

## NOTES ON THE MAGISTERIUM

From Jim Bretzke's Class notes for a Morally Complex World.  
For the entire set of class notes (and the context in which these notes are found) go to <http://www.usfca.edu/fac-staff/bretzkesj/MoralComplexClassNotes.htm>

Some Key Terminology taken from James T. Bretzke's *Consecrated Phrases: A Latin Theological Dictionary* (Collegeville: Liturgical Press, 1998).

### Key Latin Terms for the Magisterium

These terms are taken from James T. Bretzke's *Consecrated Phrases: A Latin Theological Dictionary* (Collegeville: Liturgical Press, 1998).

#### *Credenda*

"Things to be believed"

Refers to a doctrine that must be believed by the Christian faithful as pertaining to the faith itself. There is, however, an important distinction between doctrines that are to be believed (*credenda*) from those which must be "held" (*tenenda, q.v.*) when proposed in an authoritative manner by the Magisterium. See also *De fide definita, Ex Cathedra*, and *Tenenda*.

#### *De fide*

"(A matter) of the faith"

Essential to the faith, and based in Revelation. A doctrine proposed *de fide* in an *ex cathedra (q.v.)* fashion is said to possess the highest degree of certainty of truth, and must be believed by the faithful. See also *De fide definita* and *Depositum fidei*.

#### *De fide definita*

"(Matter) of the defined faith"

Refers to a doctrine which is held to be formally defined by the Church's *Magisterium (q.v.)*, and therefore not open to denial, further speculation, or revision, and which is required to be held as an article of faith by all believers. See also *De fide* and *Depositum fidei*.

#### *De fide vel moribus*

"Concerning faith or morals"

Common expression to indicate matters about which the Magisterium maintains that it can give authoritative teaching. However, there is some debate among scholars as to the proper translation and meaning for *moribus*. Some hold that the term refers to concrete precepts of the natural law, while others hold the term refers historically to the customs and practices of the Church, such as liturgy. See also *Ex cathedra* and *Depositum fidei*.

### *Depositum fidei*

"The deposit of faith"

Refers to the content of formal revelation (e.g., the Scriptures). The task of the Church is to safeguard from error and corruption this *depositum fidei*, and for this reason heresy, etc. is to be guarded against and rooted out. See also *De fide*, *De fide definita*, and *De fide vel moribus*.

### *Ex cathedra*

"From the chair (of office)"

Usually referred to in relation to the highest exercise of authority of the papal Magisterium. Thus, when the Pope "acting in the office of shepherd and teacher of all Christians" declares *ex cathedra* "a doctrine concerning faith or morals to be held by the universal Church" such declared doctrines are considered "infallible" and "irreformable" of themselves (*ex sese*), and "not because of the consent of the Church (*non autem ex consensu ecclesiae*)." (Quoted phrases from the definition of infallibility given in *Pastor Aeternus*, "Dogmatic Constitution on the Church of Christ," of Vatican I [**DS** 3074-3075]). For an explanation of **DS** see *Enchiridion Symbolorum Definitionum Et Declarationum*. See also *Cathedra*, *De fide definita*, *Diffinimus* and *Depositum fidei*.

### *In forma communi*

In common (usual) form

This expression refers to the usual way in which Vatican curial documents are received by the pope and subsequently published. The expression *in forma communi* indicates that the pope has reviewed it, and orders it to be published, but the document itself retains the juridical weight of the particular Curial dicastery which has formulated the document, and does *not* carry the added weight of a papal document or papal act. However, if the pope were to approve a Curial document *in forma specifica* (*q.v.*) the particular document then does carry the weight of a formal papal document or act. To carry the added weight of *in forma specifica* the document must carry this precise formula: *in forma specifica*

*approbavit*; otherwise the document would be understood to be approved *in forma communi*. See also *In forma specifica*.

### *In forma specifica*

#### In specific form

This is a legislative term associated primarily with canon law. An ecclesial document or act or law (e.g., which comes from some Vatican dicastery, such as the Congregation for the Doctrine of the Faith) which is given *in forma specifica* means that the pope has approved this document, act, or law, in a special way such that no further appeal to the pope directly is possible (unless the pope himself should specifically mandate such an appeal). The expression *in forma specifica* indicates that the pope has reviewed the document and makes it his own by express approbation, and thus the document acquires the canonical force of a formal papal act (cf. CIC Canons 1404 and 1405, §2). To carry the added weight of *in forma specifica* the document must carry this precise formula: *in forma specifica approbavit*; otherwise the document would be understood to be approved *in forma communi* (*q.v.*). The 1997 Vatican “Instruction on Some Questions Regarding Collaboration of Nonordained Faithful in Priests’ Sacred Ministry” was signed by the Cardinals Prefect of eight different Vatican dicasteries (including the Congregation for the Doctrine of the Faith, etc.) and was issued *in forma specifica*. The text of this Vatican Instruction can be found in *Origins* 27 (27 November 1997): 397; 399-409. For an excellent article analyzing this particular document and a fuller explanation of the relevant canonical terminology see John M. Huels, O.S.M., “Interpreting an Instruction Approved *in forma specifica*,” *Studia canonica* 32 (1998): 5-46. In this Dictionary see also *In forma communi* and *Prima sedes a nemine iudicatur*.

### *Obsequium religiosum*

"Religious submission (of the will)"

Referred to in *Lumen gentium* #25 and *Donum veritatis*, the 1990 Congregation for the Doctrine of the Faith's Instruction on The Theologian's Ecclesial Vocation. A much debated issue, especially in terms of how one *translates* this phrase, as well as to how one understands and then applies the phrase. In general, one might understand this "religious submission" to refer to a fundamental attitude of loyal openness to accept and evaluate the teaching of the Magisterium, especially that which is not proposed as being explicitly infallible in a solemn *ex cathedra* (*q.v.*) form.

### *Prima sedes a nemine iudicatur*

The First See is judged by no one

This is Canon 1404 of the 1983 Code of Canon Law and expresses the canonical principle that the Pope, as the highest law-giver, chief executive officer, and supreme judge enjoys a very great latitude and discretionary power in governance and matters of positive ecclesiastic law. For example, if the pope has the power to make certain liturgical laws requiring some sort of activity, then he would also have the power to dispense or lessen conformance to these same sorts of things. A concrete example would be a papal indult granting the power to impart general absolution to penitents without requiring them to confess their sins individually to a priest. Pope John XXIII granted just such an indult in 1962 to the people of Sudan. See also *In forma specifica* and *Qui potest plus, potest minus*.

### *Sententia probata*

An approved (“probable”) position (“sentence”)

One of the theological “notes”—indicating a theological position which, while not formally defined or pronounced upon by the Magisterium, was still held as “probable” by the majority of theologians that it enjoyed a very high presupposition of truth, and could be freely taught and believed. See also *Credenda, De fide, Ex Cathedra, Tenenda*.

### *Tenenda/Tenendum*

"Things to be held (pl.)/Thing to be held (sing.)"

Refers to doctrines that are to be held by the Christian faithful as pertaining to the faith itself, when they are proposed as such in an authoritative manner by the Magisterium. *Tenendum* was the term employed in Vatican I's 1870 formal definition of papal infallibility (cf. **DS** 3074). There is, however, an important distinction between doctrines that are to be "held" (*tenenda*) from those which are to be believed (*credenda, q.v.*). See also *Credenda, De fide definita*, and *Ex Cathedra*.

## 1. DEVELOPMENT OF THE NOTION OF THE MORAL MAGISTERIUM

- a. Thomas' understanding of twin authorities of Magisterium
  - i. Pope and bishops
  - ii. Teachers
- b. E.g. the University of Paris (and others) passing out sentences of excommunication and pronouncements of heresy.
- c. Later development, especially after the Council of Trent and the creation of a papal bureaucracy.

- i. In this regard, the talk given by Archbishop John Quinn in June of 1996 is helpful to see how part of this same problematic remains today.
  - ii. See Quinn's "The Exercise of the Primacy." *Commonweal* 123 (12 July 1996): 11-20. This point is amplified and developed in his *The Reform of the Papacy: The Costly Call to Christian Unity*. Ut Unum Sint: Studies on Papal Primacy. New York: Crossroad, 1999.
- d. Greater centralization in Rome
- i. Expansion of papal authority, culminating in the solemn definition of papal infallibility at Vatican I in 1870
  - ii. Role of the Holy Roman Office of the Inquisition
- e. Magisterium and Tensions with the Modern World
- i. Development of liberalism in Europe
  - ii. Political revolutions of 1848
  - iii. Pontificate of Pius IX
    - (1) Elected as a liberal in 1846
    - (2) Would reign until 1878 (longest pontificate in history--to date!).
    - (3) Forced to flee Rome in 1848
    - (4) Became increasingly conservative
    - (5) 1864 Encyclical *Quanta Cura* with the accompanying "Syllabus of Errors"
  - iv. Condemnation of religious liberty: "From which totally false idea of social government they do not fear to foster that erroneous opinion, most fatal in its effects on the Catholic Church and the salvation of souls, called by Our Predecessor, Gregory XVI [in his 1832 *Mirari Vos*], an insanity, viz., that "liberty of conscience and worship is each man's personal right, which ought to be legally proclaimed and asserted in every rightly constituted society; ...".
  - v. Contrast this with Vatican II's Decree on Religious Liberty, *Dignitatis Humanae*, [#2]: "The Vatican Council declares that the human person has a right to religious freedom. Freedom of this kind means that all men should be immune from coercion on the part of individuals, social groups and every

human power so that, within due limits, nobody is forced to act against his convictions in religious matters in private or in public, alone or in associations with others. The Council further declares that the right to religious freedom is based on the very dignity of the human person as known through the revealed word of God and by reason itself.

- vi. Involves the notion of development of doctrine.
- vii. Pontificate of Leo XIII
  - (1) Elected as a "caretaker" pope in 1878,
  - (2) but would rule until 1903
  - (3) Noted for the development of Catholic social teaching, especially *Rerum Novarum* which was published in 1890.
  - (4) And whose centenary anniversary was commemorated by John Paul II's *Centesimus Annus*.
- viii. Modernist Crisis under Pius X
  - (1) Succeeded Leo XIII in 1903 and reigned until 1914
  - (2) *Lamentabili* issued in 1907
  - (3) Oath against modernism and crack-down on seminary professors
  - (4) As Archbishop Rembert Weakland has remarked, "Unfortunately, such periods [of "fervor for orthodoxy"] also produced, in addition to the cruelty mentioned, fear. In such an atmosphere, amateurs--turned theologians--easily became headhunters and leaders were picked, not by their ability to work toward a synthesis of the new knowledge and the tradition, but by the rigidity of their orthodoxy, so that often second-rate and repressive minds, riding on the waves of that fear, took over. [From his weekly pastoral column in the Milwaukee *Catholic Herald*, 11 September 1986.]

## 2. DEVELOPMENT OF PAPAL INFALLIBILITY

- a. Historical Background connected to the development of the papacy itself
- b. Solemn definition of papal infallibility
  - i. 1869-1870 Vatican I: Passage of the doctrine of papal infallibility

- ii. Worth reading!, contained in *Pastor Aeternus*, Dogmatic Constitution on the Church of Christ, Vatican I [**DS** 3074-3075].
  - iii. It is a divinely revealed dogma that the Roman Pontiff, when he speaks *ex cathedra*, that is, when, acting in the office of shepherd and teacher of all Christians, he defines, by virtue of his supreme apostolic authority, a doctrine concerning faith or morals to be held [*tenenda*] by the universal Church, possesses through the divine assistance promised to him in the person of Blessed Peter, the infallibility with which the divine Redeemer willed his Church to be endowed in defining the doctrine concerning faith or morals; and that such definitions of the Roman Pontiff are therefore irreformable of themselves, not because of the consent of the Church (*ex sese, non autem ex consensu ecclesiae*). But if anyone presumes to contradict this our definition--which God forbid--*anathema sit*.
  - iv. Note a certain "circularity" to the formulation and reasoning in this definition, as well as the implied limitations to this infallibility.
  - v. First Vatican Council never concluded due to the Franco-Prussian War and the entrance of the Italian troops into Rome, and Pope flees to the Vatican
- c. Impact of notion of papal infallibility on the Conception and Development of Moral Theology
- i. Pope as "answer man" on the moral questions of the day.
  - ii. Development of "lobbying" in the various schools of moral theology
  - iii. Procedures used in the formulation of papal positions: "papal moral theologians"
    - (1) Example of Pius XI's *Casti connubii* and Arthur Vermeersch, S.J. of the Gregorian and Pius XII and Francis Hürth (also of the Gregorian).
    - (2) More positive examples also, e.g. Johannes Schasching (of the Gregorian) and the social encyclicals of John Paul II

## 1. INTRODUCTION TO THE ROLES OF THE MAGISTERIUM AND CHURCH AUTHORITY

- a. Scriptural grounding: Charism as gift of the Holy Spirit

- i. **1 Cor 12: 1-30** Now concerning spiritual gifts, brothers and sisters, I do not want you to be uninformed. 2 You know that when you were pagans, you were enticed and led astray to idols that could not speak. 3 Therefore I want you to understand that no one speaking by the Spirit of God ever says "Let Jesus be cursed!" and no one can say "Jesus is Lord" except by the Holy Spirit. **4 Now there are varieties of gifts, but the same Spirit; 5 and there are varieties of services, but the same Lord; 6 and there are varieties of activities, but it is the same God who activates all of them in everyone. 7 To each is given the manifestation of the Spirit for the common good. 8 To one is given through the Spirit the utterance of wisdom, and to another the utterance of knowledge according to the same Spirit, 9 to another faith by the same Spirit, to another gifts of healing by the one Spirit, 10 to another the working of miracles, to another prophecy, to another the discernment of spirits, to another various kinds of tongues, to another the interpretation of tongues. 11 All these are activated by one and the same Spirit, who allots to each one individually just as the Spirit chooses. 12 For just as the body is one and has many members, and all the members of the body, though many, are one body, so it is with Christ. 13 For in the one Spirit we were all baptized into one body--Jews or Greeks, slaves or free--and we were all made to drink of one Spirit. 14 Indeed, the body does not consist of one member but of many. 15 If the foot would say, "Because I am not a hand, I do not belong to the body," that would not make it any less a part of the body. 16 And if the ear would say, "Because I am not an eye, I do not belong to the body," that would not make it any less a part of the body. 17 If the whole body were an eye, where would the hearing be? If the whole body were hearing, where would the sense of smell be? 18 But as it is, God arranged the members in the body, each one of them, as he chose. 19 If all were a single member, where would the body be? 20 As it is, there are many members, yet one body. 21 The eye cannot say to the hand, "I have no need of you," nor again the head to the feet, "I have no need of you." 22 On the contrary, the members of the body that seem to be weaker are indispensable, 23 and those members of the body that we think less honorable we clothe with greater honor, and our less respectable members are treated with greater respect; 24 whereas our more respectable members do not need this. But God has so arranged the body, giving the greater honor to the inferior member, 25 that there may be no dissension within the body, but the members may have the same care for one another. 26 If one member suffers, all suffer together with it; if one member is honored, all rejoice together with it. 27 Now you are the body of Christ and individually members of it. 28 And God has appointed in the church first apostles, second prophets, third teachers; then deeds of power, then gifts of healing, forms of assistance, forms of leadership, various kinds of tongues. 29 Are all apostles? Are all prophets? Are all teachers? Do all work miracles? 30 Do all possess gifts of healing? Do all speak in tongues?**

Do all interpret? 31 But strive for the greater gifts. And I will show you a still more excellent way [NRSV]

- ii. ***Rm 12: 4-8*** 4 ***For as in one body we have many members, and not all the members have the same function, 5 so we, who are many, are one body in Christ, and individually we are members one of another.*** 6 We have gifts that differ according to the grace given to us: prophecy, in proportion to faith; 7 ministry, in ministering; the teacher, in teaching; 8 the exhorter, in exhortation; the giver, in generosity; the leader, in diligence; the compassionate, in cheerfulness. [NRSV]

b. Theological context in Vatican II

- i. *Dei verbum* #8 The Tradition that comes from the apostles makes progress in the Church, with the help of the Holy Spirit. ***There is a growth in insight into the realities and words that are being passed on.*** This comes about in various ways. It comes through the contemplation and study of believers who ponder these things in their hearts. It comes from the intimate sense of spiritual realities which they experience. And it comes from the preaching of those who have received, along with their right of succession in the episcopate, the sure charism of truth. ***Thus, as the centuries go by, the Church is always advancing towards the plenitude of divine truth, until eventually the words of God are fulfilled in her.***
- ii. *Dei verbum* #10 10. Sacred tradition and Sacred Scripture form one sacred deposit of the word of God, committed to the Church. Holding fast to this deposit the entire holy people united with their shepherds remain always steadfast in the teaching of the Apostles, in the common life, in the breaking of the bread and in prayers (see Acts 2, 42, Greek text), so that holding to, practicing and professing the heritage of the faith, it becomes on the part of the bishops and faithful a single common effort. (7)But the task of authentically interpreting the word of God, whether written or handed on, (8) has been entrusted exclusively to the living teaching office of the Church, (9) whose authority is exercised in the name of Jesus Christ. ***This teaching office is not above the word of God, but serves it, teaching only what has been handed on, listening to it devoutly, guarding it scrupulously and explaining it faithfully in accord with a divine commission and with the help of the Holy Spirit, it draws from this one deposit of faith everything which it presents for belief as divinely revealed.*** It is clear, therefore, that sacred tradition, Sacred Scripture and the teaching authority of the Church, in accord with God's most wise design, are so linked and joined together that one cannot stand without the others, and that all together and each in its own way under the action of the one Holy Spirit contribute effectively to the salvation of souls.

c. Bibliography

- i. Boyle, John P. *Church Teaching Authority: Historical and Theological Studies*. Notre Dame: University of Notre Dame Press, 1995.
  - (1) An excellent overview of the theology of the Magisterium and related questions. Includes chapters on the biblical and historical bases for episcopal Magisterium, infallibility, and a concluding chapter on the Magisterium and role of theologians in the Church. The last half of Chapter 6, "The Infallibility of the Universal Magisterium and the Limits of the Object of Infallibility," (pp. 132-152) is also found in Curran and McCormick, *Readings in Moral Theology, No. 6*, pp. 42-57.
- ii. Charles E. Curran and Richard A. McCormick, S.J., eds. *Readings in Moral Theology, No. 3: The Magisterium and Morality*. New York: Paulist Press, 1982.
- iii. Francis A. Sullivan, S.J. *Magisterium: Teaching Authority in the Catholic Church*. Dublin: Gill and Macmillan, 1983.
  - (1) Very good for developing an understanding of how to exegete and interpret the various levels of teaching contained in Vatican documents. Helpful in dogmatic theology as well. Good historical examples are used to illustrate the various points.
- iv. Francis A. Sullivan, S.J. *Creative Fidelity: Weighing and Interpreting Documents of the Magisterium*. New York: Paulist Press, 1996.
  - (1) Very good for developing an understanding of how to exegete and interpret the various levels of teaching contained in Vatican documents. Helpful in dogmatic theology as well. Good historical examples are used to illustrate the various points.
- v. Josef Fuchs, S.J., "Human Authority--between the Sacral and the Secular." Chapter 7 in Id. *Christian Ethics in a Secular Arena*, 100-113. Translated by Bernard Hoose and Brian McNeil. Washington, D.C.: Georgetown University Press, and Dublin: Gill and Macmillan, 1984.
- vi. John E. Thiel, "Tradition and Authoritative Reasoning." *Theological Studies* 56 (1995): 627-651.
  - (1) Uses insights from nonfoundational epistemology to discuss some of the problematic relations between argument and authority in magisterial teaching. Teachings contained in *Humanae vitae* and *Inter Insigniores* are used to illustrate the issue.

- vii. Quinn, Archbishop John. *The Reform of the Papacy: The Costly Call to Christian Unity*. Ut Unum Sint: Studies on Papal Primacy. New York: Crossroad, 1999.
- viii. Paul Ramsey, *Who Speaks for the Church?* Nashville: Abingdon Press, 1967.
  - (1) Critique of the 1966 Geneva Conference on Church and Society sponsored by the World Council of Churches. Ramsey criticizes the self-understanding the Conference exhibited, especially in its pronouncements on political matters. Illustrative of a Protestant "take" on the authority issue.
- ix. Fagan, Gerald M, S.J. *Fidelity in the Church—Then and Now*. *Studies in the Spirituality of Jesuits* 31 (May 1999).
  - (1) Discusses fidelity to the Church, and what might be termed proper attitudes of discernment and religious submission of the will [*obsequium religiosum*] in the context of Jesuit spirituality, and in particular Ignatius' Rules for Thinking with the Church. Fagan's text also treats the recent Jesuit 34<sup>th</sup> General Congregation and contains selected Jesuit texts relevant to this discussion.
- d. One of the key concepts connected to authority is that of fidelity. However, it is important to bear in mind that *all believers* are called to this fidelity, and not just those who are not part of the hierarchical magisterium. Furthermore, in relation to the "Church" fidelity should be understood as *in* the Church, and not *to* the Church. As Gerald Fagan explains "Fidelity *in* the Church implies being faithful within the Church as one who shares in the life of the Spirit and struggles to remain faithful to the movement of the Spirit in the whole community. Fidelity *to* the Church implies being faithful to something distinct from oneself. Fidelity *to* the Church often is understand as fidelity to the magisterium or to the pope, although, of course, the Church is more than either of these realities." Gerald Fagan, *Fidelity in the Church—Then and Now*. *Studies in the Spirituality of Jesuits* 31 (May 1999): 1-2.
- e. How does the Spirit aid the whole Church to reach the "splendor of the truth" of which *Veritatis Splendor* speaks? Here authority can play a positive role, but we must admit also that there are dangers when authority slips into authoritarianism. A recent unsigned editorial in *The Tablet* articulates a potential abuse of authority in these words: "There is a flawed circular argument behind much of the Vatican's efforts to police theological discussion in the Catholic Church at present. Disciple is used to produce a spurious sense of consensus. Then the existence of the consensus is cited as evidence of the settled position of the Church. And thus those who speak against that settled position are accused of disagreeing with a teaching that has the Church's authority behind it. But this is just an exercise in tautology. It convinces

nobody. The only consensus that matters is one that emerges after free and exhaustive debate, without any attempt to silence those holding different opinions. Only thus can the Holy Spirit be seen to have the time and space in which to work.” “Freedom to Disagree,” *The Tablet* (14 July 2001): 1007.

- f. Theologically this understanding of fidelity to the Spirit *within* the Church community is grounded in the fact that God’s Revelation is addressed to the whole *communio* of the People of God (one of the key Vatican II images of the Church). While it is true that in the past Revelation often has been understood as primarily a collection of doctrinal statements formulated in propositional terms which call for the “assent” of the believers, we should keep in mind that Vatican II teaching (cf. *Dei verbum*) understands Revelation as “first of all an invitation to all people to enter into communion with the triune God. Revelation is not primarily a body of knowledge or a series of truths communicated by those with the authority to teach. It is an encounter with God, a self-disclosure of himself to all and an invitation to a personal relationship of love. Faith is not primarily an assent to truths, but a response of trust and commitment to God.” Fagan, *Fidelity in the Church—Then and Now*, p.11.
- g. Therefore, in the same vein we need to avoid a sharp dichotomy between the “teaching” Church (e.g., the hierarchical Magisterium) and the “learning” Church (i.e., everyone else). Neither the true nature of the Church, nor the nature of knowledge itself could support such a sharp separation (even if it be true that a pre-Vatican II understanding of Church teaching and authority would seem to move in that direction). As Charles Curran has observed, “The total church and all its members are involved in teaching and learning the theory and practice of the moral life. The Holy Spirit guides the church in this mission, and every individual Christian through baptism shares in the threefold office of Jesus as priest, teacher, and ruler.” Curran, *The Catholic Moral Tradition*, p. 197.
- h. In the same vein, the response, assent, and commitment of the whole Church community, as expressed as the *sensus fidelium* will be *a* (and *not* the *sole*) key principle of verification of the truth of the teaching as guaranteed by the presence of the Holy Spirit in the Church. Here a little history may help us appreciate this gift of the Spirit to the Church. In the fourth century the Church was confronted with the rise of doctrine of Arianism, which held that Jesus was God’s Son, but was not himself God. Though this doctrine was condemned at the Council of Nicea the heresy itself infected a considerable part of the Church, including a goodly percentage of what we would today call the official Magisterium. It was the lay people, and the “simpler” strata of the lay people who refused to accept this teaching and who held fast to the faithful belief that Jesus was truly God’s Son. This does *not* mean that doctrine is determined by democratic popular polls, but perhaps it *does* reflect a Gospel truth contained in Jesus’ own prayerful praise of the Father, found in Matthew 11:25-27: “I thank you, Father, Lord of heaven and earth, because you have hidden these things from the wise and the intelligent and have revealed them to

infants; yes, Father, for such was your gracious will. All things have been handed over to me by my Father; and no one knows the Son except the Father, and no one knows the Father except the Son and anyone to whom the Son chooses to reveal him” [NRSV]

- i. The positive role of Spirit-filled *sensus fidelium* is expressed in this way by Joseph Cardinal Ratzinger: “In the process of assimilating what is really rational and rejecting what only seems to be rational, the whole Church has to play a part. This process cannot be carried out in every detail by an isolated Magisterium, with oracular infallibility. The life and suffering of Christians who profess their faith in the midst of their times has just as important a part to play as the thinking and questioning of the learned, which would have a very hollow ring without the backing of Christian existence, which learns to discern spirits in the travail of everyday life.” Joseph Cardinal Ratzinger. "Magisterium of the Church, Faith, Morality," in *Readings in Moral Theology, No. 2*, ed. Charles E. Curran and Richard A. McCormick, S.J. (New York: Paulist Press, 1980):186. (German original: "Kirchliches Lehramt, Glaube, Moral." In Ratzinger, Joseph, Hrsg. *Prinzipien Christlicher Moral*, 41-66. Einsiedeln, 1975.)
- j. Foundational concept of the *munus* as a function and office in *service* to the Church, and not to be seen as some sort of “upper class” or special prerogative.
- k. Preliminary need to distinguish among the three *munera* (functions/offices) or concepts of Magisterium as *Teaching* Authority, from Magisterium as *Governing* Authority, and/or Magisterium as *Sanctifying* Authority. In this context it is important to be very attentive to the danger or “confusion” of mixing these different *munera* or functions of authority—e.g., using one mode of authority to control another, such as “governing” the teaching authority by an imposition of what may or may not be researched, discussed, etc.
- l. Note the reality of power and institution which necessarily functions in any human exercise of authority. It would be naive to expect of even desire a society or institution without “authority” institutionalized in some fashion or other. Here, too, it is important to be aware of the American ethos of “democracy” as being somehow the highest, or an absolute, moral principle. Pay attention also to the *cultural* groundings of authority: e.g. monarchical, aristocratic, oligarchic, “democratic,” as well as the *theological* paradigms which frame and interpret the Magisterium, such as the juridical office vs. the charism of office among the People of God. Recall here the debate at the Council over the sequence of the chapters contained in *Lumen gentium*: the Church as People of God comes before the chapter on the Church is hierarchical. Boyle's book is helpful here.
- m. Biblical "grounding" of the authority of the Magisterium

- i. The key texts, I would argue, are *not* the Petrine “privilege” texts, but rather those which center on the role of the Holy Spirit within the Church. Thus, recall the role of the Holy Spirit, the Paraclete according to Jesus in John's Gospel:
  - (1) John 14:16-17 (The Advocate, the Spirit of Truth)
  - (2) John 14:26 (the Teacher)
  - (3) John 16: 7-15 (Progressive Revealer)
  
- ii. In this wider context be especially wary of two "biblical sins"
  - (1) Creating a canon-within-the-canon in which only certain passages are considered, or their contextual meaning is abstracted and absolutized, while other passages whose voices might be "polyphonous" are silenced.
  - (2) The other “biblical sin” is proof-texting, taking a passage out of its context in order to “prove” a point or clinch an argument which has largely been developed on grounds extraneous to scriptural exegesis and interpretation.
  
- iii. Matthew 16:14–19
 

They replied, "Some say John the Baptist; others say Elijah; and still others, Jeremiah or one of the prophets." "But what about you?" he asked. "Who do you say I am?" Simon Peter answered, "You are the Christ, the Son of the living God." Jesus replied, "Blessed are you, Simon son of Jonah, for this was not revealed to you by man, but by my Father in heaven. And I tell you that you are Peter, and on this rock I will build my church, and the gates of Hades will not overcome it. I will give you the keys of the kingdom of heaven; whatever you bind on earth will be bound in heaven, and whatever you loose on earth will be loosed in heaven."
  
- iv. Gloss on Matthew 16: True Gospel-based authority is tied to faithful testimony to the Good News of the Kingdom preached by Jesus. It is this fidelity to the Gospel that ultimately gives real authority. Jesus and the Gospel, therefore, are the *norma normans* of any ecclesial authority. In this context it is helpful to recall how Peter is portrayed *throughout* the whole of the Gospels, namely as a person who at times is stubborn, impetuous, betrays poor judgment, but nevertheless (and presumably not because of these characteristics!) was still “chosen” by Jesus. But Jesus makes clear that Peter does not stand above the Gospel message. Also we should remember that while Peter may have been chosen by Jesus, at no point does he stand

alone as the solitary apostle. The New Testament, especially Acts and the Pauline corpus, gives ample evidence of the crucial need for Paul and the others to complement, augment, and even to correct Peter.

- v. Other views on authority: e.g. Mark 10:35-45 (request of James and John to be seated on Jesus' right and left hand). Here we can see the Christian authority vs. "worldly" concept of authority: The Christian notion of authority as service, and thus we could say that this notion has a "sacred claim" and functions as a canon-within-the-canon corrective.
- vi. Pastoral Epistles
  - (1) 1 Tim 4:16 Watch your life and doctrine closely. Persevere in them, because if you do, you will save both yourself and your hearers. (NIV)
  - (2) 2 Tim 4:3 For the time will come when men will not put up with sound doctrine. Instead, to suit their own desires, they will gather around them a great number of teachers to say what their itching ears want to hear. (NIV)
  - (3) Titus 1:9 He must hold firmly to the trustworthy message as it has been taught, so that he can encourage others by sound doctrine and refute those who oppose it. (NIV)
  - (4) Titus 2:1 You must teach what is in accord with sound doctrine. (NIV)

## 2. THEOLOGICAL REFLECTIONS ON THE NOTION OF RELIGIOUS AUTHORITY

- a. Sacral versus Functional Understanding of authority
  - i. "According to this understanding human authority itself participates in God's authority. The authority of God (itself) is present in the human authority (itself)." [Fuchs, "Human Authority--between the Sacral and the Secular." p. 103].
  - ii. Linked to a model of authority of the absolute ruler.
  - iii. "One of the two chief interpretations of the representation of divine authority in human authority originally sees the representative as a physical person: as God's representative, the person who bears the authority has a sacral character." p. 103.

- iv. E.g., being a “vicar of Christ” in these sense of somehow being “Christ on earth.” There is a concomitant problem when such a view of authority is linked to the recurrent instances of voluntarism, (which has its own origins in nominalism).
- b. Second view: as *functional* representative:
    - i. "Here, it is not so much the person as such, who has the // authority and therefore can act authoritatively, who is the central concern, but more importantly it is the *function* of this person in society, in the service of this society, and made necessary by the society itself. Thus the person is more servant than lord; he must carry out the required function and is thereby implicitly the servant of the creator." pp. 103-104.
    - ii. In this view, the “vicar of Christ” is seen primarily as the servant of Christ (e.g. *Servus servorum* [Servant of servants] and/or *Primus inter pares* [First among equals]).
    - iii. Implicit relation here of duty to *learn* first if one is to *teach*. This presumes that one could function well or poorly, and that to function well, one must actively train oneself, not by being "authoritarian" but by informing oneself so that one can speak "with authority." Thus, in this vein Fuchs continues, "The one who carries out this function--precisely because he carries it out, and inasmuch as he carries it out--has the corresponding authority, in the representation of God. Hence it is not because someone has attained authority that he can make ordinances, but rather the other way around: inasmuch as someone has to carry out the function of authority, he has also the corresponding authority. Thus, the one-sidedly sacral character of the person who bears the authority disappears." p. 104.
- c. Additional Understandings of the Notion of Authority
    - i. Contribution from Sandra Schneiders' *The Revelatory Text: Interpreting the New Testament as Sacred Scripture*. San Francisco: HarperSanFrancisco, 1991.
    - ii. Two basic types of authority: absolute and dialogic
    - iii. "In the first class would be all exercises of authority that are finally coercive, covering a range from the quasi-violence of the command given by a lethally armed assailant to the self-evidence of a mathematical axiom. In such cases, to hear the address is to recognize the absolute necessity, for the sake of physical or intellectually self-preservation, of responding with compliance or assent or both." [Schneiders, p. 55.]

- iv. Second version of authority: "Dialogical authority characterizes situations in which the address not coercive. What is said (in the broad, not strictly verbal, sense of this word) invites investigations of its claims, that is, verification of its truth claims and/or evaluation of its moral or behavioral claims." [Schneiders, p. 55.]
- v. Dialogical authority is ultimately *disclosive*: "In this case the address of authority never fully transcends its character of appeal. ... In this category are such appeals as the claim of the beautiful to aesthetic response, the claim of a suffering human being to compassion, the claim of a parent to filial piety, the claim of a loving rebuke of a true friend to a hearing and even to a response of repentance and conversion,..." [Schneiders, p.56]..
- vi. Some tension and confusion over when, where, and how the Magisterium is invoking its claim of "authority."
- vii. And I would add that even those "marginalized" from institutional authority often seek for themselves "coercive" rather than "dialogical" authority, i.e., to replace the current institutional authority with "their" institutional authority. This is part of the human condition it seems! And thus we all need a "conversion" to "dialogical" authority.
- viii. In this same vein Schneiders notes further that "Because of our natural human preference for certitude, we spontaneously tend to think that coercive, or at least evidential, authority is the primary analogue. Such is not the case. True personal authority is of the second type. This is the type of authority that God exercises towards humans." [Schneiders, p. 57.]
- d. Need for two-way magisterial listening. By this I mean it would be misleading to divide the Church into two groups, the *ecclesia docens* and the *ecclesia discens*. Rather, these two terms should interact with one another in a dialogical fashion. I think that a Cardinal Ratzinger should be open and listen to a Margaret Farley, but that a Margaret Farley should also be open and listen to a Cardinal Ratzinger. Probably paradigms in both the official Magisterium and the theological academy need to shift a bit before this need I've articulated becomes a reality.

### 3. THE MAGISTERIUM'S SELF-UNDERSTANDING OF ITS MORAL AUTHORITY

- a. This is an ecclesiological and theological issue first, grounded in an understanding of the charism of office, aided by the Holy Spirit, which the Magisterium has traditionally claimed functions as 1) Interpreter of Revelation; 2) Guardian of the deposit of faith; and 3) and authentic interpreter of the natural law. Thus the understanding of the competence of the "moral Magisterium" is grounded in a number of anterior premises about the nature of humanity, the nature of Revelation, the nature of the Church, and the nature of authority.

- b. This charism is related primarily to the interpretation of Revelation, and teachings which draw on Revelation in some way. As Joseph Selling expresses it, "In preserving the integrity of the faith, the magisterium exercises an authority which is proportionate to the seriousness of what is needed to achieve that preservation. This may involve drawing conclusions from the content of revelation that would appear to be coherently and integrally connected with that content, such as the teachings about Mary, *theotokos*, the Mother of God. It would also include condemning those things that are inimical to the faith, such as the doctrine of predestination or the idea that human souls preexist real persons." Selling, "Magisterial Authority and the Natural Law," *Doctrine and Life* 47 (August 1997): 340.
- c. In terms of morality though, the Roman Catholic Magisterium for the most part has relied not so much on biblical "warrants" for ethical positions, as it has on the natural law, which the Magisterium holds as a sort of "natural morality"--knowable to all people. In principle there is little debate among Roman Catholic moralists about this basic approach (though many Protestant ethicists would disagree with this natural law approach).
- d. Among Catholics, however, "The question about the content of this 'natural morality', however, is something quite different. It admits of many levels, all of // which are mapped out according to their relation to revelation. Thus, when the magisterium teaches something that is closely connected to revelation, such as the wrongness of engaging in adulterous behaviour or the need to periodically worship and give thanks to God, it is on very solid ground and should be attended to as such. When it teaches about something that is only remotely related to revelation, its 'authority' is proportionately relevant and may carry lesser weight, as, when it may voice an opinion about something like political structures or monetary policy." Selling, "Magisterial Authority," pp. 340-341.
- e. In contemporary applied moral theology, the Church has recently made the claim on numerous occasions to be an "expert in humanity":
  - i. E.g., refer to John Paul II's *Sollicitudo Rei Socialis*, no. 41, which in turn is a reference to Paul VI's *Populorum Progressio*, 42
  - ii. E.g., one theological interpretation of this "expertise in humanity" in matters of sexual ethics: "the church sees a fundamental integration of the person with his or her concrete sexual specificity and human nature. Because the church holds that this nature and its meaning have been revealed by Christ, the individual person and his or her sexuality also stand illumined. As the one to whom this revelation is entrusted, the Church regards herself as an 'expert in humanity' and is qualified to speak accordingly." John S. Grabowski and Michael J. Naughton, "Catholic Social and Sexual Ethics: Inconsistent or Organic?" *The Thomist* 57 (1993): 577.

- iii. If the Church is an "expert in humanity" then it will have to have those "credentials" validated and verified.
  
- f. There is an additional problematic of institutional exclusion of certain voices from participation in the Magisterium (problematic because this tends to neglect, skew, or eliminate the "Experience" quadrant of the quadrilateral), e.g. women, married people, etc., and raises the issue of being perhaps overly clerical, as well as noting the impact of only celibate males as having institutional authority. It is important not to overlook how the Magisterium itself recognizes that even its "expertise" has methodological limits, as noted in the section on moral norms. The point bears repeating here: Pope Paul VI stated in his social encyclical *Octogesima Adveniens*, ""in the face of such widely varying situations it is difficult for us to utter a unified message and to put forward a solution which has universal validity. Such is not our ambition nor is it our mission." (OA #4).
  
- g. Keep in mind too the important principle of subsidiarity, which was articulated well by Pius XI in his social encyclical *Quadragesimo anno*: "It is a fundamental principle of social philosophy, fixed and unchangeable, that one should not withdraw from individuals and commit to the community what they can accomplish by their own enterprise and industry. So, too, it is an injustice and at the same time a grave evil and a disturbance of right order, to transfer to the larger and higher collectivity functions which can be performed and provided for by lesser and subordinate bodies. Inasmuch as every social activity should, by its very nature, prove a help to members of the body social, it should never destroy or absorb them" (QA #79). This same principle has been re-affirmed by Pope John XXIII in his social encyclical *Mater et magistra*, who spoke of the "guiding principle of subsidiary function" (MM #53); by Pope John Paul II in *Centesimus Annus*, who stated "the principle of subsidiarity must be respected. A community of a higher order should not interfere in the internal life of a community of a lower order, depriving the latter of its functions, but rather should support it in case of need and help to coordinate its activity with the activities of the rest of society, always with a view to the common good." (CA #48); and in the *Catechism of the Catholic Church* (CCC 1894).
  
- h. A note on the claims and limits of infallibility: As Archbishop John Quinn puts it: "Infallibility does not guarantee that a papal definition is prudent, wise, or timely. It does not guarantee that the arguments used to support the definition are cogent or even correct. The prerogative of infallibility guarantees only that what is defined is true." Quinn, *The Reform of the Papacy: The Costly Call to Christian Unity*, pp. 49-50.
  
- i. Quinn goes on to underscore the important distinction between divine *assistance* and "inspiration": "Catholic doctrine holds that papal infallibility occurs through divine *assistance*, not through inspiration. This means that papal infallibility does not come about because the Pope receives some kind of supernatural illumination or

vision or that he has some personal endowments of insight or intuition not given to others. Papal infallibility comes about through the Providence of God over the Church, which means that the Pope must take all the humanly available means to discover the truth and is obligated to weigh the prudence of proceeding to a definition.” pp. 50-51. Regrettably, Quinn continues, “the definition of papal infallibility, the reverence for and focus on the person of the Pope, and increasingly strong centralization by the Vatican have all tended to expand the idea of divine assistance into a kind of continuing divine inspiration. This mystique, which has come to surround and engulf the Pope especially since the nineteenth century, creates a deep psychological barrier to speaking in critical terms about policies, declarations, or actions of the Pope.” p. 51.

- j. Additional Caveats on authority: The potential for abuses is clear, however, we need to see clearly how non-magisterial authorities also function, e.g., the concept of "political correctness" which creates its own canon and modes of enforcement of orthodoxy. Consider the following caution raised by the Nobel Prize winner novelist, Saul Bellow: "P.C. [Political Correctness] is really a serious threat to political health, because where there is free speech without any debate what you have is a corruption of free speech, which very quickly becomes demagoguery. People in general in this country have lost the habit of debating questions. TV does it for them. People hold opinions, but the opinions are not derived from either thought or discussion. They are just acquired, as an adjunct, a confirmation of the progressive status of the person who holds these opinions--as an ornament, a decoration. It's like those Russian generals, their chests covered with medals. People wear these opinions like medals." [As quoted in "Mr. Bellow's Planet" in the "Talk of the Talk" section of *The New Yorker* 23 May 1994): 35]. These considerations highlight once again the importance of an ongoing moral discernment of spirits, and an honest ethos critique.

#### 4. THEOLOGICAL REFLECTION ON THE ROLE AND LIMITS OF THE MORAL MAGISTERIUM

- a. Epistemological Finitude of the Moral Magisterium
  - i. Recognition and acceptance of the charism of office and the concomitant aid of the Holy Spirit. But this office and gift are still received and exercised in a *human way*. In this vein recall the scholastic axiom, *Quidquid recipitur ad modum recipientis recipitur* {One receives according to his or her own mode of reception. Thus, there can be no "magical" moral Magisterium, and this may well be perhaps the strongest heresy to combat.
  - ii. Therefore, along with Josef Fuchs we can agree that "with regard to the teaching office of the church, that it can have knowledge of morality--despite the support of the Spirit--only via the conscience of men, or by recourse to such insights. The teaching office, like the individual, has no direct access to

God and to his 'divine law'; from this point of view, it belongs to the realm of divine wisdom which is incarnate in creation. In the case of the concrete questions of right human conduct in the world, one cannot speak of a 'possession' on the part of the church's teaching authority, but at most of a 'presumptive' possession." (Josef Fuchs, S.J., "God's Incarnation in a Human Morality," ch. 4 in Id. *Christian Morality: The Word Became Flesh*, (Washington, D.C.: Georgetown University Press; Dublin: Gill and Macmillan, 1987): 54).

- b. Role of the Spirit in the Church as ultimate criterion of truth
  - i. Theological significance as "charisms": There are many gifts (coming from the Spirit), but always it is the Spirit which is one and therefore the source and ground of unity (which is not to be misconstrued as uniformity). This theological aspect then puts a greater importance on the genuine discernment of spirits as a moral task (and a task for moral theology as well). Life according to the spirit becomes not only the ultimate organizing principle of Christian life, but also the principal criterion of verification of the authenticity of that life. In order to be open and receptive to the many gifts of the Spirit we should be wary of eclipsing and/or neglecting other charisms, which as charisms come from the Spirit, are gifts to the *whole* Church, and thus have their own "authority." In this view then the charism of "authority" is not limited to the charism of the office of the magisterium.
  - ii. Consider the insight from George Tavard, who speaks to the question of interpretation of Tradition, but whose basic remarks can be applied to the moral Magisterium as well. Tavard notes that "the Spirit alone is, in final analysis, the absolute criterion of the Christian faith, and therefore of tradition, and therefore of the emergence of tradition through the interpretation of the past by theologians or by the *Magisterium* of the churches. And the only criterion of this faith and of this tradition which is at the same time practical, proximate, and ascertainable is the moral unanimity of the disciples: by this we know that the Spirit has shown himself. This entails no negative conclusion concerning the Magisterium and its intrinsic authority. It requires, however, that the *Magisterium* be set in the context of the catholicity, the unanimity, the collegiality, the conciliarity, the sobornost, of the church and the manifestation of this *consensus in the sensus fidelium*." [From George Tavard, "Tradition in Theology: A Problematic Approach," in Robert M. Grant, et. al., *Perspectives on Scripture and Tradition*, ed. Joseph F. Kelly, (Notre Dame: Fides Publishers, 1976): 103]
- c. Understanding of the Competence of the Magisterium in "matters of faith and morals."

- i. Cf. Mahoney's important point about the proper translation of the Tridentine phrase *de fide vel moribus*: i.e., "morals" here might be better translated as "mores" or "customs" (such as liturgical practices).
- ii. Important distinction between authority in regards to *principles* as opposed to their concrete *application* to varied ethical problems. Following Fuchs again, on the general issue of the competency of the Magisterium to pronounce infallibly on concrete principles and applications of the natural law, Fuchs makes the following points:
  - (1) "Nevertheless, the Magisterium does not deduce these truths from the faith: it knows them from the exercise of the practical reason that is enlightened by the faith. Such truths therefore lie outside the realm of infallibility.
  - (2) [Important to consider well this "source" of practical reason]
  - (3) "But since such ethical teaching directives have come into being in the community of the Holy Spirit, and since they have been proposed by the office-bearers who are called to lead this community and are therefore assisted by the Spirit, they have a great significance in the church, and the spirit of fidelity that is required in the church obliges one to be receptive to them in the internal discourse that is the formation of conscience, and to give them a certain preference over other considerations--even one's own. This receptivity is required by the responsible conscience itself." [Fuchs, *Moral Demands*, p. 165.]
- iii. Josef Fuchs notes that "The problem of allegiance or non-allegiance toward episcopal instructions revolves not so much around *principles*, but around their concrete *application* to innumerable ethical problems. "Even Vatican II indicated that shepherds of the church do not always have clear answers to ethical problems, and that Christians whose faith is solid and who have responsible consciences should be able to find legitimate solutions to a variety of problems (cf. *Gaudium et spes* 33, 43). This holds not only for the Christian laity, but also for priests and bishops." p. 5. Fuchs also stresses that while respect for such episcopal teaching is a value, it is not an *absolute* value, and the *absolute* value would be only to the moral truth (and the common search for that truth). This position would be in accord with one of the central tenets of *Veritatis Splendor*, i.e., on the objective moral order.
- iv. The above points come from Fuchs' "'Whoever hears you hears me': episcopal moral instruction." *Theology Digest* 41 (1994): 3-7. [English digest of "'Wer euch hört, der hört mich': Bischöfliche Moralweisungen." *Stimmen der Zeit* 117 (1992): 723-731.] The article briefly highlights instances where both individual bishops and different bishops' conferences

have issued position statements on a particular issue, such as PVS, which are not in agreement with one another.

- v. Most would agree that it would be an improper role of the moral Magisterium would be direct intervention and exaggerated specification of the concrete demands of the moral life. Several official Church texts would support this view as well.
- vi. This would then be functioning like a superego or parent, and thus preventing or impeding the development of moral maturity, as well as an instance of improper ecclesiology. We need to reflect on our understanding of the "Church" and its place in the "world"? In this vein, consider the following from Josef Fuchs: "The wish--indeed, the demand--is often expressed by a certain type of believer that the Magisterium of the church intervene with an authoritative word to bring fresh certainty, or at least a little more certainty, regarding the rightness or wrongness of certain acts and behavior in the human world, from a moral point of view. Such a desire or demand would surely be erroneous if one wished to view the church's principal task as consisting in such interventions about the moral rightness of behavior in the human world, for the principal task of the church and her Magisterium (just as for Jesus) is not the good functioning of the world of men and of human society, and hence the question of right and best conduct in this world, but the salvation of mankind, of persons as such. From a moral viewpoint, this means that the church is not interested primarily in acts and their moral rightness but in the person and his moral goodness. To fail to see this is to misunderstand the true mission of the church and of its authority." Josef Fuchs, S.J. "Morality: Persons and Acts," in id. *Christian Morality: The Word Became Flesh*, trans. Brian McNeil, (Washington, D.C.: Georgetown University Press; Dublin: Gill and Macmillan, 1987): 114.
- vii. Problematic theological methodology as well, would perhaps hinder or block the corporate coming to a deeper realization of the full splendor of the truth. As George Tavard notes in regard to Tradition, but whose basic insight is applicable to moral theology as well, "freedom of debate and the allowance of a variety of opinions are indispensable for the tradition eventually to emerge from the past. Only from a comparison of divergent opinions can light be obtained on their relative value. Accordingly, freedom of expression in the church is not a luxury, but a requirement of the intelligibility of faith." Tavard, "Tradition in Theology: A Problematic Approach," p. 102.
- viii. In this same context, keep in mind the point made earlier regarding the Magisterium's own recognition of its limitations in speaking about concrete moral matters: pronouncements cannot be given for every issue and problem which will have universal validity. (Cf., Pope Paul VI *Octogesima Adveniens*, #4).

- ix. Finally, we should recall the basic position of good moral discourse: the 6 C's. In this vein, Fuchs makes an important point: "Further, since the concrete norms of conduct are derived from the practical reason illumined by faith, rather than from the Christian faith itself (and hence are universal in principle), the Magisterium in its invitation to fidelity should attempt cautiously and persuasively, to make clear to those who are willing to follow, that such norms are reasonable. They are not based on a theologically unjustifiable use of scripture, a particular distorting ideology, a naturalistic fallacy, or an excessively juridical understanding of the Magisterium (for example, that one must always follow the teaching of one's own bishop, and not the teaching of another bishop, which may in particular circumstances be different). Rather, such norms are based on reasons that are generally plausible and capable of being communicated to others." [Fuchs, *Moral Demands*, p. 167].
- d. Development of the Understanding of Infallible and "Authentic" Ordinary Magisterium in moral matters
  - i. Historical background in Mahoney's *The Making of Moral Theology*
  - ii. Notion of infallibility is carefully "limited" and "nuanced" in both canon law and the conciliar documents of both Vatican I and Vatican II (worth rereading the relevant documents, such as *Pastor Aeternus*). The assistance of the Holy Spirit facilitates the need for the Magisterium to investigate, study, and learn
  - iii. As Josef Fuchs observes, "If one wishes to give moral instructions and teachings concerning such human realities, inasmuch as they are human, one must acquire sufficient competence, receiving information from others who are more competent." Fuchs, "Morality: Persons and Acts," in id. *Christian Morality*, p. 115.
  - iv. Only a magical "sacral" view of authority would exempt one from such study and investigation.

## 5. VIEWS ON AUTHORITY AND PROCESS OF THE MAGISTERIUM

### ***By Members of the Magisterium***

Pope John XXIII, from his *Opening Address* of Vatican II:

Often errors vanish as quickly as they rise, like fog before the sun. The church has always opposed these errors. Frequently she has condemned them with the greatest severity. Nowadays, however, the spouse of Christ prefers to make use of the medicine of mercy

rather than that of severity. She considers that she meets the needs of the present day by demonstrating the validity of her teaching rather than by condemnations.

Pope Paul VI stating why he was not ready (in 1966) to make his final statement in regards to artificial contraception (*AAS* 58 [1966]: 219).

The magisterium of the Church, cannot propose moral norms until it is certain of interpreting the will of God. And to reach this certainty the Church is not dispensed from research and from examining the many questions proposed for her consideration from every part of the world. This is at times a long and not an easy task.

Karol Cardinal Wojtyla [John Paul II], *The Acting Person* [*Osoba i Czyn*] (1969).

Opposition is not inconsistent with solidarity. The one who voices his opposition to the general or particular rules or regulations of the community does not thereby reject his membership; he does not withdraw his readiness to act and to work for the common good.

Joseph Cardinal Ratzinger. "Magisterium of the Church, Faith, Morality." In Curran and McCormick. *Readings in Moral Theology, No. 2.*, p.186.

In the process of assimilating what is really rational and rejecting what only seems to be rational, the whole Church has to play a part. This process cannot be carried out in every detail by an isolated Magisterium, with oracular infallibility. The life and suffering of Christians who profess their faith in the midst of their times has just as important a part to play as the thinking and questioning of the learned, which would have a very hollow ring without the backing of Christian existence, which learns to discern spirits in the travail of everyday life.

Archbishop (later Cardinal) Roger Mahoney, "The Magisterium and Theological Dissent," *Origins* 16:21 (11/6/86): p. 375, in his address at the USC Seminar on Dissent, 16 October 1986:

Even theologians in university situations are likely to be over influenced by the reigning ethos of academic freedom. It therefore becomes more necessary than ever for the Church to have firm authority structures so as to preserve its rich and ancient heritage and to address new problems in the light of Christ.

Archbishop Daniel Pilarczyk (former head of the U.S. Conference of Catholic Bishops) in his Pastoral Letter on Dissent to the Cincinnati Archdiocese, 6 June 1986. Reported in *Origins* 16:9 (31 July 1986), p. 177.

Also found in Curran and McCormick, *Readings in Moral Theology, No. 6*, pp. 152-163.

[The specific role of the theologians] calls them to explore the implications of Church teach, to investigate it, to refine it, to probe it, to push back its horizons. If not all Church teaching is guaranteed to be infallible, then some of it could be fallible, reformable, conceivably even

incorrect. It is part of the theologian's responsibility to speak to Church teaching which he or she conscientiously believes to be inexact or erroneous.

Archbishop Rembert Weakland, in his talk during the meeting of the U.S. Bishops with John Paul II in Los Angeles on 9/16/87 [Quoted in *National Catholic Reporter*, 25 September 1987]:

The faithful are more inclined to look at the intrinsic worth of an argument proposed by the teachers in the church than to accept it on the basis of the authority itself. Since so often that teaching touches areas where many of the faithful have professional competency (from medical-moral issues to complex economic ones, for example), they wish to be able to contribute through their own professional skills to solving the issues. This demands a new kind of collaboration and a wider range of consultation on the part of the teaching office of the church. Before their peers, Catholic intellectuals are also more sensitive to the credibility of the church if such competency is not maintained. ... An authoritarian style is counterproductive, and such authority for the most part then becomes ignored. ...

There are no words to explain so much pain on the part of so many competent women today who feel they are second-class citizens in a church they love. That pain turns easily to anger and is often shared and transmitted to the younger generation of men and women. Women do not want to be treated as stereotypes of sexual inferiority, but want to be seen as necessary to the full life of a church that teaches and shows by example the co-discipleship of the sexes as instruments of God's kingdom. They seek a church where the gifts of women are equally accepted and appreciated. Many of them do not yet see the church imaging such a co-discipleship, but fear that it is still one of male superiority and dominance.

Bishop Theodore Bacani (Philippines) Column in *Today* 18 July 2002

For, in fact, the Second Vatican Council and the Second Plenary Council of the Philippines declared that the secular realm is the specific responsibility of laypeople. Although the pastors (bishops) are the authority on moral principles, they are not necessarily the best authority when it comes to assessing concrete political situations and prescribing courses of action. Assessing concrete political situations falls under the competence of the lay faithful. And quite often too, choosing a course of action based on Catholic moral principles will fall under their field of competence.

### ***By Theologians***

Richard A. McCormick, S.J., "Moral Theology in the Year 2000: Tradition in Transition," *America* 166 (18 April 1992): 316.

It seems to be a perennial temptation of those to whom there attaches both jurisdictional and teaching authority. There is the seemingly irresistible penchant to prescribe and proscribe *urbi et orbi* with utter certainty and forever. It is as if teaching would not be taken seriously unless it is proposed for all ages.

Karl Rahner, S.J. "On Bad Arguments in Moral Theology," *Theological Investigations XVIII*, 1984. p. 79.

But it is in fact also part of the tragic and impenetrable historicity of the Church that in practice and theory it defended moral precepts with bad arguments, based on problematic, historically conditioned preconceptions, "prejudgments," which it did not itself abandon but which other historical causes eliminated; only then did the Church finally find the new conviction obvious and (unfortunately) proceeded to act as if the new global conviction was obvious and the Church had never had any doubts about it.

Bernard Häring, C.Ss.R. *Free and Faithful in Christ. Vol. I*. 1978. p.128.

Whenever man does not live by faith and trust in God, he is tempted to hide behind the observance of external laws. He considers even salvation truth as something like a code of dogmas and is ready to fight for them without longing for the true knowledge of Christ. There can even be a formal obedience and devotion to the law in such a way that a person refuses to surrender himself totally to God and to his saving justice. There can be obedience towards law and authority, a performance of religious acts that in reality are self-seeking, a stubborn self-assertion in many forms, manifesting a lack of openness to the Spirit.

Daniele Hervieu-Leger. "The Crisis in Doctrinal and Kerygmatic Language," *Concilium* 59 (1973), p.27.

But what happens when the status and the role of the Church is [sic] threatened by the social order upon which it depends for its existence? Should it attempt to smother the ferment, to control the activities of theologians, to use the magisterium as a trump card and to walk a tight-rope between concession and repression. For it is in this way that the Church has preserved its sense of superior religious vision, its claim to determine what is normative. In this way it has been possible for the institutional Church to make doctrinal development and new ways of expressing the Christian gospel conform to its own theological models. It can thus preserve itself and maintain its role in the world.

Bernard Häring, C.Ss.R. in a speech at Holy Cross Abbey, quoted by Philip S. Kaufmann, O.S.B., in "Probabilism & the Right to Know of Moral Options," *Commonweal* 12 September 1980, p. 497.

Those who are doubtful whether they can accept it [*Humanae Vitae*] have to study it thoroughly, have to read it with good will, but they also have to accept other information in the church. They cannot dissociate the pope from the whole of the church. They have to study it, consider it, but not alone, not isolated.

Pope Paul VI stating why he was not ready (in 1966) to make his final statement in regards to artificial contraception (*AAS* 58 [1966]: 219).

The magisterium of the Church, cannot propose moral norms until it is certain of interpreting the will of God. And to reach this certainty the Church is not dispensed from research and from examining the many questions proposed for her consideration from every part of the world. This is at times a long and not an easy task.

Richard McCormick, S.J. *Notes on Moral Theology 1965-1980*, p. 212. Speaking of this 1966 comment of Paul VI in light of the 1968 encyclical, *Humanae vitae*, which ran absolutely counter to the Pope's own investigation commission:

If in February, 1966, the pope needed the studies of the commission to achieve the certainty necessary to propose moral norms, and if having received the majority report of the [Birth Control] commission he achieved or maintained a certainty contrary to it, then perhaps we need a long, long discussion about the nature of the magisterium.

Paul Ramsey. "Incommensurability and Indeterminacy in Moral Choice," in *Doing Evil to Achieve Good: Moral Choice in Conflict Situations*, ed. Richard A. McCormick, S.J. and Paul Ramsey, (Chicago: Loyola University Press, 1978): 83.

Perhaps the term *absolute* should be banished forever from the discussion of moral questions. Also Latin expressions like *malum in se*. Only God has absoluteness and aseity; and even in his case we scarcely know the meaning of those attributes. In any case, reference to God as *summum bonum* of the human will tells us little about value conflicts.

Josef Fuchs, S.J., "The Magisterium and Moral Theology." *Theology Digest* 38 (1991): 107.

Occasionally I have said: I do not say anything I do not stand behind, but maybe I do not say everything behind which I stand. I think it is generally wrong to want to provoke. In the face of possible difficulties from the magisterium a person must get a sense of what may be said under the circumstances, what must be said, and what should not be said.

## 6. UNDERSTANDING OF INFALLIBILITY AND THE NATURAL LAW

- a. Will follow here Archbishop William Levada, who was installed, on 22 September 1986, as archbishop of Portland, Oregon, and then in 1995 was named Co-adjutor Archbishop of San Francisco to succeed John Quinn, whom he succeeded as Archbishop in 1996. Levada was a former member of the Congregation of the Doctrine for the Faith, and very involved in the drafting and promulgation of the *Catechism of the Catholic Church*. He has his STD from the Gregorian, and did his dissertation under Francis A. Sullivan, S.J., entitled, *Infallible Church Magisterium and the Natural Law*. Excerpta ex dissertatione ad Doctoratum in Facultate Theologiae Pontificiae Universitatis Gregorianae. Rome: Pontifical Gregorian Press, 1971.
- b. Levada writes that the "...traditional doctrine of infallibility as defined in Vatican I and explained in ecclesiology: infallibility (considered from the aspect of its *object*)

refers in general to those statements which are taught as definitive and to be held by all the faithful in the Church; such definitions are irreformable in the sense that they do not admit of subsequent contradictory teaching or practice; such definitions are true in the sense that they correspond to objective Church tradition, and do not merely represent temporary symbols of faith." [Levada, *Infallible Church Magisterium and the Natural Law*, p. 75.]

- c. Scope of infallibility
  - i. Deposit of faith and Revelation
  - ii. Secondary principles deemed “necessary” for understanding message of revelation
  - iii. Primary and secondary object of infallibility
- d. Infallibility and the Natural Law: 3 aspects involved
  - i. Understanding of the nature of the natural law
  - ii. Understanding of norms derived from the natural law
  - iii. Understanding of the Magisterium's competence to make pronouncements in these areas
    - (1) Authentic or "ordinary" Magisterium
    - (2) Infallible Magisterium
- e. Levada's exposition of the relevant aspects:
  - i. “Thus we had to come ultimately to a consideration of the peculiar characteristics of the natural law norms which in our dissertation would be the *object* of the Church's infallible defining power. We found that the human process of formulating moral norms is marked by an essential dependence upon the data of human experience, and this dependence has, in greater or lesser degree, always been recognized in traditional moral theology. This recognition thus must serve to correct the model sometimes used in moral theology, in which man's knowledge of moral norms was simply a ‘given’ or was ‘deduced’ from nature, in which the variable factors of the moral judgment were recognized only in the conscience-decision of the unique situation. Such an understanding did not sufficiently appreciate the fact that the formulation of the moral norms is *essentially* marked by the ‘relativity’ which is inherent in the human estimation of moral values. This consideration of the natural law in its aspect of material norm led us to

conclude that the variabilities which marked the human process of its discovery and formulation made such particular applications inherently unsuited to be considered for infallible definition. It is in the particular characteristics of this process which is man's [*sic*] discovery and application of the natural moral law in his life, and in the dependence of his reflective scientific moral knowledge upon these characteristics (which ties his moral knowledge to the perception of values seen in relation to his human nature fully considered in its historical context), that we find the ultimate reason for the unsuitability of natural law formulations for infallible definition. For such formulations must remain essentially open to modification and reformulation based upon moral values as they are perceived in relation to the data and the experience which mark man's understanding of himself." p. 77.

- ii. "When one examines the traditional theological teaching about the secondary object, one remarks that natural law is not traditionally included within this category. Even though there is nothing to prevent a council or a pope from extending this secondary object to questions of the natural moral law from the point of view of their *authority* to do so, nevertheless the 'prudential' certitude which characterizes the non-scriptural norms of the natural law argues against such an extension of this secondary object to include an infallible definition of this sort." [Levada, p. 78].
- iii. Accepts the competence of the infallible Magisterium , in the restricted sense "on the level of transcendental values; when we turn to the level of categorical norms, on the other hand, we cannot ignore the essential autonomy of the rational process of human discovery of the natural moral law. And the nature of this moral autonomy, considered in all its aspects, gives us the ultimate reason why we should not understand it to fall within the traditional categories of primary or secondary object of infallibility." [Levada, p. 79].

## 7. RESPONSE OF THE FAITHFUL TO THE MORAL MAGISTERIUM

- a. A key text is found in *Lumen Gentium* 25:

"Among the more important duties of bishops that of preaching the Gospel has pride of place. For the bishops are heralds of the faith, who draw new disciples to Christ; they are authentic teachers, that is, teachers endowed with the authority of Christ, who preach the faith to the people assigned to them, the faith which is destined to inform their thinking and their conduct; and under the light of the Holy Spirit they make that faith shine forth, drawing from the storehouse of revelation new things and old (cf. Mt. 13:52); they make it bear fruit and with watchfulness they ward off what errors threaten their flock (cf. 2 Tim. 4:14). Bishops who teach in communion with the Roman Pontiff are to be revered by all as witnesses of divine and Catholic truth;

the faithful, for their part, are obliged to submit to their bishops' decision, made in the name of Christ, in matters of faith and morals, and to adhere to it with a ready and respectful allegiance of mind. This loyal submission of the will and intellect must be given, in a special way, to the authentic teaching authority of the Roman Pontiff, even when he does not speak *ex cathedra* in such wise, indeed, that his supreme teaching authority be acknowledged with respect, and sincere assent be given to decisions made by him, conformably with his manifest mind and intention, which is made known principally either by the character of the documents in question, or by the frequency with which a certain doctrine is proposed, or by the manner in which the doctrine is formulated. Although the bishops, taken individually, do not enjoy the privilege of infallibility, they do, however, proclaim infallibly the doctrine of Christ on the following conditions: namely, when, even though dispersed throughout the world but preserving for all that amongst themselves and with Peter's successor the bond of communion, in their authoritative teaching concerning matters of faith and morals, they are in agreement that a particular teaching is to be held definitively and absolutely. This is still more clearly the case when, assembled in an ecumenical council, they are, for the universal Church, teachers of the judges in matters of faith and morals, whose decisions must be adhered to with the loyal and obedient assent of faith. This infallibility, however, with which the divine redeemer wished to endow his Church in defining doctrine pertaining to faith and morals, is co-extensive with the deposit of revelation, which must be religiously guarded and loyally and courageously expounded. The Roman Pontiff, head of the college of bishops, enjoys this infallibility in virtue of his office, when, as supreme pastor and teacher of all the faithful--who confirms his brethren in the faith (cf. Lk. 22:32)--he proclaims in an absolute decision a doctrine pertaining to faith or morals. For that reason his definitions are rightly said to be irreformable by their very nature and not by reason of the assent of the Church, in as much as they were made with the assistance of the Holy Spirit promised to him in the person of blessed Peter himself; and as a consequence they are in no way in need of the approval of others, and do not admit of appeal to any other tribunal. For in such a case the Roman Pontiff does not utter a pronouncement as a private person, but rather does he expound and defend the teaching of the Catholic faith as the supreme teacher of the universal Church, in whom the Church's charism of infallibility is present in a singular way. The infallibility promised to the Church is also present in the body of bishops when, together with Peter's successors, they exercise the supreme teaching office. Now the assent of the Church can never be lacking to such definitions on account of the same Holy Spirit's influence, through which Christ's whole flock is maintained in the unity of faith and makes progress in it. Furthermore, when the Roman Pontiff, or the body of bishops together with him, define a doctrine, they make the definition in conformity with revelation itself, to which all are bound to adhere and to which they are obliged to submit; and this revelation is transmitted integrally either in written form or in oral tradition through the legitimate succession of bishops and above all through the watchful concern of the Roman Pontiff himself; and through the light of the Spirit of truth it is scrupulously preserved in the Church and unerringly explained. The Roman Pontiff and the bishops, by reason of their office and the

seriousness of the matter, apply themselves with zeal to the work of enquiring by every suitable means into this revelation and of giving apt expression to its contents; they do not, however, admit any new public revelation as pertaining to the divine deposit of faith." [Flannery, *Documents of Vatican II*]

- b. However, we must be careful not to read this as an isolated, simplistic, or self-interpreting proof-text, but in harmony with the rest of the document, as well as the rest of the Conciliar documents, our ecclesiology, the Church's ongoing tradition on the sanctity of conscience, and so forth. In other words, we must seek to read it in context of the whole document, as well as the other documents of Vatican II, such as *Gaudium et spes* and *Dignitatis humanae*, as well as the Church's whole theological tradition on the sanctity of conscience. To do otherwise would not be faithful to either the character of the text itself, or the fuller theological context in which the text is situated.
- c. We should keep in mind as well that there are various interpretations of what the key term "obsequium religiosum" ("religious submission of the will") means, both coming out of *Lumen Gentium* itself as well as subsequent documents such as the Congregation for the Doctrine of the Faith Document, *Donum Veritatis*, on "The Ecclesial Vocation of the Theologian" (1990); and Pope John Paul II's encyclical on fundamental moral theology, *Veritatis Splendor* (6 August 1993).
- d. For some helpful analyses look at some of the commentaries on Vatican II documents for keys to interpretation, as well as the writings of key theologians. One very respected individual who has written extensively on this area is the former Gregorian University professor, Francis Sullivan, S.J. See especially the following works: such as his book: *Magisterium: Teaching Authority in the Catholic Church*, (Dublin: Gill and Macmillan, 1983), and in his article, "The Theologian's Ecclesial Vocation and the 1990 CDF Instruction." *Theological Studies* 52 (1991): 51-68. See also Charles Curran's brief treatment in his *The Catholic Moral Tradition Today*, pp. 208-209, for some important historical background to interpreting this term.
- e. Sullivan notes the following in regards to the Congregation for the Doctrine of the Faith's reference made in *Donum Veritatis*, on "The Ecclesial Vocation of the Theologian" to *obsequium religiosum* as "'fundamental openness loyally to accept the teaching of the Magisterium'. What is crucial here is that *obsequium* is not identified 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." p. 62. [Here Sullivan references Avery Dulles' own article "Question of Dissent" published in *The Tablet* (p. 1033)]:

- f. 'I [i.e. Dulles] 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.' [p. 65 in Sullivan's *Theological Studies* article]
- g. I [i.e., JTB] would add that this point echoes the well-known hermeneutical principle in canon law that strictures are interpreted narrowly and favors are interpreted broadly: *Odia restringi, et favores convenit ampliari* which means that burdens (odious things) are to be restricted, and favors (privileges) are to be multiplied (or extended). This principle of canon law interpretation holds that burdens or strictures are to be interpreted in a narrow sense of application, while on the other hand favors are to be widely applied. See the *Code of Canon Law CIC #18* for the canon which gives this principle of strict interpretation in regards to laws which establish either a restriction of rights or impose a penalty. Yet, we have to be honest in admitting that a "reading" of some current cases involving theologians and the Congregation for the Doctrine of the Faith might lead to a less sanguine view on the "reality" of what is "permitted" or tolerated!
- h. Consider also the view of Richard McCormick, speaking of nuancing the response to *Lumen Gentium #25*, the *obsequium religiosum* (religious submission of the will): "I suggest that the proper response is not obedience. Obedience is appropriate when orders are involved. But teaching should not be conceived in this way--and if it is, it shows that we have over juridicised the search for truth. Rather, the proper response is first a docility of mind and will, a cast of mind and bent of will open and eager to make the wisdom of the teacher one's own, a desire to surmount the privacy and limitation of one's own views to enjoy the wisdom of broader perspectives. It is, in brief, a desire to assimilate the teaching." Richard McCormick, "The Teaching Office as a Guarantor of Unity in Morality." *Concilium* 150 (1981): 79.
- i. Recall the important point of the different cultural understandings of what "authority" and "dissent" are, and what their effects are: E.g., as a means of dialogue and common search for the fullness of the truth, or an "attack" on the Church and its legitimate authority figures? Cultural context will have a big part to play here in determining what role dissent itself plays. E.g., is obedience to authority seen as a *sine qua non* for loyalty and membership in the Church, or is questioning of authority seen as a necessary part of growth and assertion of legitimate independence? Either of these above two positions, if absolutized, would be problematic.
- j. In the American context, consider the following observations of George B. Wilson, S.J. who suggests that "dissent" is really the wrong concept to use in referring to contemporary, well-educated, adult Catholics in their attempts to dialogue and agree

and/or disagree with magisterial teaching. “Adults don’t ‘dissent’; they discuss and deliberate and converse and dialogue. Yes, and argue. Sometimes they come to agreement and arrive at a common position; sometimes they are unable to. In the New Testament it appears that Paul and Barnabas never did resolve their differences; they just agree to work in different patches of the vineyard. Talk of dissent, by contrast, implies a prior that some definitive position has been arrived at. The question has been answered and the case closed—which, of course, may be the very point the adult participant finds unconvincing. In church usage the concept of dissent brings with it a note of moral failure. Those who dissent are viewed, not simply as disagreeing with the orthodox position, not even as being objectively wrong. They are view as being morally deficient, having a sort of virus that must be either controlled or perhaps even eradicated lest it contaminate others.” p. 9. “One final consideration colors the understanding of the question we started with: What is really going on here? It is the church’s lust for the idol of certitude.” p. 10. [Quotes taken from George B. Wilson, S.J. “‘Dissent’ or Conversation Among Adults?” *America* 180 (13 March 1999): 8-10; 12].

- k. Josef Fuchs' overall interpretation of the moral Magisterium
  - i. From his article, "A Harmonization of the Conciliar Statements on Christian Moral Theology." Chapter 40 (vol. 2) in *Vatican II: Assessments and Perspectives, Twenty-five Years After (1962-1987)*, 479-500. Edited by René Latourelle, S.J. New York: Paulist Press, 1989.
  - ii. "Divine law and eternal law are nothing other than an interpretation of natural moral law (A. Auer). Nonetheless, the Magisterium also has no 'direct' access to the divine, eternal law, and is thus dependent on human moral knowledge. Correspondingly, it must be evident that we must arrive at knowledge of the divine law both with the aid of the Magisterium and also of other teaching as well as by mutual exchange." p. 490.
  - iii. "This is echoed in the statement of Lumen gentium 25 to the effect that the infallibility of the Magisterium (and hence, no doubt, also the Magisterium itself) restricts itself to the same limits as those of divine revelation, and thus does not extend to the whole area of what is morally right. The field of what is morally right in behavior in the world requires, especially according to *Gaudium et spes* and *Apostolicam actuositatem*, an immense degree of specialized knowledge, which we can certainly not derive from revelation. What is more, as Bishop Gasser explained in the *Relatio* he delivered Vatican I, the ethical principles of natural law are not entirely in the sphere of the doctrine of faith, which is the sole object of the Magisterium of the Church." p. 495.
- l. Other theological opinions on infallibility and the moral Magisterium

i. Msgr. William B. Smith

- (1) Opus Dei theologian, "Answer Man" for *Homilectic and Pastoral Review*, and moral theology teacher at the conservative St. John's Seminary in New York (Dunwoodie). From his paper on "The Question of Dissent in Moral Theology," given at the 1986 "International" Congress on Moral Theology held in Rome and organized by Opus Dei and Msgr. Carlo Caffarra.
- (2) "If, in a given but rare instance, it happens in time that some aspect of that authentic teaching [of the Magisterium] is not completely true, it still remains here and now a true guide for action, that this is what the Holy Spirit wants by directing, that is assisting, as a norm for action at this time. The only way for genuine dissent in theory and practice to be legitimate is to accept and adopt an illegitimate ecclesiology which not only changes but also contradicts the teachings of Vatican II about the nature of sacred and certain Catholic teaching and the very nature of the Church (LG 25; DV 7-10).
- (3) in *Persona Verità e Morale: Atti del Congresso Internazionale di Teologia Morale (Roma, 7-12 aprile 1986)*, (Roma: Città Nuova Editrice, 1987): 252-253.
- (4) I would offer the following points in critique of Smith's position: It presents a rather problematic view of the Magisterium, and the objective nature of moral truth! Moreover it strikes me as excessively paternalistic, with a corresponding infantile view of the People of God. I would also observe that Smith seems to be overstating the claims to fidelity expressed in the Council documents, and that this is probably related to a deeper overall problematic view of the nature of the Church. Finally, I would note a rather [problematic epistemology of a "true guide" which may not in fact always be "true."

ii. Germain Grisez

- (1) Very conservative and polemical, yet quite influential
- (2) *The Way of the Lord Jesus. Volume One: Christian Moral Principles*. Chicago: Franciscan Herald Press, 1983.
- (3) "But we believe that our Lord teaches in and through the Church and gives us the word of the Father. Hence, our submission to the Church's teaching is not submission to mere human opinions, but to the very word of God (see 1 Thes 2.13)." p. 570.

iii. Hoose's critique of Grisez

- (1) Hoose is currently on the faculty of Heythrop College.
- (2) Referring to the above quote from Grisez: "It would seem, then, that Grisez advocates obedience to the pope or bishop even when the pope or bishop is wrong. If we carry that to its logical conclusion, we find that, according to Grisez, a person should conform with official teaching even when his or her conscience dictates otherwise." [Hoose, *Proportionalism: The American Debate and its European Roots*, (Washington, D.C.: Georgetown University Press, 1987): 112.]
- (3) "What I wish to point out is the fact that Grisez, in holding that Catholics should always obey the moral teaching of the Magisterium, even when that teaching is possibly wrong, reveals something of great importance about his understanding of the human good and the place it has in his method of moral judgement.
- (4) It would seem that rightness for him is dependent upon the fulfilment of certain basic goods, *except where such fulfilment would conflict with the will of God as expressed through the Magisterium of the Roman Catholic Church.*" [Hoose, "Proportionalists, Deontologists and the Human Good." *The Heythrop Journal* 33 (1992): 184].

8. INTERPRETATION OF TEACHING OF THE MAGISTERIUM

- a. Absolute importance of historicity in interpretation of magisterial teaching. Look at the historical context. Read the document in that light. Be careful of abstracting and/or absolutizing magisterial pronouncement. Be sure you do a good "exegesis" of the relevant documents, *before* you seek to interpret them. And finally, it can be helpful in a variety of pastoral situations to have at your disposal a few "quotable quotes.
- b. In this last vein, see Maureen Fiedler and Linda Rabben, eds. *Rome Has Spoken: A Guide to Forgotten Papal Statements and How They Have Changed through the Centuries*. New York: Crossroad, 1998.
- c. The Magisterium, as is true for all Christians stand under (and not above) the truth
  - i. Difficult to suppose, even with the charism of office, that one, or one group, can fully know the truth
  - ii. Consider the experience of Paul and Peter, as recounted in Galatians 2:11-16:

When Peter came to Antioch, I opposed him to his face, because he was clearly in the wrong. Before certain men came from James, he used to eat with the Gentiles. But when they arrived, he began to draw back and separate himself from the Gentiles because he was afraid of those who belonged to the circumcision group. The other Jews joined him in his hypocrisy, so that by their hypocrisy even Barnabas was led astray. When I saw that they were not acting in line with the truth of the gospel, I said to Peter in front of them all, "You are a Jew, yet you live like a Gentile and not like a Jew. How is it, then, that you force Gentiles to follow Jewish customs?" We who are Jews by birth and not 'Gentile sinners' know that a man is not justified by observing the law, but by faith in Jesus Christ. So we, too, have put our faith in Christ Jesus that we may be justified by faith in Christ and not by observing the law, because by observing the law no one will be justified.

- d. Model of Exegesis (See also *Appendix 3: Exegesis And Interpretation of Magisterial Documents*)
- i. Presupposition: no text is self-interpreting
  - ii. Rules for exegesis
  - iii. Source criticism
  - iv. Hermeneutics
    - (1) Recall the basic principle that *no* text is self-interpreting.
    - (2) Magisterial documents must be governed by a particular branch or variety of hermeneutics, inasmuch as these texts are clearly distinct from other texts.
  - v. Basic hermeneutical guidelines for interpreting magisterial teaching, as given in Vatican II
    - (1) The character of the teaching
    - (2) Frequent repetition
    - (3) Manner of the teaching
  - vi. Avoid twin dilemmas of
    - (1) Magisterial positivism

- (2) Magisterial cynicism
- e. Hermeneutics on the Mode of Argumentation Employed
  - i. Methodological questions posed by Klaus Demmer
    - (1) From his essay, "Theological Argument and Hermeneutics in Bioethics." In *Catholic Perspectives on Medical Morals: Foundational Issues*, 103-122. Edited by Edmund D. Pellegrino, John P. Langan and John Collins Harvey. Dordrecht: Kluwer Academic, 1989. Originally presented at the Twenty-Fourth Trans-Disciplinary Symposium on Philosophy and Medicine, 13-16 October 1986.
    - (2) "What philosophical presuppositions are present? Why are they being put forward? Do they take account of the complexity of the moral problem to be solved, or are they insufficient to meet this demand?" p. 112.
  - ii. "Certainly one can maintain a correct teaching without totally convincing arguments. But if the teaching is correct, then, in principle, it must be made clear through reasonable and plausible argument. Furthermore, it must be considered whether the Church's teaching office uses fundamental concepts of philosophical anthropology consistently. This is to be considered, for instance, in regard to the use of the key concepts 'person' and 'nature'. Does theological reflection perhaps utilize philosophical concepts that no longer correspond to the state of scientific research?" p. 112.
  - iii. Similar arguments made in my use of the "6 C's"
- f. Levels of Authority in Magisterial Teachings. Here Francis Sullivan's *Creative Fidelity* is especially helpful. Overall premise of hierarchy of truths necessary for salvation, this refers more to the character of the teaching itself. We also need to be aware of the *manner* in which the teaching is proposed.
- g. Levels of Authority of Magisterial Teaching based on the Manner in which It Is Proposed:
  - i. Teaching solemnly proposed *de fide* in *ex cathedra* form
  - ii. Conciliar teachings
  - iii. Papal Encyclicals
    - (1) Dogmatic

- (2) Hortatory
  - (3) Commemorative, recalling a special event or saint
- iv. Papal Apostolic Exhortations
- v. Apostolic Constitutions
  - (1) Establishment of a particular celebration, such as the Holy Year
  - (2) Addresses various matters, such as penitential practices, the reform of the curia, etc.
- vi. Apostolic Letters given "motu proprio"
  - (1) literally, "Of one's own accord"
  - (2) A personal letter written by a pope either to the whole church, a local church, or some particular group or body.
  - (3) Used to issue norms,
  - (4) establish a new institute,
  - (5) restructure various situations, etc.
- vii. Occasional papal allocutions
  - (1) E.g. from a congress, etc.
  - (2) Wednesday audience
- viii. Documents of Roman Congregations
  - (1) with papal approbation in which the pope *explicitly* takes over and makes his own (i.e., as if issued in his name) a document promulgated by a Vatican office.
    - (a) This is termed *In forma specifica*
    - (b) A recent example is the 1997 Vatican "Instruction on Some Questions Regarding Collaboration of Nonordained Faithful in Priests' Sacred Ministry" For the text see *Origins* 27 (27 November 1997)

- (2) without specific papal approbation, through with his approval
      - (a) This is termed *In forma communi*
      - (b) The vast majority of Vatican documents issued by the various congregations and dicasteries are in this mode.
- ix. Magisterial teachings of bishops
  - (1) Documents from Bishops' Conferences
  - (2) Documents from Individual bishops
- x. Occasional statements, allocutions, etc. from individual bishops
- h. Summary of the Church's magisterial teaching on concrete moral issues: To date no teaching has been proposed *infallibly*. In fact we can say that in the history of the entire Church no *infallible* papal statement has been made on any "concrete" moral issue. However, this does not mean that we should not pay close attention to, and give real respect to magisterial teachings. "Non-infallible" does *not* mean erroneous or false; it simply means that a given teaching is open to the possibility of incompleteness or error, as well as that in the future the teaching may be further refined and developed, and that such development may involve some degree of change in the concrete positions taken. The history of moral theology, especially in the areas of applied ethics, has ample examples to illustrate this point. For example, the Church has developed and changed its positions on ethical issues like the taking of interests on loans (usury), the moral legitimacy of certain procedures such as organ donations, the notion of freedom to choose one's religion as a fundamental right of all human beings, and so on. The previous examples show what might be called a relaxing of liberalizing of the relevant moral norms, but there are other examples which show that traditional teaching can also become stricter over time. Two examples of this tightening of Church teaching can be seen in the more recent positions on capital punishment and the so-called "just war" theory.

## 9. THEOLOGICAL UNDERSTANDINGS OF CRITICISM AND DISSENT

- a. Bibliography
  - i. Charles E. Curran and Richard A., McCormick, S.J., eds. *Readings in Moral Theology, No. 6: Dissent in the Church*. New York: Paulist Press, 1988. This volume is clearly contextualized by Curran's 1986 negative judgment by the Congregation for the Doctrine of the Faith. Good overview of some of the basic issues and conflicting theological opinions

- ii. Most Rev. Daniel Pilarczyk, "Pastoral Letter on Dissent to the Cincinnati Archdiocese," 6 June 1986. Reported in *Origins* 16 (31 July 1986). Also found in Curran and McCormick, *Readings in Moral Theology, No. 6*, pp. 152-163.
  - (1) The specific role of the theologians calls them to explore the implications of Church teachings, to investigate it, to refine it, to probe it, to push back its horizons. If not all Church teaching is guaranteed to be infallible, then some of it could be fallible, reformable, conceivably even incorrect. It is part of the theologian's responsibility to speak to Church teaching which he or she conscientiously believes to be inexact or erroneous.
  
- iii. Avery Dulles, S.J. "The Magisterium, Theology and Dissent." *Origins* 20 (28 March 1991): 692-696.
  - (1) Dulles proposes five ground rules that the Magisterium itself might observe in its practical exercise of the teaching office.
  
- iv. Francis A., Sullivan, S.J. "The Theologian's Ecclesial Vocation and the 1990 CDF Instruction." *Theological Studies* 52 (1991): 51-68.
  - (1) A careful "exegesis" and interpretation of the Congregation for the Doctrine of the Faith's 1990 "Instruction on the Ecclesial Vocation of the Theologian."
  
- v. Quinn, Archbishop John. "Reform and Criticism in the Church." Ch. 2 in Idem, *The Reform of the Papacy: The Costly Call to Christian Unity*, 36-75.. *Ut Unum Sint: Studies on Papal Primacy*. New York: Crossroad, 1999.
  
- vi. Sklba, Bishop Richard J. "Theological Diversity and Dissent within the Church." In *Shepherds Speak: American Bishops Confront the Social and Moral Issues that Challenge Christians Today*, 20-33. Edited by Dennis M. Corrado and James F. Hinchey. New York: Crossroad, 1986.
 

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- b. Archbishop Quinn, in his magisterial work on papal primacy, looks at criticism *in* the Church as a service *to* the Church. In fact, he calls criticism the "matrix of reform," and notes that criticism of the popes has a long tradition and even includes those who are often identified as staunch advocates of the papacy (he cites an example of Joseph Cardinal Ratzinger strongly criticizing Pope Paul VI). For Quinn the relationship is axiomatic: "if the Church is in need of continual reform, she is

necessarily in need of continual criticism. Reform and criticism go together.” Archbishop John Quinn, *The Reform of the Papacy: The Costly Call to Christian Unity*, (New York: Crossroad, 1999): 44). However, neither reform nor criticism is accepted easily: “if there is resistance to reform within the Church, there is even more resistance to criticism.”(p. 44)

- c. Cultural-historical understandings of "dissent": E.g., the American, which sees dissent as part of the communal search for the fullness of the truth; the Polish, which may see it as a real “betrayal” of the Church to her enemies, or the Italian, which often ignores that with which one doesn't agree.
- d. Epistemological humility and care for the reputation of the Church's teachers. We have to navigate between commitment to the truth, under which *all* are subject and the respect and "religious submission" we have to those who exercise office.
- e. Pastoral guideline from Josef Fuchs, S.J.: "Occasionally I have said: I do not say anything I do not stand behind, but maybe I do not say everything behind which I stand. I think it is generally wrong to want to provoke. In the face of possible difficulties from the Magisterium a person must get a sense of what may be said under the circumstances, what must be said, and what should not be said." From his talk, "The Magisterium and Moral Theology." *Theology Digest* 38 (1991): 103-107.

## 10. CONSCIENCE AND CHURCH AUTHORITY

- a. Bibliography: Avery R. Dulles, S.J. "Authority and Conscience." *Church* (Fall, 1986): 8-15. Also in *Readings in Moral Theology, No. 6: Dissent in the Church*, 97-111. Edited by Charles E. Curran and Richard A. McCormick, S.J. New York: Paulist Press, 1988.
- b. Recall Traditional Guidelines on Matters of Conscience: A person should not be prevented from following even an "erroneous" conscience, *unless* such contemplated action is seriously injurious to either the person him/herself *or* to others. Two clear examples would be suicide and murder. No one may morally coerce or persuade another to act against her or his conscience. This precept binds especially those who are in persons of authority (e.g. confessors and religious superiors, counselors, etc.). However, one can always try to *reason* with another without resorting to coercion. Seen in this light parents, for example, do have an obligation to guide their children in the formation of their conscience. Confessors and others in authority cannot overburden a weak or delicate conscience. This traditional pastoral principle would caution against unnecessary prying and/or laying on burdens the person is not likely to be able to bear (e.g. ecological guilt-feelings etc.). It is *not* part of the responsibility of confessors to build a sinless world.

- c. Key Distinction between Church Law and Church Teaching: Don't confuse the two! Law governs (I will/won't). Teaching instructs (I agree/disagree, or I understand/don't understand/misunderstand)
- d. Recall two basic types of commandments
  - i. Fulfillment: I must do/not do this (Examples: Do not kill innocent persons. Pay your taxes). These are related to the axiom *semper et pro semper* [bind “always and in every instance”]
  - ii. Goal (*Zielgebot*) “This should be my ideal, my ultimate aim.” Example: Love everyone. Goal commandments are not absolutely binding. This is an important point! This point is seen more easily in moral systems which are more teleological and virtue based, but is more difficult to perceive in deontological systems, as well as in the Anglo-American legal culture. Goal commandments are related to the axiom *semper sed non pro semper* [bind “always {in the sense of being a true ideal} but *not* applicable in each and every instance”]..
- e. Extenuating circumstances in which we are released or dispensed from the obligation of laws:
  - i. *Excuse*: a physical or psychological impediment, what is termed in the traditional manualistic vocabulary as “physical” or “moral” impossibility, such as inculpable ignorance. Example: missing Mass when sick or not remembering that a Friday in Lent is a day of abstinence.
  - ii. *Collision or conflict of duties*: Each of the “conflicting” duties is important and "binds." But they bind in different ways (cf. *semper et pro semper* and *semper sed non pro semper*). Here one employs the principle of proportionality, and one must therefore rank the relevant duties and their concomitant values. Possible example in the case of artificial contraception among the duties of a married couple, such as 1) the duty to maintain peaceful and loving preservation of their marriage; 2) the duty to responsible parenthood (which the Church now recognizes includes the possible limiting of the number of offspring); and 3) the duty to respect the encyclical's teaching on artificial contraception.
  - iii. Canon law has a further set of important factors which must be taken into consideration in order to arrive at a proper understanding and suitable application of the law. Here I would recommend that everyone involved in pastoral ministry read something like James Corriden’s *Canon Law as Ministry: Freedom and Good Order for the Church*, (New York: Paulist Press, 2000). Corriden seeks to ground the understanding of canon law in both the New Testament and the theology of the Church, and he clears up

many popular misconceptions that many of us might have about both Church authority and canon law.

- iv. *Dispensation*, which is granted by church law, and may be “particular” or “general” and in turn is governed by the general canonical principle of interpreting dispensations and concessions (or favors) broadly, and strictures narrowly (*Odia restringi, et favores convenit ampliari*). Canon law, unlike Anglo-American law, grants a much wider discretionary power to the various Church authorities to enforce or modify the application of the law in various circumstances, communities, or to individuals. Thus, it is rarely (if ever) a valid interpretation of canon law to simply follow the letter of the law without any further investigation into and consideration of particular circumstances. In short, all of these situations call for the practice of the virtue of *epikeia*; and remember that virtues deepen and become “perfected” through practice!
- v. *Desuetude* and/or *non-reception*. For canon law to be a true *ius vigens* (law in force) it must possess three elements: legitimate authority, suitable promulgation, and acceptance (“reception”) by its users. The law loses its binding force either by never being “received” and put into practice by those for whom the law was meant, or by falling into general “disuse” or non-observance. An example of desuetude would be the teaching on usury, and an example of non-reception would be Pope John XXIII’s Seminary Instruction in Latin, *Veterum Sapientia*, issued on 22 February 1962, which was widely ignored from the moment of its promulgation (leading some to refer to it as an example of “instant desuetude”). Rarely abrogated, therefore need to look to see if the teaching is repeated and confirmed, and to be attentive to the language and nuances of subsequent documents to see if the position has been modified. This is an accepted point in canon law, and differs widely from Anglo-American law. For an excellent article on the history and theory of the canonical doctrine of reception and non-reception see James A. Corriden, “The Canonical Doctrine of Reception,” *The Jurist* 50 (1990): 58-82.
- f. General Summary Guideline for Conscience and Church Authority: The Church’s teaching is normally and usually a source for positive illumination of one’s conscience. But, if after appropriate study, reflection and prayer a person remains convinced that his/her conscience is correct, then in spite of a conflict with the moral teachings of the Church, or Church law, the person not only may, but *must* follow the dictates of her or his conscience, rather than the teachings and/or law of the Church. This is the *traditional* basic teaching of the Church on the sanctity of conscience. To date, the Church has never explicitly claimed to speak infallibly on a moral question, so there is probably no case yet of a conflict between an individual’s fallible decision in conscience, and a teaching of the Church which is immune from error. No teaching of the Church can hope to account for every moral situation and

circumstance. Each teaching must still be applied in particular cases, and according to the particular abilities of each moral agent. Here the moral discernment and the virtue of *epikeia* are important. The Church teachings themselves are historically conditioned, especially in their particular formulations. We all need help from a variety of sources. Don't go it alone!