

## THE THEOLOGIAN'S ECCLESIAL VOCATION AND THE 1990 CDF INSTRUCTION<sup>1</sup>

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WHEN WRITING my book on the teaching authority in the Church,<sup>2</sup> I found it most helpful to be able to make use of the 1975 document of the International Theological Commission, "Theses on the Relationship between the Ecclesiastical Magisterium and Theology."<sup>3</sup> As I remarked then,<sup>4</sup> it seems inevitable that on this question statements by members of the hierarchy will tend to stress the authority of the magisterium and the obligation on the part of theologians to follow its directives, while statements by theologians will tend to stress the freedom of theological research and publication, and the critical role of theology even with regard to documents of the magisterium. I felt fortunate in having these theses of the International Theological Commission, because while, on the one hand, they would reflect a fairly broad consensus in the Catholic theological community, on the other hand there is also reason to believe that they were acceptable to the official organ of the papal magisterium, namely, the Congregation for the Doctrine of the Faith, since they could not have been published without its approval.

On June 26, 1990, fifteen years after the completion of the commission's work on this topic, the Congregation for the Doctrine of the Faith (CDF) issued its own Instruction, dealing substantially with the same questions, but manifesting no evidence of having made significant use of the theses of the International Commission. There is no mention of them either in the text or the endnotes of the Instruction. The failure to make use of the work done by the International Commission is all the more surprising, considering the fact that the intention of the Synod that proposed its creation was that it should serve as a consultative body to the Congregation for the Doctrine of the Faith in the preparation of important documents. The inevitable result is that the present Instruction lacks the equilibrium given to the Theses by the fact that in a certain

<sup>1</sup> In referring to this Instruction of the Congregation for the Doctrine of the Faith (CDF), I shall use the paragraph numbers from the English version published in *Origins* 20, no. 8 (July 5, 1990) 117-26 (also available in booklet form from St. Paul Books and Media).

<sup>2</sup> Francis A. Sullivan, S.J., *Magisterium: Teaching Authority in the Catholic Church* (New York: Paulist; London: Gill & Macmillan, 1983). Hereafter cited as *Magisterium*.

<sup>3</sup> Latin text in *Gregorianum* 57 (1976) 549-63; French version in *Documentation catholique* 73 (1976) 658-65; English version in Sullivan, *Magisterium* 178-216.

<sup>4</sup> *Ibid.* 174.

sense they were the fruit of a dialogue between a distinguished group of theologians and officials of the papal magisterium. There is little or no evidence of such a dialogue in the present Instruction. It unabashedly presents the position of the magisterium, addressing itself in the first place to the bishops, and through them, to the theologians. The very choice of the term "Instruction" for the title of this document would seem to leave little if any room for dialogue with regard to its contents.

Yet it is important, even vital, that there be dialogue between theologians and the magisterium precisely on the question of the relationship between them. Without, I hope, being presumptuous, it is my intention in this article to contribute to such a dialogue, by posing some questions that have occurred to me in reading this document, and suggesting how I think that they should be answered.<sup>5</sup> I see no need of informing the readers of this journal concerning the contents of this Instruction, as I presume that they will have read it. Rather, I shall simply treat a number of the questions which it has raised in my mind. After a preliminary question regarding the significance of the term "Instruction," the rest of my questions will refer to matters discussed in Chapters 3 and 4 of the document. Chapter 3 is entitled "The Magisterium of the Church's Pastors." Chapter 4, "The Magisterium and Theology," has two parts: (a) "Collaborative Relations," and (b) "The Problem of Dissent."

*1. What is the significance of the term "Instruction" in the title of this document?*

Ladislav Orsy has taken "Instruction" here to have the same technical meaning which it has in canon law (canon 34), which defines the term as follows: "Instructions which set out the provisions of a law and develop the manner in which it is put into effect, are given for the benefit of those whose duty it is to execute the law." On the basis of this canonical definition of the term, Orsy concludes that the key to the interpretation of this Instruction is to read it as a "normative legal document," in which "the principal intent of the legislator was not to provide theology in depth, but to provide a binding code of conduct for the theologians."<sup>6</sup>

Now I agree with Orsy's judgment that this document does not provide "theology in depth," nor, as he also puts it, is it a "systematic treatise."

<sup>5</sup> The editors of the *Tablet* have already initiated such a dialogue by inviting three Catholic theologians to contribute their observations on the Instruction. See Avery Dulles, "The Question of Dissent," *Tablet*, August 18, 1990, 1033-34; Ladislav Orsy, "The Limits of Magisterium," *Tablet*, August 25, 1990, 1066-69; Christian Duquoc, "The Curia Sews It Up," *Tablet*, September 1, 1990, 1097-98. An earlier and somewhat expanded version of Orsy's article was published under the title "Magisterium and Theologians: A Vatican Document" in *America*, July 21, 1990, 30-32.

<sup>6</sup> Ladislav Orsy, "Magisterium and Theologians" (n. 5 above) 30.

I would also say that it does propose a code of conduct which it expects theologians to follow. What seems doubtful to me is his assumption that the Congregation for the Doctrine of the Faith (CDF) intended to use the term "instruction" with the technical sense which this term has in canon law, leading to the conclusion that it should be read as a "normative legal document," in which the CDF intended to act as "legislator" rather than as "teacher." My reason for doubting this, is the use which the CDF has made of this same term in other recent documents which it has produced.

Among such documents are the "Instruction on Christian Liberty and Liberation" of March 22, 1986, and the "Instruction on Respect for Human Life in its Origin and on the Dignity of Procreation" of February 22, 1987. In both of these Instructions, the Congregation clearly saw itself as fulfilling the task entrusted to it by *Integrae servandae*, Pope Paul VI's *motu proprio* of Dec. 7, 1965, namely, the task of "promoting sound doctrine."<sup>7</sup> Thus, in *Libertatis conscientia*, the CDF said that with this "Instruction" it proposed to fulfill the intention it had expressed in its previous document about liberation theology, namely, "to set forth and explain the principal elements of Christian doctrine about liberty and liberation."<sup>8</sup> Similarly, in *Donum vitae*, the CDF explicitly declared that it was its intention "to fulfill the office entrusted to it of defending and promoting the doctrine of the Church on a matter of great seriousness."<sup>9</sup>

My point here is simply to show that when the Congregation for the Doctrine of the Faith chooses to call its documents Instructions, it does not necessarily intend to use this term with the technical meaning which it has in canon law. On the contrary, there is good reason to assume that it uses the term in its more common meaning, referring to the exercise of a teaching function. This corresponds to what is actually the proper role of the CDF. It is clear from the *motu proprio* to which we have referred above, and also from the subsequent document of Paul VI, *Paterna cum benevolentia*,<sup>10</sup> that the CDF participates in the magisterial, rather than the legislative, office of the pope. The Instruction on which we are commenting declares: "The Roman Pontiff fulfills his universal mission with the help of the various bodies of the Roman Curia and in particular with that of the Congregation for the Doctrine of the Faith in matters of doctrine and morals. Consequently, the documents issued by this congregation expressly approved by the pope participate in the

<sup>7</sup> See J. Hamer, "In the Service of the Magisterium: The Evolution of a Congregation," *Jurist* 37 (1977) 340-57.

<sup>8</sup> *Acta apostolicae sedis* 79 (1987) 55.

<sup>9</sup> *Acta apostolicae sedis* 80 (1988) 101.

<sup>10</sup> *Acta apostolicae sedis* 67 (1975) 5-23.

ordinary magisterium of the successor of Peter."<sup>11</sup> I submit that there is no reason to conclude from the use of the term Instruction that we should read this document as other than an exercise of "participated ordinary magisterium." Indeed, if it were primarily an exercise of legislation, its interpretation would be the business of canon lawyers; but I am convinced that as an exercise of the teaching function, it is the business of theologians to interpret it, and that is why I feel it is my business to raise the following questions about its contents.

2. *How is the term "authentic" being used in this document?*

The problem arises because in modern usage, the word "authentic" is usually understood as synonymous with "genuine," and indeed it is used in this sense in no. 14 of the Instruction, which speaks of God's people "professing the authentic faith free from error." But in no. 13 the "living magisterium" is described as "the sole authentic interpreter of the word of God."; in no. 15 the Church's pastors are said to have the "task of teaching the Gospel and authentically interpreting revelation"; in no. 16 we read that "what concerns morality can also be the object of authentic magisterium"; and in no. 21 we are told that the magisterium "authentically teaches the doctrine of the apostles." If the "living magisterium" is the "sole authentic interpreter," does it follow that no one but the pastors can give a genuine interpretation of the word of God? What has happened is that the translators of this document have followed the translators of *Lumen gentium* in rendering the Latin *authenticum* by "authentic," and thus have used the English word in a sense that is actually obsolete. The fact that the Latin *authenticum* in this context is correctly translated by "authoritative" is clear from the text of *Lumen gentium* 25a, which explains the term with the phrase: "that is, endowed with the authority of Christ." It is true that the pastors are the only ones endowed with that specific kind of authority, but they are not the only ones who are equipped to give a genuine interpretation of the word of God.

3. *Which acts of the magisterium manifest the charism of infallibility?*

The question arises because in no. 15 we read:

This charism is manifested when the pastors propose a doctrine as contained in revelation and can be exercised in various ways. Thus it is exercised particularly when the bishops in union with their visible head proclaim a doctrine by a collegial act as is the case in an ecumenical council or when the Roman pontiff, fulfilling his mission as supreme pastor and teacher of all Christians, proclaims a doctrine *ex cathedra*.

<sup>11</sup> No. 18. The footnote at this point refers to *Paterna cum benevolentia* of Paul VI, in which he confirmed the role of the Congregation as an organ of papal magisterium.

This last is a technical term that clearly enough refers to an act in which the charism of infallibility is manifested. But this charism is not manifested *whenever* the pastors “propose a doctrine as contained in revelation,” or *whenever* “the bishops in union with their visible head proclaim a doctrine by a collegial act in an ecumenical council.” For surely the bishops at Vatican II proclaimed various doctrines as revealed by God, but in no case did they intend to invoke the charism of infallibility in doing so. The problem is with the word “proclaim.” Vatican I attributed infallibility to an act by which the church or the pope *defines* a doctrine, but to no other act than that. In its turn, Vatican II attributed infallibility to the kind of ordinary universal teaching whereby the whole college of bishops, together with the pope, concur in proposing the same doctrine “as definitively to be held.” In other words, the charism of infallibility is manifested only in the kind of teaching which is proposed as absolutely *definitive*. A doctrine proposed in this way is understood to be irreformable, and to call for an irrevocable assent from the faithful. Other kinds of teaching enjoy divine assistance, but no other kind has a divine guarantee of being free from error.

4. *What kind of nonrevealed truth can be the object of definitive teaching?*

In no. 16 of the Instruction we read:

By its nature, the task of religiously guarding and loyally expounding the deposit of divine revelation (in all its integrity and purity), implies that the magisterium can make a pronouncement “in a definitive way” on propositions which, even if not contained among the truths of faith, are nonetheless intimately connected with them in such a way that the definitive character of such affirmations derives in the final analysis from revelation itself.

The same question occurs again in no. 23, where we are told: “When the magisterium proposes ‘in a definitive way’ truths concerning faith and morals, which even if not divinely revealed are nevertheless strictly and intimately connected with revelation, these must be firmly accepted and held.”

The question is: What kind of “strict” and “intimate” connection with revelation suffices to justify the claim that the magisterium can speak definitively about something that is not part of the deposit of revelation? This is a problem that was solved neither at Vatican I nor at Vatican II. The most authoritative answer that had been given prior to the present Instruction was given by the same Congregation for the Doctrine of the Faith in its Declaration *Mysterium ecclesiae* of June 24, 1973. Here the “secondary object” of infallible teaching was described as “those things without which the deposit of revelation cannot be properly safeguarded

and explained."<sup>12</sup> These terms reflect the understanding which had been expressed by the Theological Commission at Vatican II, when it explained the statement in *Lumen gentium* 25 about the object of the church's infallibility by saying that "it extends to all those things, and only to those, which either directly pertain to the revealed deposit itself, or are required in order that the same deposit may be religiously safeguarded and faithfully expounded."<sup>13</sup> Now while there are some Catholic theologians who are convinced that the church cannot speak infallibly about anything that is not in the deposit of revelation,<sup>14</sup> most of those who do admit a secondary object of infallibility limit it to what is strictly required in order for the magisterium to be able to defend or explain some revealed truth. This is a necessary relationship which does seem to justify the claim to be able to speak in a definitive way about such matters, and thus to enjoy a divine guarantee of speaking the truth.

It is surprising, therefore, that in its recent Instruction, the CDF does not speak of this relationship of necessity for the defense or explanation of revealed truth which had been the common understanding of the matter, but introduces a new idea: that of being intimately connected with the truths of faith "in such a way that the definitive character of such affirmations derives in the final analysis from revelation itself" (no. 16). My question is: What kind of relationship between a nonrevealed truth and revelation would justify the claim of the magisterium to be able to make a definitive statement about such a nonrevealed matter, and what would it mean to say that the definitive character of such an affirmation would be derived from revelation itself? Along with most Catholic theologians, I do not recognize any relationship between non-revealed truth and revelation that would justify the magisterium's claim to be able to make a definitive statement about the former, other than its being strictly required for the defense or explanation of the latter. And it is only in such a case that I think one could say that the definitive character of the affirmation would derive in the final analysis from revelation itself. What is not clear to me is whether the CDF intends by this phrase to extend the limits of the secondary object of infallibility beyond those which it had proposed in *Mysterium ecclesiae* in 1973. In any case, it is important to recall that the magisterium has never definitively settled the question whether it *can* speak definitively about matter that is not in the deposit of revelation, and still less has it settled definitively the question as to the limits of such an object of infallible teaching.

<sup>12</sup> *Acta apostolicae sedis* 65 (1973) 401.      <sup>13</sup> *Acta synodalia Conc. Vat. II* 3/1, 251.

<sup>14</sup> See, e.g., Ladislav Orsy's statement: "Only what is in the deposit of revelation can ever be infallibly defined" ("Limits of Magisterium" [n. 5 above] 1068).

5. *Can the magisterium make infallible pronouncements about everything that pertains to the natural moral law?*

The point of my question here is to inquire whether in this present Instruction the CDF intends to confirm the opinion expressed by Umberto Betti in his commentary on the new Formula for the Profession of Faith, where he said: "One can include in the object of irreformable definitions, even though not of faith, everything that pertains to the natural law, this also being an expression of the will of God."<sup>15</sup> The fact that Betti's commentary was published on the same page of *L'Osservatore Romano* as the new Formula for the Profession of Faith suggests that his commentary reflected the view of the Congregation which authored the new Formula. Hence the significance of the question whether his opinion is confirmed by the new Instruction.

In my opinion, the language of the Instruction need not be understood as confirming Betti's commentary on this point. The only naturally knowable moral norms which this document says can be infallibly taught are those which are also contained in revelation (no. 16). As such, they belong to the primary object of infallibility, and, as the Instruction points out (no. 16), it is a doctrine of faith that such norms can be infallibly taught by the magisterium.

In other statements of this Instruction which could be understood as referring to the whole of the moral law, both revealed and unrevealed, the terms used do not ordinarily imply the capacity to make infallible judgments. The statements I have in mind are found also in no. 16:

What concerns morality can also be the object of the authentic magisterium because the Gospel, being the word of life, inspires and guides the whole sphere of human behavior. . . . By reason of the connection between the orders of creation and redemption, and by reason of the necessity, in view of salvation, of knowing and observing the whole moral law, the competence of the magisterium also extends to that which concerns the natural law.

In my opinion, to say that something can be the object of the *authentic* (read: authoritative) magisterium, or to say that the *competence* of the magisterium extends to it, does not necessarily imply that the magisterium is authorized or competent to speak with infallibility on such a matter.<sup>16</sup> I conclude that if the Congregation had intended to confirm

<sup>15</sup> *L'Osservatore Romano*, February 25, 1989, 6. On this see Francis A. Sullivan, "Some Observations on the New Formula for the Profession of Faith," *Gregorianum* 70 (1989) 553 f.

<sup>16</sup> Christian Duquoc understands the Instruction to mean that the magisterium is competent to make definitive pronouncements about all matters that pertain to the natural law ("The Curia" [see n. 5 above] 1097). This is indeed Betti's opinion, but I do not believe that the Instruction has clearly asserted what Duquoc thinks it has.

Betti's opinion on this question, it would have used more specific terms than it has chosen to employ.

6. *Does this Instruction intend to distinguish between "definitive" and "infallible" teaching?*

The reason for the question is that no. 17, when speaking of the exercise of "ordinary" magisterium, adds: "even should this not issue in an infallible definition or in a definitive pronouncement." The first question I would raise is whether one can speak of an infallible definition as being the product of an exercise of ordinary magisterium. It is my understanding of the matter that the pronouncing of an infallible definition is of its very nature an act of the extraordinary magisterium, either of an ecumenical council or of a pope speaking *ex cathedra*. As for "definitive" teaching, this can issue from the "ordinary" exercise of magisterium, only when it is also "universal"; that is, when the whole college of bishops, together with their head, concur in proposing the same point of doctrine as definitively to be held.<sup>17</sup> Hence, not every instance of definitive teaching is an infallible definition, since matters are not "defined" except by a solemn act of a pope or an ecumenical council. On the other hand, it is my understanding that every example of truly definitive teaching is also infallible. A teaching that is truly definitive is also, of its nature, irreformable, and calls for an irrevocable assent on the part of the faithful. It is to such teaching that we attribute an assistance of the Holy Spirit that protects the Church from being irrevocably committed to error. I do not believe that there is a category of "definitive" teaching which falls short of being infallible, or which need not fulfill the rigorous conditions required for a claim of infallibility.

7. *In what sense do "all acts of the magisterium derive from the same source, that is, from Christ"?* (no. 17)

It would seem more accurate to say that all legitimate acts of the magisterium derive their *authority* from Christ. But the acts, as such, are also the product of human effort, as was so evident during the difficult sessions of the Second Vatican Council. The inspired Scriptures have God as their author, but this is not true of even the most solemn pronouncements of the magisterium.

8. *In what sense do documents issued by the Congregation for the Doctrine of the Faith participate in the ordinary magisterium of the Pope?*

The statement to this effect in no. 18 has to be understood in the light of the previous paragraph, where we read: "One must therefore take into

<sup>17</sup> *Lumen gentium* 25, b.



account the proper character of every exercise of the magisterium, considering the extent to which its authority is engaged." For, while it is true that documents issued by the CDF participate in the ordinary (but never the infallible) magisterium of the Pope, they participate in it to various degrees, depending on the extent to which the Pope decides to engage his own authority in such acts of the Congregation. There are different forms of papal approval or confirmation of these documents, which indicate the extent to which the Pope engages his own authority in their promulgation.

*9. What does this Instruction say about the magisterium which bishops exercise in episcopal conferences?*

The reason for the question is that the new Code of Canon Law, in Canon 753, says that "bishops in communion with the head and members of the college, whether as individuals or gathered in conferences of bishops or in particular councils, are authentic teachers and instructors of the faith for the faithful entrusted to their care."<sup>18</sup> In view of this clear recognition in church law of the teaching authority which bishops exercise in episcopal conferences, it is surprising that this recent Instruction, in the section which deals with the magisterium of bishops, speaks of episcopal conferences only as "contributing to the concrete realization of the collegial spirit (*affectus*)." This would seem to be a reflection of the approach taken by the "working document" issued by the Congregation for Bishops on this question, which, as is well known, was severely criticized by a number of episcopal conferences.

*10. What are the consequences for a Catholic theologian of having a canonical mission or mandate to teach theology?*

The Instruction describes such consequences in no. 22, which states:

Collaboration between the theologian and the magisterium occurs in a special way when the theologian receives the canonical mission or the mandate to teach. In a certain sense, such collaboration becomes a participation in the work of the magisterium, linked as it then is by a juridic bond. The theologian's code of conduct, which obviously has its origin in the service of the word of God, is here reinforced by the commitment the theologian assumes in accepting his office, making the profession of faith and taking the oath of fidelity.

This strikes me as taking a one-sidedly juridical approach to the question of the collaboration between theologians and the magisterium.

<sup>18</sup> I am using the English version of the Code published by the Canon Law Society of America, even though I do not care for their use of "authentic" as a translation of the Latin *authentici* here.

I cannot help preferring the approach of the International Theological Commission in its Theses on this question, which recognized a clear difference between the function of the magisterium and that of theologians, rather than seeing the work of theologians as a participation in the work of the magisterium. The danger in the juridical approach of this Instruction is that it suggests that ultimately there is only one kind of teaching authority in the Church, the hierarchical, and that all teaching authority must necessarily be a participation in this. The International Commission had rightly insisted that theologians have a specific kind of authority, which they derive from their qualifications as scholars; this can be confirmed by a canonical mandate, but is not derived from it.

Another consequence of the canonical mission or mandate to teach theology is suggested in no. 37 of the Instruction, which speaks of the "commitment which the theologian freely and knowingly accepted to teach in the name of the church." I am inclined to agree with Avery Dulles, who finds this terminology misleading, since it could be understood as implying that the ecclesiastical authorization necessary for teachers of theology rules out any disagreement with current official teaching.<sup>19</sup> But I shall discuss this point below, when I address the question of the possibility of legitimate disagreement with official teaching.

*11. What are the consequences of the divine assistance which the magisterium enjoys in the nondefinitive exercise of its teaching function?*

There are several references in this Instruction to the divine assistance which accompanies even the ordinary, noninfallible exercise of magisterium. No. 17 begins:

Divine assistance is also given to the successors of the apostles teaching in communion with the successor of Peter, and in a particular way to the Roman pontiff as pastor of the whole church, when exercising their ordinary magisterium even should this not issue in an infallible definition or in a "definitive" pronouncement but in the proposal of some teaching which leads to a better understanding of revelation in matters of faith and morals and to moral directives derived from such teaching.

The same paragraph concludes by saying: "For this same reason, magisterial decisions in matters of discipline, even if they are not guaranteed by the charism of infallibility, are not without divine assistance and call for the adherence of the faithful." Then, in no. 24, we read: "But it would be contrary to the truth if, proceeding from some particular cases, one were to conclude that the church's magisterium can be habitually mis-

<sup>19</sup> Avery Dulles, "Question of Dissent" (n. 5 above) 1034.

taken in its prudential judgments or that it does not enjoy divine assistance in the integral exercise of its mission."

It is obvious that in none of these passages is there question of the kind of divine assistance that guarantees the truth of what is taught. Furthermore, one must presume that there is a different kind of divine assistance given to the three different kinds of magisterial interventions of which these texts speak. First, there is the kind of teaching which leads to a better understanding of revelation and to moral directives derived from such teaching. Next, there is question of decisions in matters of discipline; and third, of interventions in the prudential order. As there is clearly a descending order of weight attached to these three ways of exercising magisterium, so there must be a descending order of divine assistance given to them. Since the recognition of the divine assistance attached to the exercise of magisterium is a motive for the response of the faithful, this response must also reflect the different levels of divine assistance that accompany such exercise. Thus, while "magisterial decisions in matters of discipline . . . are not without divine assistance and call for the adherence of the faithful," it is also necessary to "take into account the proper character of every exercise of the magisterium, considering the extent to which its authority is engaged" (no. 17), and, one might add, the kind of divine assistance on which it can rely.

*12. What light does this Instruction shed on the meaning of the obsequium religiosum which is called for by the ordinary, nondefinitive exercise of magisterium?*

The official English version of the Instruction translates *obsequium* with the word "submission," as do the two most commonly used versions of the documents of Vatican II. The Instruction also follows the Council in speaking of "religious submission of will and intellect." It goes on to say: "This kind of response cannot be simply exterior or disciplinary, but must be understood within the logic of faith and under the impulse of obedience to the faith" (no. 23). The two references to "faith" here suggest the reason why this "submission" is described as "religious"; i.e. its motive is ultimately derived from faith in the divine origin of the Church and the authority of its pastors. But the response itself is not the obedience of faith that is called for by the definitive proposal of revealed truth. It is described, rather, in the following section (no. 24), as "the willingness to submit loyally to the teaching of the magisterium on matters per se not irreformable." This "willingness to submit," furthermore, is said to be "the rule"; but two important qualifications are added: (1) such "willingness to submit" does not mean that a theologian may not, according to the case, raise questions regarding the timeliness,

the form or even the contents of magisterial interventions; and (2) “the theologian will need, first of all, to assess accurately the authoritativeness of the interventions, which becomes clear from the nature of the documents, the insistence with which a teaching is repeated and the very way in which it is expressed.” Presumably, there will be different degrees of “willingness to submit” that will correspond to the different degrees of authoritativeness of the magisterial interventions. And, in any case, “willingness to submit” does not exclude raising questions about the content of what has been taught.

Further light on the meaning of this “willingness to submit loyally to the teaching of the magisterium on matters per se not irreformable” (which I take to be the meaning given to the term *obsequium religiosum* in this document) is given in no. 29, which describes what a theologian should do who has “serious difficulties, for reasons which appear to him well-founded, in accepting a nonirreformable magisterial teaching” (no. 28). “In any case,” we are told in no. 29,

there should never be a diminishment of that fundamental openness loyally to accept the teaching of the magisterium as is fitting for every believer by reason of the obedience of faith. The theologian will strive then to understand this teaching in its contents, arguments and purposes. This will mean an intense and patient reflection on his part and a readiness, if need be, to revise his own opinions and examine the objections which his colleagues might offer him.

Here again we have an authoritative interpretation of the meaning of *obsequium religiosum*, as “fundamental openness loyally to accept the teaching of the magisterium.” What is crucial here is that *obsequium* is identified not with assent as such, but with a fundamental willingness to submit to the authority of the magisterium and an openness to its teaching, attitudes which can very well persist in a theologian who finds he cannot give his intellectual assent to a particular proposition that has been taught by this same magisterium.

*13. Does this Instruction recognize that interior nonassent to teaching of the ordinary magisterium may be justified?*

Obviously, here we are not talking about a general attitude of nonassent to the ordinary magisterium, but of nonassent or interior disagreement to particular statements issued in the nondefinitive exercise of the magisterium. It seems to me beyond question that the text of the CDF admits the legitimacy of such interior nonassent under certain conditions.

First of all, in no. 24 we read: “It can happen, however, that a theologian may, according to the case, raise questions regarding the timeliness, the form or even the contents of magisterial interventions.” In context, it is question of nonirreformable interventions.

Then, no. 28 of the document treats this question in detail, speaking of “the case of the theologian who might have serious difficulties, for reasons which appear to him well-founded, in accepting a nonirreformable magisterial teaching.” (The language here reminds one of the *modus* presented to the theological commission at Vatican II about this problem.<sup>20</sup>) The CDF here first speaks of what it sees as conditions that would *not* justify such a disagreement: namely, if it were based solely upon the fact that the validity of the given teaching were not evident, or upon the opinion that the opposite position would be the more probable. With regard to this first condition, I would note the difference between saying that the validity of a teaching is not evident, and saying that there is no evidence given for the teaching. If the validity of a teaching is evident to me, I have no choice but to agree with it. I do not think I would be justified in withholding my assent solely on the grounds that the teaching is not so evidently true that my mind would be forced to assent to it. This would rule out any area of freedom in giving assent to authoritative teaching. On the other hand, to justify the call for an intellectual assent, it seems right to say that there should be some evidence given to support the teaching. Furthermore, it would be within the province of the theologian to assess the value of such evidence critically.

I do have a problem, however, with the second condition given here which, according to the CDF, would not justify interior disagreement with a point of ordinary teaching. They say that disagreement would not be justified solely upon the opinion that the opposite position would be the more probable. Here I would wish to distinguish between a rash or ill-founded opinion, and a well-founded opinion that the opposite position would be the more probable. Indeed, I do not see how it would be possible to give a sincere assent of one’s mind to a proposition in the face of a well-founded opinion that the opposite position would be the more probable. In fact later on, in no. 31, the CDF speaks of the situation of a theologian who “feels he cannot give his intellectual assent to a proposition, because the arguments to the contrary seem more persuasive to him.” Is this not the same as to say that he has a well-founded opinion that the opposite position is the more probable one? So I fail to see how this would not justify his interior nonassent.

The text goes on to speak of a third condition that would not justify disagreement with a point of ordinary teaching: this would be the judgment of the subjective conscience of the theologian. Here again I would wish to distinguish between a purely subjective judgment of conscience and a judgment founded on objective reasons. It seems to me that the

<sup>20</sup> *Acta synodalia Conc. Vat. II* 3/8, 88, no. 159.

latter could justify nonassent to a particular point of noninfallible teaching.

It would seem clear from the very fact that the CDF has listed conditions that in their view would not justify interior disagreement with such teaching, that at least implicitly they do recognize that under certain other conditions, such disagreement could be justified. In fact, the document suggests what such conditions would be, in nos. 29 and 31. First, “there should never be a diminishment of that fundamental openness loyally to accept the teaching of the magisterium as is fitting for every believer by reason of the obedience of faith.” Then, “the theologian will strive to understand this teaching in its contents, arguments and purposes. This will mean an intense and patient reflection on his part and a readiness, if need be, to revise his own opinion, and examine the objections which his colleagues might offer him.” But finally, “It can happen that at the conclusion of a serious study, undertaken with the desire to heed the magisterium’s teaching without hesitation”—I would identify this “desire to heed the magisterium’s teaching” with an attitude of *obsequium religiosum*—“the theologian’s difficulty remains, because the arguments to the contrary seem more persuasive to him. Faced with a proposition to which he feels he cannot give his intellectual assent, the theologian nevertheless has the duty to remain open to a deeper examination of the question.” It seems obvious that here the CDF recognizes that in such a case, his interior disagreement, or nonassent, is justified, at least subjectively. Indeed, there seems to be an admission that his disagreement might also be justified objectively, i.e. by the fact that his divergent opinion is actually the true one, when the text goes on to speak of such a theologian being called to “suffer for the truth.” In my judgment, it is certain that this Instruction does not rule out the possibility of legitimate interior nonassent to specific teachings of the ordinary, non-definitive magisterium. Rather, it seems to me clearly to recognize the compatibility of an attitude of *obsequium religiosum* with such well-founded nonassent. The question remains as to what expression the theologian could give to such interior disagreement, according to this Instruction.

#### *14. Can a theologian ever express his disagreement with a statement of the nondefinitive magisterium?*

First, the Instruction says what he should not do: “In cases like these, the theologian should avoid turning to the mass media, for it is not by seeking to exert the pressure of public opinion that one contributes to the clarification of doctrinal issues and renders service to the truth” (no.

30). Secondly, the CDF speaks of a positive duty incumbent on such a theologian:

He has the duty to make known to the magisterial authorities the problems raised by the teaching in itself, in the arguments proposed to justify it or even in the manner in which it is presented. He should do this in an evangelical spirit and with a profound desire to resolve the difficulties. His objections could then contribute to real progress and provide a stimulus to the magisterium to propose the teaching of the church in greater depth and with a clearer presentation of the arguments (no. 30).

It is my impression that some reactions to the Instruction have to some extent been based on the idea that the CDF means to say that the magisterial authorities are the only ones to whom a theologian could communicate his divergent opinion on the point at issue, and that apart from that he could only maintain silence. This interpretation may also be drawn from the passage that speaks of a theologian who feels he cannot give his intellectual assent to a proposition of the magisterium being called to “suffer for the truth in silence and prayer” (no. 31).

However, I believe that this is a misreading of the Instruction. Rather, I agree in substance with Avery Dulles:

I would say that the CDF rules out strident public dissent and recourse to the media to foment opposition in the church, but that it acknowledges the value of discreet and constructive criticism of authoritative documents. The instruction does not seem to me to forbid the airing of such criticisms in scholarly journals, theological conferences, classroom situations and other appropriate forums. What the authorities do not forbid is, I take it, still permitted.<sup>21</sup>

My only reservation is with regard to the airing of such criticisms in classroom situations; I would wish to specify at what level of education one is going to express one’s critical views about official teaching.

My opinion that the CDF does not intend to rule out every expression of disagreement except that directed to the magisterial authorities themselves is based both on the text of the Instruction and on the remarks made by Cardinal Ratzinger in the press conference in which this document was presented to the public. First, the document says:

The theologian will not present his own opinions or divergent hypotheses as though they were nonarguable conclusions. Respect for the truth as well as for the people of God requires this discretion. For the same reasons, the theologian will refrain from giving untimely public expression to them (no. 27).

<sup>21</sup> Avery Dulles, “Question of Dissent” 1033.

The reference to “divergent hypotheses” here suggests that his views might also be divergent from some officially stated position. But not all expression of them is excluded; only that which would be indiscreet or untimely.

Another indication that the Instruction does not rule out the communication among theologians of their difficulties with official teaching is given in the reference to the objections which a theologian’s colleagues might offer him concerning his divergent opinions. He should be ready, “if need be, to revise his own opinions and examine the objections which his colleagues might offer him” (no. 29). But how will his colleagues be able to offer their objections to his divergent opinion, if he has not communicated it to them? And how can theologians share their views with one another except through publication in scholarly journals or in theological conferences? In other words, the expectation that his colleagues will be able to offer their objections takes for granted that a theologian will be able to communicate such views to his peers in ways that are proper to his discipline. What is to be said of the objection that what is published in scholarly journals or said in theological conferences will inevitably get into the popular media? I think that one could rightly invoke the principle of the double effect. For sufficient reason, one can permit an undesirable effect which one can foresee but does not intend. I believe that the sufficient reason here is the necessity of communication among theologians precisely so that they can expose their ideas to the criticism of their colleagues. The same Instruction, in an earlier passage, quotes Pope John Paul II when he described theology as “this very disinterested service to the community of the faithful, which entails in essence an objective discussion, a fraternal dialogue, an openness and willingness to modify one’s own opinion” (no. 11). Moreover, in the press conference to which we have referred, Cardinal Ratzinger is quoted as having said that the Instruction denounced public expressions of dissent but did not rule out genuine exploratory research by theologians. Referring to the theologian who disagrees with some official teaching, he said: “We have not excluded all kinds of publication, nor have we closed him up in suffering. The Vatican insists, however, that theologians must choose the proper place to expound their ideas.”<sup>22</sup> In other words, the CDF recognizes that there must be a forum in which theologians can discuss with their peers their problems with points of official teaching.

#### 15. *What does the Instruction mean by “dissent”?*

Most of the comments that appeared in the press when the Instruction was published focussed on the idea that it had ruled out all dissent by

<sup>22</sup> *Origins*, July 5, 1990, 119.



Catholic theologians. What was often not recognized was the specific meaning that this document was giving to the term “dissent”. It is only when one has analyzed the statements in which the CDF has spelled out what it means by “dissent” that one can know exactly what it is that the CDF intends to exclude, and come to an informed judgment about the reasonableness of such an exclusion.

Chapter IV, part B is entitled “The Problem of Dissent.” So obviously that is the place to look for the meaning of “dissent” in this document. The following passages spell out this meaning.

The magisterium has drawn attention several times to the serious harm done to the community of the church by attitudes of general opposition to church teaching which even come to expression in organized groups. In his apostolic exhortation *Paterna cum benevolentia*, Paul VI offered a diagnosis of this problem, which is still apropos. In particular, he addresses here that public opposition to the magisterium of the church also called dissent, which must be distinguished from the situation of personal difficulties treated above (no. 32).

(The “situation of personal difficulties” referred to here has to do with the case of a theologian who, after serious reflection, finds that he cannot give his intellectual assent to a particular proposition of the nonirreformable magisterium. It is important to note that this is *not* what this Instruction means by “dissent.”)

After discussing the causes of the phenomenon of dissent, the CDF goes on to describe what it sees as various aspects of the attitude of dissent.

In its most radical form [dissent] aims at changing the church following a model of protest which takes its inspiration from political society. More frequently, it is asserted that the theologian is not bound to adhere to any magisterial teaching unless it is infallible. . . Doctrines proposed without exercise of the charism of infallibility are said to have no obligatory character about them, leaving the individual completely at liberty to adhere to them or not. The theologian would accordingly be totally free to raise doubts or reject the noninfallible teaching of the magisterium, particularly in the case of specific moral norms (no. 33).

Another aspect of dissent, as described in the Instruction, is that it gives rise to what the CDF calls a kind of *parallel magisterium*, “in opposition to and in competition with the authentic magisterium.” Further, this parallel magisterium “can cause great spiritual harm by opposing itself to the magisterium of the pastors. Indeed, when dissent succeeds in extending its influence to the point of shaping a common opinion, it tends to become the rule of conduct. This cannot but seriously trouble the people of God and lead to contempt for true authority” (no. 34).

Other aspects of dissent are mentioned later on, where it is said to

involve the following practices: "Polling public opinion to determine the proper thing to do, opposing the magisterium by exerting the pressure of public opinion, making the excuse of a 'consensus' among theologians, maintaining that the theologian is the prophetic spokesman of a 'base' or autonomous community which would be the source of all truth." All of this "indicates a grave loss of the sense of truth, and of the sense of the church" (no. 39). Even graver is the warning that "to succumb to the temptation of dissent is to allow the leaven of infidelity to the Holy Spirit to start to work" (no. 40).

Further light on the sense in which the Instruction is using the term "dissent" was given by Cardinal Ratzinger in the press conference we have mentioned. He is quoted as having made the following statement:

The instruction distinguishes between healthy theological tension and true dissent, in which theology is organized according to the principle of majority rule, and the faithful are given alternative norms by a 'countermagisterium.' Dissent thus becomes a political factor, passing from the realm of thought to that of a 'power game.' This is where a theologian's use of mass media can be dangerous.<sup>23</sup>

From the above quotations, both from the text of the Instruction and from Cardinal Ratzinger's remarks at the press conference, it should be clear how misleading it would be to say that the CDF has ruled out all dissent by theologians in the Catholic Church, without explaining what this Instruction means by "dissent." Perhaps it is true to say that from now on, we ought to use the term "dissent" exclusively in the way that the CDF has used it here, and be careful to use other terms when we are talking about other forms of disagreement which do not involve the "power game," or the organized appeal to public opinion through use of the mass media, or the general opposition to the pastoral magisterium in favor of a countermagisterium of theologians, which is what the CDF has in mind.

It is true that in my book *Magisterium*, I spoke of "legitimate dissent from ordinary papal teaching."<sup>24</sup> If I have the opportunity to prepare a new edition of that book, I will restrict my use of the term "dissent" to what the CDF means by it in this Instruction, and no longer speak of "legitimate dissent," because I would not want to defend any of the attitudes or practices that the CDF has described as typical of dissent. On the other hand, I would certainly want to continue to defend what I had in mind by "legitimate dissent from ordinary papal teaching." I do not believe that what I meant by "legitimate dissent" has been ruled out by this Instruction.

<sup>23</sup> Ibid.

<sup>24</sup> See Sullivan, *Magisterium* 166 ff.