (cf. CIC/17, c. 3). Its role was to check (*controllare*) whether certain norms of canon law were observed by tribunals or administrative authorities when they declared a marriage null or dissolved a marriage and to issue a decree authoritatively declaring the conformity of the act with canon law, enabling the competent civil authority to declare the lower tribunal's sentence or the dissolution of marriage executable vis-à-vis the State.[29] This faculty gave way to another type of administrative act, namely, general administrative norms providing certain guidelines for the implementation of the new internal arrangements (cf. CIC/83, c. 34, §1).[30]

Also, the praxis of the Apostolic Signatura revealed that its so-called "delegated" power was not limited to requests for the commission of causes to the Roman Rota. For instance, it stood out as the competent organ through which juridically interested bishops could request that the Roman Pontiff grant competence to a national tribunal to adjudicate causes in third in-

[28] Supreme Tribunal of the Apostolic Signatura (STAS), sententia incidentalis *c.* Lega, 25 November 1922, «AAS», 15 (1923), p. 184.

[29] This title of competence was established for the following countries in the following sources: Italy – *Concordato tra la Santa Sede e l'Italia*, 11 February 1929, art. 34, «AAS», 21 (1929), pp. 290-291; Austria – *Concordato tra la Santa Sede e la Repubblica Austriaca*, 5 June 1933, art. VII, «AAS», 26 (1934), pp. 258-259; Portugal – *Concordato tra la Santa Sede e la Repubblica Portoghese*, 7 May 1940, art. XXV, «AAS», 32 (1940), p. 230; Dominican Republic – *Concordato tra la Santa Sede e la Repubblica Dominicana*, 16 June 1954, art. XVI, «AAS», 46 (1954), pp. 442-443.

[30] E.g., STAS, *Litteræ circulares quoad sententias de nullitate matrimonii, ad normam art. 34 pacti inter Sanctam Sedem et Regnum Italiæ Concordati*, 3 August 1929, «AAS», 21 (1929), pp. 511-512; Idem, *Normæ ad E.mum ac R.mum D. Cardinalem Lisbonensem atque Exc.mos ac R.mos Archiepiscopos et Episcopos Reipublicæ Lusitanæ: circa applicationem art. XXV Concordati inter Sanctam Sedem et ipsam Rempublicam Lusitanam*, 22 August 1940, «AAS», 32 (1940), pp. 381-382.

stance.[31] In 1950, yet another administrative faculty was conferred upon the Apostolic Signatura. It was granted the faculty to extend the competence of lower tribunals when they were not competent by law.[32]

d) *The Reform of Paul VI (1967) and the* Normæ speciales *(1968)*

The major innovation with respect to the Supreme Tribunal introduced by Paul VI (1963-1978) in his 1967 Apostolic Constitution *Regimini Ecclesiæ universæ* was the division of the Signatura into two sections. This division was elaborated upon about seven months later in the proper law called for by Paul VI, the *Normæ speciales* (*NS*).[33] Generally speaking, the *Sectio prima* enjoyed a great variety of faculties all pertaining to different aspects of the exercise of judicial power in the Church – either its own, that of the Roman Rota, or that of lower tribunals (n. 105; *NS*, artt. 17-18). The *Sectio altera* consisted especially of an administrative tribunal (nn. 106-107; *NS*, art. 96).

What was established regarding the *Sectio prima* in the *Normæ speciales* brought fresh clarity to the nature of the Signatura's power. No longer was it described in terms of *ordinaria-delegata* (as it was called even in *REU*), but its specific nature was identified (*iudicialis-administrativa*) in art. 17, §2 – «Per [primam] sectionem Signatura Apostolica *iudicat*….» (emphasis added) – and art. 18 – «Vi potestatis administrativæ, forum iudiciale respicientis….».

Paul VI endowed the *Sectio altera* with three faculties having no legislative precedent for the Signatura in the 20th century: 1) the adjudication of the admissibility of a recourse against a decision of a dicastery of the Roman Curia and of the legitimacy of its decision; 2) the resolution of conflicts of competence arising between dicasteries of the Roman Curia; and 3) the resolution of *negotia administrativa* deferred to it by dicasteries of the Roman Curia. As a fourth area of competence, he also stated that it could judge questions entrusted to it by the Supreme Pontiff (cf. *Regulæ servandæ* of 1912, art. 1).

The juridical nature of these three types of cases is not easy to determine in a general manner; one would have to analyse each case individually. Still, since the Signatura is the Supreme *Tribunal*, and since merely administra-

[31] E.g., see *The Canon Law Digest. Official Published Documents Affecting the Code of Canon Law: 1933-1942*, T. L. Bouscaren (ed.), vol. 2, Milwaukee, 1943, pp. 459-460.

[32] See Z. Grocholewski, *La Segnatura Apostolica nell'attuale fase di evoluzione*, in *Dilexit iustitiam*, *cit.*, p. 214.

[33] Paul VI, constitutio apostolica «*Regimini Ecclesiæ universæ*» *de Romana Curia*, 15 August 1967, «AAS», 59 (1967), pp. 885-928 (= *REU*); in n. 108, he states, «Signatura Apostolica regitur lege propria». This proper law is the following: STAS, *Normæ speciales in Supremo Tribunali Signaturæ Apostolicæ ad experimentum servandæ*, 25 March 1968, in I. Gordan and Z. Grocholewski (eds.), *Documenta recentiora circa rem matrimonialem et processualem cum notis bibliographicis et indicibus*, vol. 1, Rome, 1977, pp. 372-397.

tive matters could likely have been entrusted to a Congregation, it would be reasonable to conclude that the legislator foresaw these cases to be judicial in nature, thus building on the Signatura's judicial competence. Indeed, the norms that applied to these cases used judicial language – e.g., *Processus coram sectione altera* (*NS*, art. 97), *stare in iudicio* (art. 99, §1), *Collegium iudicans* (art. 101, §1), *normæ processuales* (artt. 124, 125), the members of the Signatura are called *Cardinales iudices* (art. 1, §3). Still, it is conceivable that such questions and conflicts could take a more administrative form.[34]

The juridical nature of the power exercised by the Signatura on the occasion of recourse against an act of a dicastery is not immediately evident in the law.[35] On the one hand, before reaching the Apostolic Signatura, the course of the act in question is entirely administrative in nature: it is itself a singular administrative act placed by an authority endowed with administrative power; this act is governed by various administrative procedures in the law; it is challenged before the authority; and it is presented to an administrative dicastery of Roman Curia, which issues a singular administrative decree confirming, amending, or reversing the original act. One might easily draw the conclusion that a further challenge of the act would be resolved by an act of administrative power. On the other hand, the recourse before the Signatura is resolved within a trial by a tribunal of judges after a detailed procedure has been conducted. It has all the elements of a judicial process: citations, a joinder of issues, advocates, a trial, and a definitive sentence.

Indeed, the majority of authors maintains that the power exercised by the Signatura when evaluating the legitimacy of a singular administrative act of a dicastery is judicial in nature. In virtue of this special competence of the Apostolic Signatura, the controversy previously handled in the administrative forum enters the judicial forum when it is presented before the same Signatura. «The nature [of this administrative tribunal] is in fact properly jurisdictional: the Second Section is a *specialised section* of a tribunal which acts by exercising judicial power and not as a hierarchical superior of the administrative authority».[36] It responds to a strictly judicial question for the

[34] Indeed, Prof. Gordon went as far as to imply that the acts of the *Sectio altera* in general are administrative in nature (*De iudiciis*, *cit.*, pp. 309, 313; *Normæ speciales*, *cit.*, pp. 90-91 [nn. 27-28], 97-98 [n. 46]).

[35] Our analysis will draw on doctrinal discussions held for the most part during the era of the 1983 Code; but these in fact wholly apply to the competence described in *REU*, n. 106 and *NS*, art. 96, 1°, since these refer to the very same competence found in the *ius vigens* (c. 1445, §2; *PB*, art. 123, §1).

[36] J. Miras, J. Canosa and E. Baura, *Compendio di diritto amministrativo canonico*, Subsidia Canonica 4, Rome, 2007, p. 356. See also C. de Diego-Lora and R. Rodríguez-Ocaña, *Lecciones de Derecho Procesal Canónico. Parte general*, Pamplona, 2003, pp. 27-30; V. De Paolis, *Il contenzioso amministrativo. Via amministrativa e via giurisdizionale. Controllo di merito e controllo di legittimità*, «Periodica», 97 (2008), pp. 491-501; Z. Grocholewski, *De ordinatione ac munere*

first time in the life of the dispute; most commonly: *An constet de violatione legis sive in procedendo sive in decernendo relate ad actum Congregationis*.

The competence of the Signatura would not be dramatically broadened, further clarified, or rearticulated until the promulgation of the 1983 Code.

3. The Apostolic Signatura's Power in the *ius vigens*

a) *The Power of Governance in General*

In the *ius vigens*, the general norm that establishes the distinction of powers for the whole canonical system (*CIC*, c. 135; *CCEO*, c. 985) indicates that judicial power is enjoyed by judges, whether acting individually or collegially (*ibidem*, §3). No single canon so concisely names the titulars of administrative power. Rather, the latter are identified in terms of the juridic acts of administrative power that they can place: those who can issue general administrative norms in virtue of administrative power (cc. 31, §1; 34, §1), those who can place singular administrative acts in virtue of ordinary administrative power (cc. 35; 48; 59; 76, §1; 85; 136) and their delegates (cc. 85; 131, §1; 132-133; 137), as well as those delegated by a legislator (c. 76, §1).

As mentioned above, in *Sapienti consilio*, Pius X attempted to divide the dicasteries of the Roman Curia endowed with the power of governance between those that enjoy judicial power and those that enjoy administrative power. This was a monumental effort in the history of the Roman Curia, which in times past contained a plurality of tribunals.[37] While this distinction for the most part perdures, it has been confronted with two notable exceptions. There are two dicasteries that are habitually competent to place juridic acts of both judicial and administrative power: one is the Congregation for the Doctrine of the Faith (CDF), which, in the arena of faith and morals, can place both administrative acts (singular and general) and acts of judicial power;[38] the other is the Apostolic Signatura.[39] Indeed, as the current universal law describes this Dicastery, the Signatura is both the supreme judicial authority (*...præter munus, quod exercet, Supremi Tribunalis....*) and an

Tribunalium in Ecclesia ratione quoque habita iustitiæ administrativæ, «Ephemerides Iuris Canonici», 48 (1992), pp. 66, 72-73; E. Labandeira, *Trattato di diritto amministrativo canonico*, Milan, 1994, pp. 515-516; P. Lombardía, *Lezioni di diritto canonico. Introduzione, Diritto costituzionale, Parte generale*, Milan, 1985, p. 44; *Il contenzioso amministrativo*, *cit.*, pp. 99-101, 364, *passim*.

[37] See Gordon, *De Signaturæ iustitiæ competentia*, *cit.*, p. 361.

[38] See Lega-Bartoccetti, *op. cit.*, pp. 187-188, n. 4; Roberti, *De processibus*, *cit.* pp. 421-426; *REU*, nn. 35, 39; *PB*, art. 52.

[39] One author would add the Pontifical Council for Legislative Texts to this list (see E. Baura, *Analisi del sistema canonico di giustizia amministrativa*, in *Il contenzioso amministrativo*, *cit.*, pp. 31-33). He holds that this Dicastery exercises judicial power when it determines whether or not a particular law is contrary to a universal law (*PB*, art. 158).

organ of administration (...*consulit ut iustitia in Ecclesia recte administretur*) (*PB*, art. 121).

b) *Competence of the Apostolic Signatura*

The competence of the Apostolic Signatura in the *ius vigens* substantially repeats what is found in *REU* and the *Normæ speciales*. The most drastic alteration is of a structural character: no longer does the law divide the Signatura into two Sections (although this language is still used in doctrine); rather it distinguishes three general jurisdictional functions of the Signatura. They are the following: 1) strictly judicial, 2) contentious-administrative, and 3) disciplinary-administrative.

1 – The Signatura's strictly judicial function entails adjudication of the following causes (*PB*, art. 122): the alleged nullity of definitive decisions of the Roman Rota (1°), requests for a *restitutio in integrum* against the same (1°), recourses against Rotal decrees denying a new examination of a cause regarding the status of persons (2°), recusatory exceptions against judges of the Roman Rota (3°), other causes against judges of the Roman Rota (3°), and conflicts of competence between tribunals which are not subject to the same appellate tribunal (4°).

2 – Its contentious-administrative function entails adjudication of the following causes (*PB*, art. 123): the legitimacy of a singular administrative act placed or approved by another dicastery of the Roman Curia (§1), the question of whether the damages incurred on the occasion of said act must be repaired by the authority that placed the act (§2), other administrative controversies deferred to it by the Roman Pontiff (§3), other administrative controversies deferred to it by another dicastery of the Roman Curia (§3), and conflicts of competence between dicasteries of the Roman Curia (§3; *PB*, art. 20).[40]

3 – Its disciplinary-administrative function includes the following matters (*PB*, art. 124): vigilance over all the tribunals of the Church, which assumes a variety of forms (1°), the correction of advocates and procurators (1°), petitions for entrusting a cause to the Roman Rota (2°), requests for some favour pertaining to the administration of justice, including dispensation from procedural laws (2°), prorogation of competence to lower tribunals (3°), ap-

[40] Related to the last-mentioned area of competence is the Signatura's faculty to resolve doubts about the competence of a dicastery, which in itself is not contentious in nature, though it does entail an authoritative declaration on the part of the Signatura. See JOHN PAUL II, *Regolamento generale della Curia Romana*, 30 April 1999, art. 137, §2, «AAS», 91 (1999), p. 684.

proval of an appellate tribunal (4°), promotion or approval of the erection of an interdiocesan tribunal (4°), and the treatment of matters entrusted to it by agreements between the Holy See and secular states (*Lex propria/2008*, art. 35, 6°).[41]

As is evident, this Dicastery is legally capable of placing a great variety of jurisdictional juridic acts. The Signatura has been entrusted with deciding conflicts by exercising judicial power, especially in causes involving the Tribunal of the Roman Rota as well as Roman dicasteries and other public administrative authorities. In so deciding, it places the juridic acts proper to judges, namely, definitive sentences, interlocutory sentences, definitive decrees, interlocutory decrees, and ordinatory decrees.[42] As an administrative organ it also makes decisions outside of the context of trials (*extra iudicia*) (c. 48), make provisions (c. 48), imposes precepts (c. 49), grants favours (c. 59),[43] and issues administrative norms (*ius*) (cc. 31-34); hence, it is also clearly endowed with administrative power. It is empowered to adjudicate causes at the highest level – except for those reserved to the CDF – and to correct, decide, and provide for the judicial activity of the Church.

c) *Titulars of Power within the Apostolic Signatura*

It is necessary to consider more specifically the *locus* of these powers. Does every person involved in the work of the Dicastery participate in these powers? Or is the power collectively exercised by all the persons involved, manifesting itself simply as the power of the Dicastery as a singular jurisdictional organ? The answer to both questions is in the negative, for there are specific officials that are endowed with these powers, and they exercise these powers by placing concrete juridic acts of governance. In the first place, who are the officials of the Apostolic Signatura? The personnel of the Supreme Tribunal are cleric-members (especially Cardinals and Bishops, among whom is the Prefect), the bishop-secretary, the promoter of justice and his substitutes, the defender of the bond and his substitutes, referendaries, the chancery personnel (the moderator, notaries, secretaries, an archivist, and

[41] Benedict XVI, *Lex propria Supremi Tribunalis Signature Apostolicæ*, 21 June 2008, «aas», 100 (2008), pp. 514-538.

[42] See cc. 1607; 1617-1618; 1589, §1; 1629, 4°-5°. For further distinctions and explanations of these categories of acts, see de Diego-Lora and Rodríguez-Ocaña, *Lecciones*, *cit.*, pp. 383-386, 391-393; C. de Diego-Lora, at *Canon 1607* and *Canon 1617*, in *Exegetical Commentary*, *cit.*, vol. iv/2, pp. 1452-1457, 1519-1526; W. L. Daniel, *Juridic Acts in Book vii of the «Codex iuris canonici»*, «Studia Canonica», 40 (2006), pp. 439-443.

[43] It does not have the legal capacity to grant privileges, at least in virtue of the law, since only a legislator may grant privileges. Any privilege it grants is based on delegated administrative power (c. 76, §1).

a person in charge of assigning protocol numbers [*protocollista*]), and messengers.[44]

Which of these officials are titulars of judicial and administrative power? In order to offer a full response to this question, it is necessary to analyse the various juridic acts of power which certain officials are legally capable (*habiles*) of placing according to the law itself. In this final sub-section, we will identify each such act mentioned in the *Lex propria/2008*, and draw specific conclusions about who the titulars of power are and the nature of the power they possess. This will require that we discern the juridical nature of each act. For the sake of order, we will treat each official or group of officials separately, highlighting each act of power which he/it is capable of placing, providing analysis where necessary. We will treat them in the following order: the Cardinal Prefect, the *Congresso*, the college of judges, the secretary, and the promoter of justice.[45] These are the only officials of the Signatura who are endowed with the power of governance by the law itself.

The reader should note that this is not actually an exhaustive list of the acts which the titular can place but only those mentioned in the law. The legislator does not attempt to foresee or prescribe every act of administrative and judicial power needed in the life of the Church. The exercise of power is dynamic, and the legislator entrusts it to certain persons or colleges so that they may exercise it *pro bono Ecclesiæ* in the specific circumstances with which they are confronted.

i. The Cardinal Prefect

Being a dicastery head (*il Capo Dicastero*), the Cardinal Prefect of the Supreme Tribunal in his own name exercises both judicial and administrative power. Among the acts of judicial power which he can place are the following ordinatory decrees: to convoke and defer the adjudication of a cause to the full Signatura (*Signatura Plena*); to constitute a college of judges and designate a *ponens*; to establish peremptory time limits; to entrust the motivation of a decision to the promoter of justice; to appoint a procurator-advocate for a dicastery that has neglected to do so; to decide a recourse against the secretary's decree establishing time limits and establishing the grounds in a cause of contentious-administrative recourse; to order or allow further instruction; to defer the question of damages to the time of the definitive

[44] *Lex propria/2008*, artt. 1-4; *Annuario Pontificio per l'anno 2008*, Città del Vaticano, 2008, pp. 1240-1241.

[45] Rarely does the law entrust specific faculties to the full membership of the Apostolic Signatura. One example of this, though, is the approval of the text of general administrative norms (art. 112).

sentence.[46] He can also issue the prejudicial definitive decree (*extra Congressum*) about whether to grant gratuitous representation; for validity, he must first hear the secretary and the promoter of justice (art. 31, §2; c. 127, §2, 2°). And one interlocutory decree he issues is on the occasion of an appeal against a decision of the secretary regarding profits made by a procurator-advocate (art. 19, §2).

The Prefect is also presented in the law as an administrative authority, since it is for him «to grant favours requested and to issue decisional decrees outside of the *Congresso*» (art. 5, §2, 3°). Among these "decisional decrees" – that is, singular administrative decisional decrees (c. 48) – are the following: to order the promoter of justice to initiate an action in a penal or disciplinary matter (cf. cc. 1718; 1721, §1); to execute the Signatura's sentence deciding a cause of contentious-administrative recourse which the interested dicastery has failed to execute; to establish a time limit other than 30 days for making compensation (this could also be a rescript); to decide administrative matters (see c. 127, §2, 2°); to submit an administrative matter to the *Congresso*; to decide whether to confirm or overturn the secretary's rejection at the outset of an administrative petition; to decide matters deferred to him by the secretary when a tribunal is denounced; to suspend the execution of a decision of a lower tribunal; to revoke or amend (even *ex officio*) an act of a bishop-moderator of a tribunal placed as a disciplinary measure against an advocate or procurator; in cases of doubt, to declare the legality of declarations of marriage nullity or dissolutions of marriage so that they may obtain civil effects, as well as to suspend or revoke such decrees (see c. 127, §2, 2°).[47]

Among the other acts of administrative power that he can place are singular administrative decrees that make a provision (c. 48), such as admitting Rotal advocates to intervene in a cause of contentious-administrative recourse (cf. c. 1483) and giving the secretary a mandate to fulfill certain administrative matters. He can also issue precepts, such as those reproving practices and correcting tribunals or officials, ordering the bishop-moderator of a tribunal to attend to the disciplining of advocates or procurators brought to the Signatura's attention (wherein he orders the bishop to inform the Signatura of the measure he adopted), and warning an advocate or procurator. Finally, he can issue rescripts granting favours pertaining to the administration of justice (cf. c. 127, §2, 2°), such as that granting a prorogation of competence.[48]

[46] *Lex propria/2008*, artt. 1, §3; 5, §2, 1°; 27, §2; 48, §2; 80; 85, §2; 87; 103.

[47] *Lex propria/2008*, artt. 7, §2; 92, §2; 93, §2; 106, §1; 107, §2; 108; 110, §3; 111, §2; 113, §1; 119, §1; 121; 120, §2.

[48] *Lex propria/2008*, artt. 106, §1; 17, §3; 106, §2; 110, §3; 113, §1; 113, §3; 106, §1; 115, §1.

ii. The *Congresso*

Ordinarily, the *Congresso* of the Apostolic Signatura consists of the Prefect, the secretary, the promoter of justice in the case, the defender of the bond in the case (if the question pertains to the nullity of marriage or sacred ordination, or the dissolution of marriage), the head of the chancery, and, if called by the Prefect, referendaries (art. 22, §1). It is not scientifically precise to speak of the acts of the *Congresso*, as if it is a deliberative body that places collegial acts. Indeed, it is the Prefect who, in his own name, issues decisions in *Congresso*.[49] The way one norm was drafted illustrates this: «Once the *Congresso* has been convoked ... *the Prefect decides* whether the recourse is to be admitted to discussion....» (art. 83, §1, emphasis added). The *Congresso* is convoked not to issue a decision itself but to assist the Prefect with formulating his decision.

Keeping this understanding in mind, the *Congresso* enjoys both judicial and administrative power. This includes the power to issue certain ordinatory decrees. For example, while as a rule colleges of judges consist of five members, the Prefect in *Congresso* can establish a college of three judges to adjudicate an appeal against a decree of rejection issued by the Prefect in *Congresso* (art. 21). It can also order the execution of a sentence on the occasion of admitting a petition for a *restitutio in integrum* (art. 55, §2) and grant or revoke the suspension of the execution of a sentence on the occasion of hardling a new proposition of a cause (art. 61). Among the interlocutory decrees it can issue are the following: it can admit or reject a recourse when it is to decide an incidental question (art. 41, §1); it can resolve a recusatory exception against a Rotal judge (art. 64; *PB*, art. 122, 3°); and it can resolve a positive conflict of competence between tribunals (art. 72, §2; *PB*, art. 122, 4°).

It can issue the following definitive judicial decrees: to admit or reject a recourse when it is to decide a principal cause; to grant or deny a new proposition of a cause denied before the Rota (*PB*, art. 122, 2°); to confirm the secretary's rejection of contentious-administrative recourse at the outset; to declare a cause to be a *lis finita* due to peaceful agreement between the parties; to decide not to admit recourse to discussion; to resolve a controversy regarding the execution of a sentence; to grant or reject the suspension of execution of a challenged administrative act; to resolve a conflict of compe-

[49] See *Lex propria/2008*, artt. 5, §2, 2°; 22, §1. The traditional expression in the praxis of the Signatura does not serve to clarify this point. It speaks of "decrees of the *Congresso*" (*decreta Congressus*), and its acts frequently read as follows: «SUPREMUM SIGNATURÆ APOSTOLICÆ TRIBUNAL ... in Congressu habito coram infrascripto Cardinali Præfecto decrevit....». Of course, it is not incorrect to speak of the act as an act of the Apostolic Signatura; but doctrinally it is most specific to understand it as an act of the Prefect in *Congresso*.

tence between dicasteries; to declare the nullity of marriage when a deeper investigation is not necessary (*Dignitas connubii*, art. 5, §2).[50]

Among the singular administrative acts that the *Congresso* can place are the following: the precepts resolving a negative conflict of competence between tribunals and taking disciplinary measures against advocates or procurators; the singular administrative decisional decrees which it addresses grave procedural irregularities found in a lower tribunal; and the rescripts whereby it grants favours which the Prefect has deferred to the *Congresso*, as well as those which the legislator has entrusted to the *Congresso* – e.g., a dispensation from a double conforming sentence, the commission of a cause to the Roman Rota, a *beneficium novæ audientiæ*, a positive recommendation to the Supreme Pontiff for a favour reserved to him, the approval of decrees erecting tribunals.[51]

The *Congresso* is also legally capable of issuing general administrative norms. For example, «The *Congresso* establishes norms about depositing financial guarantees, judicial expenses, reimbursement, and fees for rescripts» (art. 30, §1). In general, administrative norms pertaining to the judicial forum could be described as being "of greater importance"; they are thus issued by the Prefect in *Congresso* (art. 107, §1).[52]

iii. The College of Judges (*Collegium iudicans*)

The College of Judges is solely a judicial authority. Among the definitive decrees it can issue is that deciding an appeal against a decree of rejection issued by the Prefect in *Congresso*. It can also issue certain ordinatory decrees regarding particular matters arising in conjunction with its definitive decisions: for example, to order further instruction, to decree that an appeal be resolved before a plaint of nullity against a Rotal decision, and to defer the question of damages to the time of the definitive sentence. Finally, to it is reserved the following definitive sentences: those deciding a plaint of

[50] See *Lex propria/2008*, artt. 41, §1; 59, §2; 76, §4; 78, §2; 83, §1; 94; 96, §3; 105; 118. Regarding the last-mentioned, despite the fact that this faculty has been referred to as a declaration of nullity *per via amministrativa*, it entails the exercise of judicial power. For, even though an abbreviated procedure is used, it is not an act of discretion, but it demands that the judge reach moral certainty about the alleged nullity of the marriage. On this point, see V. De Paolis, *I fondamenti del processo matrimoniale secondo il Codice di diritto canonico e l'Istruzione «Dignitas connubii»*, in P. A. Bonnet and C. Gullo (eds.), *Il giudizio di nullità matrimoniale dopo l'Istruzione «Dignitas connubii». Prima parte: I principi*, Studi Giuridici 75, Città del Vaticano, 2007, pp. 74-76.

[51] See *Lex propria/2008*, artt. 72, §2; 105; art. 111, §§1-2; 113, §2; 107, §1; 115, §§2-3; 116, §1; 117.

[52] For example, see STAS, responsio per decretum generale ad propositum quæsitum de can. 1673, 3° C.I.C., 6 May 1993, prot. n. 23192/92 VT, «aas», 85 (1993), pp. 969-970: «Re sedulo examini subiecta in Congressu…» (p. 970). Cf. art. 112.

nullity or request for a *restitutio in integrum* (*PB*, art. 122, 1°),[53] a penal or contentious cause against a Rotal judge (*PB*, art. 122, 3°), a cause of contentious-administrative recourse (*PB*, art. 123, §1), a plaint of nullity against its own sentence, a *restitutio in integrum* against its own sentence, and administrative controversies deferred to it by the Roman Pontiff or a dicastery (*PB*, art. 123, §3).[54]

iv. The Bishop Secretary

The secretary of the Supreme Tribunal enjoys broad participation in the power of governance, being endowed with both ordinary judicial and administrative power, and there is a firm historical foundation for this. At the time of Gregory XVI's legislative reform, the office of secretary was called Prelate Auditor of the Prefect («Prælatus auditor est a secretis tribunalis»). Whereas matters of greater importance falling within the competence of the *Signatura iustitiæ* were handled by a college of Prelate *votantes* (judges), the Prefect resolved matters of less importance, and he often did this through his Auditor, who enjoyed delegated power. In addition, the secretary exercised ordinary judicial power in matters of minor importance and those matters not addressed in the Gregorian legislation. Furthermore, he had the power to execute rescripts and other decisions of the tribunal.[55]

Since ordinary judicial power is possessed only by judges (c. 135, §3), it follows that the secretary of the Signatura is a true judge, even if he cannot place any act of judicial power whatsoever within the general competence of the Signatura. In the *ius vigens*, his judicial power is seen especially in his role of governing the process through his ordinatory decrees. Examples of these are the following: to summon the defender of the bond to intervene in a cause; to assign someone to intervene as defender of the bond or promoter of justice in a case – this could be a referendary or some other expert, in addition to the stable defenders and promoters of justice; to establish time limits; to assign a procurator-advocate when gratuitous representation has been granted; to cite interested parties; to establish the formula of the doubt; to suspend pending processes pertinent to a conflict of competence between tribunals;[56] to cite the competent dicastery and all interested parties, in which he also invites the dicastery to appoint a procurator-advocate;

[53] When these are proposed as an incidental matter while a cause is pending before the Roman Rota, the College's decision is an interlocutory sentence (cc. 1589, 1607).

[54] See *Lex propria/2008*, artt. 21; 49; 53, §2; 103; 68; 47, §3; 89; 91, §1; 104.

[55] *Regolamento legislativo e giudiziale*, art. 342, cited in Lega, *Prælectiones*, *cit.*, pp. 31-32, n. 35; see also Lobina, *op. cit.*, p. 16, n. 4.

[56] This is a singular administrative decisional decree when the conflict arises extrajudicially.

to order the competent dicastery to transmit the acts; to order the chancery to notify the recurrent and the other interested parties of what is mentioned in art. 79, §1, 1°; and to admit a recourse to the College.[57]

He can also issue certain definitive judicial decrees, such as those by which he rejects a recourse or petition at the outset and declares a cause to be a *lis finita* (cc. 1517, 1618).[58] Finally, he can issue certain interlocutory decrees, such as those resolving questions regarding profits made by a procurator-advocate (art. 19, §2) and questions incidental to the cause being adjudicated before the Signatura (art. 43, §2; e.g., art. 86).

The secretary's administrative power finds a variety of expressions. He can issue the following singular administrative decisional decrees: those which reject a recourse or petition at the outset; those which are ordered by the Prefect; those deciding how to proceed when a tribunal is denounced and making certain decisions if it is not a question of grave irregularities; that suspending the execution of a decision of a lower tribunal; and those declaring the legality of declarations of marriage nullity or dissolutions of marriage so that they may obtain civil effects. Among the decrees that make a provision which he can issue are those whereby he summons the defender of the bond to intervene in a cause, grants *ad actum* the role of notary to a non-notary who works at the Signatura, and makes other provisions by mandate of the Prefect. He can issue the precepts whereby he reproves illegitimate judicial practices or corrects tribunals or officials, orders an advocate to respect his grant of gratuitous representation, and insists on financial obligations before the Signatura. He can grant certain favours, such as the relaxation of financial obligations before the Signatura, as well as those entrusted to him by mandate of the Prefect. He can also grant the *licentia* whereby procurator-advocates may have a copy of the acts if they request it.[59]

Finally, when the Prefect is absent or impeded, the law extends the Prefect's powers to the secretary, except for cases that are reserved to the Prefect himself (art. 6, §3). What are these? In order to answer this question, it would be necessary to analyse individual acts and determine whether they must by their nature be issued by the Prefect – such as deciding a recourse against a decree of the secretary. In addition, the law itself implies that the secretary may not actually take the place of the Prefect within a college of

[57] See *Lex propria/2008*, artt. 8, §1; 9 (e.g., art. 79, §1, 3°); 27, §2 (e.g., artt. 38; 59, §1; 63, §1; 77; 81, §§1-2; 85, §1; 96, §1); 31, §4; 38; 43, §2 (e.g., artt. 54; 56; 85, §1); 71; 79, §1, 1°-2°, 4°; 85, §1.

[58] See *Lex propria/2008*, artt. 6, §2, 2° (e.g., artt. 52, §2; 76, §1; 96, §1); 16, §2 (e.g., art. 78, §3).

[59] See *Lex propria/2008*, artt. 6, §2, 2°; 108; 106, §2; 110, §2; 111, §1; 111, §2; 119, §1; 121; 8, §1; 106, §1; 12, §2; 106, §2; 110, §2; 19, §2; 30, §2; 26, §1.

judges. Indeed, in art. 23, §2, when the Prefect recuses himself from a cause, the secretary is to exercise the Prefect's function *usque ad Iudicum Sessionem*, over which the Cardinal judge of the higher order and earlier promotion presides.

v. The Promoter of Justice

In general the promoter of justice does not excercise the power of governance. His principal role is to submit his observations to the judges in interest of the public good by clarifying the truth of the matter in an individual case (*votum pro rei veritate*). Still, when the secretary is absent or impeded, the law extends his powers to the promoter of justice (artt. 7, §3; 23, §3). In this situation, therefore, he would become legally capable by the law itself of a variety of acts of judicial and administrative power (see section iv. *infra*).

Conclusion

It is of great benefit for canonists and others involved in the *munus regendi* in the Church to deepen their knowledge and appreciation of the nature and extent of the power of governance enjoyed by the Supreme Tribunal of the Apostolic Signatura. For, in the first place, it is increasingly likely that some among the faithful living within the particular Churches or some members of religious institutes will have recourse to the ministry of the Supreme Tribunal; and it is incumbent upon local authorities to be at least generally acquainted with the identity and *modus procedendi* of this superior authority. In addition, any effort spent reflecting on the history and contemporary contributions of a dicastery of the Roman Curia is bound to yield a deeper reverence and fondness for the Petrine ministry. For the Supreme Pontiff's dependence upon the expertise and prudence of others expresses his aspiration to govern well, according to the heart of the Good Shepherd. And this stands as a vivid demonstration of the fact that the supreme law of the Church is the salvation of souls.