THE LEGAL NATURE OF THE ACT OF CELEBRATING
THE HOLY MASS

NATURE PRAWNA AKTU CELEBRACJI MSZY ŚWIĘTEJ

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Abstract

The work aims to show the relationship that occurs between the church authority and the celebration of the Eucharist. It is worth emphasizing that concepts such as potestas, auctoritas or iurisdiction are still at an early stage of research development, and are inextricably linked to the mission of preaching the Gospel and administering the sacraments, and constitute a specific heritage of the legal doctrine of the Church from which it is difficult to cut off when wanting to describe the issue in a canonical manner celebration of the sacrament of the Eucharist. In addition, canonical concepts such as bring, right, authorization, or duty allow a better understanding of the nature of the power necessary to celebrate the Holy Mass.

Keywords: Holy Mass, obligation, privilege, entitlement, authorization, legal act

Abstrakt

Praca ma na celu pokazanie relacji, jaka zachodzi pomiędzy władzą kościelną a celebrowaniem Eucharystii. Warto podkreślić, że takie pojęcia jak potestas, auctoritas czy iurisdiction są wciąż we wczesnym stadium rozwoju badań, a nieodłącznie wiążą się z misją głoszenia Ewangelii i sprawowania sakramentów oraz stanowią specyficzne dziedzictwo doktryny prawnej Kościoła, od którego trudno się odcinać chcąc opisywać na sposób kanoniczny zagadnienie celebracji sakramentu Eucharystii. Ponadto kanoniczne pojęcia takie jak przywilej, uprawnienie, upoważnienie czy obowiązek umożliwiają lepsze zrozumienie natury władzy niezbędnej do sprawowania Mszy św.

Słowa kluczowe: Msza św., obowiązek, przywilej, uprawnienie, upoważnienie, akt prawny

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Introduction

People attach great importance to the prayers of priests and often ask the clergy to pray for them or their family members. St Monica, just before her death, told her son, St Augustine, not to worry about burial in Ostia, far from her native land. “Put this body anywhere and let the care of it be no trouble for you. I ask only one thing: that you remember me at the altar of the Lord wherever you are.”¹ She realised the value of the priest’s prayers.

1. Authority to administer a sacrament

Officiating priests (sacerdotes ministeriales) have the potestas sacra by which they edify (efformare) the priestly people and govern (regere) them. This power ranges from legislative and judicial powers to worship and preaching, including the ability to celebrate Mass [Skonieczny 2013, 19-20]. In the 1983 Code of Canon Law,² the legislator uses the term sacred pastors (sacri pastores) to refer to the subjects who are the addressees of the preservation of the right to sanctification, whenever he has in mind bishops or other persons endowed with episcopal authority (Canon 212 § 1 CIC/83). On the one hand, he uses the word pastors (pastores) when referring to other pastoral ministers, such as parish priests (Canon 519 CIC/83). On the other hand, when he uses the term sacred ministers (sacri ministri), he has in mind the clergy (Canon 207 § 1 CIC/83), which is considered to be bishops, presbyters and deacons (Canon 1009 § 1 CIC/83) [Kołodziej 2019, 119].

Common canonical doctrine does not dispute the fact of the existence of sacra potestas since the first centuries of Christianity. As Iniesta rightly points out, it is difficult to understand sacred potestas without referring to the origins of the concept derived from Roman jurisdictional law [Iniesta 2015, 12-13]. The concept, derived from the law of the ancient Roman Empire, adopted by canonistics formed a bridge between the two legal orders, secular and ecclesiastical, defining a set of powers exercised

by the bishop, including the state judicial power (*episkopalis audiencia*) [Litewski 1998, 312].

Thus, as in Roman law, the Church did not make a distinction of authority. The bishop, as an office equivalent to the supreme authority of the emperor, assumed all powers (*tria munera*). This concept of a single authority with closely related elements survived in the Church until the twelfth century. It were the Middle Ages and the concept of the benefice that resulted in a practical splitting of sacred authority into sacramental office-bearers and office-holders [Garroté 1999, 260-64]. In medieval Europe, pastoral care had to be provided where the bishop was a feudal lord and did not receive the episcopal sacraments; moreover, at the Fourth Lateran Council in 1215, it was stated with some regret that some prelates did not celebrate the Eucharist as little as four times a year [Pastuszko 1994, 104-105].

In the Roman Catechism (1566), the phenomenon of separating the authority of ordination from the authority of governance became quite apparent. The power of ordination referred to the real Body of Christ in the Most Holy Eucharist, while the power of governance addressed itself to the Church as the Mystical Body of Christ. This gave rise to an erroneous juxtaposition: sacraments – law [Skonieczny 2013, 25].

### 2. The authority to administer a sacrament versus the authority to govern

In the earliest centuries of the Church, no distinction was made between the requirements necessary for ordination and the assumption of office; they were identical. Similarly, no distinction was made between the powers of ordination and those of office, nor was a distinction made between the powers of ordination and those of office. Evidence of this approach can be found in the decisions of the Council of Chalcedon (451), which allowed only relative ordination, i.e. directed to a specific office in the Church, so-called absolute ordination was strictly forbidden

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A distinction was made between the law and the exercise of the law, the acceptance of ordination and the exercise of the authority of ordination, which was held invalid if an absolute ordination was accepted. However, the literature cites, among others, the case of St Hieronimo, cardinal and secretary of Pope Damasus, who was ordained to the presbyterate in an absolute manner, but, according to the accounts of tradition, was not in the habit of celebrating Mass at all. Such examples, while they occurred in the practice of the Church in the first centuries, were not reflected in doctrine [Stickler 2018, 54-67; Kowalczyk and Kuska 2023]. Thomas Aquinas, on the question of whether a priest can decently abstain completely from consecrating the Eucharist maintained that the thesis that a priest who does not hold a pastoral office is not obliged to celebrate Mass is unintelligent, since everyone is obliged to exercise the grace granted to him, which is in accordance with the teaching of the Apostle Paul, who recorded not to receive God’s grace in vain (2 Cor 6:1). According to Aquinas, a priest who is not a pastor cannot completely abstain from celebrating Mass. It seems that he should celebrate Mass at least on major feasts, and especially when the lay faithful are used to receiving Holy Communion.5 It is worth quoting at this point the decree Presbyterorum ordinis, in which the Council Fathers stress that all presbyters in general participate in the potestas sacra as “collaborators of the episcopal state” (Ordinis episcopalis cooperatores).6

A significant contribution on the nature of the authority of the government of souls and the celebration of the Eucharist was made by d’Ors, who drew a distinction between auctoritas and potestas. The two concepts occur in practice in a combined form, their social recognition is characterised by a somewhat different nature, so it is possible to distinguish between auctoritas, the socially recognised truth, and potestas, the socially recognised will of the legislator [d’Ors 1973, 23-35]. According to Iniesta, however,

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5 Thomas de Aquino, Summa Theologica, III, q. 82, a. 10.
no application of this distinction to the question of sacred authority will be made without reference to the dogmatics of law, which stipulates that the two elements consecration and office, closely related, are essentially different, since the former is absolute, indelible and cannot be annulled by any human authority, while the latter can be revoked by competent authority [Iniesta 2015, 10-11]. Moreover, as Pope Benedict XVI explained, through episcopal consecration one participates “ontologically” in the sacra munera (“sacred tasks”), but not in the potestas sacra. The munera sacra should be actualised or determined through the missio canonica of the competent hierarchical authority and only in this way do they become potetas sacra. It is not enough, therefore, to communio alone through the sacra received, there is a need for communio hierarchica with the Head and with the College of Bishops by virtue of the canonical mission. Thus, the canonical mission is not merely a formal element, external to the potestas sacra, but becomes a material, essential element that co-creates it, constituting the communio hierarchica [Skonieczny 2013, 31-34]. Referring to the theory of d’Ors, the authority derived from the fact of accepted ordination is not sufficient. In order to validly and decently exercise sacra potestas one must obtain jurisdiction to do so [d’Ors 1973, 23].

3. The authority to administer the sacraments and communion with the Catholic Church

The link between sacrament and communion with the community was emphasised emphatically by Sobański. According to the canonist, the concepts communio and societas expressed the social consciousness of Christians. Furthermore, the name communio and its correlate excommunicatio predominate in ancient Christian literature. Both terms describe the legal situation of baptised people. Not only excommunicatio, therefore, but also communio were consciously used as a legal concept. Communio is a “sacramental institution” with specific conditions of membership, binding discipline and organisation. Thus, there is no scientific basis for tying the legal aspects only to the concept of societas. In addition, the legal aspect is

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emphasised more clearly by the name *communio*. The ancient Church, in its self-consciousness, defines itself as *communio sacramentorum* – a community of people united by the sacraments. The communion forms the outward sign (*sacramentum*) of a certain inward reality (*res*) which is, as Sobański adds, the work of the Holy Spirit and a real community of saints. The community, therefore, through the sacraments becomes the reality to which it is called. However, since the validity of the sacraments celebrated outside the ecclesial community was recognised, attention had to be paid to other factors of unity. The sign of unity became the Eucharist: whoever remained in unity was admitted or sent to the Eucharist. This close link between unity, which is so important for the Church, and the Eucharist resulted in a strong coupling of the concepts of *communio* and Eucharist. In the course of time, *communio* became a technical term to designate the Eucharist. At the same time, processes took place whereby the concept Christian also acquired political, social and cultural denotations. In addition to faith and the sacraments, other secondary factors emerged to determine the status of a community member. The edict of Constantine and then the decree of Theodosius recognising Christianity as the state religion gave rise to the *societas* in which *communio* should be practised. In practice, therefore, the designations of these names ceased to coincide more and more. The consequence of this is the model of governing authority articulated in Canons 130-144 CIC/83, without reference to jurisdiction or an equivalent concept. This is particularly evident in the law on the sacraments. The administration of the sacraments according to the provisions of the CIC/83 is not an act of ordained and jurisdictional authority, but only of ordained authority. Thus, it lacks an intrinsic connection with the governing authority [Sobański 2018, 6-19]. As the canonist quips, “it is all too difficult to explain on what grounds the power of jurisdiction was necessary for the valid celebration of the sacrament – the validity of the sacrament could not, after all, depend on the observance of purely ruling requirements” [ibid., 17]. It is a matter of knowing through reason enlightened by faith the obliging and social forms of life called law, since the sacraments instituted by Christ oblige not only theologically, but also as legal acts determining the specificity of the Church, and vice versa [Gałkowski 2013, 122]. The *potestas sacra* thus understood can therefore only be exercised in the *communio* of the Church. Thus, *potestas sacra* is
neither an authority of the people of God nor an authority over the people of God, but it is an authority in the people of God. In this view, it is also impossible to conclude that the potestas sacra has a dualistic sacramental-jurisdictional character, the two “natures” of the potestas sacra – the authority of ordination (sacramental) and the authority of governance (jurisdictional) – interpenetrate each other, are intrinsically and inseparably linked, and can only be distinguished conceptually. Hence, the act of celebrating Mass is not only a sacred action, but also an exercise of jurisdiction in the people of God. Firstly, the concept of potestas sacra defines the whole and one ecclesiastical authority that comes from Jesus Christ. Secondly, this authority is explicitly limited to the clergy, i.e. to those who have been ordained. Thirdly and finally, sacra munera do not yet signify potestas sacra, since the mode of transmission of the latter is more complex and takes place by means of canonical mission [Skonieczny 2013, 30-37].

4. Celebrating the sacrament as the realization of a juridical act

Summarising the theological dimension of the act of celebration the Mass as described in the teaching of the Fathers of Vatican II, it is said that in the Eucharistic Sacrifice the work of our redemption is accomplished, and that every Mass has a public and communal character, always being an act of Christ and the Church. Using theology as well as jurisprudence, it is possible, on the basis of the general theory of the juridical act, to draw even more specific conclusions about the juridical nature of the Mass. Firstly, if, according to the theory derived from Mörsdorf, the Mass is an act of the power to sanctify and govern, does it at the same time constitute an office [Garroté 1999, 260-64]? Nowhere in the CIC/83 does the legislator impose an obligation on priests to celebrate the Mass daily, but only recommends it (Canon 904 CIC/83); however, he does impose an obligation on presbyters to strive for holiness, by virtue of the double title of the received sacrament of baptism (Canon

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217 CIC/83) and ordination (Canon 276 CIC/83). In other documents,\(^\text{10}\) he adds that the pursuit of holiness is realised in the first place through the celebration of the Eucharistic Sacrifice, since the goal of the priest's life is union with Jesus and the Church, and this flows from the Mass in which the life of the presbyter is rooted. In conclusion, the legislator does not directly (explicitly) prescribe the daily celebration of the Eucharist, it does require it indirectly (implicitly) [Pérez Marín 2018, 108; Lewandowski 2021, 181-84]. In this way, the celebration of the Mass can be spoken of as a juridical act, since a juridical act occurs when there is coherence between the individual's idea and the legislator's concept, and furthermore all the requirements of the legislator in a particular system are fulfilled [Dzierżoń 2002, 25-52]. In the case of the sacraments, it is a matter of subjective requirements, the possession of authority required by the Church for the valid and dignified celebration of the sacraments, and object requirements, the use of matter and form prescribed for the sacrament [Janczewski 2011, 251-57], and in order to meet “all the requirements” also the realisation of the ratio legis of the legislator [Dzierżoń 2002, 28]. Therefore, it does not seem that the celebration of the Eucharist falls under the formulation of alius actus contained in Canon 128 CIC/83, since it exhausts all the criteria listed in the general theory of the juridical act, moreover, it bears the characteristics of a juridical act, since, as shown above, its juridical effect is the actualisation of communio with the Church and Jesus, while in the case of alius actus we are dealing only with practical or factual effects without any juridical consequences, while the Mass, on the other hand, implicitly realises the obligation to strive for communio with the Church and Jesus, implicitly also realises the obligation to strive for holiness and the realisation of communio as an effect of a juridical act [ibid., 28-29; Skonieczny 2017, 73-74].

Furthermore, the Mass also becomes an obligation strictly from positive law (Canons 948-949 CIC/83) when an offering has been accepted by the priest with the intention of celebrating the Eucharist for a specific intention [Lewandowski 2019, 135-39], as well as when, by virtue of his

\(^\text{10}\) Ioannes Paulus PP. II, Adhortatio apostolica postsynodalis de Sacerdotum formatione in aetatis nostrae rerum condicione Pastores dabo vobis (25.03.1992), AAS 84 (1992), p. 657-804, no. 16; PO 14.
office, the presbyter is obliged to celebrate the Mass pro populo (Canon 388, Canon 534 CIC/83) [Sitarz 2006, 99-101] moreover, in order to fulfil Canon 222 § 1 and Canon 1246 § 1 CIC/83, i.e. to participate in the Eucharist on Sundays and holy days prescribed [Mazur 2021, 95-101], but as Pope Paul VI pointed out, graces cannot be obtained in equal abundance by Holy Communion alone,\(^{11}\) and therefore the practice of receiving Communion alone without the Eucharistic celebration would be an incomplete fulfilment of the obligation to strive for holiness. Finally, the obligation to celebrate Mass also arises in the case of binations when there is a shortage of priests and there is just cause (\textit{iusta causa}) and in the case of trinations on Sundays and prescribed feasts when there are insufficient presbyters and there is pastoral necessity [Kodzia 2013, 157-58].

However, the obligation to celebrate daily Mass can occur not only by ecclesiastical statute, but also by legal custom [Lewandowski 2017, 132-34]. Pope Clement wrote to the Corinthians reminding them to do with order all that the Lord had commanded to be fulfilled. He further enjoined that they should offer sacrifices and celebrate the liturgy not carelessly and out of order, but in set circumstances and times.\(^{12}\) Thus, in the early Church, the liturgy was orderly and obligatory at specific times. The author of the Didache writes in less detail, but sufficiently intelligible: “assembled on the day of the Lord, confess your sins first, that your sacrifice may be pure; then break bread, give thanks. And he who is at variance with his brother, until he is reconciled, let him not join you, lest your sacrifice be defiled.”\(^{13}\) In addition, Church history mentions celebrants who celebrated between seven and nine Masses in one day, such as Pope Leo III, who lived at the turn of the eighth and ninth centuries. Pope Paschalis I (817-824) states clearly and explicitly that Mass can be celebrated every day. He teaches that Christ the Lord once suffered in the flesh and saved the world through one passion and death, but that we ourselves are to remember

\(^{11}\) Paulus PP. VI, Litterae encyclicae \textit{Mysterium Fidei} (03.09.1965), AAS 57 (1965), p. 753-74 [hereinafter: MF], no. 3.


His sacrifice every day. For every day we sin at least slightly, and therefore Christ the Lord offers Himself mystically for us every day [Pastuszko 1994, 104]. The above practices testify not so much to an obligation as to a custom which makes the daily celebration of the Mass possible. In a specific case, the legal custom as to the daily Eucharist turns from an opportunity into an obligation when it comes to the so-called “Gregorian” Masses. Pope Gregory the Great (590-604), according to tradition, was the first to recommend the application of thirty Masses for one deceased person, who was to be freed from the punishments of Purgatory after these thirty days. Since then, there has been a practice in the Church of applying thirty Masses in successive days for one deceased to be freed from the punishment of Purgatory [Bejda 2020, 9-67]. Furthermore, clarifying the rules of the custom described, according to the response of the Congregation for Indulgences and Holy Relics, Gregorian Masses are not possible for the living or for several persons at the same time.14 It is generally believed that this pious practice involves a form of plenary indulgence granted to the soul for whom the sacrifice of the Mass is offered, unless the justice of God is opposed to it. It is therefore not definitively established that the indulgence has an effect, but by a decree of 24 August 1888, the said Congregation approved the pious practice and the special trust with which the faithful observe the celebration of thirty Masses efficacious for God’s good pleasure and to obtain mercy for the liberation of souls from the punishments of Purgatory.15 In practice, it was required that the Gregorian Masses be applied for thirty consecutive days without any interruption and for whatever reason for such an interruption. The authors agreed that Gregorian Masses could be interrupted for the last three days of Holy Week, as long as the application of Masses was completed after these three days so that there were thirty Masses in total. On the other hand, they disagreed about the consequences of a possible interruption if it happened without any fault on the part of the applicant [Pastuszko 1994, 94]. However, if the continuity has been interrupted, there is an obligation to complete the application of the Masses to the number thirty

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15 Ibid.
as soon as possible.\textsuperscript{16} For a similar reason, post-conciliar law has even allowed the continuity of the Gregorian Mass to be interrupted whenever the need arises to celebrate the Eucharist at a funeral or wedding. In order to avoid unwarranted binations, it is possible not to celebrate the Gregorian Mass [Janczewski 2006, 289; Lewandowski 2022, 27-30]. In conclusion, it must be affirmed that the Church, assuming the existence in priests of a profound awareness and goodwill stemming from their faith, instructs them to celebrate the Holy Sacrifice daily for the salvation of the world, seeing it as the principal priestly activity, those who would have a real, serious obstacle to its celebration could abstain from it without incurring moral guilt. It is certain, however, that the Church’s teaching does not approve of attempts to exempt oneself from the daily celebration of the sacrifice of the Mass, either because of a holiday being experienced or in the absence of the faithful or of a Mass stipend [Kodzią 2013, 152-53]. Furthermore, Pope Paul VI spoke out against criticisms of the private Mass. In his opinion, a Mass that is celebrated privately by the priest, but according to the Church’s regulations and legitimate traditions, with one altar server serving and responding, can be considered fruitful. For such a Mass brings not few but very many special graces for the salvation of the priest himself and of the faithful, of the whole Church and of the world (MF 3).

To complete the issue, it is worth adding that the possibility to celebrate Mass cannot be treated as a privilege, because the privilege is permanent, but it can expire, while the authority resulting from ordination never expires, so it is an abuse to pejoratively describe the celebration of Mass as a privilege [Dzierżoń 2012, 25-29]. Moreover, it is also difficult to speak of “authority to celebrate Mass” as something external to the authority derived from ordination. Janczewski rightly observes that \textit{facultas} has the nature of a power of attorney and is a constitutive element of the act, whereas in the case of the celebration of Mass, the priest celebrates it validly, on the basis of the ordination itself, so the relevant element is primarily the subjective one as regards the validity of the act of ordination, whereas as regards the sacrament’s dignity and efficacy (referring to the legal effect of \textit{communio}) incardination and the canonical mission. Thus, it is correct

to say that by virtue of ordination, a priest is “entitled” to celebrate Mass [Janczewski 2007, 102-107], but cannot perform this decently without in-cardination and canonical mission [Krawczyk 1980, 3-5], issued by a particular administrative act, the purpose of which in the canonical legal order remains in close connection with the good of the Church conceived as communio [Dzierżoń 2012, 278]. Thus, the presbyter enjoys jurisdiction to celebrate Mass because the legislator does not require him to be authorised to do so, as in the case of Holy Confession [Idem 2007, 107].

**Conclusion**

As Pope Francis said, “the bishop who does not pray, the bishop who does not listen to the Word of God, who does not celebrate Mass every day, who does not go to confession regularly, and likewise the priest who does not do these things, in the long run lose their communion with Jesus and their characteristic becomes mediocrity, which is not good for the Church.”¹⁷ This is why the concept of communio, which is actualised at each Mass celebrated by a priest who is in ecclesial communion with the Catholic Church, who creates the unity of the community through each implementation of the act of celebration of the Eucharist, in accordance with the will of the legislator, is so important. Furthermore, the daily application of the Eucharist is very important because it concerns the bishops’ and priests’ duty of their own sanctification.

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