

**THE OBLIGATION OF THE CHRISTIAN FAITHFUL TO MAINTAIN
ECCLESIAL COMMUNION WITH PARTICULAR REFERENCE TO
*ORDINATIO SACERDOTALIS***

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INTRODUCTION

What was the intention of Pope John Paul II when he issued *Ordinatio sacerdotalis* concerning the Church's lack of authority to ordain women to the priesthood? What authoritative weight does this document carry? Are the Christian faithful bound to give it the assent of faith or firmly hold and accept this definition? What does it mean to remain in communion with the Church? In this paper, I will address the authoritative nature of the teaching found in *Ordinatio sacerdotalis* and, more specifically, whether or not this teaching is an exercise of the ordinary and universal magisterium. I will look at its relationship to the deposit of faith so that a determination can be made as to the response owed by the Christian faithful in order to maintain communion with the Church.

A canonical assessment of the teaching in this document requires an analysis of several key concepts. First of all, I will address the creative tension between the external and internal dimensions of "communio" in the teaching of Vatican II and its application to canon 209 §1 whose obligation can be viewed from two perspectives. The first is the moral obligation that is the faithful's response to God's invitation to relationship. The second flows from the moral obligation of this relationship as witnessed by reception of baptism and the social nature of the human person. This bond between God and the faithful is fundamental to understanding the obligation in canon law which simply brings specificity to a pre-existing obligation.

The second chapter provides a historical, theological and canonical understanding of the magisterium of the Catholic Church as expressed in the teaching office of the Roman Pontiff and the College of Bishops. This includes a description of its ordinary and extraordinary expression whether infallible or non-infallible in order to discern the level of teachings in

various magisterial documents. This hierarchy of truths will determine the appropriate response of the faithful in order to maintain communion with the Catholic Church.

Finally there is a review of theological and canonical opinions as they apply the aforementioned principles to *Ordinatio sacerdotalis* with regard to its teaching authority and binding nature. Specifically, they evaluate the claim of the Congregation of the Doctrine of the Faith that the letter is an infallible teaching of the ordinary and universal magisterium and is to be definitively held by the faithful.

1 – The Obligation to Maintain Ecclesial Communion

When Pope John XXIII announced his plan for an ecumenical council on January 25, 1959, he linked the council and the expected updating of canon law so that the latter would apply juridically what the Council was to lay out theologically. Concerning the council John XXIII states it “happily will be conducive to the hoped for and expected updating of the Code of Canon Law, which should complement and complete these efforts at practical applications.”¹ In the oft repeated phrase of Pope Paul VI this called for a *novus habitus mentis*.² The revised Code reflects the papal desire that it should embody the renewal reflected in the council.³ When promulgated precisely twenty four years later, Pope John Paul II noted that the Code necessarily was delayed until the fruit of the council was known and was able to be integrated.⁴ This is especially true with regard to the ecclesiology of *Lumen gentium* and *Gaudium et spes* which provided an opportunity for the Church to reflect on its nature and mission both for renewal and reform.

Since the guiding light for the Code’s revision was to be the Second Vatican Council, its subsequent renewed emphasis on the notion of Church as *communio* provided a key theme for the revision. While this term has been considered by both theologians and canonists in a wide array of contexts which reflect its richness, for this present work the term will be viewed from

¹ JOHN XXIII, Address to the Roman Cardinals, 25 January 1959, in *AAS*, 51 (1959), 65-69, English translation in *TPS*, 5 (1959), 400-401.

² PAUL VI, address to the Sacred Roman Rota, 4 February 1977, in *AAS*, 69 (1977), 147-153, English translation in W. H. WOESTMAN, *Papal Allocutions to the Roman Rota 1939-2011*, Ottawa, Faculty of Canon Law, Saint Paul University, 2011, 143 (=address to Roman Rota 1977).

³ See among others: PAUL VI address to the International Congress of Canonists, 19 January 1970 in *TPS*, 15 (1970), 70-74; PAUL VI address to the Second International Congress of Canonists, 17 September 1973, in *TPS*, 18 (1973), 275-283 (=1973 Congress of Canonists); JOHN PAUL II plenary session of the Pontifical Commission for the Revision of Canon Law, 29 October 1981, in *TPS*, 27 (1982), 106-107.

⁴ JOHN PAUL II, apostolic constitution *Sacrae disciplinae leges*, 25 January 1983, in *AAS*, 75 II (1983), 7-14, English translation in *Origins*, 12 (1982-1983), 555 (=Sacrae disciplinae leges)

within the context of c. 209 §1 of the Latin Code, a foundational canon for understanding *communio* and the accompanying fundamental obligation of the Christian faithful to preserve ecclesial communion throughout all aspects of their lives.⁵

1.1 The Development and Revision of Canon 209 §1

When considering the meaning of a canon, it is instructive to take into account its development through the various schema to place it within the proper context. In the first two chapters of his doctoral dissertation, Robert Kaslyn explores the *fontes* of c. 209 §1 from *Lumen gentium* and *Gaudium et spes* through the revision process of the Code to its placement in Book Two, The People of God, before he concludes with a recognition of the importance of a *novus habitus mentis* for those involved in canonical analysis. It is this attitude and the importance of *communio* that John Paul II was referencing when he promulgated the new Code.

The instrument the Code is, fully suits the church's nature, for the church is presented, especially through the magisterium of the Second Vatican Council, in her universal scope, and especially through the council's ecclesiological teaching. In a certain sense, indeed, this new code may be considered as a great effort to transfer that same ecclesiological or conciliar doctrine into canonical language. And, if it is impossible for the image of the church described by the council's teaching to be perfectly converted into canonical language, the code nonetheless must always be referred to that very image, as the primary pattern whose outline the code ought to express as well as it can by its own nature.⁶

Kaslyn addresses the relationship between theology and canon law and the *communio* ecclesiology that provided guidance for the Code. He highlights how this new orientation in canon law underscores the equity of all the Christian faithful before a consideration of the distinctions. This *communio* is the framework within which we fulfill our baptismal mission.⁷

⁵ CIC, c.209 §1, English translation *Code of Canon Law: Latin – English Edition, New English Translation*, prepared under the auspices of the CANON LAW SOCIETY OF AMERICA, Washington, DC, CLSA, 1999. This translation is used for all subsequent citations of the canons of the 1983 Code.

⁶ JOHN PAUL II, *Sacrae disciplinae leges*, 556.

⁷ R. KASLYN, “*Communion with the Church*” and the *Code of Canon Law: An Analysis of the Foundation and Implications of the Canonical Obligation to Maintain Communion with the Catholic Church*, Lewiston, NY, The Edwin Mellon Press, 1994, 1-103 (= *Communion with the Church*).

Avery Dulles notes that this orientation is not new but rather is a recovery of a rich tradition in the early Church that was incrementally buried beginning in the middle ages before being recovered and renewed at the Second Vatican Council. He sees this as a concept that can provide new hope and direction for the future of the Church and all the People of God.⁸

1.1.1 The Text of the Canon

It is in the discussions of the *coetus* “*De laicis deque associationibus fidelium*,” which met 28 -31 January 1970 that the obligation to maintain ecclesial communion is first suggested. This went through several revisions including more explicit references to the Petrine office and the College of Bishops before the canon was finalized. The challenge was in balancing the connection with baptism and the determination of internal and external communion, while at the same time strengthening the articulation of the obligation from *tenere* to *astringere*. Kaslyn believes we can draw two conclusions from this evolution. The first is the importance of the obligation to maintain communion and the second is that the principle of *communio* has many meanings. He notes that the choice to use *communio* in c. 209 §1 includes the multiplicity of meanings which are so intimately bound to each other as to make any attempt to isolate them incomplete.⁹

1.1.2 Terminology in the Canon

The use of *communio* includes not only the multiplicity of meanings but also all the levels of meaning, the empirical, theoretical and intentional. We are warned to avoid two temptations which represent extremes. First, *communio* is not a vague disposition. It expresses itself in

⁸ A. DULLES, “Forward,” in R. KASLYN, “*Communion with the Church*,” iv. – vi.

⁹ R. KASLYN, “*Communion with the Church*,” 106-112.

various ways which require juridic form while at the same time is grounded in charity. Secondly, attempting to compose a comprehensive definition of *communio* is not productive.¹⁰

The introductory canons to Title One of Book II concerning the Christian faithful refer to all the baptized, particularly c. 204 §1. This is given more specificity in cc. 204 §2 and 205 by providing criteria to determine who is in full communion with the visible structure of the Catholic Church. There are various interpretations of whether the terms “the Church” and “*christifideles*” are to be understood broadly or not, but given the context in which they are placed, Kaslyn presumes that the terms in c. 209 §1 refer to baptized Roman Catholics in the Latin Church who are in full ecclesiastical communion.¹¹ A broader foundation for the obligation of Latin Catholics to maintain communion arises from the theological understanding of the grace of baptism. With the reception of baptism, one becomes subject to certain rights and duties. Canon 96 distinguishes, however, between all the baptized and those in ecclesiastical communion. Canon 204 §1 reminds us of the three *munera* of all the Christian faithful which itself calls all to the unity of the Church of Christ and provides the possibility of a choice to embrace full communion in the external forum.¹² *Lumen gentium* states, “Nevertheless, many elements of sanctification and of truth are found outside its visible confines. Since these are gifts belonging to the church of Christ, they are forces impelling toward catholic unity.”¹³

¹⁰ Ibid., 113.

¹¹ Ibid., 114.

¹² On the subject of incorporation into the Church of Christ by baptism and one’s relationship with the Catholic Church, see J. PROVOST, commentary on c. 204, in J. CORIDEN, T. GREEN AND D. HEINTSCHEL (eds.), *The Code of Canon Law: A Text and Commentary*, commissioned by the CANON LAW SOCIETY OF AMERICA, New York, Mahwah, NJ, Paulist Press, 1985, 122-126.

¹³ *LG*, no. 8, English translation in FLANNERY1, 9.

1.2 Canonical Analysis of c. 209 §1

Theological reflection on the various aspects of *communio* must be distinguished from the experience of *communio*. Kaslyn explores the works of various authors noting that there is a tendency to emphasize either the internal or the external dimension even while acknowledging the importance of both.¹⁴ For example, the sacraments are a means of God's self-revelation to a person or community. The external sign reveals the reality of God's grace while remaining external. As a symbol, it effects the grace that it symbolizes. The external provides the vehicle for God's self-revelation as intra-Trinitarian *communio*. However, the two realities are not one and the same. We know that finite language and categories cannot encompass the infinite. Similarly, the visible Church made up of a society of faithful provides the external expression of a *communio* that exists as a true symbol of God's presence and saving grace. The complementarity of the internal and external is noted by R. Castillo Lara when he states: "The two aspects, the interior and exterior, are similar to the obverse and the reverse of the same medal: they are inseparable and indivisible. The one does not exist without the other and cannot establish only by itself authentic ecclesial communion."¹⁵

Kaslyn contends that *communio* includes four foundational principles which express certain inherent elements. The first is the divine origin of *communio* which is founded upon the divine plan of salvation. The second notes *communio* requires an external expression. The third

¹⁴ R. KASLYN, *Communion with the Church*, 115-129. Regarding the obligation in this canon, the author cites P. VALDRINI (ed.), *Droit Canonique*, Précis Dalloz, Paris, 1989, no. 80 p. 53, as viewing the obligation as more moral than juridical; G. GHIRLANDA in *Il diritto nella Chiesa misterio di comunione; compendio di diritto ecclesiale*, Milan, Ed. Paoline; Rome, Editrice Pontificia Università Gregoriana, 1990, no. 41, p. 63 believing it to be a correlation between the external profession of faith and the practice of charity, and J.A. CORIDEN, in *An Introduction to Canon Law*, New York and Mahwah, NJ, Paulist Press, 1990, 32 viewing the canon more generally as a literary example of a directive.

¹⁵ R. CASTILLO LARA, "La communion ecclésiastique dans le nouveau Code de droit canonique," in *Studia Canonica*, 17 (1983), 336.

acknowledges the dynamic nature of *communio* rather than as a static reality. The fourth recognizes the various grades or levels of *communio*, internal and external, depending on one's relationship to the Catholic Church.¹⁶

1.3 *Communio* and Related Canonical Issues

To provide a more comprehensive study of *communio* as it relates to this study, there are additional canonical issues that must be addressed. First, there are questions concerning the three bonds in c. 205. Then we need to consider the concepts of communion and incorporation before we can determine the type of obligation reflected in c.209 §1.

1.3.1 *Communio* and c. 205

The *fontes* for this canon cite *Lumen gentium* 14 as its explicit source. Additionally, *Unitatis redintegratio* provides the context for those communities within the one Church of Christ that do not have full communion with the Catholic Church. Discussion centered on the use of the term “fully” (*plene*) as well as the deletion of the phrase “possessing the Spirit of Christ” from the *Lex Ecclesiae Fundamentalis* and the omission of a fourth bond, that of communion. This latter bond instead is taken up in c. 209 in the obligation of all the Christian faithful to maintain communion with the Church.¹⁷ Even as the development of c. 205 focused on the external observable criteria, it acknowledged the internal dimension “united with Christ”.¹⁸ Ultimately, the purpose of this canon is to establish a juridic means of determining full communion.

¹⁶ R. KASLYN, “The Value Underlying the Law: A Foundational Analysis of Canon 209 §1,” in *Studia canonica*, 29 (1995), 16-18, ID., in *Communion with the Church*, 131-137 the author notes that these principles apply primarily to the human expression of *communio* and only by analogy to the Trinitarian *communio*.

¹⁷ R. KASLYN, “The Christian Faithful,” in *New Commentary on the Code of Canon Law*, J. Beal et al. (eds.), New York, NY/Mahwah, NJ, Paulist Press, 2000, 250.

¹⁸ *LG*, no. 14, p. 20.

Since it relates to union with Christ, the introduction of the spiritual dimension within the external creates issues because law itself cannot encompass all of the Christian life, for the Holy Spirit moves beyond external legal bonds. This influences our understanding of the three bonds required for full communion: faith, sacraments and governance. The external manifestation of the profession of faith presumes the profession as a response to God's invitation to enter into a relationship. By means of the sacraments the Church lives out its mission as the sacrament of salvation in the world. While it presupposes faith, faith also is the ongoing source to nourish and strengthen one's relationship with God. In the governance of the hierarchical structure, we have the externally visible manifestation of the interiority of the first two bonds. Kaslyn beautifully notes that in these three bonds we see the gradual movement "from the primarily interior realm of faith through the sacramental mediation of the spiritual and visible realm to the primarily external realm of governance".¹⁹ The Congregation for the Doctrine of the Faith (CDF) makes this link when it reminds the world's bishops that "Ecclesial communion is at the same time both visible and invisible [...] This link between the invisible and the visible elements of ecclesial communion constitutes the Church as the sacrament of salvation."²⁰

1.3.2 Full Communion and Incorporation into the Church

It is through baptism that one is incorporated into Christ and his Church. It is only in the Catholic Church that the fullness of all the means of salvation is available. *Lumen gentium* points out that the Church of Christ subsists in the Catholic Church,²¹ so we need to distinguish between incorporation in the Church of Christ and full incorporation into the Catholic Church. The

¹⁹ R. KASLYN, *Communion with the Church*, 143.

²⁰ CDF, Letter to the Bishops of the Catholic Church on Some Aspects of the Church Understood as Communion, 28 May 1992, in *AAS*, 85 (1993), 838-850, English translation in *Origins*, 22 (1992-1993), 108-112, no. 4.

²¹ *LG*, no. 8, p. 9.

christifideles of c. 204 are all the baptized, not just Catholics; they are incorporated but not fully. *Lumen gentium* explains that being fully incorporated into the Catholic Church requires the three bonds that are in addition to the indwelling of the Spirit of Christ in all the baptized.²²

The necessity of a faith commitment can be drawn by analogy from what is required of the parents/guardians of an infant or of adults requesting baptism (see c. 865 §1). This requirement underscores the gift of baptism as dynamic and requiring continuous nurturing after reception, something every minister struggles to impart when preparing individuals or parents requesting baptism. It is a daily choice throughout one's life to accept the grace God offers. "A person who does not persevere in charity, however, is not saved, even though incorporated into the Church. Such people remain indeed in the bosom of the church, but only 'bodily' not 'in their hearts'... If they fail to respond in thought, word and deed to that grace, not only will they not be saved, they will be the more severely judged."²³

Theologically, full incorporation can be viewed as analogous to full communion. From this perspective, *communio* is a positive response at some level to God's offer for participation in the divine life. It is a free gift, an offer of grace that is already present but not appropriated unless freely accepted and nurtured. However, this does not impair the sacramental character of baptism. One is still incorporated into the Church but only in body, not in heart, as *Lumen gentium* noted above. Incorporation is permanent: once Catholic always Catholic.²⁴

Juridically, *communio* has a useful purpose such as determining who can serve as a godparent. But as any pastoral minister knows, this external, verifiable measurement does not

²² *LG*, no. 14, p. 20.

²³ *Ibid.*

²⁴ See R. KASLYN, *Communion with the Church*, 146. For further discussion about participation in God's self-communication see K. RAHNER, "Baptism," in *The Practice of the Faith, A Handbook of Contemporary Spirituality*, K. LEHMANN and A. RAFFELT (eds.), New York, Crossroad Publishing Company, 1984, 47-50.

and cannot express the reality that *communio* represents. Clearly full communion implies more than what can be externally known. Thus incorporation also has varying levels which can be identified as full incorporation, incorporation and non-incorporation.²⁵ From a canonical perspective, the external criteria determine communion and incorporation, always keeping in mind however the importance of an underlying faith relationship with God.

1.3.3 The Nature of the Obligation in c. 209 §1

Kaslyn claims most theologians and canonists have not yet determined explicitly the type of obligation entailed in this canon. Acknowledging the importance of this determination, he suggests the obligation be approached from two perspectives. First is the moral obligation that flows from the necessity of a response to God's invitation to relationship. The second establishes a right/duty scenario which is a result of the moral obligation of baptism and the inherent social nature of the person.²⁶ As Paul VI insisted, "The 'communion' is the union of the baptized, a spiritual reality, but one that is socially represented."²⁷ Since all have the capacity to hear the invitation of God, it is in the free response and reception of baptism that the individual establishes *communio* with the Trinitarian life that is given in baptism, a relationship that must be nurtured throughout one's life. This free positive response places the individual in varying degrees of communion with the Church which is the sign of the salvific relationship. This divine life is expressed in the visible and social dimension of the Church which reaches its fullness in the Catholic Church. Paul VI also warned, "All members of the Church are obligated to recognize the necessity for structure in the Church. If it were lacking, communion in Christ could

²⁵ See *ibid.*, 147.

²⁶ *Ibid.*, 148.

²⁷ PAUL VI, 1973 Congress of Canonists, 280.

not be put into practice socially, nor could it operate effectively.”²⁸ If one’s relationship with God is dynamic, then necessarily so is the obligation of *communio*.

Kaslyn suggests there are two consequences to this. First each person must personally appropriate this directive. Taking into consideration the obligation to maintain communion, one is to be guided by Church teaching and norms in order to determine how to live it externally in one’s own life, including a receptivity to God’s grace. This is followed by the second consequence whereby in maintaining communion one is able to exercise rights and obligations. Canon 209 §1 is the juridical expression of the obligation to actively respond to God’s offer of grace. The divine origin provides the purpose to remain in communion with the Church, fulfilling the rights and obligations inherent in that participation.²⁹ For only in communion can the rights and obligations of the faithful be attributed their full meaning and contribute to the common good of the Church.

Concern for a *communio* ecclesiology is clearly seen throughout the pontificate of Pope John Paul II. He highlights the obligation of maintaining communion as a response to the divine revelation and invitation of God when he spoke with the bishops from Michigan and Ohio on their ad limina visit in 2004. In reminding them to foster and strengthen a spirituality of communion he stated, “Like her holiness, the church’s unity is an unfailing gift of God and a constant summons to an ever more perfect communion in faith, hope and love. God himself is communion, Father, Son and Holy Spirit, and he calls all people to share in that same Trinitarian communion.”³⁰ When he promulgated the new code, John Paul II explained that rather than

²⁸ Ibid., 281-282.

²⁹ R. KASLYN, *Communion with the Church*, 147-150.

³⁰ JOHN PAUL II, *ad limina* address to the bishops of Michigan and Ohio, “Fostering and Strengthening the Spirituality of Communion,” in *Origins*, 34 (2004-2005), 13.

substituting for these values, the purpose of canon law is rather “to create such order in ecclesial society that, assigning primacy to love, grace and charisms, it at the same time renders more active their organic development in the life both of the ecclesial society and of the individuals belonging to it.”³¹

Ladislas Orsy acknowledges this obligation when he notes that a “Christian is bound to God by a ‘person-to-person’ obligation. All duties that emerge in his or her life are specifications of this unique overriding bond. This is really the best key to understand the nature of canon law; it specifies an already existing personal obligation in the faithful [...] A Christian subject always responds to his personal God.”³²

In his allocution to the Roman Rota, Paul VI noted, “The aim of the Second Vatican Council, for its part, was that the whole life of the ecclesial communion might be effectively ordered through faith and charity [...] that an order and peaceful communion may be perfected, protected and preserved by every appropriate means. For this reason, the attainment of the Council’s goal requires a juridical life [...] as an unqualified necessity.”³³

Laws and structures are a means, not an end. The ecclesiastical institutions exist to express and promote interior communion of the Christian faithful with God and each other. The juridic obligation in c. 209 §1 expresses the value that is the basis for order in the Church, that it may fulfill its mission to be sacrament of God’s salvation in the world.

³¹ JOHN PAUL II, *Sacrae disciplinae leges*, 556.

³² L. ORSY, “The Reception of Laws by the People of God: A Theological and Canonical Inquiry in the Light of Vatican Council II,” in *The Jurist*, 55 (1995), 514 (= “Reception of Laws”).

³³ PAUL VI, address to Roman Rota 1977, 138-139.

2 – The Authentic Magisterium

Reflecting an emphasis on the Church as a spiritual communion of “people made one by the unity of the Father, the Son and the holy Spirit,”³⁴ *Lumen gentium* placed the chapter on the Church as the People of God before its chapter on the hierarchy, providing a clear message that all believers share a common dignity and equality by virtue of faith, baptism and a call to participate in the mission of the Church. Similarly, in the development of the Code, it was decided to place the teaching office of the hierarchical Church in Book III after Book II which speaks of the Church as the People of God, echoing *LG*, with an emphasis on their equality by virtue of baptism and profession of faith. Both affirm the baptized share in various ways the *tria munera* of Christ which takes particular form as offices of the hierarchy, including the teaching office.

In this chapter we will turn our attention to the authentic magisterium of the Church. We will consider its manifestation in the teaching office whereby the faith handed down from the apostles is discerned and communicated in order that the Christian faithful may appropriate it and give it the proper response.

2.1 Magisterium

The pontificate of Pope John Paul II had a particular impact on the recent exercise of the teaching office of the bishops.³⁵ While acknowledging the role of all the Christian faithful and the ongoing need for a deeper understanding of the mysteries of the faith, in his 1988 *ad limina*

³⁴ *LG*, no. 4, p. 3.

³⁵ See B. FERME, “Developments in Church Magisterium: The Pontificate of John Paul II,” in *Periodica*, 90 (2001), 45-83 (= “Developments in Church Magisterium”); See also L. BLYSKAL, *The Ordinary Ecclesiastical Magisterium from the Antepreparatory Documents of Vatican Council II to Canons 752 and 753 of the 1983 Code*, JCD thesis, Anne Arbor, MI, University of Michigan, 1987, 303-310; See also CDF, *Instruction on the Ecclesial Vocation of the Theologian Donum veritatis*, 24 May 1990, AAS, 82 (1990), 1550-1570, English translation in *Origins*, 20 (1990-1991), 117-126 (= CDF, *Donum veritatis*).

address to the bishops of New York, he reminds the bishops that theological knowledge is founded upon faith as its point of reference since faith comes from divine revelation. He states:

Faith has not been transmitted to the human mind as a philosophical invention to be perfected: rather, it has been entrusted to the spouse of Christ as a divine deposit to be faithfully guarded and infallibly interpreted [...] Revealed truth has been entrusted to the church once and for all [...] Hence the profound significance of the Pauline expression ‘deposit’ of faith. At the same time, this deposit allows for a further explanation and for a growing understanding as long as the church is on this earth. This task of achieving an ever deeper understanding of the content of faith belongs to every member of the church. But the Second Vatican Council assures us that “the task of authentically interpreting the word of God, whether written or handed down, has been entrusted exclusively to the living teaching office of the church. This magisterium is not above the divine word, but serves it with a specific *carisma veritatis certum* which includes the charism of infallibility, present not only in the solemn definitions of the Roman pontiff and of ecumenical councils, but also in the universal ordinary magisterium (LG 25), which can truly be considered as the usual expression of the church’s infallibility.”³⁶

In his work on the teaching authority of the magisterium, Francis Sullivan explains the term “magisterium” comes from the classical Latin *magisterium* meaning the role and authority of one who was a *magister* or teacher and master of an art or trade reflecting the authority of one who teaches. By the middle ages the symbol of this teaching authority was the seat or chair of either the bishop in his cathedral or the professor in the university.

This term has evolved to refer primarily to the teaching office of the bishop. Vatican I has several references to magisterium as presently understood. *Dei filius* refers to the college of bishops outside an ecumenical council including its ordinary and universal teaching authority.³⁷ *Pastor aeternus* states papal primacy includes the supreme power of *magisterium*.³⁸ Vatican II

³⁶ JOHN PAUL II, *ad limina* address to the bishops of New York, “The Magisterium and Infallibility,” in *TPS*, 34 (1989), 57-58.

³⁷ VATICAN I, Dogmatic Constitution on the Catholic Faith, *Dei filius*, chapter 3 in N. TANNER (ed.), *Decrees of the Ecumenical Councils*, vol. 2, London, Sheed & Ward, 1990, 807 (= *Dei filius*).

³⁸ VATICAN I, Dogmatic Constitution on the Church of Christ, *Pastor aeternus*, chapter 4 in N. TANNER (ed.), *Decrees of the Ecumenical Councils*, 816 (= *Pastor aeternus*).

speaks of the pastoral teaching office as well when it refers to the infallible magisterium of the Roman Pontiff³⁹ and applies it to the college of bishops as the successor to the college of the apostles.⁴⁰ This council also uses the terms “authentic” and “supreme” with regard to the magisterium of the Roman Pontiff and includes the bishops gathered in an ecumenical council in its definition.⁴¹ Sullivan claims there are two aspects to this modern development. The first is the use of magisterium to refer almost exclusively to the teaching office of the hierarchy. The second is more recent whereby it has come to mean the hierarchy as holders of the teaching office, not the teaching office itself.⁴²

2.1.1 Authentic Magisterium

Lumen gentium 25 is rich in references to the authentic magisterium. In its first paragraph it refers to bishops as “authentic teachers, that is, teachers endowed with the authority of Christ” and speaks of the “authentic teaching authority of the Roman Pontiff.” The second paragraph refers to the situation in which the bishops of the world are “authoritatively teaching on a matter to do with faith or morals.”⁴³ Sullivan believes the rendering of the Latin *authenticum* and *authentice* should be “authoritative,” not “authentic,” in all cases to avoid the impression that the

³⁹ *LG*, no. 18, p. 26.

⁴⁰ *LG*, no. 22, p. 30.

⁴¹ *LG*, no. 25, pp. 34-35. See also R. GALLARADETZ, *By What Authority? A Primer on Scripture, the Magisterium and the Sense of the Faithful*, Collegeville, MN, Liturgical Press, 2003, 57-58 on the attempt of Vatican II to correct the imbalance created by Vatican I’s “papo-centric vision” of the Church that resulted from a subsequent lack of attention to the limits placed on papal authority and the first council’s inability to address the role of bishops in any detail due to its premature suspension. See also L. ORSY, *The Church: Learning and Teaching*, Wilmington, DE, Michael Glazier, Inc., 1987, 64-65 (= *Church Learning*). Orsy states that Vatican I explicitly affirmed papal infallibility but did so in the context of it belonging to the whole church when it taught “[...] that infallibility with which the divine Redeemer wanted his church to be endowed in defining doctrine concerning faith and morals” (*Pastor aeternus*, 815).

⁴² See F. SULLIVAN, *Magisterium: Teaching Authority in the Catholic Church*, Eugene, OR, WIPF & Stock Publishers, 2002, 24-34 (= *Magisterium*). See also ORSY, *Church Learning*, 46-55.

⁴³ *LG*, no. 25, pp. 34-35.

Council was claiming only bishops can give genuine interpretation of Scripture or Tradition with any kind of authority. The council fathers understood well as they lived the experience that others with expertise in a given discipline speak authoritatively within their–competency.⁴⁴ Instead the council is speaking of the bishops endowed with the mandate to teach the gospel in the name of Jesus Christ as successors of the apostles either individually or collectively.

2.1.2. Source of Teaching Authority

Sullivan observes that these passages also indicate the source of the bishop’s authority as well as give an indication of the type of authority being exercised when it states the bishops are “endowed with the authority of Christ”⁴⁵ and their judgement is “made in the name of Christ, in matters of faith and morals”⁴⁶ to which the faithful are to adhere with a religious docility of spirit, that is, of will and intellect.⁴⁷ The source of the teaching authority of the magisterium is to be found in *LG* 20 which states:

This divine mission, which was committed by Christ to the apostles, is destined to last until the end of the world, since the Gospel which they are obliged to hand on is the principle of all of the Church’s life for all time. For that very reason the apostles were careful to appoint successors in this hierarchically constituted society [...] Thus according to the testimony of St. Irenaeus, the apostolic tradition is manifested and preserved throughout

⁴⁴See F. SULLIVAN, *Magisterium*, 28-29, for a discussion on recovering the use of the term magisterium to refer to the twofold magisterium of bishops and theologians. The author believes, given its current usage, it would be confusing and imprudent. Cf. A. DULLES, in Catholic Theological Society of America *Proceedings*, 35 (1980), 155-169 (=CTSA) who suggests it may be beneficial to refine the term to include a dual magisterium of theologians and the hierarchy as understood by medieval authorities such as Gratian and Aquinas. Cf. L. ORSY, *Church Learning*, 65-67, for the distinction in the role of the bishop who has the charism of the Spirit to witness to the mystery of what God has done while the task of the theologian is to go deeper into its meaning. Their functions are different but are intended to be complementary. He agrees with Sullivan that given the current understanding of the term “magisterium,” it would cause more confusion than any benefit to be gained by proposing a dual magisterium at the present time. For a brief and unbiased presentation of the main lines of the magisterium and its relations with scholars, see Y. CONGAR, “A Brief History of the Forms of the Magisterium and Its Relations with Scholars,” in *Readings in Moral Theology*, vol. 3, New York, Paulist Press, 1982, 314-331.

⁴⁵ *LG*, no. 25, p. 34.

⁴⁶ *LG*, no. 25, p. 34.

⁴⁷ See F. SULLIVAN, *Magisterium*, 27-28.

the world by those whom the apostles made bishops and by their successors down to our own time.⁴⁸

It concludes with the intention of the council fathers: “The sacred synod consequently teaches that the bishops have by divine institution taken the place of the apostles as pastors of the Church in such wise that whoever hears them hears Christ and whoever rejects them rejects Christ and him who sent Christ.”⁴⁹ Clearly the ultimate authority is God who revealed the truth through the Word made flesh which was entrusted to the apostles and their successors. The act of faith on the part of the Christian faithful is an assent to the reliability that the message proposed by the teaching authority of the magisterium is indeed this truth. It is to this authority that John Paul II appealed when he declared in *Ordinatio sacerdotalis* that “the Church has no authority whatsoever to confer priestly ordination on women [...]”⁵⁰

2.2 Levels of Authentic Magisterial Teachings

Ecclesial documents are issued by a variety of ecclesiastical authorities and it often is unclear from either the title or the one issuing what weight it carries. Frank Morrisey reminds us that the Second Vatican Council recognized this diversity and its significance in reference to the assent due to papal documents when it stated: “His mind and will ... may be known chiefly either from the character of the documents, from his frequent repetition of the same doctrine, or from his manner of speaking.”⁵¹

⁴⁸ *LG*, no. 20, p. 27.

⁴⁹ *Ibid.*, 28.

⁵⁰ JOHN PAUL II, apostolic letter *Ordinatio sacerdotalis*, 22 May 1994, in *AAS*, 76 (1994), 545-548, English translation in *Origins*, 24 (1994-1995), 51 (= *OS*).

⁵¹ *LG*, no. 25, pp. 34-35. See F. MORRISEY, “Papal and Curial Pronouncements: Their Canonical Significance in Light of the 1983 Code of Canon Law,” in *The Jurist*, 50 (1990), 110-111. See also J. FORD and G. KELLY, “Doctrinal Value and Interpretation of Papal Teaching,” in C. CURRAN and R. MCCORMICK (eds.), *Readings in Moral Theology*, no.3, 1-13, for a theological analysis of the problems concerning the doctrinal value of ecclesiastical documents and the need to discern the papal intentions within their historical context. The authors then

Canon 753 affirms this in stating: “All the Christian faithful are obliged to observe the constitutions and decrees which the legitimate authority of the Church issues in order to propose doctrine and proscribe erroneous opinions; this is especially true of the constitutions and decrees issued by the Roman Pontiff or the college of bishops.” A document may and often does contain statements of different levels of authority which command different levels of assent, or if not assent at least the respect of the faithful. One needs to determine the nature and authority of the document in order to guide one’s assessment of its importance. This discernment of the teaching authority then provides a juridical criteria that determines the response owed by the faithful.

In 1989, precisely to provide more clarity regarding the various teachings and response due, the CDF published a new profession of faith that added three paragraphs after the Creed and extended the category of those required to take the oath to all those listed in c. 833, 5°-8° who exercise an office in the name of the Church.⁵²

However, this addition created a *lacuna* in the 1983 Code of Canon Law and the 1990 Code of Canons of the Eastern Churches regarding the regulation of the new second paragraph. In 1998 Pope John Paul II issued an apostolic letter *Ad tuendam fidem* to address this by adding a §2 to c. 750 in the Latin Code and to c. 598 in the Eastern Code as well as a reference to this new paragraph in the corresponding penal canon 1371, 1° in the Latin Code and 1436 § 2 in the Eastern Code.⁵³ In the CDF commentary on the apostolic letter Ratzinger states, “This new formula of the *professio fidei* restates the Nicene-Constantinopolitan Creed and concludes with

also conclude: “When there is a question of official teaching that would end legitimate controversy, this decisive character should be evident.”

⁵² CDF, Profession of Faith and Oath of Fidelity, 1 July 1988, in AAS, 81 (1989), 105, English translation in *Origins*, 18 (1989), 661, 663.

⁵³ JOHN PAUL II, apostolic letter *Ad tuendam fidem*, 18 May 1998, in AAS, 90 (1998), 457-461, English translation in *Origins*, 28 (1998-1999), 113-116 (= *Ad tuendam fidem*).

the addition of three propositions or paragraphs intended to better distinguish the order of the truths to which the believer adheres. The correct explanation of these paragraphs deserves a clear presentation so that their authentic meaning, as given by the Church's magisterium, will be well understood, received and integrally preserved."⁵⁴

2.2.1. Divinely Revealed Dogmas (cc. 749, 750 §1)

Huels observes the three paragraphs added to the profession of faith by the CDF essentially parallel the three levels of teaching and responses owed by the faithful. The first and highest level includes those divinely revealed dogmas that are declared infallibly either by the ordinary and universal magisterium or by the extraordinary magisterium by means of a solemn act of the pope himself or the college of bishops generally within an ecumenical council. This level calls for the assent of faith by the Christian faithful. These teachings are already part of the deposit of faith. The solemn declaration provides clarification that the teaching is infallible.⁵⁵ Sullivan points out the distinction that it is only the infallibility of the magisterium in defining dogmas of faith which is itself a dogma of Catholic faith. The Church has never defined the infallibility of the magisterium with regard to non-revealed truths. He understands infallibility as follows:

[...] to believe that the magisterium is infallible in defining dogmas of faith is to believe that when an ecumenical council or pope definitively proclaims something to be divinely revealed, the Holy Spirit assists the magisterium in such a way as to guarantee that what is defined is true. Infallibility then means that the Holy Spirit sees to it that the magisterium does not solemnly oblige the faithful to believe something as divinely revealed which really is not contained in God's Word.⁵⁶

⁵⁴ CDF, Doctrinal commentary on the concluding formula of the *Professio fidei*, 29 June 1998, in AAS, 90 (1998), 544-551, English translation in *Origins*, 28 (1998-1999), no.4, 117.

⁵⁵ See J. HUELS, "The Responses Owed by the Faithful to the Authentic Magisterium of the Church," in *Studies in Church Law*, 7 (2011), 114-115 (= "Responses Owed").

⁵⁶ F. SULLIVAN, *Magisterium*, 80.

Sullivan goes further to distinguish the human element inherent in any attempt to express a divine truth stating that the infallibility does not exempt the defined dogma from any limitation which is compatible with the truth. In other words, it still remains a human definition.⁵⁷ While criteria for a solemn proclamation of infallible papal teaching “ex cathedra” was clarified at Vatican I,⁵⁸ it is less clear regarding teachings of the universal and ordinary magisterium. Since this latter is defined as the Roman Pontiff together with the College of Bishops exercising their proper teaching office, it follows that these may or may not include infallible truths. Huels rightly observes that, for the most part, we know which teachings are infallible only in hindsight. They are recognized as a doctrine rooted in Scripture and consistently taught by the bishops and accepted by all the faithful but have not been solemnly defined because it was not needed.⁵⁹

Kenneth Kauchek believes the lack of clarity with regard to the infallibility of a teaching of the universal ordinary magisterium can be a source of confusion.⁶⁰ In order to achieve clarity, he notes “The whole body of bishops, who are in communion with one another and with the pope, must be in a unanimous agreement in their teaching and they must present this teaching *tamquam definitive tenendam*,” a teaching to be definitively held.⁶¹ Huels states there is no historical evidence that the pope and the college of bishops within the exercise of their ordinary magisterium ever specifically intended to proclaim a doctrine infallibly. Such proclamations of infallible doctrines have only been done by way of a solemn papal act or by proclamation of an

⁵⁷ See *ibid.*, 79-80.

⁵⁸ See *Pastor aeternus*, 815.

⁵⁹ See J. HUELS, “Responses Owed,” 116.

⁶⁰ See K. KAUCHEK, *The Infallible "Ordinary and Universal Magisterium": A Canonical Investigation into the Sources of Some Key Expressions of Canons 749-750 of the 1983 Code of Canon Law*, JCD thesis, Rome, Pontifical Gregorian University, 1996, 225.

⁶¹ *Ibid.*, 207.

ecumenical council in the extraordinary form. He astutely questions how such a collegial act could be verified juridically and continues by pointing out c. 342 §2 which refers to the decrees of the college of bishops outside an ecumenical council that must be confirmed by the pope.⁶² Though this has never been done, theoretically this expression is possible given that the supreme power of the college of bishops is present in all the bishops united as one though dispersed throughout the world. The law simply does not indicate the procedure by which the college of bishops could proclaim a dogma outside an ecumenical council.⁶³ John Paul II's encyclical *Evangelium vitae* provides a good example of the imprecision in determining whether or not a teaching is an infallible expression of the ordinary and universal magisterium.⁶⁴

George Nedungatt provides five criteria for determining the infallible nature of a doctrine by the ordinary and universal magisterium: (1) the bishops are dispersed throughout the world rather than gathered in an ecumenical council; (2) they maintain communion among themselves and with the bishop of Rome; (3) the object of their teaching is a matter of faith or morals; (4) they intend to propose the doctrine definitively, or at least concur that it is definitive; (5) they act

⁶² See *LG*, no. 22, p. 31.

⁶³ See J. HUELS, "Responses Owed," 117.

⁶⁴ JOHN PAUL II, encyclical letter *Evangelium vitae*, 25 March 1995, in *AAS*, 87 (1995), 401-522, English translation in *Origins*, 24 (1994-1995), 689-727 (= *Evangelium vitae*). See also "The Vatican's Summary of *Evangelium Vitae*," in *Origins*, 24 (1994-1995), 728, which refers to the weight of this document when it states it is "presented with great doctrinal authority: It is not only an expression ... of the ordinary magisterium of the pope, but also of the episcopal collegiality which was manifested first in the extraordinary consistory of cardinals in April 1991 and subsequently in a consultation of all the bishops of the Catholic Church, who unanimously and firmly agree with the teaching imparted in it." Cf. J. HUELS, "Responses Owed," 118, who proposes the consultation of the bishops dispersed throughout the world that preceded the letter did not constitute a truly collegial act and thus cannot be claimed as an exercise of the ordinary universal magisterium. Cf. B. FERME, "Developments in Church Magisterium," 71-72, who believes this encyclical is an example of such a teaching. He points out the final sentence that specifically uses the language of *LG* 25 regarding the ordinary and universal magisterium. He adds that this may indeed be a truth that is divinely revealed before acknowledging herein lies the problem of determining "which truths are divinely revealed in a technical sense and which truths are definitively taught though not technically divinely revealed."

in concert with the pope.⁶⁵ Huels affirms there is no canonical procedure for verifying these conditions, noting it is the Code that provides only the pontiff with the power to determine this procedure. He also reminds us that without canonical certainty we must keep in mind c. 749 §3 (CCEO, c. 597 §3) which states, “No doctrine is understood to be infallibly defined unless this is manifestly demonstrated.”⁶⁶

2.2.2 Teachings Closely Related to Divine Revelation (c. 750 §2)

The second level refers to doctrinal teachings concerning faith and morals that, while not divinely revealed, are closely related to divine revelation and are definitively proposed either by the ordinary and universal magisterium or by the extraordinary magisterium. This level calls for firmly accepting and holding such teachings. Huels points out that there is no infallible teaching that teachings at this second level are infallible. Therefore it follows that there can be diverse opinions about the infallibility of a teaching without directly challenging the teaching itself.⁶⁷

In his commentary on c. 750 §2, Eloy Tejero reiterates the commentary of the CDF when he states that the new §2 in the code provides wording that is “autonomous and clearer” than the language in section two of the profession which Tejero says led some “to conclude that there must be an implicit distinction therein between an assent of faith with respect to truths belonging to the deposit of faith and a definitive assent – not necessarily of faith – with respect to other truths taught infallibly.”⁶⁸ He ends by noting that the definitive nature of infallible teaching

⁶⁵ See G. NEDUNGATT, *A Guide to the Eastern Code: A Commentary on the Code of Canons of the Eastern Churches*, Kanonika 10, Rome, Pontificio Istituto Orientale, 2002, 452.

⁶⁶ See J. HUELS, “Responses Owed,” 118. To establish canonical certainty, he suggests a mailed vote as one possibility rather than simply a letter soliciting a response as was done with *Evangelium vitae*.

⁶⁷ *Ibid.*, 122.

⁶⁸ E. TEJERO, in A. MARZOA, J. MARAS, and R. RODRÍGUEZ-OCAÑA (eds.), *Exegetical Commentary on the Code of Canon Law*, prepared under the responsibility of the Martin De Azpilcueta Institute, Faculty of Canon Law, University of Navarre, E. CAPARROS, English edition, vol. II/1, Montreal, Canada, Wilson & Lafleur, 2004, 34.

regarding moral issues ultimately refers to the truths of faith. In this way the phrase, “namely those things required for the holy keeping and faithful exposition of the deposit of faith,” contained in §2 of c. 750, provides a needed clarification. It is more specific to the object of the act which is the faithful guarding and explanation of the deposit of faith.⁶⁹ According to the CDF, the wording of adherence to these truths is:

[...] of great importance because it refers to truths necessarily connected with divine revelation. Such truths manifest the particular inspiration of the divine Spirit given to the church in the exploration of Catholic doctrine and in the church’s deeper understanding of some truth concerning faith or morals. The truths definitively stated and the truths revealed are intimately linked either for historical reasons or through logical connection.”⁷⁰

2.2.3. Other Authentic Teachings (cc. 752-753)

The third level refers to all other authentic teachings of the magisterium that are not infallibly defined nor definitively taught, but which call for religious submission of intellect and will.⁷¹ Joseph Komonchak indicates the teachings referred to in cc. 752-753 come under one of two categories. Canon 752 includes those teachings of the pope or college of bishops as the supreme ordinary magisterium. The teachings that are regulated by c. 753 are those of the ordinary magisterium which includes bishops individually in their dioceses or in particular groupings. This latter is distinguished from the extraordinary magisterium even though it refers to the same supreme teaching authorities.”⁷² Though the response owed by the faithful to such teachings is similar, they are distinguishable by the canon to which they refer. Outside a

⁶⁹ Ibid.

⁷⁰ *Ad tuendam fidem*, no.3, 115.

⁷¹ See HUELS, “Responses Owed,” 125-129.

⁷² See J. KOMONCHAK, “Ordinary Papal Magisterium,” in C. CURRAN and R. MCCORMICK (eds.), *Readings in Moral Theology*, no. 3, 71.

definitive act, when the bishop of Rome individually or the college of bishops collectively speak regarding a teaching on faith or morals (c.752), the required response is religious *obsequium* of intellect and will. However, if it is a given bishop or a particular grouping of bishops teaching on such matters, the response is religious *obsequium* of mind (c.753).

The Latin *obsequium* has a richness that is not well represented when translated into any one of its English variations. Huels notes many authors simply retain the Latin. When it is translated, the choice of translation generally reflects the particular response proper to a given teaching. When needed, Huels prefers to translate it as “submission” which he believes best reflects the idea of the intellect and the will intended in the original.⁷³

2.3 Ordinary and Universal Magisterium

The first use of the term “ordinary magisterium” in a papal document is found in the letter *Tuas libenter* of Pius IX to the Archbishop of Munich in December 1863 which followed a growth in the exercise of papal teaching authority in the 19th century even as its temporal power decreased.⁷⁴ Many authors note the importance of this growth in the understanding of the purpose and manner of exercising the teaching office.⁷⁵

⁷³ See HUELS, “Responses Owed,” 125. For a further study on the use of the term *obsequium* as the response due to teachings, see also J. BOYLE, *Church Teaching Authority: Historical and Theological Studies*, Notre Dame, IN, University of Notre Dame Press, 1995, 87-88 (= *Church Teaching Authority*). See also L. ORSY, in “Magisterium and Dissent,” in *Theological Studies*, 48 (1987), 488-489; and F. SULLIVAN in “The Response Due to the Non-definitive Exercise of the Magisterium (Canon 752),” in *Studia Canonica*, 23 (1989), 271.

⁷⁴ PIUS IX, *Tuas libenter*, 21 December 1863, letter to Archbishop Scherr of Munich, in H. DENZINGER et al., *Enchiridion Symbolorum*, Barcelona, Herder, 1967, no. 2879 (= *Tuas libenter*).

⁷⁵ See J. BOYLE, *Church Teaching Authority: Historical and Theological Studies*, Notre Dame, IN, University of Notre Dame Press, 1995 for a study of the historical and theological development of church teaching. He suggests that the decline in temporal power may be influential in the rise of papal power. See also R. GAILLARDETZ, *Witness to the Faith: Community, Infallibility, and the Ordinary Magisterium of Bishops*, New York and Mahwah, NJ, Paulist Press, 1992, 18-145 (= *Witness to the Faith*) for a study on the historical development of the ordinary and universal magisterium. See also F. SULLIVAN, “The Ordinary Universal Magisterium,” in *The Jurist*, 56 (1996), 338-360, for a concise overview of the development of the Church’s understanding of the ordinary universal magisterium. See also B. FERME, in “Developments in Church Magisterium,” 47 for a brief summary of the specific institutional means developed to determine the truth of the faith from the early Church through Vatican II.

Ladislav Orsy writes the theological understanding of ordinary magisterium before Vatican II refers more to the *mode* in which a doctrine is determined to be an important element of the faith as a consistent expression of doctrine by the popes and bishops, which essentially is a formal definition. This understanding was preserved in c. 750 whose *fontes* is Vatican I's *Dei Filius*. It makes the clear distinction between solemn magisterium and ordinary magisterium as two modes of teaching infallibly. He suggests that based upon c. 750 it could be deduced that ordinary *and* universal teaching is infallible, but he disagrees the term “universal” can provide this clarification.⁷⁶

Sullivan states the term “universal ordinary magisterium” refers to “the concordant teaching of the whole Catholic episcopate together with the Pope”⁷⁷ apart from an ecumenical council. He believes Vatican I did not explicitly define the *infallibility* of the ordinary universal magisterium though he acknowledges it may be concluded that the obligation of all the faithful to believe what is taught by the ordinary universal magisterium follows since the whole Church cannot error.⁷⁸ Gaillardetz defines the ordinary universal magisterium as “the ordinary infallible teaching of the bishops, that teaching which occurs when the bishops, while dispersed throughout their local dioceses, nevertheless propose as one body that a particular teaching must be held definitively.”⁷⁹

⁷⁶ See L. ORSY, *Church Learning*, 61 where he suggests the term lacks the precision needed to provide the distinction. He refers to the ministry and teachings of the pope which most often are addressed to the entire Church without, by that fact alone, being infallible. He draws the same parallel with the gathering of the college of bishops which includes statements that certainly are not all infallible citing Vatican II as an example.

⁷⁷ SULLIVAN, *Magisterium*, 122.

⁷⁸ See *Ibid.*, 123.

⁷⁹ R. GAILLARDETZ, *Witness to the Faith*, 4.

2.3.1 Source of Infallibility

The first canon of Book III, Title One lays the foundation for the teaching ministry of the Church and its inherent infallibility. “The Church, to which Christ the Lord has entrusted the deposit of faith so that with the assistance of the Holy Spirit it might protect the revealed truth reverently, examine it more closely, and proclaim and expound it faithfully, has the duty and innate right, independent of any human power whatsoever, to preach the gospel to all peoples” (c. 747 §1).⁸⁰ This makes clear the source of the Church’s infallibility. It is the Holy Spirit received at the very inception of the Church that provides our confidence that the Church will not err in matters of faith and morals as she spreads the message of salvation, her ultimate mission and the goal of canon law.⁸¹

While infallibility in the Church certainly refers to the successor of Peter and college of bishops under specific circumstances, the root of this infallibility is the Spirit of God working in all those who believe and are baptized.⁸² It is the fidelity of the Spirit that is the source of the Church’s own fidelity to the message and her source of infallibility. The Roman Pontiff and the college of bishops enjoy that fidelity to the message when they solemnly proclaim the message given to the apostles. They cannot err because the faith of the Church is protected from corruption. Otherwise Christ’s mission as entrusted to the apostles could not be fulfilled.⁸³

⁸⁰ It is my opinion this reference to the assistance of the Holy Spirit to “examine it [the truth] more closely” can be interpreted to refer to the historical understanding of the teaching magisterium including those experts in the theological disciplines who are not members of the episcopal college. See footnote 44 of this work.

⁸¹ See Matthew 28:18-20; John 16:13-15, Acts 1:8; c. 1752. In this paper, all quotations from the Bible are from the New American version, in CONFRATERNITY OF CHRISTIAN DOCTRINE, *St. Joseph Edition of The New American Bible*, New York, Catholic Book Publishing Co., 1986.

⁸² See JOHN 14:26; 16:13; 17:6-8.

⁸³ See L. ORSY, *Church Learning*, 55-57. Further, Orsy prefers the phrase “fidelity to the revelation” to “infallibility” as a more positive expression which he claims has its roots in the earliest Christian communities whose faith in the fidelity of the Spirit to the church led to the current understanding of infallibility. He believes use of this more positive terminology would make ecumenical discussion easier.

Sullivan points out the evolution of the text in the second paragraph of *LG 25*. The text, “while [...] teaching authoritatively on a matter of faith or morals,” earlier had read “in handing on the revealed faith.” In the earlier text the ordinary universal magisterium taught infallibly only when the bishops proposed a doctrine as divinely revealed. It was this that called for the response of faith. Some were concerned that this was too limited, so “revealed truth” was eliminated which then allowed for an infallible teaching that was not revealed but rather connected with revelation. This, he notes, is why “to be held” was used which does not necessarily mean “by divine faith”. In addition, the adverb “definitively” was added to “to be held” which calls for the definitive assent of the faithful. This limits the infallibility to those doctrines being proposed by the Roman Pontiff and bishops as one to be definitively held.⁸⁴

2.3.2 The Object of Infallibility of the Ordinary Universal Magisterium

We look to *LG 25* to find the reference concerning the object of infallibility. It states, “This infallibility, however, with which the divine redeemer wished to endow his Church in defining doctrine pertaining to faith and morals, extends just as far as the deposit of revelation, which must be religiously guarded and faithfully expounded.”⁸⁵

It is clear that the object of the teaching of the ordinary and universal magisterium speaking authoritatively is a doctrine of faith and morals. Sullivan points out the object of this teaching can pertain either directly or indirectly. Directly is understood to be specifically

⁸⁴ See F. SULLIVAN, *Creative Fidelity: Weighing and Interpreting Documents of the Magisterium*, Eugene, OR, WIPF & Stock Publishers, 2003, 102-103. Sullivan opines that, by including matters connected with revelation, Vatican II went beyond Vatican I and Pius IX who included only teachings of revealed truth. He suggests, “Vatican II has opened the door to the claim that norms of the natural law, even those not confirmed by revelation, have been infallibly taught by the ordinary universal magisterium.” He goes further to point out the need to prove that the bishops in the world agree on a teaching with the pope and that they are proposing this doctrine to “be held definitively.” As Huels noted above (see footnote 66, J. HUELS, “Responses Owed,” 117), there is no procedure for this, and it is difficult to prove juridically.

⁸⁵ *LG* no. 25, p.35.

contained in the Gospel message. This is the primary object. Indirectly is in itself not revealed, but is so intimately related to the Gospel truth as to be necessary in order to explain and defend the truth. This is the secondary object. The first is to be found in Scripture and sacred tradition as the one deposit of faith and the second is in its guarding and explanation.⁸⁶

With this presentation of the three levels of teachings and the understanding of *Lumen gentium* of the exercise of the ordinary and universal magisterium, in the next chapter I will apply these principles to Pope John Paul II's apostolic letter *Ordinatio sacerdotalis* to determine its canonical status and weight with regard to the response of the faithful.

⁸⁶ F. SULLIVAN, *Magisterium*, 127-129.

3 – *Ordinatio sacerdotalis*

On 22 May 1994 Pope John Paul II issued the apostolic letter *Ordinatio sacerdotalis* wherein he wrote:

Wherefore, in order that all doubt may be removed regarding a matter of great importance, a matter which pertains to the church's divine constitution itself, in virtue of my ministry of confirming the brethren (cf. Lk. 22:32) I declare that the church has no authority whatsoever to confer priestly ordination on women and that this judgment is to be definitively held by all the church's faithful.⁸⁷

The text of the Vatican's presentation of the letter in *L'Osservatore Romano* states:

Ordinatio sacerdotalis notes however that, despite the constant and universal tradition of the church and the teaching of the magisterium proposed anew in the above-mentioned recent documents, in some places the question continues to be considered as still open to debate or this teaching is held to be merely a matter of discipline. This widespread uncertainty explains and justifies the intervention of the magisterium of the supreme pontiff, explicitly in order "that all doubt may be removed regarding a matter of great importance" (No. 4) involving the correct understanding of Catholic teaching on the ministerial priesthood.

[...] And given that the ministerial priesthood is one of the essential elements of the church's structure, it follows that the question of who can receive priestly ordination "pertains to the church's divine constitution itself" (No. 4).

[The letter] formally declaring the nature and the definitive force of this teaching, deriving from the will of Christ and the practice of the apostolic church, confirms a certainty [...] a doctrine taught by the ordinary papal magisterium in a definitive way; [...] as certainly true. Therefore, [...] it always requires the full and unconditional assent of the faithful, and to teach the contrary is equivalent to leading consciences into error.⁸⁸

In this chapter I will focus on the authority of the teaching found in *OS* and the response due by the Christian faithful.

⁸⁷ JOHN PAUL II, *OS*, 51.

⁸⁸ See VATICAN presentation of the apostolic letter *Ordinatio sacerdotalis*, "An Overview of the Apostolic Letter," in *L'Osservatore Romano*, English ed., 31 May 1994, 3, also in *Origins*, 24 (1994-1995), 52-53. While the authorship of this letter is not indicated, it is generally believed to be the work of Cardinal Ratzinger.

3.1 Authoritative Status of the Teaching in *Ordinatio sacerdotalis*

Gaillardetz points out that, unlike previous papal documents concerning the exclusion of women from ordination to the priesthood, *OS* did not focus on the theological arguments. Rather, the originality of this letter was in the manner in which the teaching was framed. The term “to be definitively held” in *LG* 25, 2 refers to the teaching of the ordinary and universal magisterium of bishops. Though John Paul II used the terminology of this latter authority, this appeared to be an exercise of ordinary *papal* magisterium which was confirmed shortly thereafter by Cardinal Ratzinger.⁸⁹ He states: “In the technical language one should say: here we have an act of the ordinary Magisterium of the Supreme Pontiff [...] not a solemn definition *ex cathedra*, even though in terms of content a doctrine is presented which is to be considered definitive.”⁹⁰

3.1.1 Reactions of the Bishops

The response of various members of the United States’ National Conference of Catholic Bishops (NCCB) to *OS* is instructive. Archbishop Keeler of Baltimore, president of the NCCB, noted the pope’s initiative in reaffirming the authentic teaching of the Catholic Church on priestly ordination appealing to her lack of authority to confer priestly ordination on women. He

⁸⁹ See R. GAILLARDETZ, “The Ordinary Universal Magisterium: Unresolved Questions,” in *Theological Studies*, 63 (2002), 450-451 (=Gaillardetz, “Unresolved Questions”).

⁹⁰ J. RATZINGER., “The Limits of Church Authority,” in *L’Osservatore Romano*, English ed., 29 June 1994, 7. John Boyle notes *OS* was unique in its time. He points out that the pope states reserving ordination to men “pertains to the Church’s divine constitution” as *revealed* by the actions of Christ himself and subsequently held by the apostles and their successors. This makes it an important matter. The pope is fulfilling his role of confirming the college of bishops and the papal teaching is to be definitively held. He believes the letter therefore appears to have all the elements of an infallible papal teaching but the pope does not make this claim. See J. BOYLE, *Church Teaching Authority*, 8. Cf. A. DULLES, marginal commentary in *Origins*, 28 (1998-1999), 117. Reflecting on the CDF commentary that accompanied *Ad tuendam fidem* with regard to the “just penalty” being the same for definitively and non-definitively taught matters, Dulles regards *OS* as revealed truth and would consider it to be on the first level of truths rather than the second and therefore subject to a *latae sententiae* excommunication. However, he believes “the reason for not excommunicating people is that it’s relatively low on the hierarchy of truths.” Acknowledging something can be certain he states, “I don’t think you excommunicate people unless you get (an issue) close to the heart of faith.”

repeats this has been the Church's constant tradition.⁹¹ Archbishop Weakland of Milwaukee is more reserved when he responds:

In his apostolic letter [...] the question of the ordination of women is no longer open to debate. In this he has certainly disagreed with my position that the issue should be left open because of the unresolved theological questions involved and because of the pastoral problems which would result from an untimely closing of the doors on the issue. I certainly will be obedient to this command.

Yet, in a spirit of filial loyalty, I must also express my own inner turmoil at this decision. I know that in the long run my obedience will result in a deepening of my faith, but I state sincerely that it will not be done without much sacrifice and inner searching.⁹²

Weakland observes the effects of this declaration will be threefold. The first is on the work of theologians who continue to debate the theological foundations of the papal teaching. The second is the response of the faithful who already struggle with the manner in which the Church exercises its authority, citing *Humanae vitae* as an example. Finally, the implications on ecumenical dialogue including the Orthodox Churches who while they “may agree with the pope on the question at hand, [...] are usually shocked when the pope teaches the bishops and does not speak in union with them.”⁹³

Cardinal Bernardin of Chicago reaffirms the apostolic letter reflects the Church's teaching on the question of priestly ordination of women. He observes: “[the pope] is firmly convinced it is not within his power to change what has been a constant tradition.”⁹⁴

The Catholic bishops of Canada issued a statement on 30 May 1994. “The Catholic bishops of Canada accept the teaching of the pope and make it their own [...]

⁹¹ See “Bishops React to *Ordinatio sacerdotalis*,” in *Origins*, 24 (1994-1995), 53.

⁹² *Ibid.*, 55.

⁹³ *Ibid.*, 55-56.

⁹⁴ *Ibid.*, 57.

the terms the pope uses and the importance he attributes to the issue [...] call all the Catholic faithful to give a religious assent [...].”⁹⁵

Shortly thereafter, twelve US bishops wrote the NCCB:

[...] the recent apostolic letter, *Ordinatio sacerdotalis*, was issued without any prior discussion and consultation with our conference. [...] In an environment of serious questions about a teaching that many Catholic people believe needs further study, the bishops are faced with many pastoral problems in their response to the letter. The questions now being raised by women, theologians, ecumenists and many of the faithful as a result of this new apostolic letter present an immense pastoral problem that might have been prevented had there been more regular and open communication from us to Rome.”⁹⁶

3.1.2 *Responsum ad propositum dubium*

When it was issued, rather than alleviating the uncertainty that was the impetus for the letter, *OS* created more juridical confusion about the precise status of the teaching. It was because of this confusion about its authoritative status that the CDF issued a *responsum ad propositum dubium* on 28 October 1995 which was approved by John Paul II and ordered published. It stated:

This teaching requires definitive assent, since, founded on the written word of God and from the beginning constantly preserved and applied in the tradition of the church, it has been set forth infallibly by the ordinary and universal magisterium (cf. Second Vatican Council, Dogmatic Constitution on the Church *Lumen Gentium*, 25.2). Thus, in the present circumstances, the Roman pontiff, exercising his proper office of confirming the brethren (cf. Lk. 22:32), has handed on this same teaching by a formal declaration, explicitly stating what is to be held always, everywhere and by all as belonging to the deposit of the faith.⁹⁷

⁹⁵ *Ibid.*, 58.

⁹⁶ See letter of some US bishops to the NCCB doctrinal committee, “Bishops Embrace Conference Change, More Openness,” in *National Catholic Reporter*, 28 July 1995, 12-14. This letter was subsequently endorsed by thirty other bishops in 1995. In part, the letter lamented the relationship of the conference to the universal Church and an increasing tendency of the conference to acquiesce to Rome’s “reinterpretation” of Vatican II documents into a vertical ecclesiology. It cites documentary examples to illustrate the growing influence of Rome within the conference, including *OS*.

⁹⁷ CDF, Response to the *dubium* concerning the Teaching in the Apostolic Letter, *Ordinatio sacerdotalis*, 28 October 1995, in *AAS*, 87 (1995), 1114, English translation in *Origins*, 25 (1995-1996), 401 (= CDF, Response to the *dubium*).

Gaillardetz indicates this last point is noteworthy in that *ad fidei depositum pertinens* is translated into English as “belonging to the deposit of faith,” which would suggest it is a teaching that belongs to divine revelation and is a dogma of faith. Gaillardetz believes this clarification indicates the intention of *pertinens* is “pertains to,” in that while not divinely revealed itself, it is in an essential relationship to divine revelation.⁹⁸ He further questions the relationship of the Roman Pontiff in confirming a teaching of the ordinary and universal magisterium and the exercise of that latter magisterium itself.⁹⁹

In the cover letter Ratzinger acknowledges the need for the *responsum ad propositum dubium* due to the publication of *OS* being “followed by a number of problematic and negative statements [...]. These reactions attempted to cast doubt on the definitive character of the letter’s teaching [...] and also questioned whether this teaching pertained to the deposit of the faith.”¹⁰⁰

The CDF *responsum* makes two new points. It claims: (1) The teaching pertains to the deposit of faith, and (2) this doctrine was infallibly proposed by the ordinary and universal

⁹⁸ See R. GAILLARDETZ, “Unresolved Questions,” 451. He goes on to note that in the commentary on the final paragraphs of the Profession of Faith issued with *Ad tuendam fidem*, *OS* is given as an example of a definitive doctrine rather than a dogma of faith. The commentary, however, continued by saying, “in the future the consciousness of the church might progress to the point where this teaching could be defined as a doctrine to be believed as divinely revealed.” See also J. RATZINGER AND T. BERTONE, “Commentary on Profession of Faith’s Concluding Paragraphs,” in *Origins*, 28 (1998-1999), 118. F. Sullivan had already come to Gaillardetz’s conclusion in the Tissa Balasuriya case where Balasuriya was to “accept and hold” the Church’s stance on the priestly ordination of women, which is the response related to definitive doctrines not dogmas of faith. See F. SULLIVAN, “Heresy and Women Priests,” in *The Tablet*, (251) 18 (January 1997), 71.

⁹⁹ Gaillardetz points out that the contemporary appeal to the infallibility of the ordinary universal magisterium under John Paul II in various documents and its increasing significance in Church teachings have a commonality. Most of these claims to infallibility pertain to questions that are still disputed among reputable theologians. He finds this trend to be a troubling precedent. See R. GAILLARDETZ, “Unresolved Questions,” 455, 471.

¹⁰⁰ CDF, Cover Letter to the Presidents of the Conferences of Bishops concerning the reply to the *dubium* concerning the teaching in *Ordinatio sacerdotalis*, 8 November 1995, in *L’Osservatore Romano*, English ed., 18 November 1995, also in *Origins*, 25 (1995-1996), 403. He indicates “confidence” that the conferences and individual bishops will do all they can to ensure a positive reception of the *responsum* and to ensure “ambiguous and contrary positions will not again be proposed.”

magisterium. The infallibility comes not so much from the definition itself but rather from the truth “founded on the written word of God” which has been “from the beginning constantly preserved and applied in the tradition of the Church.”¹⁰¹

3.2 Authority of the CDF

Theologians and canonists had immediate concerns regarding the infallible nature of the teaching in *OS*.¹⁰² In December 1995, Sullivan observed that this *responsum* by the CDF is the first time that an authoritative document of the Holy See specifically declares that a doctrine has been infallibly taught by the ordinary and universal magisterium. He expressed strong disagreement with the claim and stated the conditions for such an infallible teaching had not been met.

The question that remains [...] is whether it is a clearly established fact that the bishops of the Catholic Church are as convinced by those reasons as Pope John Paul evidently is, and that, in exercising their proper role as judges and teachers of the faith, they have been unanimous in teaching that the exclusion of women from ordination to the priesthood is a divinely revealed truth to which all Catholics are obliged to give a definitive assent of faith. Unless this is manifestly the case, I do not see how it can be certain that this doctrine is taught infallibly by the ordinary and universal magisterium. [...] One thing, at least, is certain: the statement of the congregation is not infallible, even if published with papal approval.¹⁰³

Ferme points out the documents of the CDF are based in the *potestas magisterii* as a participation in the ordinary magisterium of the Pontiff. He highlights this because it is unique

¹⁰¹ CDF, Response to the *dubium*, 401. See R. GAILLARDETZ, “Infallibility and the Ordination of Women,” in *Louvain Studies*, 21 (1996), 3-24 (= GAILLARDETZ, “Infallibility and the Ordination of Women”).

¹⁰² See R. GAILLARDETZ, “Infallibility and the Ordination of Women,” 3-24. See also B. FERME, “The Response [28 October 1995] of the Congregation for the Doctrine of the Faith to the *Dubium* Concerning the Apostolic Letter *Ordinatio Sacerdotalis* [22 May 1994]: Authority and Significance,” in *Periodica de re canonica*, 85 (1996), 689-727 (=FERME “The Response”). See also L. ORSY, “The Congregation’s ‘Response’: Its Authority and Meaning,” in *America*, vol. 173, no. 19 (1995), 4-5 (=ORSY, “The Congregation’s Response”). See also F. SULLIVAN, “Guideposts from Catholic Tradition,” in *America*, vol. 173, no. 19 (1995), 5-6 (=SULLIVAN, “Guideposts”).

¹⁰³ F. SULLIVAN, “Room for Doubt,” in *The Tablet*, vol. 249, no. 8107, (December 1995), 1646.

within the Curia. However, it is seen always and only in reference to the Pope that the CDF can exercise the magisterial role. Though they are bishops, the members of the CDF do not act in their own name but vicariously in the name of the Pope. It is not about the *potestas* but rather the subordinate relationship to the office holder who has responsibility for the universal Church.¹⁰⁴

Orsy points out the first question to be asked for reception of a document is to determine the weight and meaning using canonical rules of interpretation. By what authority is it published and what is its doctrinal message? As noted earlier, this is not always obvious. He reminds us there are two types of papal approval of a document: *in forma communi* and *in forma specifica*. The former indicates papal approval, but the pope does not make it his own. In the latter, he makes it a papal act, something the *responsum* does not claim. Therefore it carries the authority of the CDF which does not include infallibility. With regard to the doctrinal message, it first affirms the terminology of *OS* that the teaching is “to be held definitively.” It then exceeds the apostolic letter by asserting this is an infallible teaching. Orsy rightly notes this remains the interpretation of the CDF and does not change the weight and message of *OS*.¹⁰⁵

The Catholic Theological Society of America (CTSA) articulated the confusion regarding the *responsum* when they noted that because the CDF claims it is a truth infallibly taught, “many have concluded that the question whether women can be ordained has now been so definitely settled that no future pope or council could decide otherwise. However, [...] not a few Catholic theologians have questioned both the level of its authority and the warrants for its assertions.”¹⁰⁶ Clearly it is important to distinguish between the teaching in *OS* and that in the *responsum*. John

¹⁰⁴ See B. FERME, “Developments in Church Magisterium,” 53-57.

¹⁰⁵ L. ORSY, “The Congregation’s ‘Response,’” 4-5.

¹⁰⁶ CTSA, report “Study, Prayer Urged regarding Women’s Ordination ‘*Responsum*,’” in *Origins*, 27 (1997-1998), 75. Also available in CTSA *Proceedings*, 52 (1997), 197.

Paul II stated this teaching must be definitively held. The CDF went further to declare it pertains to the deposit of faith and has been taught infallibly by the ordinary and universal Magisterium. The CTSA report indicates theologians are right in raising questions concerning the reasons given by the CDF that “clearly establish” the fact *OS* has been infallibly taught. Canon 749 §3 reminds us that a doctrine which has been infallibly taught is to be a question of fact that is clearly established.¹⁰⁷

3.3 Exercise of the Ordinary and Universal Magisterium

The importance of understanding the doctrinal authority of the ordinary and universal magisterium cannot be underestimated, particularly as it appeared to be increasingly invoked with implications for the future. Ferme claims from both *LG 25* and the beginning of c. 749 §2 that the subject of infallibility is the College of Bishops whose key to teaching dispersed throughout the world is found in the bond of hierarchical communion. The object of this collegial act is an infallible teaching, though he acknowledges they can also teach authoritatively but not infallibly. It is the agreement that defines the collegial character of the teaching and is essential to the act. He believes there is no need to provide proof of unanimity since, based on the nature of the college of bishops itself, the Head can confirm or declare a teaching already taught by the college.¹⁰⁸

Kaucke highlights the three canonical keys that can unlock the truth of the CDF claim. They are found in c. 749 §2, “when dispersed throughout the world [...] they concur in a single viewpoint;” in c. 749 §3, “unless it is clearly beyond question,” and in c. 750, “is manifested by the common adherence of the Christian faithful.” Kaucke interprets c. 749 §3 to mean it is

¹⁰⁷ See *ibid.*, 197-199.

¹⁰⁸ See B. FERME, “Developments in Church Magisterium,” 48, 59, 83.

beyond question that the bishops dispersed throughout the world agree with the papal teaching. He observes that there are many who question the claim of the CDF, posing questions such as: How can the “brethren” of Luke 22:32 be confirmed by the pope if they have not been consulted? How can they be consulted if they are not permitted to discuss the matter? How can they discuss the matter if they cannot freely inquire into the sense of the faithful? How does one know when this magisterium is being exercised and the teaching is therefore infallible? He distinguishes between the actual fulfillment of the condition and its verification on the part of the faithful that a given doctrine is part of the deposit of faith. Canon 750 indicates a divinely revealed doctrine “is manifested by the common adherence of Christ’s faithful,” thus acknowledging the infallibility of the entire People of God as reflected in *LG* 12. Does this claim to infallibility confirm the infallibility of the believing Church? For Kauchek, this unity in the Holy Spirit determines whether or not the teaching is to be definitively held. Given the clarity *Pastor aeternus* requires of an *ex cathedra* papal proclamation, he believes the exercise of the ordinary universal magisterium should be just as clear for the sake of the faithful.¹⁰⁹

3.3.1 An Infallible Teaching

In September 1997, Sullivan critiqued Archbishop Bertone, secretary of the CDF, for making three assumptions: (1) that a mere declaration by the Pope can establish infallible teaching by the universal ordinary magisterium of the college of bishops; (2) that all truths that

¹⁰⁹ See K. KAUCHEK, “Must the Act of Divine and Catholic Faith Be Given to *Ordinatio sacerdotalis*? A Study of the Ordinary Universal Magisterium,” in *Studia Canonica*, 31 (1997), 205, 224 (=KAUCHEK, “Must the Act?”). *Donum veritatis* states: [...] the opinions of the faithful cannot be purely and simply identified with the *sensus fidei*. The sense of the faith is a property of theological faith; and as God’s gift which enables one to adhere personally to the truth, it cannot err. This personal faith is also the faith of the church ... [which] implies then by its nature a profound agreement of spirit and heart with the church... The Second Vatican Council emphasizes the indissoluble bond between the *sensus fidei* and the guidance of God’s people by the magisterium of the pastors. These two realities cannot be separated” (no. 35, p. 124). See also F. SULLIVAN, *Magisterium*, 111. See also J. KOMONCHAK, “*Humanae Vitae* and Its Reception: Ecclesiological Reflections,” in *Theological Studies*, 39 (1978), 243. He observes the bond of communion is a condition, not a description, of the exercise of the episcopal magisterium and that a bishop can disagree with the college of bishops, including its head on matters not in the Creed.

“are certainly true and undoubted” belong to the object of infallibility; and (3) that for a consensus of the college of bishops, a past consensus would suffice.¹¹⁰ Sullivan observes the appeal to the historical nature of a doctrine cannot provide absolute certainty. If a doctrine has certainly been infallibly defined or taught, it is irreversible. However, further development can clarify the meaning and give a better expression of it without reversing it. This is distinct from the history of a doctrine that seems to be unanimous yet, with further development, is no longer a teaching of the Church. He gives several examples to underscore that past tradition may not be sufficient to prove a doctrine is infallible.¹¹¹

Ferre points out the post Vatican II development beginning with *Mysterium Ecclesiae* (1973) which expanded infallibility to include all which is needed so that the deposit of faith can be explained or preserved.¹¹² The CDF’s 1990 instruction on the ecclesial vocation of theologians *Donum veritatis* addresses specific questions about the exercise of the magisterium. It affirms the development in *Mysterium Ecclesiae* as reflected in paragraph two of the profession of faith and provides insights into the difference between the truths of the first two paragraphs with regard to divine revelation. The instruction further clarifies “the task of carefully safeguarding and faithfully determining the deposit of divine revelation, implies, by its very nature, that the magisterium can propose definitively teachings which, even if not contained in

¹¹⁰ See “Theological Observations by Archbishop Bertone,” in *L’Osservatore Romano* (English ed.), 29 January 1997, 6-7 wherein he discusses the doctrinal weight to be given to a papal declaration that a given doctrine was taught infallibly by the ordinary universal magisterium. Regarding Bertone’s remarks Sullivan states, “The question whether a doctrine has been infallibly taught is not a matter of doctrine, but a matter of fact, which has to be ‘manifestly established’ (Canon 749 §3). What must be ‘manifestly established’ when the claim is made that a doctrine has been taught infallibly by the ordinary universal magisterium, is that not only the Pope, but the whole body of Catholic bishops as well, are proposing the same doctrine as one which the faithful are obliged to hold in a definitive way. I do not see how it could be said that a papal declaration, of itself, without further evidence, would suffice to establish this fact.” F. SULLIVAN, “Recent Theological Observations on Magisterial Documents and Public Dissent,” in *Theological Studies*, (58) 1997, 513.

¹¹¹ F. SULLIVAN, “Guideposts,” 6. See also K. KAUCHECK, “Must the Act,” 228.

¹¹² B. FERRE, “Developments in Church Magisterium,” 65-66.

the truths of faith, are nevertheless intimately connected with them, so that the definitive character of such affirmations derives, in the ultimate analysis, from the revelation itself.”¹¹³

Ferme notes many do not agree *OS* is infallible. He supposes some think if a doctrine is not infallibly defined *ex cathedra* it is open to interpretation and requires only *obsequium*.¹¹⁴ He believes both the language of the cover letter and the *responsum* indicate unambiguously this is an irreformable teaching of the ordinary universal magisterium and a doctrine proposed as infallible and to be held definitively. It is not a new teaching but rather one held always and now confirmed by the Roman Pontiff. While he suggests the difference between the two levels of teachings is in the distinction between the primary and secondary objects of infallibility, he acknowledges there is some credence to the idea that everything within the deposit of faith, whether or not it is divinely revealed, is based on revelation and would be subject to an act of faith.¹¹⁵

Kauchek is not alone when he disagrees. Given all the criteria and their uncertainty, he does not believe the case for *OS* as an infallible teaching of the ordinary universal magisterium has been made.¹¹⁶

3.3.2 The Role of Theological Inquiry

¹¹³ CDF, *Donum veritatis*, no. 16, p. 121.

¹¹⁴ See B. FERME, “The Response,” 697, 701. He goes further to claim such an attitude does not take into consideration c. 749 §2 nor *LG* 25 which expressly provide for the conditions when the ordinary and universal magisterium can and does teach infallibly. He states the “bond of hierarchical communion provides the absolute requirement and essential condition for belonging to the College of Bishops and exercising this teaching authority.” He notes it is this communion and a subsequent confirmation or declaration by the head of the college that provides the juridic proof this is an infallible teaching of the ordinary universal magisterium. Cf. L. ORSY, *Receiving the Council: Theological and Canonical Insights and Debates*, Collegeville, MN, Liturgical Press, 2009, 131. Orsy concludes a doctrine defined at the second level “does not and cannot have the standing of an infallible definition.” He believes the second level of teaching needs continued inquiry to determine both its character and its authority.

¹¹⁵ See B. FERME, “The Response,” 709-710.

¹¹⁶ See K. KAUCHEK “Must the Act,” pp. 226, 233. See also J. HUELS, “Responses Owed,” 122-124. See also R. GAILLARDETZ, “Ordination of Women,” 13, 29.

Donum veritatis speaks of the ecclesial vocation of the theologian as one given by the Spirit in the Church.¹¹⁷ We need to distinguish between the role of the magisterium to guard and witness to the faith and the ecclesial vocation of the theologian whose work is to deepen our understanding of the theological foundations of magisterial teachings and thereby assist with its ongoing development. The Vatican reflections that accompanied the CDF *responsum* indicated that understanding the reasons for the Church's teaching "certainly [...] can be deepened further."¹¹⁸ *Donum veritatis* acknowledges the possibility for the theologian to provide additional input and clarification with an evangelical spirit when teachings are not clearly presented, but a fundamental obedience is required since "magisterial teachings by virtue of divine assistance have a validity beyond its argumentation."¹¹⁹ I believe the pope had this in mind by not claiming infallibility, indicating cautious sensitivity even as he clarified the teaching is not subject to change.

3.3.3 Dissent

Huels observes that it is possible to have diverse opinions about the infallibility of *OS* without dissenting and challenging the teaching itself. Canon 212 reminds all the Christian faithful to follow with obedience those things declared by the sacred pastors as teachers of the faith. However, within their expertise, c. 218 provides that those in the sacred disciplines have a

¹¹⁷ See CDF, *Donum veritatis*, no. 10, pp. 119-120.

¹¹⁸ "Vatican Reflections On the Teaching of 'Ordinatio Sacerdotalis'," in *Origins*, 25 (1995-1996), 404.

¹¹⁹ CDF, *Donum veritatis*, no. 34, p. 124. See also *ibid.*, nos. 24 and 26, pp. 122-123. See also L. ORSY, *The Church Learning*, 63-73 for a discussion of the role of the theologian in contributing to understanding revelation of divine truths. Orsy points out that revelation belongs to the whole Church as articulated in Vatican I's *Pastor aeternus*. "The Roman Pontiff when he speaks *ex cathedra* ... has that infallibility with which the divine Redeemer wanted his church to be endowed in defining doctrine concerning faith and morals;" and Vatican II's affirmation of the same in *LG* 12.

freedom to inquire and express their opinions prudently while observing due *obsequium* to the magisterium.¹²⁰

Orsy agrees and states theologians are looking for the truth, so it is not appropriate to call it dissent. He warns against a simplistic distinction between infallible and non-infallible teaching as the criteria for legitimate dissent. Noting that much belongs to the core of the tradition that has not yet become infallibly known or defined, he believes the relationship between the two should be closely examined to prevent a possible fracture in the unity of faith. He states *obsequium* to the authority of God and the magisterium entrusted to guard the faith should be the response. Like *communio*, this means to be of one heart and mind searching with the Church for clarification since it is the Church that is the primary subject of infallibility not the pope or college of bishops.¹²¹

Canon 751 clarifies heresy is the obstinate denial or doubt, after baptism, of a truth which must be believed with divine and catholic faith. Therefore, if *OS* is not a divinely revealed truth, one dissenting from this specific teaching is not a heretic but remains in grave error such that they could be subject to the just penalties in c. 1371, 1° and 2° or risk losing their mandate to teach (c. 812) if they teach a doctrine contrary or object to the teaching.¹²²

Conclusion

¹²⁰ See J. HUELS, “Responses Owed,” 121-122, 130. Huels proposes that it is uncertain that *OS* definitively declares an infallible teaching of the ordinary and universal magisterium since there is no clear evidence that all the bishops of the world are in agreement. However, there is no doubt this is an exercise of the ordinary papal magisterium and thus is not at the level of assent of faith. One is not a heretic if in the search for the truth one doubts or denies a defined doctrine at this level, but such doctrine should be firmly embraced and retained. Otherwise, in the words of c. 750 §2, one “is opposed to the doctrine of the Catholic Church.”

¹²¹ See L. ORSY, *The Church Learning*, 89-97.

¹²² See J. HUELS, “Responses Owed,” 130.

We conclude as we began with reference to Vatican II and a *novus habitus mentis*. John XXIII's opening address at Vatican II affirms the church's fidelity to doctrinal teachings and the need for its interpretation within a contemporary pastoral context for its authentic proclamation.

The substance of the ancient doctrine of the deposit of faith is one thing, and the way in which it is presented is another. [...] The Church has [...] frequently condemned [errors] with the greatest severity. Nowadays however, [...] she meets the needs of the present day by demonstrating the validity of her teaching rather than by condemnation.¹²³

The task of the magisterium is to authentically interpret the faith and the task of theologians and indeed all the Christian faithful is to search for a deeper understanding of the faith. As we have seen, the weight of the document *OS* is in direct relationship to the level of authority it claims. The Pope indicates the papal teaching is to be definitively held. The CDF issued a *responsum* on its own authority that not only repeats this is to be definitively held but claims it is an infallible teaching of the ordinary universal magisterium that belongs to the deposit of faith. The lack of juridical clarity on how it is to be determined that all the bishops dispersed throughout the world are in agreement with the Roman Pontiff on this issue causes serious and legitimate doubt concerning its infallibility. Canon 749 §3 reminds us, "No doctrine is understood as defined infallibly unless this is manifestly evident." Under John Paul II we saw a growing tendency to appeal to the authority of the ordinary universal magisterium to the point that perhaps even the bishops themselves are not allowed to engage in the dialogue as evidenced in the carefully worded response of some bishops to *OS*.

However, John Paul did not approve the CDF *responsum in forma specifica*. The issue clearly is still contested and should continue to be subject to serious and respectful theological

¹²³ JOHN XXIII, address at the opening of the Council *Gaudet Mater Ecclesia*, 11 October 1962, in *AAS*, 54 (1962), 792, English translation in *TPS*, 8 (1962), 213.

inquiry as to its foundational reasoning. This is not unknown in the history of the Church.¹²⁴ One can question whether it is harmonious with the truth to prematurely appeal to the hierarchical teaching authority in order to end inquiry that may provide reasonable and acceptable arguments. There must be dialogue in order for there to be credibility.

Orsy observes that laws to be obeyed must be received and he points to the divine assistance given to all the People of God as affirmed in *LG*.¹²⁵ If infallibility is the fruit of the Spirit, then there is a need for ongoing discernment without denying the authority of the teaching magisterium. We must be cautious not to set up barriers to this discernment. The moral obligation inherent in *communio* calls for speaking a truth for the good of the Church so that the unity of the Spirit may be manifest. This same Spirit will ensure that a teaching that is incomplete or even in error is not received by the church.

¹²⁴ See PIUS X, decree *motu proprio Praeestantia Scripturae*, 18 November 1907 in *AAS* 40 (1907), 723-726. This decree affirms the Mosaic authorship of the Pentateuch. *Divino Afflante Spiritu* issued by Pius XII 30 October 1943 urged scholarly biblical studies that led to a shift in understanding and abandonment of this position.

¹²⁵ See L. ORSY, "Reception of Laws," 515. See also *LG*, no. 12, p. 16-17. "The whole body of the faithful who have an anointing that comes from the holy one cannot be mistaken in belief [...] when, "from the bishops to the last of the faithful," it manifests a universal consensus in matters of faith and morals. [...] aroused and sustained by the Spirit of truth, the people of God, guided by the sacred magisterium which it faithfully obeys, receives [...] the word of God." See also *LG*, no. 13, p. 18. This "is why God sent the Spirit of his Son [...], for each and every believer is the principle of their union and unity in the teaching of the apostles and communion....All the faithful scattered throughout the world are in communion with each other in the holy Spirit [...]."

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