Languages of Power in Italy (1300–1600)

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Languages of Power in Italy (1300–1600)

Edited by

Daniel Bornstein, Laura Gaffuri,
and Brian Jeffrey Maxson

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Part III. Religion, Power, and the State

The Spoken Law:
The Judicial Paradigm of Power in Catholic Theology between the Sixteenth and Seventeenth Centuries

Franco Motta

Translated by Brian Jeffrey Maxson

The spiritual and temporal sovereignty of the pope has historically been expressed in a symbolic language of power that sees in his unique person the simultaneous presence of multiple sovereign figures. Canon law distinguishes four such figures: the bishop of the Church universal, patriarch of the West, Bishop of Rome, and secular ruler of the Papal State.[1] Theology adds others, with reference to different aspects of papal authority: the 'Vicar of Christ', for example, as first introduced by Peter Damian around 1160 and subsequently adopted by popes as an official title denoting their role as visible head of Christ's body, the church.[2] The roots of these manifold roles reach to the same famous biblical passage in Matthew 16. 18–19, in which Christ declares: 'And I tell you, you are Peter, and on this rock I will build my church, and the powers of death shall not prevail against it. I will give you the keys of the kingdom of heaven, and whatever you bind on earth shall be bound in heaven, and whatever you loose on earth shall be loosed in heaven'. Implicit in these roles was the authority of Peter and his papal successors to judge matters of the faith,

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[1] In general, see Prodi, '"Plures in papa considerantur personae distinctae"'; De Franceschi, '"Saint Pierre et Saint Paul"'.

[2] Maccarrone, *'Vicarius Christi'*; see also Paravicini Bagliani, *Il trono di Pietro*.

Franco Motta (franco.motta@unito.it) is associate professor in the Dipartimento di Studi storici of the Università di Torino.

a central aspect of papal authority from at least the fifth century up until the present.[3] The power of the pope to act as judge in controversies concerning the faith (*iudex controversiarum fidei*) underwent significant developments in the last quarter of the sixteenth century and subsequently became a formidable apologetic tool for the head of the Roman church. Through this authority, the pope developed a power that equalled and even surpassed that of the head of a state, for his power was based not upon authority over the body, through public and punitive laws, but upon authority over conscience through theology, particularly moral theology. It was no coincidence that the great development of Catholic moral theology occurred in the sixteenth and seventeenth centuries, when the principle of papal monopoly over matters of conscience was articulated in parallel with assertive theories of political sovereignty and the expansion of the prerogatives of the state.

From its origins the church derived its authority from its power over the consciences of the faithful. Whereas political power resides in laws over the life and death of the body, religious power oversees the life and death of the soul.[4] Since the Apostle Paul, Christianity, unlike many other religions, has placed faith at the centre of most questions over the life and death of the soul and salvation. As Augustine famously argued, faith has two major aspects: the 'fides qua creditur' (faith by which we believe), founded on the basic conviction that Christ is the Messiah, and the 'fides quae creditur' (faith which is believed) — that is, the tenets accepted by the community of believers as revealed truth. Without the acceptance of faith in this second sense, the church as an institutional expression of power could not have been formed. For the church determines truth and error for the community of believers, and through its judgement marks out the path to salvation. This judgement is deemed infallible and — according to Roman Catholic ecclesiology — has passed from one Bishop of Rome to the next in an uninterrupted succession, a unique privilege of that office that enabled the popes to assert their primacy over other bishops.[5] Assailed

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[3] On the development of papal judicial authority from Late Antiquity through the Middle Ages, see Ullmann, *A Short History of the Papacy*. On the early modern period, see Neveu, *L'Erreur et son juge*.

[4] On these and related issues, see Esposito, *'Bíos'*, pp. 16ff.

[5] The literature on papal infallibility and of the debates between the papacy and church councils is abundant, but mostly in German and strongly inflected by theological stances. Among others, see Schwaiger, *Konzil und Papst*; Horst, *Papst Konzil Unfehlbarkeit*; Horst, *Unfehlbarkeit und Geschichte*; Sieben, *Die katholische Konzilsidee*; Klausnitzer, *Der Primat des Bischofs von Rom*. See also Costigan, *The Consensus of the Church and Papal Infallibility*.

by Protestant reformers in the sixteenth century, the church at the Council of Trent defended itself by constructing its confessional identity around the *fides quae* and upholding its power over the consciences of its congregants.

The religious rupture of the Protestant Reformation inaugurated a long period in which the Holy See consolidated its power over Catholic consciences in matters of faith and orthodoxy. At stake was the salvation of the soul, and this, in an age of religious controversy, required the identification of an infallible authority able to resolve disputed matters of faith. The modernity of the Counter-Reformation church lay in its understanding that, after the birth of Protestantism, the construction of a supreme spiritual power had to find its own point of origin and its own field of action in the consciences of individuals. This role for the pope as judge over controversies of faith developed in the decades after Trent, based less on the council's canons and decrees than on the image of it propagated after the council had ended. This role differed from the past in that previous religious controversies could be resolved and heresies extirpated by political force. However, all efforts to eradicate Protestantism by force proved unsuccessful, and thus the church was forced to define and defend its authority within a new field of battle, that of ideas and theology. This shift towards a 'judicial paradigm' for the authority of the Roman Church came to dominate the entire age of confessional conflicts, and indeed into the modern period.

Well before the Council of Trent, the theme of the pope as judge of controversies was put forward by sixteenth-century Catholic theologians engaged in debates with Protestant reformers. The best known of these early controversialists, Johannes Eck, included it in his *Enchiridion locorum communium adversus Lutheranos*, a collection of *loci communes* designed to refute major Protestant teachings that was published in 1525 and reprinted many times. Eck wrote that 'Male haeretici nolunt alium iudicem, quam Scripturam. In veteri Testamento lex non fuit iudex, sed summus sacerdos [...]. Et catholici quoque admittunt Scriptura maxime, sed intellectu ab haereticis differimus, ideo oportet alium esse iudicem quam Scripturam' (The heretics are wrong to reject any judge [of the faith] other than Scripture. In the Old Testament the law was not a judge, but the highest priest [...]. We Catholics also give the greatest importance to Scripture, but we understand it differently than the heretics and retain that there ought necessarily to be a judge other than Scripture).[6] Eck limited himself to this brief observation, including it among other *axiomata* to oppose the Lutheran teaching of *sola Scriptura*. Although he did not pursue this point, his

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[6] Eck, *Enchiridion*, p. 22ʳ.

words contained the premise necessary to establish the judicial paradigm for the power of the church: the distinction between the law and the interpreter of the law, a distinction that did not possess a true theological foundation. Rather, it ought to be considered a reaction to the argument for *sola Scriptura* based upon an analogy with the system of the civil judiciary.

It should be noted that the judicial paradigm for the power of the church did not figure significantly in the agenda for the Council of Trent. In its fourth session, in 1546, the council issued a well-known decree identifying the sources for the faith as both Scripture and tradition, thus setting the full textual and hermeneutical range within which doctrine could be considered legitimate. The question of the final arbiter of doctrine, however, did not receive attention. Other issues involving the definition of dogma and the reform of the church, such as justification, the sacraments, and clerical discipline, were more pressing. The development of a logical and rational discourse about the foundation on which the church rested remained absent from the discussion, as this was a controversial topic that could divide the council and reopen debates over the relationship between the Holy See and the universal Church, exhuming a duality buried with the end of the conciliarist era. Nor did the theme of persuasion of consciences find space at Trent, since the council enjoyed the assistance of the Holy Spirit and thus did not need any ratification of a logical, rational order.

The idea of the judge of controversies, nevertheless, continued to develop in a different channel, one connected to scholastic epistemology and in particular to the theme of *regula fidei* (rule of faith). It was in such terms that it entered into the most famous of early modern Catholic treatises on theological method and the sources of doctrine, the *Loci theologici* of the renowned Dominican master Melchor Cano. Cano — professor of theology in Salamanca since 1546, adviser to Charles V and Philip II, and among the most influential Catholic theologians of his age — was a systematic theologian rather than a controversialist, and so he took for granted that the pope acted as judge of consciences and focused instead on proving that his judgements were infallible. He argued that 'Romanus episcopus ille sit qui Petro, et in fidei firmitate, et in componendis religionis controversiis, divino iure succedat' (the Bishop of Rome is the successor of Peter by divine law, in steadfastness of faith and in settlement of religious controversies).[7] Cano invoked both history and logic in support of this proposition. He argued for the historical infallibility of the church and its

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[7] Cano, *De locis theologicis*, l. VI, ed. by Migne, cols 334–38. On the defence of the authority of the Roman church in the *Loci theologici*, see Körner, *Melchior Cano 'De locis theologicis'*, pp. 215ff, esp. 221–23, and Belda Plans, *Los lugares teológicos*, pp. 100ff.

uninterrupted historical role as judge of the most difficult topics, stating that
the church 'constat fixam et immobilem, orbe etiam toto omni illam machi-
narum genere quatiente, in fide et auctoritate Petri permansisse' (has always
remained fixed and unmoved in its faith and in its authority from Peter, even
when the whole world tried to shake it by all kinds of siege engines). And as
logical proof, he offered one of those syllogisms so dear to Catholic apologists
of the period: 'si commentitia vanaque opinione hoc Romani episcopi privi-
legium theologi asseruissent, nec tam stabilis sententia permaneret, nec con-
firmaretur diuturnitate temporis, nec una cum seculis, aetatibusque hominum
inveterasset' (if the theologians had maintained this privilege for the Bishop
of Rome on the basis of false and empty opinions, then this opinion would
not have remained consistent; would not have been confirmed by the passage
of time; nor would it have been spread across the centuries and ages of man).[8]
Cano argued, in short, that only the truth survived the passage of time, an argu-
ment at odds with Protestants who saw ecclesiastical history as a long decline,
in which the devil's lies piled ever higher until they eventually obscured the
original truth of the gospels.

Cano's work contained not only the contention that the Bishop of Rome
was the supreme judge in matters of the faith, but also, *in nuce*, a recognition
that a final court of appeal in controversial matters of faith was a logical neces-
sity, since otherwise it would be impossible to distinguish between orthodoxy
and heresy. He wrote:

> quod apostolicarum traditionum sinceritas non posset ad nos usque servari, alias
> Ecclesias haereticis episcopis toties occupantibus, nisi una Sedes apostolica, inter
> tot orbis tumultus, fixa intemerataque consisteret. […] Atque si in definienda fidei
> quaestione Romanus episcopus errare posset, redditur statim incerta nobis mul-
> tarum haeresum condemnatio; pleraque enim non sunt damnatae per generalis
> concilii, sed per Romanae Ecclesiae iudicium et decretum.[9]

> [The authenticity of the Apostolic tradition could not have been preserved until
> now for us, while so many heretical bishops fill the other churches, if the one Holy
> See had not remained stable and pure amidst all the disorders of the world. […]
> Moreover, if the Bishop of Rome could err in the definition of questions of the
> faith, then the condemnation of so many present heresies would immediately
> become uncertain, seeing that these, in general, are not condemned by the judge-
> ment and decree of a general council, but by the Roman church.]

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[8] Cano, *De locis theologicis*, ed. by Migne, cols 343–44.

[9] Cano, *De locis theologicis*, ed. by Migne, col. 344.

The historical fact of the confessional divide thus becomes the occasion for a discourse on power cloaked in rational terms, and as such capable of assuming full juridical value.

Within a few years, Cano's ideas had not merely been picked up by other scholars, but had become a standard part of the theological curriculum. The influential Jesuit teacher Diego de Ledesma, who had studied at Alcalá, Paris, and Leuven, incorporated them in the courses on controversial theology that he offered at the Collegio Romano, the very heart of the higher education system of the Society of Jesus. In lectures that he most likely delivered in 1570–71, he addressed the crucial problem of the interpretation of Scripture, the centre of gravity around which all other doctrinal controversies revolved:

> Praecipua de sacris litteris, et expresso Dei verbo controversia adversus haereticos nostrae aetatis in eo consistit, quod non sit solum credendum, quod expresse in sacris litteris, et verbo scripto continentur, sed alia quoque non scripta […]; deinde ut ostendatur non esse posse sacras litteras, aut Scripturae verbum iudicem controversiarum fidei, sed esse necessarium animatum iudicem aliquem, cuius sententiae sit standum. Scripturas sacras non esse claras, ut [dicunt] haeretici.[10]

> [The primary dispute with the heretics of our time about sacred letters and the word of God consists of this, that it is correct to believe not only in that which is contained explicitly in sacred letters and in the written word, but also in other things not written down […]; sacred letters, or the word of Scripture, cannot be the judge of controversies of the faith. Instead, it is necessary to have a living judge by whose judgment we abide. The sacred Scriptures are not clear, as the heretics claim they are.]

Here is the very opposite of the Protestant conception of the Bible as the vital and sole sufficient source of faith. It is not prophecy but reason that establishes the certainty of faith, since only reason recognizes the necessity of a living judge with the acknowledged authority to interpret Scripture and, in so doing, to establish the community of Christians.

Ledesma declares this principle with the rough and exacting words of the dialectical method, which would be echoed by various later authors. He wrote:

> Ipsa Scriptura indiget interprete, qui eam legat, et intelligat, et inde sensum hauriat, et indicet hunc esse sensum eius, vel illum, verum, et illum alium erroneum asserat, et desiniat. Itaque manifestum est, et quasi per se notum: nam ipsa Scriptura per se tacet, est enim liber quidem compactus, tantum charta et atramentum, qui nihil

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[10] Ledesma, *De Scriptura*, fol. 496ʳ.

loquitur, etiam interrogatus tacet, nisi accedat aliquis qui norit litteras, ac linguam eam calcat, et legat, et tunc is dicat hunc sensum ibi esse, vel alium, et ita sibi videri, et se ita indicare. Ultimus ergo iudex non Scriptura, sed ille ipse legens est.[11]

[Scripture needs an interpreter who reads and understands it, and who brings out the sense of it, and who indicates that this or that is the true meaning and that other one is erroneous and abandons it. It is obvious and almost self-evident that Scripture by itself is silent, since it is nothing other than a closed book, so much paper and ink, that says nothing and remains silent even if a person interrogates it, except for those who know letters and are fluent in its language, who can say this or that is the meaning here, and thus it seems to say, and thus it indicates. For these reasons the highest judge is not Scripture, but with he who reads it.]

The hermeneutical root of the judicial paradigm for the power of the church was already present in these few lines: the Protestant appeal to the Spirit as witness to the truth is a hopeless illusion that hides the historical reality of an infinite flow of interpretations, as shown by the religious disorder in the world. However, Ledesma stops here, without developing his insights into a fully articulated model for the justification of papal authority.

Just a few years later, the most famous of the Jesuit controversial theologians, Robert Bellarmine, offered precisely that: the first fully developed theory of the power of the church based upon its role as judge over disputed dogma. It is superfluous to recall how Bellarmine's most celebrated work, *Disputationes de controversiis christianae fidei* (1586–93), became the doctrinal standard for the Tridentine Church and the classic reference point for Catholic apologists up to the eighteenth century. It is worth noting, however, that the books *De verbo Dei*, *De conciliis et Ecclesia*, and *De Summo pontifice*, which form the heart of the ecclesiological discourse in the *Disputationes*, are essentially an elaboration of the disputation *De iudice controversiarum* that the young Bellarmine prepared in the spring of 1574, when he lectured on the *secunda secundae* of the *Summa* of Thomas Aquinas before the Jesuit college at Leuven.[12]

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[11] Ledesma, *De Scriptura*, fol. 497ʳ.

[12] Bellarmine, *De iudice*, fols 23ᵛ–49ᵛ. On this point, see Horst, *Papst Konzil Unfehlbarkeit*, pp. 170ff.; Nardone, 'La controversia sul giudice delle controversie'; Motta, *Bellarmino*, pp. 362ff. The *Quaestio de iudice controversiarum* was further developed and published in part in Book III of the topic *De verbo Dei* within the *Disputationes* (*De verbi Dei interpretatione*), in part in Book IV of the topic *De Summo pontifice* (*De potestate spirituali Summi pontificis*), and in part in Books II and III of the topic *De conciliis et Ecclesia* (*De conciliorum auctoritate*, and *De Ecclesiae natura et proprietatibus*).

The form of this text — an exposition of and commentary on Aquinas's discussion of faith in the *Summa theologiae* — lends itself to both measuring Bellarmine's debt to his predecessor and revealing where he differed from the great medieval scholastic. The basis for Bellarmine's interest in Aquinas is evident: already in the thirteenth century, Aquinas had posed questions later picked up by Bellarmine. What was the relationship between faith understood as interior assent to a revealed truth and faith understood as a manifest expression of that truth, such as doctrine? What were the reasons that compelled a person to believe? Aquinas held that there were three rational foundations that made divine revelation believable: the existence of God, the inspired character of Scripture, and the obligation to avoid evil. Along with other great scholastic minds, he was confronted with the question of the reasonableness of faith and the possibility of arriving by way of reason at fundamental truths, upon which grace could then intervene to instil into a person the *fides verifica et salutaris*, the true faith that guaranteed salvation.[13] Aquinas had constructed his *Summa contra gentiles* on the axiomatic foundation that the truth of faith and the truth of reason both derived from God and thus could not in any way contradict each other.[14] Rational knowledge and revealed knowledge thus worked together in defining the process by which faith was accepted. Considered from this perspective, in the classic age of medieval scholasticism faith was viewed first of all in terms of doctrine, as a truth expressible in words and binding for any Christian.

In addition, Aquinas traced a theoretical line that would never be relinquished by Catholic theology, one that tied the *veritas prima*, God, to the authority of the church. In the *secunda secundae* of the *Summa theologiae*, he defined the *obiectum fidei*, 'object of faith', as truth recognized by the human intellect either through the natural light of reason or by divine revelation. Now, as pointed out in one of the objections to which Aquinas responded, revelation obviously included the Bible in its entirety: everything it contains is the object of faith, so that it should not be necessary to spell out scriptural truths in the formulas of a confession of faith such as the Creed. In response, Aquinas distinguished between affirmations that must be believed as objects of faith and those that were complementary to such affirmations. The first category included dogmatic articles such as the Trinity and God's omnipotence; the latter consisted of things that could be derived from Scripture, such as the fact that Adam had

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[13] Horvath, 'L'apologetica nella Chiesa occidentale', pp. 255ff.; Lang, *Die Entfaltung des apologetischen Problems*, pp. 83ff.

[14] See Aquinas, *Summa contra gentiles*, I, 7, n. 2.

two sons. The former were necessary for eternal salvation, and for that reason were expressed in the clear and understandable form of the articles of faith of the Creed, while the others merely served to make more manifest the truth of Scripture.[15]

With this distinction, Aquinas reconfirmed, in logical terms, the fundamental theological nexus between individual salvation and ecclesiastical authority. The authority to define articles of faith rested exclusively with the church (as against the later Protestant argument that Scripture alone was the guideline for faith, and therefore only what was explicitly stated in Scripture had dogmatic value). Aquinas stated that 'Ecclesia universalis non potest errare, quia Spiritu sancto gubernatur, qui est spiritus veritatis [...]. Sed Symbolum est auctoritate universalis Ecclesiae editum. Nihil ergo inconveniens in eo continetur' ('The Church universal cannot err, because it is guided by the Holy Spirit, the spirit of truth [...]. Now the creed is drawn up by virtue of the authority of the Church universal. Nothing inappropriate, therefore, is contained in it').[16] Above all, the Creed had its own raison d'être in the obscurity of the Bible. Because the true sense of Scripture could only be discerned through long and careful study, and so was not accessible to most Christians, there was a need 'ex sententiis sacrae Scripturae aliquid manifestum summarie colligeretur quod proponeretur omnibus ad credendum' ('to draw succinctly together out of the Scriptural teachings some clear statement to be set before all for their belief').[17] Thus, already in the thirteenth century Thomas Aquinas had identified the enigmatic nature of Scripture as the hermeneutical reason behind the distinction between clerics and the laity, alongside the more traditional sacramental one. Moreover, doctrine had come to be identified with the church itself, in the sense that the faith expressed in dogmatic articles was the faith proclaimed by the church, which all its members were obliged to believe.[18] Because the interpretation of Scripture was seen as a continuous exegetical process capable of bringing to light dogmas that were contained in Scripture only implicitly, the continuous proliferation of heresies rendered it indispensible that the church

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[15] Aquinas, *Summa theologiae*, II–II, q. 1, a. 6.

[16] Aquinas, *Summa theologiae*, II–II, q. 1, a. 9. Translation from *Summa theologiae*, ed. and trans. by Gilby and others, vol. XXXI, 2a 2ae 1–7, p. 48.

[17] Aquinas, *Summa theologiae*, II–II, q. 1, a. 9. Translation from *Summa theologiae*, ed. and trans. by Gilby and others, vol. XXXI, 2a 2ae 1–7, p. 51.

[18] Aquinas, *Summa theologiae*, II–II, q. 1, a. 9, res. 1. On this topic, see also Lang, *Die Entfaltung des apologetischen Problems*, pp. 88ff.

define dogma in clear terms.[19] The tenth article of the *secunda secundae* closed the circle, formulating in institutional terms the nexus between the knowability of the faith and authority: in his role as the highest judge of the church, with responsibility for deciding the most important cases, it was up to the pope to define new dogmas 'ut ab omnibus inconcussa fide teneantur' ('to the end that all hold to this with steadfast faith').[20]

In his exposition of the *secunda secundae* of the *Summa theologiae*, Bellarmine faithfully followed Aquinas's argument through the first nine articles. When he came to the tenth and final article, however, the Jesuit raised a new question, one that Aquinas had not discussed. In addition to considering, with Aquinas, whether the pope has the power to define the articles of the Creed, Bellarmine also asked 'Utrum si oriatur controversia circa fidem, et Symbolum magis explicari debeat, an id Summo pontifici sit' (Whether, if a controversy over the faith arises and the Creed needs to be further explained, that falls to the Supreme Pontiff).[21] His exposition on this point leads to a long excursus on the judge of controversies that constitutes, so far as I am aware, the first explicit theorization of the judicial paradigm of power in Catholic theology during the confessional age.

Bellarmine's logical argument unfolds in six steps. He examines the hermeneutical theses of ancient and modern heresies, which all concur in viewing Scripture as a clear and obvious text. He explains why, in reality, Scripture cannot be the judge of controversies, nor can the Holy Spirit when it illuminates the conscience. He affirms that this judge is the pope, in concert with ecumenical councils, because he is visibly present and enjoys the privilege of infallibility. With extraordinary erudition, Bellarmine lays out the basis for his reasoning. The Bible is a supreme authority that was never meant to be understood in superficial fashion, and the history of Christianity is one of perennial conflict among different interpretations. From this follows the metahistorical foundation for the jurisdictional authority of the church, already found in Cano and other earlier writers: 'Non ignorabat Dominus multas futuras de fide et de Scripturarum sensu dissensiones, ergo iudicem aliquem relinquere debuit, cuius sententiae tuto credere omnes possent; sed nullus fingi potest magis idoneus quam summus pastor cum concilio aliorum pastorum' (God was not unaware

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[19] Aquinas, *Summa theologiae*, II–II, q. 1, a. 9, res. 3.

[20] Aquinas, *Summa theologiae*, II–II, q. 1, a. 10. Translation from *Summa theologiae*, ed. and trans. by Gilby and others, vol. xxxi, 2a 2ae 1–7, p. 55.

[21] Bellarmine, *De iudice*, fol. 23ᵛ.

that there would arise so many disagreements over the faith and over the mean-
ing of Scripture, and for this reason he needed to leave a judge whose decisions
all could believe with certainty: and one could imagine no one more suitable
for this role than the supreme pastor with the council of other pastors).[22]

Bellarmine proceeds to a detailed analysis of the infallibility of the pope in
issues of faith, which draws the link between truth and law ever more tightly. In
the cultural paradigm of the early modern age — which did not credit the judi-
cial system with an autonomous basis in positive law, but considered it legiti-
mate in as much as it reflected a higher order of transcendent origins — the
antithesis between truth and error contains within itself the antithesis between
just and unjust. Establishing the truth, from this point of view, meant estab-
lishing the law that bound the Christian conscience, and therefore establish-
ing a principle of power superior even to the political sovereignty that was just
then developing in the form of the state. Bellarmine's celebrated concept of
the *potestas indirecta* of the pope over the faithful must be placed within this
conceptual framework, insofar as it sinks its roots in a recognition of the need
for an authority capable of pronouncing definitive judgements on matters of
faith — that is, on truth and error, and therefore on legitimate and illegitimate
power.[23]

With this in mind, it is easy to understand why the question of the judge
of controversies took on a life of its own within the theological writings of the
Jesuits, which more than any other Catholic religious order was formed for
the confessional struggle and for confrontation with political authorities. The
major controversialists of the order, active on the frontlines of religious dispu-
tation at the end of the sixteenth and beginning of the seventeenth centuries
— Martin Becanus, Adam Tanner, Gregorio de Valencia, Edmund Campion,
Vitus Erbermann, Jean Gontery, and François Veron — all included in their
writings a tract *De iudice controversiarum*. Thanks to this flourishing literary
production, the paradigm of judicial power acquired its autonomous solid-
ity as a theory of the spiritual sovereignty of the Roman church, embodied by
the pope. This language was, in turn, passed on, more or less explicitly, to later
Catholicism up to the nineteenth century and beyond.[24]

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[22] Bellarmine, *De iudice*, fol. 31ʳ.

[23] On Bellarmine's theory of the *potestas indirecta* and its influence, see Tutino, *Empire of
Souls*.

[24] See, for example, the writings of Thomas Stapleton, as discussed in Sdzuj, *Historische
Studien*, pp. 38ff.

It is important to note, moreover, that this language of power did not remain closed within institutions of theological education, such as colleges and university lecture halls, but spread throughout the culture of Catholic Europe as an instrument of religious propaganda and defence of the faith. For example, in July of 1591, a religious debate was staged at Stuttgart, the capital of the Lutheran duchy of Württemberg, in the presence of Duke Louis III of Württemberg and the devoutly Catholic Duke William V of Bavaria, his guest. The disputants were the Jesuit Gregorio de Valencia, dean of the theological faculty of Ingolstadt and advisor to William V, and Lukas Osiander, preacher at the court of Stuttgart and member of one of the most influential families of the Lutheran bureaucracy of the state.[25] The theme of the judge of controversies constituted one of the key theological points within these political-religious rituals. As Becanus wrote in his manual for such disputes, 'Inter controversias communes [...] tres sunt praecipuae, a quibus reliquae omnes dependent. 1. De Ecclesia. 2. De iudice controversiarum. 3. De vocatione ministrorum. Ex singulis definiri possunt omnes controversiae, saltem aliquo modo' (Among the issues commonly disputed [...] there are three in particular from which all the others are derived: 1. On the Church. 2. On the judge of controversies. 3. On the vocation of ministers. From each one of these, in its own way, all disputes can be resolved). He underlined that all three descend from principle of the correct interpretation of Scripture: the church is the final court for the definition of truth; the judge of controversies is its juridical expression; its ministers are the legitimate holders of the apostolic mission; and these points are proven by the Gospel and by the history of the church.[26] It should come as no surprise, then, that even though the declared topic for the colloquy at Stuttgart was the doctrine of justification, discussion of this topic was preceded (at the request of the Duke of Bavaria, but surely on Gregorio de Valencia's advice) by a preliminary debate on the judge of controversies as, once again, 'the principle controversy, on which all others depend'. And this dispute immediately led to a confrontation between two opposing conceptions of the church, in which Valencia deployed the classic arguments that we have encountered again and again: the necessity for a judge of Scripture; the distinction between law and judge; and the formal analogy between the church and the body politic.[27]

[25] Wolter, 'Die Kirche im Religionsgespräch', p. 353.

[26] Becanus, *Manuale controversiarum huius temporis*, p. 1391. On the theme of the *iudex controversiarum* in the political theology of the Jesuits, see Höpfl, *Jesuit Political Thought*, pp. 44–49.

[27] Wolter, 'Die Kirche im Religionsgespräch', p. 353.

In his *Essays*, Montaigne wrote 'Laws keep up their good standing, not because they are just, but because they are laws: that is the mystical foundation for their authority, they have no other'.[28] When reflecting on the inflexible cruelty of the principle of law, Montaigne recalled an episode — that may or may not be true — that he said he had witnessed:

> Certain men are condemned to death for a murder, the sentence being, if not pronounced, at least decided and determined. At this point the judges are informed by the officers of an inferior court nearby that they have some prisoners who confess outright to this murder and throw a decisive light on the whole business. They deliberate whether because of this they should interrupt and defer the execution of the sentence passed upon the first accused. They consider the novelty of the case and the precedent it would set in suspending the execution of sentences; that the sentence has been passed according to law, and that the judges have no right to change their minds. In short, these poor devils are sacrificed to the forms of justice.[29]

The enforcement of justice, in these lines by Montaigne, seems entirely disconnected from the search for truth and from the overarching principle of the distinction between just and unjust. The authority of judges who knowingly condemn innocent people to die creates a sort of parallel, counterfactual, truth: a juridical truth, the function of which consists in preserving the legitimacy of the office and preventing further controversies from arising.

This may be a principle of the secularization of justice, and without doubt echoes quite clearly the Catholic language of power founded upon the figure of the judge of controversies. It is the decision of a judge that establishes truth — and only the sceptical eye of Montaigne could grasp the arbitrariness of its mechanical application — in the moment in which truth itself (the Scripture, in the case of controversies of faith) is not in a position to be clearly revealed to man. Where the word of God is not obvious, those in authority appropriate it and translate it into the only language understandable to man — that of power and obedience — *as if* it were true. That language of power, born of the confessional conflicts of the early modern age, never became the dominant one within Catholic culture: Jansenism must also be viewed as a reaction against the legalistic and authoritarian spirit of Jesuit scholasticism. But beyond any doubt, it was fundamental in giving life to the thesis of the spiritual sovereignty of the Roman Church at a crucial point in its history.

[28] On the theoretical foundation of what follows, see Derrida, 'Force of Law', pp. 11ff.

[29] Montaigne, *The Complete Essays*, trans. by Frame, pp. 819–20.

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