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## **MAGISTERIUM AND JURISDICTION IN THE CATHOLIC CHURCH**

It is axiomatic in the field of sacred theology that, wherever we find a serious controversy which appears at first sight to be something of merely academic interest, a more complete examination of the affair will show a matter of profound and highly practical importance. Such is the case, to take only one example, in the dispute about the nature of the sacramental character. Over the course of the years, various theologians have attempted to classify the sacramental character within the categories of relation and quality, and there have been writers who have tried to define this entity in terms of each of the four sub-species of quality.

From a superficial point of view, it might seem a matter of very slight moment whether the character imprinted upon the soul by three of the Church's divinely instituted sacraments is to be classified as a *relatio* or as a *qualitas*, or whether, granted that this latter classification be accurate, the character is to be correctly designated as *habitus*, *potentia*, *passibilis qualitas*, or *figura*. If ever there were a question that might appear to have significance only for those interested in the technical niceties of scientific theology, that or the classification of the sacramental character might well seem to be such a question.

Yet the correct resolution of that problem, the establishment of the fact that the sacramental character is in reality a quality of the second species, a genuine physical and instrumental potency,<sup>1</sup> carries with it the only accurate and satisfactory basis for an appreciation of the Church's work as the Mystical Body of Christ and of what is generally known as the theology of Catholic Action. The question which, in its technical terminology,<sup>2</sup> could seem to be of little practical import turns out, on further examination, to be one of the most important in all the field of scholastic theology.

Such likewise is the case with another question, this one in the field of scholastic ecclesiology and also in the domain of public ecclesiastical law. It is a question which is debated at some length and occasionally with considerable sharpness in our theological

<sup>1</sup> An outstandingly competent discussion of this problem is to be found in Doronzo, *De sacramentis in genere* (Milwaukee: Bruce Publishing Company, 1945), pp. 290-300.

literature, although, unfortunately, the manuals with which our American seminarians are most familiar do not treat it as adequately as do other textbooks. It deals with the problem of the classification or division of those powers with which Our Lord has endowed His Church.

Interestingly enough, two men from the same pontifical faculty, both Fathers of the Society of Jesus in the University of Comillas in Spain, have taken up and have brilliantly defended opposing positions in this controversy. Fr. Lawrence R. Sotillo, in his *Compendium iuris publici ecclesiastici*, defends the teaching according to which the entire power of the Church is divided into two *genera*, that of order and that of jurisdiction. He contends that neither *potestas* or the teaching authority belongs or pertains to the power of jurisdiction, either as a species distinct from the *potestas* or as constituting, along with the *potestas* or ruling authority, two functions of one and the same power of jurisdiction,"

On the other hand, Fr. Joachim Salaverri, in his *Tractatus de ecclesia*, printed in the first volume of the well-known *Sacrae theologiae summa*, defends the position that the twofold division of ecclesiastical power is not theologically adequate and that, considering the formal and intrinsic natures of these powers, they must be considered as really and specifically divided into the powers of teaching, of sanctifying, and of ruling.<sup>2</sup> He holds that "the power of teaching, like the power of sanctifying, cannot be called a part of the power of true and proper jurisdiction understood in a specific manner."<sup>4</sup>

Fortunately the works of both Father Sotillo and Father Salaverri have gone into second editions. Both have been duly revised by their authors. Each writer has had the opportunity to inspect the arguments brought forth by the other and to publish his own replies. Both of these distinguished writers have taken advantage of these opportunities.

<sup>2</sup> Cf. Sotillo, *Compendium iuris publici ecclesiastici*, 2nd edition (Santander, Spain: Editorial Sal Terrae, 1951), pp. 91-99.

<sup>3</sup> Cf. *Sacrae theologiae summa*, 2nd edition (Madrid: Biblioteca de Autores Cristianos, 1952), I, 933-52.

<sup>4</sup> Salaverri, *op. cit.*, p. 943. Salaverri cites Cardinal Billot's *Tractatus de ecclesia Christi*, q. 8, § 1, in support of his contention, but it is to be noted that Billot does not deny that the generic power of jurisdiction in which the teaching authority is contained is really and properly jurisdiction.

They have taken advantage of their opportunities so thoroughly, as a matter of fact, that, by the time they have finished explaining their exact positions, it is difficult to find more than the vestiges of a controversy, despite the fact that each lists the other among the opponents of his thesis. Father Salaverrí holds that the power of *magisterium* is specifically distinct from the *potestas regendi*. He admits that the word "jurisdiction" can be taken in both a generic and in a specific sense, and, from the context, it seems plain that he is willing to admit that the *magisterium* is a part of the *potestas iurisdictionis*, considered in this generic sense. His continual emphasis is on the term "specific."

Father Sotillo, on the other hand, while insisting that order and jurisdiction are the two *genera* into which, the entire power of the Church is divided, does not choose to decide whether there is a specific difference between *magisterium* and *imperium*, or whether these two are merely different functions of the same *potestas*. Hence both men seem quite justified in quoting Cardinal Franzelin in support of their own views. It was Franzelin's thesis that "Although the solemn division between the power of order and jurisdiction is quite true and necessary, still the power of jurisdiction, which in that twofold division is taken in a generic sense, can, for the sake of greater clarity and because of mutually distinct properties within itself, be again divided into the power of rule or of jurisdiction specifically so-called and the power of *magisterium* which is authentic and which, in its fulness, is infallible. And so it is that the threefold distinction of the priesthood or the sacred ministry', the ecclesiastical rule, and the authentic *magisterium* should be considered as theologically true.\*7

Thus it is clear that in general, all of those who have taken part in this particular controversy will readily admit that both the twofold and threefold divisions of the ecclesiastical *potestas* are quite acceptable. The encyclical *Mystici Corporis* speaks of the threefold power which Our Lord conferred upon the apostles and upon their successors, "the power to teach men, to rule them, and to lead them to holiness."<sup>3</sup> On the other hand, the *Codex iuris canonici*.

<sup>5</sup> Cf. Salaverrí, *op. cit.*, p. 951.

<sup>6</sup> Cf. Salaverrí, *op. cit.*, p. 94.

<sup>7</sup> Franzelin, *Theses de ecclesia Christi* (Rome: Typographia polyglotta S. C. de Propaganda Fide, 1887), p. 46.

«A 4S, XXXV (July 20, 1945), 209.

in canons 118 and 218, speaks of the twofold power of orders and jurisdiction. As Cardinal Ottaviani points out in his *institutiones iuris publici ecclesiastici*, the original wording of canon 195 § 1 included the expression "potestas ordinis et potestas jurisdictionis ac magisterii," but the text which was actually approved and promulgated makes no mention of any such division.<sup>9</sup>

Despite the acceptability of both the twofold and the threefold division of the Church's power, it is much more probable that the former is scientifically preferable. In the actual constitution of the Catholic Church as this society has been established by Our Lord, the power or competence to teach actually belongs to the power of jurisdiction.

The main proof in favor of this contention is to be found in the teaching of the Vatican Council itself. In the constitution *Paster ucterus* the Council declared explicitly that "In that same apostolic primacy in the Church universal, which the Roman Pontiff receives as the successor of Peter, the Prince of the Apostles, the supreme power of *magisterium* is also included." It likewise explains this primacy as a power of jurisdiction "quae vere episcopalis est."<sup>10</sup>

The entire first paragraph in the third chapter of the *Paster Citsrnus* is obviously written with the understanding that the Holy Father's power of teaching is included or contained within his jurisdiction. This paragraph quotes the final passage from the decree for the Greeks promulgated by the Oecumenical Council of Florence. It states that "the Holy Apostolic See and the Roman Pontiff hold the primacy (*tenere primatum*) over the entire world and the same Roman Pontiff is the successor of the Blessed Peter the Prince of the Apostles, and is the true Vicar of Christ and the head of the entire Church and the father and teacher of all Christians, and that the full power of feeding, ruling, and governing the universal Church has been given to him by the Blessed Peter by Our Lord Jesus Christ." Here the power or the competence to teach is again mentioned as part of the power to direct men in the path of eternal salvation.

<sup>9</sup> Cf. Ottaviani, *Institutiones iuris publici ecclesiastici*, 3rd edition (Athenian Press, 1947), pp. 210 f.

<sup>10</sup> DS, 1832, 1827.

11 DA 1826.

Now it is characteristic of the Church's power of jurisdiction that it engenders an obligation or duty on the part of those who are being directed toward holiness and eternal life through the use of this power. It is the power to bind and to loose, the power which Our Lord promised to the apostles, and which He granted to St. Peter, and to the rest through him, when He commissioned His first Vicar on earth to feed His lambs, to be a shepherd to His sheep, and to feed His sheep.<sup>12</sup>

It is, in other words, primarily a responsibility. The power of jurisdiction within the Church is possessed and exercised only by those to whom Our Lord has given the commission and the duty to take care of the subjects of this society. The men who have been given the apostolic power are bound in conscience to employ it, and to guide and direct the faithful in the way of eternal salvation. Those to whom the directions are issued are, on the other hand, bound in conscience to follow these directions. Thus, those who hear or heed the men to whom Our Lord has given the apostolic power or jurisdiction, by that very fact, hear and heed Our Lord Himself.

The teaching authority falls within the scope of this power of jurisdiction precisely by reason of the fact that all of the instruction given by the Church is definitely and necessarily authoritative. When the Catholic Church issues a teaching, it does not merely set forth some proposition which it sees that men should accept. It presents a doctrine which its children are bound in conscience to accept. It acts in such a way that, should the subjects of the Church refuse to accept that teaching and take it as their own belief, these people would thereby be guilty of sin against God. In its teaching, the true Church acts in such a way as to be "bringing into captivity every understanding unto the obedience of Christ."<sup>13</sup>

In defending his own contention that the \_\_\_\_\_ is not a part of the power of jurisdiction in any proper or specific sense of the term, Father Salaverri has come forward with a very interesting distinction. He holds that the Church's teaching power includes the capacity to command and to pass judgment only *decretively*. According to his explanation, the *decretive* as such demands the inward assent of the intellect and decides au-

<sup>12</sup> Cf. *John* 21:15-17.

<sup>13</sup> *II Cor.* 10: 5.

thoritatively the conformity or diffornnity of some doctrine with the deposit oi divine faith. Any command or judgment which deals with outward or external acts is represented as belonging to the power of rule or jurisdiction. Father Salaverri sees examples of the exercise of these two powers in the formula of the detmition of the Immaculate Conception. The actual enunciation of the doctrine and the warning that those who presume to think otherwise "are condemned by their own judgment, have suffered shipwreck in the matter of the faith, and have failed from the unity of the Church"<sup>14</sup> would all fall under the heading oi *twg-s-terium*. The statement that these people have incurred the penalties established by law if ttev should be so unfortunate as to express their denial of the defined doctrine in words or in writing would, according to Father Salaverri, fall under the heading of the power of ruling or of jurisdiction.<sup>15</sup>

Now this particular distinction is essential to the position taken by Father Salaverri in this controversy. Although he lists Cardinal Billot among the authorities who support his own contention on this question, his teaching is notably different from that of Ins great predecessor in the field of ecclesiology. It was Billots contention that, while formally considered, ecclesiastical power is rightly divided into that of order, *niagisteriitm*, and jurisdiction, "the power of *magisterium*, considered concretely and insofar as it Fas inseparably attached to it the right to command olidience oi faith from its subjects, is not distinguished adequately from the power of jurisdiction."<sup>16</sup> Father Salaverri, on the other hand, tends to look always for evidences of specific distinction between the teaching power and the power of jurisdiction in the Church, and to overlook or at least not to stress the fact that in the concrete there is no adequate distinction between the two.

It would seem that the distinction to which Father >?.laverr; has had recourse in justifying bis stand on this question is .larlw acceptable. In the first place, it is worthy of note that lw -wings f->rth neither reason nor authority in support of his enitcniton treat the teaching power directly affects c-rdv inward acts. Toe one cita-

<sup>14</sup> *u DB*, 1641.

<sup>15</sup> *L- Ci. Salaverri, ap. cit.*, p. 944.

<sup>16</sup> Billot, *Tractatus de ecclesia Christi* (Rume: Gregorian University, 1927), p. 339.



tion to which he appeals turns out to be a statement which has nothing directly to do with the question under discussion.<sup>17</sup> It is simply the statement that, in the *Acta* of a Council, a prohibition or precept must be considered as distinct from the definition or the judgment about doctrine. It is quite obvious that such a distinction exists, but there is absolutely nothing to indicate that the teaching power of the Church, precisely as such, is not competent to deal directly with outwardly expressed statements about the faith.

Actually, the opposite would seem to be the case. By its very nature, the activity of teaching is directed toward the transmission of truth. It looks to the acceptance of a doctrine by the persons to whom that doctrine is addressed. But, when it is teaching done by human beings, it looks also, by its very nature, to the manifestation of that doctrine by the person to whom the teaching has been directed. A doctrine is recognized precisely as acquired or learned by reason of the fact that it is accurately expressed by the person who is being taught. It is definitely and essentially a part of the teaching process to demand and to evaluate responses to the content of the teaching.

And, in the case of the Church's *magisterium*, it is the power which is described as "bringing into captivity every understanding unto the obedience of Christ: And having in readiness to revenge all disobedience. . . ." <sup>18</sup> It is in the very act of teaching that the Church inculcates the divinely revealed truths into the minds of men, and it is also in that same act and process that it prohibits and proscribes inaccurate interpretations of the divine message.

The great good that comes from an examination of this controversy is a realization of the fact that the teaching of the Catholic Church is authoritative in a unique sense. Ultimately it is Our Lord Himself who teaches within the Church, and the doctrines set forth in His name and by His authority by His ministers demand full acceptance on the part of all the subjects of the Church. When the *ecclesia docens* acts, it inevitably binds the consciences or all Christians to accept its teachings and to manifest that acceptance. It forbids, by the very nature of its activity, any in-

Salaverri refers to the author of the notes appended to the second schetna of the Vatican Council's *Constitutio de ecclesia*, *op. cit.*, p. 945.

*Cor.* 10:5, 6.

accurate statement about the doctrine which has been proposed, or any refusal to receive that doctrine as the personal tenet of the persons to whom it is addressed. The man who rejects that teaching, rejects Our Lord Himself.

There is, of course, no other agency in all the world which is competent to teach authoritatively in this way. The authorities of the civil society are able to issue commands or laws, which the subjects of that society must obey under penalty of sin against God. They are not, however, commissioned or empowered to advance any teaching which men must accept as true and which they can reject or misinterpret only at the price of sin against God.

Idle jurisdiction of the state, although a genuine jurisdiction, does not carry with it or contain any power of *uiriastenitni*. It is only when we realize that the jurisdiction which God has granted, to the perfect society which is His true Church actually contains this teaching power that we can begin to appreciate the worth of the Church and the perfection of its doctrinal authority.

Ultimately, we must not allow ourselves to forget, the perfection of the Church's teaching authority is such that the Church itself does not need to add any other jurisdictional act to its authoritative condemnation of some teaching at variance with that doctrine in order to impose upon its subjects the obligation to accept that declaration with a true and inward assent, and in order to forbid, under penalty of offense against God Himself, any outward expression of opposition to what the Church has taught. The teaching power of the Church is inherently and essentially jurisdictional. The man who is subject to the authority of the Church has a duty before God of accepting the acts of the ecclesiastical *uiciyi.iriim* with a sincere and genuine inward assent. He is obliged to manifest that acceptance, and to refrain from any oral or written opposition to or misinterpretation of what Our Lord, acting through the *eccR'sM docens*, has proposed authoritatively for his guidance in His Church.

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