

DOGMATIC AND LEGAL GROUNDS FOR THE ADMINISTRATION OF MASS INTENTIONS BY THE PARTICULAR CHURCH LEGISLATOR

Rev. Paweł Kasperowicz, MA

Comillas Pontifical University, Spain

e-mail: pakasperowicz@gmail.com; <https://orcid.org/0000-0003-3360-1438>

Abstract

Benedict XVI distinguishes between *munus* and *potestas* as useful concepts in understanding the authority of the diocesan bishop. While the concept of *potestas* goes back to the Roman law of jurisdiction, the *munus* terminology is relatively new, since it stems from the theology of Dietrich von Hildebrand, who distinguished between *munus sanctificandi*, *munus docendi* and *munus regendi*. As highlighted by Pope Benedict XVI, thanks to the orders of the episcopate, the bishop shares in the *munus*, which is not equal to *potestas*; therefore only the diocesan bishop, who persists not only in *communio* but also in *communio hierarchica* with the Catholic Church, enjoys legislative power, which he exercises directly; however, his sacred power of the sacraments can be exercised through sacred ministers, and in the case of the executive power also through the lay faithful, by virtue of *missio canonica*. The bishop implements that by administering Mass intentions and offerings donated in the diocese.

Keywords: bishop, power in the Church, intentions, offering, stipend, Mass, *potestas*, jurisdiction, *munus*

Introduction

The Eucharist is considered the greatest treasure of the Church, both the source and the culmination of all evangelization, since its purpose is to unite people with Christ and in Him with the Father and the Holy Spirit.¹ As Pope Francis said, “The bishop who does not pray, the bishop who does

¹ John Paul II, Litterae encyclicae *Ecclesia de Eucharistia* (17.04.2003), AAS 95 (2003), p. 433-75; English text available at: https://www.vatican.va/content/john-paul-ii/en/encyclicals/documents/hf_jp-ii_enc_20030417_eccl-de-euch.html.

not listen to the Word of God, who does not celebrate every day, who does not regularly confess – and the same for the priest who does not do these things – in the long run lose their union with Jesus and becomes so mediocre that they do not benefit the Church.”² On this account, the priest should celebrate Holy Mass daily, with a clean heart that is free from attachment to sin, even with no faithful attending. Legislators of particular Churches emphasize that due to the holiness of the sacrament, the priest is obliged to firmly eschew the temptation either to “abuse” the gift of the Eucharist by celebrating Mass unreasonably frequently solely by virtue of accepted Mass intentions, or to too easily abstain from celebrating in the absence of intentions [Lewandowski 2019, 208].

1. Authority to celebrate the Eucharist

Ministerial priests (*sacerdotes ministeriales*) enjoy *potestas sacra*, whereby they build up (*efformare*) the priestly people and govern them (*regere*) [Skonieczny 2013, 19-20]. At this point, it will be instructive to cite the decree *Presbyterorum ordinis*, in which the conciliar fathers underscore that all presbyters in general participate in *potestas sacra* as “co-workers of the episcopal order” (*Ordinis episcopalis cooperatores*).³ As regards those who are empowered with *munus sanctificandi*, the 1983 Code of Canon Law⁴ uses the term ‘sacred pastors’ (*sacri pastores*), whenever it refers to bishops or other persons endowed with episcopal authority (Canon 212 § 1), pastors (*pastores*) when other pastoral workers are mentioned, such as pastors in the sense of *parochus* (Canon 519) and sacred ministers (*sacri ministri*), when clergy are meant (Canon 207 § 1), that is, bishops, presbyters and deacons (Canon 1009 § 1) [Kołodziej 2019, 119].

² Francis, General audience of 26 March 2014; https://www.vatican.va/content/francesco/en/audiences/2014/documents/papa-francesco_20140326_udienza-generale.html.

³ Vatican II, Decretum de presbyterorum ministerio et vita *Presbyterorum ordinis* (7.12.1965), AAS 58 (1966), p. 991-1024, no. 3; English text available at: https://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_decree_19651207_presbyterorum-ordinis_en.html [henceforth: PO].

⁴ *Codex Iuris Canonici auctoritate Ioannis Pauli PP. II promulgatus* (25.01.1983), AAS 75 (1983), pars II, p. 1-317; English text available at: https://www.vatican.va/archive/cod-iuris-canonici/cic_index_en.html [henceforth: CIC/83]; legal state as of 18 May 2022.

Universal canonical doctrine does not question the fact that *sacra potestas* has existed since the beginning of Christianity. As Belda J. Iniesta underscores, it derives from the Roman law of jurisdiction [Iniesta 2015, 12-13].

In the early Church a distinction was made between law and the exercise of law, the acceptance of holy orders and having the power of orders. Literature cites the case of Saint Jerome, a cardinal and secretary to Pope Damasus, who was ordained to the presbyterate, but, as tradition has it, he would not celebrate Mass at all. While such situations occurred in the early centuries of ecclesiastical practice, they were not reflected in doctrine [Stickler 2018, 54-67; Kowalczyk and Kuska 2023].

Saint Thomas Aquinas held that claiming that a priest who does not hold a pastoral office is not obligated to celebrate Mass makes no sense, as everyone is obligated to exercise the grace granted to them, which agrees with the teaching of Apostle Paul, who noted that divine grace must not be received in vain (2 Corinthians 6:1). Aquinas argues that a priest who is not a pastor of souls cannot refrain entirely from celebrating Mass. It appears that he should celebrate Mass at least on major feasts, especially when the lay faithful are accustomed to receiving Holy Communion.⁵

The Middle Ages and the emergence of the concept of benefice led to the splitting of holders of sacred authority into those administering sacraments and those holding offices, albeit not in doctrine but in practice [Garroté 1999, 260-64].

In the *Roman Catechism* (1566),⁶ the separation of the power of orders from the power of governance became fully apparent. For while the power of orders pertained to the real Body of Christ in the Most Holy Eucharist, the power of governance was linked to the Church as the Mystical Body of Christ [Skonieczny 2013, 25].

A significant contribution regarding the nature of the powers to govern souls and administer the Eucharist was made by Alvaro d'Ors, who distinguished between *auctoritas* and *potestas*. Although both concepts concur in practice, their social functions differ slightly, so it is possible

⁵ Aquinas, *Summa Theologica*, III, q. 82, a. 10; English translation by Fathers of the English Dominican Province, available online at: <https://www.newadvent.org/summa>.

⁶ Pius V, Clemens XIII, *Catechismus ex decreto Concilii Tridentini ad parochos*, Rome 1566.

to distinguish between *auctoritas*, or a socially accepted truth, and *potestas*, the socially recognized will of the legislator [d'Ors 1973, 23-35].

As Pope Benedict XVI explained, episcopal consecration enables one to participate “ontologically” in *sacra munera* ‘sacred tasks’, which is not tantamount to possessing *potestas sacra*.⁷ *Munera sacra* should be actualized or determined through the *missio canonica* of the competent hierarchical authority – only in this way do they become *potestas sacra*. Therefore, *communio* through the *sacra* received is not sufficient; one needs *communio hierarchica* with a head and a college of bishops by virtue of a canonical mission, so the bishop’s share in *munus docendi, sanctificandi* and *regendi* follows from his ordinations, but not in *potestas sacra*, which belongs only to the Roman Pontiff and local bishops⁸ [Skonieczny 2013, 31-34].

The distinctions between *potestas sacra* and *sacra munera*, as well as *communio* and *communio hierarchica*, carry concrete legal consequences. Within their particular Churches, bishops play the roles of good fathers and caring shepherds. They are in charge of instruction, sanctification and direction of the people of God entrusted to them, providing advice, encouragement, and good example. It should be noted that they also exercise their legislative power if necessitated by the good of the diocesan community. The legislative power, besides the executive and judicial powers, is a vital element of the ecclesiastical power of governance. Indisputably, the ecclesiastical legal order, which inheres in the life of the Church as an organized community, presupposes the existence of a legislative power in it. The exercise of legislative power by the diocesan bishop is a highly responsible task, which is confirmed by the legal stipulation that the bishop can only exercise this power in person (Canon 391 § 2) [Pawluk 1991, 34-35].

The terms *auctoritas* and *communio hierarchica*, used by d’Ors and Benedict XVI, respectively, emphasize the third dimension of the unity of the Catholic Church – the so-called social bond, known as hierarchical (*vinculum sociale seu hierarchicum*). Let us recall that according to Roberto Bellarmino’s theory, Catholics are united by three bonds of unity, *vinculum symbolicum*

⁷ Benedict XVI, *Allocutio Expergiscere homo ad Romanam Curiam ob omina natalicia* (22.12.2005), AAS 98 (2006), p. 46.

⁸ Cf. Benedict XVI, *Address to the Newly Ordained Bishops* (21.09.2006), https://www.vatican.va/content/benedict-xvi/en/speeches/2006/september/documents/hf_ben-xvi_spe_20060921_convegno-vescovi.html.

(profession of faith), *vinculum liturgicum* (liturgy – sacraments), and *vinculum sociale seu hierarch* mentioned above [Pawlowski 2015, 192].

With this in mind, one might conclude that *potestas sacra* has a dualistic sacred-jurisdictional character. The sacred dimension would involve *vinculum symbolicum* and *vinculum liturgicum*, and the jurisdictional dimension would be comprised of *vinculum sociale seu hierarchicum*. Piotr Skonieczny believes the two “natures” of *potestas sacra* – the (sacramental) power of orders and the (jurisdictional) power of governance – are intertwined, intrinsically and inseparably linked, but can only be differentiated conceptually [Skonieczny 2013, 30-37].

According to Klaus Mörsdorf, the Second Vatican Council was able to unite the two powers, ending the separation between consecration and office. This unity follows from both having the same source: the sacrament of holy orders. On this account, Mörsdorf claims, the risk of instrumentalization of power was avoided. However, he argues that the power of the orders and the power of jurisdiction are not identical, even though they are part of *potestas sacra*. The difference between the two is functional and is visible in strong coordination and full complementarity. In this way, the power of jurisdiction appears as a principle regulating the exercise of the power of orders. Since the power of orders – inalienable and permanently effective – can be abused, it must, then, be controlled by ecclesiastical authority. Thus, the function of the power of jurisdiction will be to order the life of the Church by means of law. For Mörsdorf, all authority in the Church is sacred since its source lies in episcopal consecration. However, this sole source of power has two channels through which it grants *potestas*: ministerial consecration and canonical mission. So, he argues, *missio canonica* involves delegating a specific *munus* (i.e., a particular task) to or entrusting one with a specific group of the faithful/territory. Canonical mission, therefore, has a separating role that serves to emanate universal episcopal power, sacramentally transmitted and with a solid foundation. However, this is not incidental to *potestas iurisdictionis*, because the outward structure – the personal element – is an essential element of human communion, and therefore also of the Church; *potestas iurisdictionis* cannot be validly constituted until a canonical mission is assigned to it [Mörsdorf 2008, 235-79].

So understood, *potestas sacra* can be exercised within the communion of the Church. Thus, *potestas sacra* is neither the authority of the people

of God nor the power over them – rather, it is authority among the people of God. *Communio* and the derived term *excommunicatio* are prevalent in old Christian literature. Both concepts refer to the legal situation of the baptised. Thus, not only *excommunicatio*, but also *communio* were used purposefully as a legal concept. *Communio* is a “sacramental institution” with specific membership conditions, the discipline and organisation. The ancient Church consciously calls itself *communio sacramentorum* – a community of people united by sacraments [Sobański 1987, 6-19].

It would be correct to say, then, that the priest, by the power of his orders, is “authorised” to celebrate Mass [Janczewski 2007, 102-107], but cannot legitimately do that without incardination and canonical mission [Krawczyk 1980, 3-5], granted by a specific administrative act, whose purpose in the canonical legal order remains closely related to the good of the Church interpreted as *communio* [Dzierżon 2012, 278]. It follows that the presbyter enjoys jurisdiction to celebrate Holy Mass, since the law does not require him to have *authorisation* to do that, as in the case of confession [Skonieczny 2017, 69-72]. Therefore, one can hardly speak of “authorisation to celebrate Mass” granted by an external act *vis-à-vis* the power of orders. Zbigniew Janczewski correctly notes that *facultas* (authority) has the nature of a power of attorney and is a constitutive element of the act; in contrast, the priest celebrates Mass validly by virtue of his ordination alone – the important thing is, above all, the subjective element for the act of ordination to be valid, while for sacramental legitimacy and effectiveness (having the legal effect of *communio*) incardination and canonical mission are necessary [Janczewski 2011, 251-57]. Likewise, the possibility of celebrating Mass cannot be treated as a privilege, because a privilege as such is permanent, but it can expire; in contrast, the power of orders never ceases, so treating (unfavourably) the celebration of Holy Mass as a privilege is wrong [Dzierżon 2012, 25-29]. Moreover, the authority to celebrate Mass cannot always be treated as an obligation. At no point does the CIC/83 obligate priests to celebrate Mass daily, but only recommends that (Canon 904) [Pérez Marín 2018, 108; Lewandowski 2021, 181-84]. However, although the legislator does not explicitly prescribe the daily celebration of the Eucharist, it does so implicitly by imposing an obligation to pursue holiness⁹ on two accounts: baptism (Canon 217) and ordination (Canon

⁹ For more on this, see Lewandowski 2019, 393-403; Lewandowski 2021, 181-91; Lewandowski

276). In documents other than the 1983 Code¹⁰ the universal legislator adds that the pursuit of holiness is realized, above all, through the celebration of the Eucharistic sacrifice, since the purpose of the priest's life is the bond with Jesus and the Church, and this flows from Holy Mass, in which the life of the presbyter is immersed. Moreover, as Pope Paul VI noted, graces cannot be obtained by means of Communion alone in equal abundance, so the practice of receiving Communion without celebrating the Eucharist would mean that the obligation to strive for holiness is not realised in full. Paul VI also spoke against critical appraisals of private Mass. In his opinion, a privately celebrated Mass can be considered fruitful but only – as ecclesiastical regulations and legitimate traditions require – with one acolyte serving and another responding, for Mass celebrated in this way offers many special graces for the salvation of the priest himself and the faithful, the whole Church and the world.¹¹

Additionally, Holy Mass becomes an obligation in the strict sense in positive law (Canons 948-949) and natural law when a priest accepts an offering with the intention of celebrating the Eucharist for a specific intention [Lewandowski 2019, 135-39], as well as when, by virtue of his office, the presbyter is obliged to apply a Mass for the people (Canons 388 and 534) [Sitarz 2006, 99-101] and also to observe Canons 222 § 1 and 1246 § 1 mandating participation in the Eucharist on Sundays and prescribed holidays [Mazur 2021, 95-101]. Finally, it is obligatory to celebrate Mass also in the case of bination when there is a shortage of priests and a just cause (*iusta causa*) is present, and when trination occurs on Sundays and prescribed holidays when there are not enough presbyters and there is a pastoral necessity [Kodzia 2013, 157-58]. However, the obligation of daily Mass can occur not only under an ecclesiastical law, but also by legal custom [Lewandowski 2017, 132-34]. Church history mentions priests who celebrated seven to nine Masses on a single day, for example, Pope Leo III, who lived at the turn of the 8th and 9th centuries. Pope Paschalis I (817-824) says openly that Mass can be celebrated every day, “for every day we

2022, 27-36.

¹⁰ John Paul 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; English text available at: https://www.vatican.va/content/john-paul-ii/en/apost_exhortations/documents/hf_jp-ii_exh_25031992_pastores-dabo-vobis.html; see also PO 14.

¹¹ Paul VI, Litterae encyclicae *Mysterium Fidei* (3.09.1965), AAS 57 (1965), p. 753-74, no. 3.

sin, slightly at least”, therefore Christ the Lord gives Himself up mystically for us every day [Pastuszko 1994, 104]. These practices bear witness not so much to a duty but rather a custom that enables the daily celebration of Mass. In a specific case, the legal custom concerning the daily celebration of the Eucharist is no longer a possibility but a duty with regard to so-called Gregorian Masses [Bejda 2020, 9-67].

2. Authority required by law to administer Mass offerings

Over time, *communio* became a technical term for the Eucharist. So in practice the referents of *communio* and *potestas sacra* ceased to overlap, as *communio* was replaced by a new term – *societas cristiana* – where *communio* should be practised. Authority in the Church thus came to be conceived as authority in a perfect community (*societas perfecta*), following the example of state authority and state community, leading to the 1917 codification, which was the first in the history of the Catholic Church [Sobański 1987, 6-19].

In the 1917 Code of Canon Law¹² only clerics could exercise the power of orders and jurisdiction. The precept of Canon 118 CIC/17, whose wording reflected a distinction between two types of power – by holy orders and jurisdiction – took account of the sources of each power: the power of orders was vested only in those clerics who received the presbyterate by divine law. In contrast, the power of jurisdiction – albeit possessed only by the clergy – originated from ecclesiastical law in accordance with doctrine. Authors like Mörsdorf, for example, interpreted the Second Vatican Council as the abolition of the separation between the power of orders and the power of jurisdiction. For them, the constitution *Lumen gentium*¹³ (no. 21) put the two powers on equal footing, thus reviving the idea of power functioning in the first millennium, whereby the separation – standard in the second millennium – did not exist [García-Nieto Barón 2023, 210].

For Bertrams, the exercise of jurisdictional power necessarily involves having the sacrament of holy orders, so under no circumstances can

¹² *Codex Iuris Canonici Pii X Pontificis Maximi iussu digestus Benedicti Papae XV auctoritate promulgatus* (27.05.1917), AAS 9 (1917), pars II, p. 1-593 [henceforth: CIC/17].

¹³ Vatican II, *Constitutio dogmatica de Ecclesia Lumen gentium* (21.11.1964), AAS 57 (1965), p. 5-75; English text available at: https://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_const_19641121_lumen-gentium_en.html.

a layperson perform an act that implies authority. In fact, he contends that whenever history presents cases of lay persons exercising such authority, they should always be classified as abuses. However, he posits that the lay faithful are capable of exercising public authority in the Church in some cases, because not all public authority implies power of jurisdiction. Other authors, however, did not see it that way; this distinction led to the confrontation of divergent positions in the CIC/83 codification work [Bertrams 1972, 526-27].

Eugenio Correco, for his part, believes that the problem of authority must be resolved theologically – it is not the question of legal technique. In fact, he confirms that the 1983 Code addresses this issue in positivist terms, as it adopts, at least formally, the division of powers implemented by state legislation, distinguishing between legislative, administrative and judicial powers [Correco 1984, 198-201].

According to Remigiusz Sobański, a consistent result of the legislator moving away from the *ius* of naturalism and adopting a positivist concept is the interpretation followed by Canons 130-144 CIC/83 of the model of the power of governance, without recourse to jurisdiction or an equivalent concept. This is particularly apparent, Sobański argues, in the law regulating the sacraments. The administration of sacraments, as prescribed by the 1983 Code, is not an act placed by the power of orders and jurisdiction, but only power of orders – so it is not intrinsically linked to the power of governance. Besides faith and sacraments, other secondary factors were accounted for: those determining the status of a community member [Sobański 1987, 16-19]. They are objective and subjective, as some of the requirements are easily verifiable in objective terms, such as technical or vocational education. Others are more subjective, for example, the candidate's good reputation, his moral integrity, or his appropriate testimony of life. These conditions show that the Church cannot be likened to a bureaucratic or employment structure, but that there exists some supernatural logic transcending the governing function itself and presupposing certain requirements [García-Nieto Barón 2023, 223].

The principal question was how to determine the source of authority and whether *munus* and *potestas* are equivalent. The issue of different interpretations may seem theoretical, with no practical implications. However, this is not the case, because for all practical purposes we are interested in how the authority of the pope and the diocesan bishop is understood,

whether the lay faithful in the Church can take possession of offices that involve the power of governance [ibid., 258].

The first group of canonists believed that authority, given by Christ, issues from episcopal consecration, and canonical mission establishes the manner in which it is to be exercised, but does not impact authority. The second group was of the opinion that authority is conferred partly by ordination and partly by canonical mission, both elements being indispensable. For the last group, episcopal orders form the ontological foundation of the power of governance, which is conveyed by *missio canonica*; for them, decentralization and delegation of authority are possible [García-Nieto Barón 2023, 207].

According to María García-Nieto Barón, the stance of the third group turned out to be binding on the universal legislator [ibid., 216]. Javier Hervada was a notable representative of the third group of canonists. He argues that in accordance with the tripartite division of the *munus* made at Vatican II, a distinction must be drawn between the power of orders and the power of jurisdiction. The power of orders is obtained through the sacrament and enables the recipient to administer sacraments. The power of jurisdiction, in contrast, refers to the ability to organize, direct and manage the life of the Church. For Hervada, the latter power is fully vested in those who were ordained to the episcopate; it permits a broad devolution, which is accomplished through canonical mission. Although this deconcentration typically affects the ordained faithful, we are reminded by Hervada that the continuous practice of secondary bodies makes it clear that ordination is not necessary for that because they do not act *in nomine Christi*, but in any case *in nomine Papae* or *in nomine episcopi* as the sources of jurisdiction. On this account, there is no need for “Christo-conformation” (*cristoconformación*), as these offices are not ones for which ordination is required, so Canon 129 § 2 CIC/83 does not apply [Hervada 2014, 224-28].

This is supported, as Gianfranco Ghirlanda holds, by no. 5 of the principles and criteria for the functioning of the Roman Curia laid down in the Apostolic Constitution *Praedicate Evangelium* as well as by Article 15 of the Apostolic Constitution *Praedicate Evangelium*,¹⁴ both resolving the question

¹⁴ “Each curial institution carries out its proper mission by virtue of the power it has received from the Roman Pontiff, in whose name it operates with vicarious power in the exercise of his primatial *munus*. For this reason, any member of the faithful can preside over

concerning the ability of the laity to accept offices and imply the exercise of the power of governance in the Church by the laity, provided that they do not require priestly ordination and indirectly confirm that the power of governance in the Church does not flow from the sacrament of holy orders, but from the canonical mission; otherwise the provisions of the constitution would not be valid [Ghirlanda 2022].

Umberto Betti explains that the members of the Commission for the Drafting of the Code of Canon Law would discuss various opinions of doctrine on the exercise of power of governance by the laity. In fact, the first proposed wording of the canon used the term ‘participation’ to describe the action of the laity holding offices of authority. While some endorsed this interpretation, others favoured the view that the non-ordained laity could by no means exercise *potestas*. A more radical group demanded that the second part of Canon 129 should be deleted to avoid any reference to the laity having the power of governance. Others suggested that the verb ‘cooperate’ should be restated as ‘help’. Eventually, it was agreed to replace ‘participate’ with ‘cooperate’, hence the prescript – perhaps not persuasively enough – articulates the legislator’s intent [Betti 1983, 628-47].

Such an idea of authority in matters of diocesan financial management, for example, was implemented in the norms of the Spanish Bishops’ Conference, which do not exclude the laity from management, while emphasizing their – more often than not – professional qualifications.¹⁵

3. From the iusnaturalism to legal positivism in the law on mass offerings

In the first instance, we should appreciate the value of research based on the theory of naturalistic theories of *ius*. Following Hervada’s definition

a Dicastery or Office, depending on the power of governance the power of governance and the specific competence and functions of the Dicastery or Office in question.” Francis, Constitutio apostolica *Praedicate Evangelium* de Curia Romana eiusque servitio pro Ecclesia in mundo (19.03.2022), “Communicaciones” 54 (2022), p. 161-93; English text available at: https://www.vatican.va/content/francesco/en/apost_constitutions/documents/20220319-costituzione-ap-praedicate-evangelium.html [accessed: 15.02.2024].

¹⁵ Conferencia Episcopal Española, *Una casa de cristal El camino de la transparencia y el buen gobierno en la Iglesia* (9.03.2021), /<https://www.conferenciaepiscopal.es/wp-content/uploads/2021/03/Una-casa-de-cristal-Resumen.pdf> [accessed: 15.02.2024], p. 25.

of justice in the context of Mass offerings, we see that the obligation to ensure a thing (Mass), and the simultaneous obligation to give a Mass offering, are not based solely on justice conceived as a virtue of the priest or a lay person (morality). This is so because the central element is not the virtue of justice, but the law (*lex*) that determines the thing due. In the case of Mass offerings, what matters is the well-established custom of making offerings when placing Mass intentions. This custom legally sanctions the title under which a thing is due, and it is attached not to persons but to things. What is just precisely corresponds to what is due to someone – neither in excess nor below what is due, according to Hervada’s precise formulation. One who gives less does not fulfil his or her obligation, does not provide the other party with what they deserve, what is due to them – and this constitutes an act of injustice. In contrast, one who gives in excess is offering something he or she is not entitled to – and this is generosity; therefore, what is just is what is due to someone. For a faithful person who requests a Mass to be applied for a specific intention, what they are entitled to is the specific Mass they are asking for. As for the priest, what he is to expect from the believer is a specific offering that he or she will make [Hervada 2011, 22-42].

Robert Kantor notes that the existence of law gives rise to the virtue of justice, and not the other way round [Kantor 2017, 149]. In other words, law (*ius*), or the thing – in this case the offering – obliges the priest to deliver on the agreement, whether he is an inherently just or unjust. If a believer requests the application of an intention, it is of secondary importance whether he or she is righteous or a person of low morality.

Pawel Lewandowski holds that a just compensation for a priest who performs a sacred service is due not only by custom, but also by natural law. As provided by Canon 948, the acceptance of any offering from a believer obliges the priest to apply his or her intention in accordance with the agreement, since this situation creates the so-called “knot of justice”. The legal grounds for entering into this type of contract can be found in the long-lived custom sanctioned by Canon 945 [Lewandowski 2019, 171].

Pio Vito Pinto, referring to the general principle formulated in Canon 848, points out that priests should take care that needy people are not deprived of sacramental assistance because of poverty. He believes the very fact of their membership in the Church guarantees them the right to access

sacramental graces, and not merely a title resulting from the offering they have made [Pinto 2001, 575].

On the other hand, we should appreciate the achievements of canon legal science in the development of the concept of positive law governing the temporal goods of the Church, and especially the evolution of understanding the concept of ownership, which in the case of the faithful called to hold offices in the Church cannot be limited to the capitalization of property for private purposes, unrelated to or even contrary to the mission of soul salvation. Michel Villey traces the beginnings of the revolutionary understanding of property rights in the Church's canonical doctrine while discussing the medieval dispute between the Franciscan order and the papacy [Villey 1976, 44-81]. Saint Francis of Assisi, the founder of the Franciscan order, established a rule of poverty for his friars, but in fact the Franciscans, like other orders, owned a lot of land and property. Attempts were made to resolve this apparent contradiction by resorting to *fictio iuris*, whereby the ownership of property was actually endorsed by the Holy See, which ceded its "use" to the Franciscans, who would relinquish the option of becoming its owners. However, the papacy – represented by Pope John XXII – tried to underscore this legal fiction inherent in this situation where a distinction was drawn between ownership and permanent use of property, thus confronting the Franciscans with the alternative of assuming the status of owners or illegal users of goods. Some Franciscans – the Spiritual Franciscans – opposed the pope, wanting to defend the purity of the principle of poverty to the very end. One of them was William of Ockham, who contested the decisions of John XXII, leading a movement that confronted the papacy. Ockham maintained that the pope abused the concept of *ius*, which was a good that he enjoyed, while for Ockham it was the power over that good, made inaccessible to the public. In this way, he distinguished between *ius poli*, the right to use property, and *ius fori*, the right to claim ownership of property, thinking that *ius poli* – the Franciscans' right to use property – was in full accord with the vow of poverty they had taken, because *ius fori* – the condition of ownership – was alien to them. In this way, a distinction was made between the status of the possessor of secular property held under an ownership title, with full power of disposal and the right of recourse, and the position enjoyed vis-a-vis ecclesiastical property, which was held only for the purpose of holding offices as administrators of a divine purpose. This, in essence, encapsulates law in a subjective sense,

detached from its object. This understanding of law exceeded the one advanced by William of Ockham and was later adopted by prominent representatives of the Spanish school of natural law, such as Luis de Molina and Francisco Suarez, as the power to freely use and dispose of a thing [Skomial 2019, 171-99; Villey 1976, 44-81].

Fernando Cuevillas states that Molina's theory of law speaks of reason and will as the formative elements in its genesis, attempting to overcome the antagonism between intellectualism and voluntarism with regard to political prudence. Law would be a prudent, political and permanent act placed by those who exercise supreme authority. The requirement that law's purpose is the common good can be found in Molina's stipulation that the common good be announced to all community members [Cuevillas 1954, 103-16].

According to Manuel Calvillo, Suarez opts for the middle course, between intellectuals and voluntarists. He advocates a third way, whereby law in general consists of an act that is on a par with intellect and will. Law is an intellectual act as long as it includes rational determinants serving to order the activities of beings endowed with reason; however, the law contemplated in the lawmaker's mind presupposes, in addition to the intellectual moment, an act of will by virtue of which law is binding on those to whom it is addressed [Calvillo 1945, 107-14].

These opinions are supported by Sobański, who notes that the science of canon law, until modern times, was considerably influenced by Francisco Suarez. His thinking opposes that of Aquinas. Suarez does not depart from behaviour oriented towards the common good but starts with the common good oriented towards the conduct of individuals, because in his view, concern for the common good lies primarily with the legislator. Further, Sobański notes, Suarez introduced a distinction between the proximate cause of legislated law, which for him was the consent of the community, and the primary cause, which he saw as the consent of the legislator. The former typically gives rise to a custom of fact (factual state), and the latter – a custom of law (legal state). Suarez's view has been widely accepted in canon science and is also highly regarded by contemporary authors. As Sobański writes, he "is unmistakably echoed in both Codes of 1917 and 1983" [Sobański 2001, 132].

Sobański's opinion is supported by other canonists, too. As Muni-er writes, despite the apparent constancy of definitions and comments on *proprietas*, church writers do not, in the main, advocate the absolute rule of property, without restrictions or control. Their references to natural law and their concern for the norms of morality impart a new orientation to their expositions; at stake here is no longer the abstract ideal of quiritarian ownership (*ius*), native to Roman law, which was principally individualistic [Munier 1962, 478]. In addition, experts in the doctrine of Aquinas point out that he did not advocate the absolute immutability of natural law but considered only its *principia* as inviolable; as Andrzej Andrzejuk underscores, natural entitlements are not the same as natural law, but they express some natural justice, which is quite commonly felt by people. Aquinas links it to the "nature of things" (*natura rei*), but in this particular instance he does not equate it with the immutable essence of being but understands it more colloquially. This is corroborated by his belief that natural entitlements are not immutable and absolute [Andrzejuk 2019, 17-18].

The position, describing the theoretical and legal foundation of the norms regulating the use of Mass offerings for the purposes of the particular and universal Church, is not espoused by Pastuszko, who maintains that in the case of the law on Mass offerings, the legislator ultimately opted for iusnaturalism. The 1917 Code contained no statement that the giving of Mass offerings contributes to the good of the ecclesial community. However, this truth had existed in the minds of the faithful for a long time. Therefore, Pastuszko opines, an attempt was made to use the opportunity and include that element in the norm. The 1972 issue of "Communicationes"¹⁶ did anticipate such a norm, and the 1975 schema of the law on the holy sacraments included the text of the proposed canon. It was stipulated in § 1 that the faithful who make a Mass offering for the application of the fruits of the Mass according to their intention contribute to the good of the Church, participate in the organization of worship, perform obligations, and support various works of the Church. § 2 adds that the ecclesiastical authority, especially the diocesan bishop, whose task is to take care of the needs of the Church and the upkeep of the clergy, has the right to issue regulations that respect the will of the donors.¹⁷ These

¹⁶ "Communicationes" 4 (1972) 58, p. 9-13.

¹⁷ W. Onclin (relator), *De oblata ad missae celebrationem stipe*, p. 57-59; M. De Nicolò (relator),

regulations were designed to specify the purposes for which Mass offerings were to be used, or to determine whether priests who accepted them could retain them, on condition that only one offering per day can be retained. The main idea is that a Mass offering is made not only for the benefit of a particular priest, but also for the Church community. This fully agrees with the canonical spirit and values. By contrast, what is less clear is the thesis that diocesan bishop is to administer all Mass offerings in two ways: by determining the purposes for which Mass offerings will be used, or by giving all or some of the accepted Mass offerings to those priests who accepted them. Both entitlements were intended to allow bishops to take over Mass offerings for the benefit of the particular Church, which was advantageous [Pastuszko 1986, 118-19; Lewandowski 2021, 184-91].

However, both competences have their downsides, too. In needs to be noted that if the bishop determines the ecclesiastical purposes for the attainment of which all Mass offerings must be given in full, then who will be obliged to apply the fruits of Masses on account of the Mass offerings accepted? In other words, who will bear the responsibility for discharging such obligations? Is it the priest who promised to apply the fruits of the Mass upon receiving an offering, or the bishop who ultimately determines the manner in which Mass offerings accepted by the priest are to be used? The question is legitimate because previously the priest was obligated to apply the fruits of the Mass, but he – as the recipient of Mass offerings – had the right to dispose of them. If the entitlement to dispose of Mass offerings is transferred from the priest to the diocesan bishop, will the priest still be obligated? As for the second competence, we might ask: why should the diocesan bishop issue a legal act for the priest to accept a Mass offering, apply the fruits of the Mass in accordance with the donor's intention, and then dispose of the offering? Previous practice allowed priests to perform these acts without the local bishop intervening directly. Also, how to reconcile the bishop's administration of Mass offerings with the wishes of the donors, who usually want the priest to retain the offering for himself? According to Pastuszko, this way of resolving the issue of distributing Mass offerings would not be foreign to the Church, because its possible application within the universal Church has already been contemplated.

Ultimately, though, the legislator opted out of this and followed quite a different route [Pastuszko 1986, 120].

In practice, however, we find examples from particular law where legal justice prevails over natural justice understood personalistically, as legislators oscillate between the two positions. In one approach, ecclesiastical law helps to build, consolidate, and intensify the community of the Church by guaranteeing the authenticity of the elements safeguarding salvation: the Divine Word and the sacraments. Another goal of law is to protect the community of faith. On the other model, church law fulfils its function by guaranteeing and promoting the realisation of subjective rights in the Church. It is intended to actualise, protect, and support the Church as a freedom-based institution, enabling and supporting the life of the faithful, which is grounded in faith lived out responsibly [Sobański 2003, 97-98].

In the context of Mass offerings, particular Church legislators have a strong preference for joint accounting of Mass offerings among parish pastoral workers, consistently with iusnaturalism. This happens through cumulation. As a rule, offerings are deposited in a common treasury, recording respective amounts in the book of Mass intentions. After a specified time, usually a month, the offerings for Masses celebrated are split equally between the pastor and vicars. The exception is the Diocese of Tarnów, where Mass offerings are deposited in the “common fund,” 25% of which is given to the pastor as his functional allowance¹⁸ [Lewandowski 2019, 223].

From the perspective of the top-down regulation of the right of ownership, a corresponding example is provided by a provision of the particular law applicable in the Diocese of Częstochowa. It stipulates that of the total income received from Mass offerings 10% is deducted for the organist and 5% for the sexton¹⁹ [ibid., 224].

¹⁸ *IV Synod Diecezji Tarnowskiej. Ad imaginem ecclesiae universalis (Lumen Gentium 23)* (13.03.1986), Kuria Diecezjalna, Tarnów 1990, statute 424 § 2, 1; Bishop of Tarnów, *Dekret wprowadzający całkowitą wspólnotę dochodów kapłańskich w diecezji tarnowskiej* (27.08.1994), “Currenda” 144 (1994), no. 4, Articles 1-4; Bishop of Tarnów, *Zarządzenie* (28.08.2000), “Currenda” 150 (2000), no. 4, Articles 2-3. The 5th Synod of the Diocese of Tarnów does not directly address this issue, while the particular legislator announces the promulgation of a separate decree on the management of Mass offerings. *V Synod Diecezji Tarnowskiej. Statuty*, Biblos, Tarnów 2024, statute 601.

¹⁹ Archbishop Metropolitan of Częstochowa, *Statut Organisty w Archidiecezji Częstochowskiej* (27.11.2009), “Wiadomości Archidiecezji Częstochowskiej” no. 3-4 (2010), p. 115-16, Article 40.

If we look at these regulations strictly *vis-à-vis* iusnaturalism, these provisions interfere with the individual right of ownership; however, according to positivist doctrine, they are lawful, since it cannot be implied that the norm is unjust. The manner in which equality can be warranted is through legal justice, based on the premise that a person incurs a debt to the community, so the latter can demand that the former contribute to the common good through property redistribution. The difference between the naturalist theory of *ius* and legal positivism, however, is in the former model, only the member of the faithful who is making a Mass offering might heed the priest's status, abilities, contribution to society and needs, and give a higher offering. In the case of these norms, it is the legislator who – in accordance with the doctrine going back to the time of Suarez and having in mind the common good – lays down that the pastor will receive more than the other priests, and the organist and sexton will receive part of the income obtained by the presbyters, although this is not directly dependent on the will of the faithful [Sobański 1991, 45; Hervada 2011, 22-36]. Another example is the legislation of the bishops of the Province of Madrid, who by virtue of Canon 952 § 1 stipulate in point 1 that the stipend set for the dioceses of the Ecclesiastical Province of Madrid for the celebration and celebration of Mass is a minimum of 8 euros. Also, point 2 provides that the stipend for celebrating and celebrating Gregorian Masses is a minimum of 300 euros.²⁰ This exemplifies how a universal norm in positive law has been adapted for local conditions, which, however, does not rule out the principle of canonical equity. As Sobański argues, in keeping with Suarez's legal doctrine, the application of equity is possible in three cases: first, when the law has lost its purpose – its observance would bring about grave harm in a particular case; second, when there is a conflict of laws; and third, when observance of the law would entail considerable difficulties, not reflecting the legislator's intent [Sobański 2001, 132-33].

Thus, it is possible to apply – in the body of canon law concerning Mass offerings – not only norms based on natural law, but also norms derived from positive law, which by no means contravene the principle of justice, if one respects the general rules and goals following from the nature of canon law. What is even more, these norms embody the idea of distributive

²⁰ Provincia Eclesiástica de Madrid, *Decreto sobre Estipendios* (23.06.2008), "Boletín oficial de las Diócesis de la Provincia eclesiástica de Madrid" no. 6 (2008), p. 524.

justice, that is, equality that does not follow from the title under which a thing is possessed (*ius*), but equality that is based on the proportion between things and persons [Hervada 2011, 22-36]. An example of a positivist regulation of the norm in the law on Mass offerings, which implements the demands mentioned above, is the 2014 decree issued by the Archbishop of Łódź, where no. 26 provides that “Offerings from binated and trinated Masses are to be handed over to the Finance Department of the Metropolitan Curia of Łódź. They will be used by the Archbishop Metropolitan of Łódź to fund Mass stipends for priests who do not have them (e.g., old-age or disability pensioners, those working in missionary countries or in parishes where the faithful do not make donations for Mass stipends).”²¹ As commented by Tomasz Gałkowski, this applies quite often to situations in which the priest does not receive stipends for Masses except on feast days. On such days, through bination or trination, he lawfully applies the requirement of satisfying the requirement of justice associated with his livelihood, retaining the stipends he could have received during the week. The solution here is the literal application of the provision contained in no. 26 of the decree at hand, whereby stipends for binated or trinated Masses should be given to the metropolitan curia. They will be used “to fund [...] Mass stipends for priests who do not have them,” so the literal application of positive law instead of custom solutions based on arbitrary interpretations of natural law appears here as a way to normalise the situation and eliminate abuse, since the priest who donates an offering to the Financial Department of the Metropolitan Curia of Łódź having no Mass intentions during the week becomes the addressee of the norm in question stipulated in the decree of the Archbishop of Łódź and becomes eligible to “receive” the Mass offering, and does not have to “grant it to himself” [Gałkowski 2014, 86].

As summarised by Lewandowski, the universal legislator calls on bishops to put in practice the requirements of distributive justice in respect of material issues related to presbyters, in keeping with the teaching of the conciliar fathers and the recommendations of the Holy See.²² The compensation

²¹ Archbishop Metropolitan of Łódź, *Dekret w sprawie zezwoleń na binację i trynącję oraz składanych stypendiów mszalnych* (9.01.2014), <https://www.archidiecezja.lodz.pl/aktualnosci/2014/01/dekret-metropolity-lodzkiego-w-sprawie-zezwoleń-na-binację-i-trynącję> [accessed: 15.02.2024], no. 26.

²² Provided in Vatican II, *Decretum de pastoralis episcoporum munere in Ecclesia Christus*

provided to the clergy should be equal for all clerics working in the same conditions and, having regard for the evangelical spirit of poverty, sufficiently secure a decent support for presbyters, protect the necessary apostolic freedom, and enable them to personally assist the needy. The Dicastery for Bishops obliges the legislators of particular Churches to remind their entire diocesan communities, church institutions and presbyters themselves included, of the obligation resting on all to fulfil this need. The exercise of the clerical right to a decent support also depends on priestly solidarity, which should be manifested in the organization of mutual assistance, the establishment of certain banks or associations that grant loans at a low interest rate, and, above all, the establishment of special institutions for the material support of the clergy [Lewandowski 2019, 94].

Moreover, from the perspective of the penal law of the Church, the establishment of a central intention fund in the diocese would exclude the possibility of committing an offence under Canon 1383, in which the legislator envisages a situation where a priest unlawfully retains for himself the offerings or combines intentions offered for a single Mass, but the said offence does not occur. This is because by observing the rule of obligatory participation in the diocesan fund of Mass offerings but being unable to retain offerings, the presbyter does not satisfy the hypothesis contained in the said canon (“who unlawfully traffics in Mass offerings”) as he does not derive profit in this case but receives compensation indirectly, with the consent, at least impliedly, of the diocesan legislator. Only if the second circumstance occurs, which is combining Mass intentions in a single celebration, the priest may face disapproval of the faithful, but does not commit a canonical offence by not drawing illegal profits from Mass offerings [Sánchez-Girón Renedo 2021, 654-55]. The Archbishop of the Diocese of Burgos serves as an example here: he is authorized to obligate the priests of the diocese to celebrate Masses for a specific compensation which he determines, including binated and trinated Masses, as laid down in the particular law

Dominus (28.10.1965), AAS 58 (1966), p. 673-96, no. 16; English text available at: https://www.vatican.va/archive/hist_councils/ii_vatican_council/documents/vat-ii_decree_19651028_christus-dominus_en.html; see also *PO* 20-21; Paul VI, *Litterae apostolicae motu proprio datae Ecclesiae Sanctae. Normae de quaedam exsequenda SS. Concilii Vaticani II decreta statuuntur* (6.08.1966), AAS 58 (1966), pp. 757-87, I, 8; English text available at: https://www.vatican.va/content/paul-vi/en/motu_proprio/documents/hf_p-vi_motu-proprio_19660806_ecclesiae-sanctae.html.

of that diocese, by virtue of the 1986 rescript of the Dicastery for the Clergy, Prot. N. 166890/1, as the excess of parish intentions accepted should be given to the *Colecturia de Misas de Curia Diocesana*.²³ As Pastuszko explains, in some cases the local ordinaries hold such an indult, which permits a priest to collect a Mass offering to apply a second or third Mass for the donor's intention, but with the obligation to transfer the offering to the diocesan curia [Pastuszko 1986, 124-28; Janczewski 2006, 281-87].

Conclusion

People are greatly attached to prayers said by priests and often ask them to pray for them or their family members. Just before her death, Saint Monica told her son, Saint Augustine not to worry about her burial in Ostia, far from her homeland. "Lay [...] this body any where; let not the care for that any way disquiet you: this only I request, that you remember me at the Lord's altar, wherever you be."²⁴ She understood the value of priestly prayers. As regards the management of Mass intentions, however, all that goes against the Ten Commandments and the commandment to love God and neighbour must be avoided [Saj 2021]. For that reason, the idea of *communio* is very important. It is actualised every time during a Mass celebrated by a priest who is in ecclesial communion with the Catholic Church. Besides, the celebration of the Eucharist is important as it pertains to the legal obligation vested in bishops and priests to sanctify themselves. This unique imperative of *communio* is visible not only in spiritual unity, but also in the source whence ecclesiastical authority issues – the authority of the diocesan bishop and the pope, transmitted for the common good through the sacrament of ordination and canonical mission. It follows that from the perspective of souls' salvation, considering that the diocesan bishop is the sole law-giver in the diocese, in the first place, we must not make downplay his concern for the implementation and adaptation of the universal norms governing Mass offerings directly for situations and customs unique to a particular diocese, and for the management of Mass offerings

²³ Archbishop of Burgos, *Normas Canonicas Vigentes sobre Estipendios de Misas* (22.09.2019), <https://www.archiburgos.es/wp-content/uploads/2018/09/2-2-5-normas-canonicas-vigentes-sobre-estipendios-de-misas.pdf> [accessed: 17.02.2024].

²⁴ Augustine, *The Confessions of Saint Augustine*, trans. Edward B. Pussey, Project Gutenberg ebook, 2001, <https://www.gutenberg.org/files/3296/3296-h/3296-h.htm>.

directly in terms of legislation and indirectly through the delegation of executive power – for the common good.

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