

INFORMATION TO USERS

This manuscript has been reproduced from the microfilm master. UMI films the text directly from the original or copy submitted. Thus, some thesis and dissertation copies are in typewriter face, while others may be from any type of computer printer.

The quality of this reproduction is dependent upon the quality of the copy submitted. Broken or indistinct print, colored or poor quality illustrations and photographs, print bleedthrough, substandard margins, and improper alignment can adversely affect reproduction.

In the unlikely event that the author did not send UMI a complete manuscript and there are missing pages, these will be noted. Also, if unauthorized copyright material had to be removed, a note will indicate the deletion.

Oversize materials (e.g., maps, drawings, charts) are reproduced by sectioning the original, beginning at the upper left-hand corner and continuing from left to right in equal sections with small overlaps. Each original is also photographed in one exposure and is included in reduced form at the back of the book.

Photographs included in the original manuscript have been reproduced xerographically in this copy. Higher quality 6" x 9" black and white photographic prints are available for any photographs or illustrations appearing in this copy for an additional charge. Contact UMI directly to order.

UMI

A Bell & Howell Information Company
300 North Zeeb Road, Ann Arbor MI 48106-1346 USA
313/761-4700 800/521-0600



Université d'Ottawa • University of Ottawa

**THE OBLIGATION TO OBSERVE
THE CONSTITUTIONS AND DECREES
OF CHURCH AUTHORITIES:
AN ANALYSIS OF CANON 754**

by
Mario MEDINA BALAM

A dissertation submitted to the Faculty of Canon Law,
Saint Paul University, Ottawa, Canada, in partial
fulfillment of the requirements for the degree of
Doctor of Canon Law

Mario Medina Balam

Ottawa, Canada
Saint Paul University
1996



National Library
of Canada

Acquisitions and
Bibliographic Services

395 Wellington Street
Ottawa ON K1A 0N4
Canada

Bibliothèque nationale
du Canada

Acquisitions et
services bibliographiques

395, rue Wellington
Ottawa ON K1A 0N4
Canada

Your file Votre référence

Our file Notre référence

The author has granted a non-exclusive licence allowing the National Library of Canada to reproduce, loan, distribute or sell copies of this thesis in microform, paper or electronic formats.

The author retains ownership of the copyright in this thesis. Neither the thesis nor substantial extracts from it may be printed or otherwise reproduced without the author's permission.

L'auteur a accordé une licence non exclusive permettant à la Bibliothèque nationale du Canada de reproduire, prêter, distribuer ou vendre des copies de cette thèse sous la forme de microfiche/film, de reproduction sur papier ou sur format électronique.

L'auteur conserve la propriété du droit d'auteur qui protège cette thèse. Ni la thèse ni des extraits substantiels de celle-ci ne doivent être imprimés ou autrement reproduits sans son autorisation.

0-612-21976-3

MEDINA BALAM, MARIO, *The Obligation to Observe the Constitutions and Decrees of Church Authorities: An Analysis of Canon 754*.

ABSTRACT

To what extent does c. 754 give power to the ecclesiastical magisterium to require juridically from Christ's faithful the reception of its pronouncements? What is the meaning and purpose of the canon? The Author examines canon 754 in its historical, ecclesiological and juridical context. He divides his study into five chapters: the first offers a brief overview of the underlying ecclesiologies relating to the teaching office of the Church; the second deals with the sources of c. 754. The next two chapters approach the canon directly: its process of formulation and its interpretation (ch. 3), and a doctrinal and juridical analysis of it (ch. 4). The last chapter attempts to apply the canon to the life of the Church today. Two visions on the role of the ecclesiastical magisterium were present during the process of formulation of c. 754: one is represented by the principal sources of the canon, the epilogue of the Dogmatic constitution *Dei filius* of Vatican I and c. 1324 of the 1917 Code of Canon Law; both reflected, in some way, a juridical approach to the exercising of the office of the magisterium, whose particular office of teaching was marked by an apologetic attitude. The other was the vision of Vatican II, which rediscovered the role of the magisterium as a service. Thus, while c. 754 is more positive than its counterpart c. 1324 of the 1917 Code, it retains a voluntaristic juridical approach to the magisterial authority of pastors. Its present form seems to endow the ecclesiastical magisterium with the power to require juridically from the faithful an internal assent to its teachings. Therefore, the Author suggests that the appropriateness of maintaining the canon in the Code should be reconsidered in the future, or at least be transformed in the line that the Code of Canons of the Eastern Churches did. He also offers some guiding points to help Christ's faithful discern the nature of ecclesiastical documents to give an adequate response to them; he gives an overview of each legitimate authority referred to in c. 754. He thinks that not all doctrinal pronouncements fall under c. 754, instead, he divides into two categories the specific documents which the proper ecclesiastical authority enacts to propose doctrine and to proscribe erroneous opinions. Finally, he suggests that c. 754 must be interpreted in the light of some of the fundamental rights and duties of all the Christ's faithful regarding their participation in the teaching office of the Church, such as the right, and at times the duty to express their opinion publicly in the Church (c. 212 § 3), or their just freedom to research and express their findings in the field of sacred disciplines (c. 218). This might reduce the juridical significance of c. 754 on the magisterial authority of ecclesiastical pronouncements.

TABLE OF CONTENTS

TABLE OF CONTENTS	ii
ACKNOWLEDGEMENTS	vi
ABBREVIATIONS	vii
INTRODUCTION	viii
CHAPTER I: UNDERLYING ECCLESIOLOGIES RELATED TO THE TEACHING OFFICE OF THE CHURCH	1
1. Vatican I and the Post Vatican I period: the Church as a perfect society	2
1.1. The historical context: from Gregory XVI to John XXIII	2
1.1.1. Rational Liberalism	3
1.1.2. Modernism	6
1.1.2.1. The historical context of Modernism	7
1.1.2.2. A doctrinal system	8
1.1.2.3. The ecclesiastical Magisterium against Modernism	8
1.1.3. The New Theology	10
1.1.3.1. Historical context of the New theology	11
1.1.3.2. An innovative attitude	12
1.1.3.3. The reaction of the Magisterium	13
1.2. The Church perceived as a perfect society	15
1.2.1. Authority as a central value	16
1.2.2. The power of teaching became part of the power of jurisdiction	16
1.2.3. Dichotomic vision of the Church	19
2. Vatican Council II: the Church as the People of God	19
2.1. A change in perspective	20
2.2. Elements of the ecclesiology of the People of God	21
2.2.1. Historical and salvific dimensions of the Church	21
2.2.2. The free and gratuitous election from God	22
2.2.3. Equality within the People of God	23
2.3. The teaching office of the People of God	24
3. <i>Lumen gentium</i> n. 25 and the post-conciliar period	27
Conclusion	30

CHAPTER II: JURIDICAL AND DOCTRINAL SOURCES OF CANON 754	34
1. Conclusion of the dogmatic constitution <i>Dei filius</i> of Vatican I	35
1.1. Development of the conclusion of <i>Dei filius</i>	35
1.2. The conclusion of <i>Dei filius</i>	40
1.2.1. First part of the conclusion	41
1.2.2. Second part of the conclusion	43
2. Canon 1324 of the 1917 Code of Canon Law	47
2.1. Sources of canon 1324	48
2.2. Context of canon 1324	50
2.3. Analysis of canon 1324	52
3. Post 1917 Code of Canon Law sources	57
3.1. Encyclical letter <i>Humani generis</i>	57
3.2. Post-conciliar sources of canon 754	66
3.2.1. CDF, Letter <i>Cum oecumenicum concilium</i>	69
3.2.2. Synod of Bishops, report <i>Ratione habita</i> , October 28, 1968	71
Conclusion	73
CHAPTER III: CANON 754 AND ITS INTERPRETATION	78
1. The <i>coetus de magisterio ecclesiastico</i> and Vatican II	80
2. Toward canon 754: the 1977 Draft	86
2.1. The revision of canon 1324 of the 1917 Code	87
2.2. Consultation on the schema	94
3. Toward canon 754: the subsequent revisions	97
3.1. From the 1980 Draft	97
3.2. From the 1982 Draft	101
4. Canon 754, the promulgated text	104
4.1. The context of canon 754	105
4.1.1. Canon 754 among the preliminary canons of Book III	105
4.1.2. The response of the Christian faithful to the ecclesiastical magisterium	106
4.2. The Content of canon 754	110

TABLE OF CONTENTS

iv

4.3. No penalty is prescribed	115
4.4. A legal and religious obligation	116
4.5. The discipline serving the doctrine of the Church	119
5. Canon 754 and the Code of canons of the Eastern Churches	121
Conclusion	126
CHAPTER IV: AN ANALYSIS OF CANON 754	130
1. Some concepts related to the Magisterium of the Church	131
1.1. The word of God was entrusted to the entire People of God	132
1.2. The authentic Magisterium of the Church	133
1.3. The infallible Magisterium	135
1.4. The non-infallible Magisterium	141
1.5. The ordinary and extraordinary Magisterium	142
2. The obligation to observe the constitutions and decrees	145
2.1. The obligation to observe the doctrine of the Church	147
2.1.1. The response to the infallible Magisterium (c. 750)	147
2.1.2. The response to the non-infallible Magisterium (cc. 752-753)	148
2.2. The obligation to observe juridical dispositions	154
2.3. Does this obligation bind in conscience?	157
2.4. Can we dissent from the authentic non-infallible Magisterium?	165
Conclusion	172
CHAPTER V: A PRACTICAL APPLICATION OF CANON 754 IN THE LIFE OF THE CHURCH TODAY	177
1. The nature of ecclesiastical documents	178
2. Legitimate authority and its pronouncements	182
2.1. The Roman Pontiff	182
2.2. The College of Bishops	185
2.3. The Roman Curia	187
2.4. Episcopal Conferences	194
2.4.1. Doctrinal authority of Episcopal Conferences	195
2.4.2. Legislative authority of Episcopal Conferences	200
2.4.3. Pronouncements of Episcopal Conferences	201
2.5. Individual Bishops	203

TABLE OF CONTENTS

v

3. Documents to which canon 754 applies	206
3.1. Documents mentioned in canon 754	207
3.1.1. Nature of a constitution	207
3.1.2. Nature of a decree	209
3.2. The object of the documents mentioned in canon 754	210
3.2.1. To propose doctrine	211
3.2.2. To proscribe erroneous opinions	212
3.2.3. Matters not covered by canon 754	214
3.2.4. Documents that could be considered under canon 754	215
Conclusion	217
GENERAL CONCLUSION	220
APPENDIX 1: Stages in the formulating of the conclusion of the Dogmatic constitution, <i>Dei filius</i>, of Vatican I	227
APPENDIX 2: Stages in the formulating of canon 754	228
BIBLIOGRAPHY	229
1. Sources	229
2. Literature	234
2.1. Books	234
2.2. Articles	242
BIOGRAPHICAL NOTE	253

ACKNOWLEDGEMENTS

The present study is meant to be a small contribution to the important task of the people of God to safeguard, understand and proclaim divine revelation.

This work is the fruit of the efforts and assistance of many persons and institutions. First of all, I would like to thank my Archbishop, Emilio Carlos Berlie Belaunzarán, and the Emeritus Archbishop, Manuel Castro Ruiz, who allowed me to complete my studies in Canon Law; I am very grateful to them and to the various institutions that covered the costs of my studies, especially the Pontifical University of Mexico. I am also indebted to Rev. F. Morrissey, O.M.I., for his supervision of my work and patient help with my English. Without his encouragement, I would not have completed this task. I would like to express my gratitude to the Dean, Rev. Roch Pagé, and to all the members of the Faculty of Canon Law for their support and readiness to help me. I would like to mention, in a special way, Rev. Jean Thorn, former Dean of the Faculty, who left us recently to return to the Father, thanking him for his kindness and constant support. I acknowledge also the staff of the library, who assisted my research in so many ways. I extend my gratitude to all my friends of Deschâtelets for their support and encouragement, and for patiently helping me to improve my English. Finally, I would like to thank my family and all those who with their prayers and support encouraged me to carry on each day.

ABBREVIATIONS

AA	Vatican II, Decree on the Apostolate of Lay People, <i>Apostolicam Actuositatem</i>
AAS	<i>Acta Apostolicae Sedis: Commentarium officiale</i> , 1909-
ASS	<i>Acta Sanctae Sedis</i> , 1865-1908, 41 vols.
c., cc.	Canon, canons.
CCCB	Canadian Conference of Catholic Bishops
CCEO	<i>Codex Canonum Ecclesiarum Orientalium</i>
CD	Vatican II, Decree on the Pastoral Office of Bishops, <i>Christus Dominus</i>
CDF	Congregation for the Doctrine of the Faith
CIC	<i>Codex Iuris Canonici</i>
CLD	Canon Law Digest, 1934-1991, 11 vols.
CLSA	Canon Law Society of America
CLSGBI	Canon Law Society of Great Britain and Ireland
DH	Vatican II, Declaration on Religious Liberty, <i>Dignitatis Humanae</i>
DV	Vatican II, Dogmatic Constitution on Divine Revelation, <i>Dei Verbum</i>
DZ	Denzinger, <i>Enchiridion Symbolorum</i> , English translation.
Fontes	<i>Codicis Iuris Canonici fontes</i> , cura P. Card. Gasparri, Romae, 1926-1939, 9 vols.
GE	Vatican II, Declaration on Christian Education, <i>Gravissimum educationis</i>
GS	Vatican II, Pastoral Constitution on the Church in the Modern World, <i>Gaudium et Spes</i>
LEF	<i>Lex Ecclesiae Fundamental</i>
LG	Vatican II, Dogmatic Constitution on the Church, <i>Lumen Gentium</i>
Mansi	<i>Sacrorum Conciliorum Nova et Amplissima Collectio</i>
NCCB	National Conference of Catholic Bishops of the United States of America
NCE	New Catholic Encyclopedia, 1967-, 18 vols.
OT	Vatican II, Decree on the Training of Priests, <i>Optatam Totius</i>
PB	John Paul II, Apostolic Constitution <i>Pastor Bonus</i>
PCCICAI	<i>Pontificia Commissio Codici Iuris Canonici Authentice Interpretando</i>
PCCICR	<i>Pontificia Commissio Codici Iuris Canonici Recognoscendo</i>
SC	Vatican II, Constitution on the Sacred Liturgy, <i>Sacrosanctum Concilium</i>
UR	Vatican II, Decree on Ecumenism, <i>Unitatis Redintegratio</i>
17/CIC	1917 Code of Canon Law

INTRODUCTION

Christ the Lord entrusted to his Church the deposit of revelation so that it might be religiously guarded and loyally expounded (LG, n. 25). Although all the members of the Church share in the teaching office, pastors assume the first responsibility for this task. In fulfilling their mission, they often use written pronouncements. The frequent use of documents, however, has somehow led to the phenomenon of “reception” or “non reception” of ecclesiastical pronouncements. Indeed, this phenomenon has been the object of increasing study and concern among scholars and Church authorities over the past years. On the one hand, theologians and canonists have tried to find better ways of discerning the proper nature of such pronouncements and the adequate response of the Christian faithful to be given to them. On the other hand, Church authorities are concerned about a certain lack of reception of their statements, for some of the faithful simply ignore them, while others criticize them openly. Unfortunately the mass media have not always helped matters, because they often present the documents of the Pope and of the Roman congregations as if they all had the same authority and doctrinal weight.

Some writers refer to c. 754 to justify the binding force of each ecclesiastical pronouncement, especially those of a doctrinal character. However, we must note carefully that this canon has a specific purpose and does not impose a juridical obligation

in relation to every document issued by ecclesiastical authorities. The canon reads as follows:

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 holds especially for those published by the Roman Pontiff or by the College of Bishops.

This and the previous canons, taken together, form a unity; as we read them, we can see the close relationship of one with the other. Yet, all of them converge toward the same end: the carrying out of the teaching office of the Church by all the Christian faithful. We can also say that each of the canons in this section of the Code presents a slightly different aspect of the same matter, and c. 754 can be seen as an all-embracing norm, which needs the others to be understood and applied correctly. However, the approach taken in these canons sometimes leaves something to be desired; for, on the one hand, they emphasize the prerogatives of the magisterium of the Church, and on the other, stress the obligations of all the Christian faithful; but, there is no counterpart on the rights of the faithful and the corresponding obligations of the magisterium. Thus, our interest in finding some answers about the meaning, underlying values and purpose of c. 754.

Method of our study

In conducting our study, we intend to use both a canonical and a doctrinal approach. We shall begin with the principal sources of c. 754: the Dogmatic constitution *Dei filius* of Vatican I (1870) and c. 1324 of the 17/CIC, taken in their historical and ecclesiological context. Later, we shall examine c. 754 in its immediate context, in the light of the Vatican II teachings and principles. Finally, we shall try to apply this norm to the life of the Church today.

Structure of our study

The canonical norms rely on the ecclesiologies of the time. The object of the first chapter, then, is to give a general vision of the intimate relationship between the role of the ecclesiastical magisterium and the ecclesiologies that were current at the time when the sources of c. 754 were written. This magisterium had to assume a firm stand in the face of certain movements, which developed during the last century. At the same time, though, these movements drew the interest of scholars to deepen the deposit of faith through new methods and to search for more accessible ways to expound it to the world, not without the risk, however, of falling into error. Some years later, the ecclesiology of Vatican II, based on the notion of the people of God immersed in diverse cultures,

rediscovered the function of the magisterium as a service, and recognized the common responsibility of all the faithful in furthering the Church's teaching office.

Having set this base, we will be in a better position to scrutinize the sources and underlying values of c. 754.

The object of chapter two is to analyze the sources of c. 754. A careful study of these sources will show us that both the conclusion of *Dei filius* and c. 1324 of the 17/CIC recognized that the Holy See had the power to bind the faithful by its decisions, whether disciplinary or doctrinal, whether infallible or of a non-infallible nature. The norm, however, was expressed in negative terms, i.e., the Christian faithful were to avoid any errors condemned by the Holy See. Meanwhile, the ecclesiastical magisterium reinforced its authority, by increasing the number of major pronouncements, and thus, to some extent, overshadowing the specific task of theologians and exegetes. Following this, we shall see whether Vatican II added anything to what was eventually to become c. 754. A review of the process of the formulation of this canon should help us answer this question.

Chapter three, then, is dedicated to a detailed study of the process of formulation of c. 754, to show how the Commission for the Revision of the Code of Canon Law struggled to infuse into the canon the spirit of Vatican II. Despite this, the canon retains a

juridical approach to the functions of the magisterium, in the sense that it recognizes in the magisterium the power to impose on the faithful both the obligation to avoid proscribed erroneous opinions, and to require an internal assent to the doctrine proposed. To complete this overview, a brief study of the parallel matter in *the Code of Canons of the Eastern Churches* will help us clarify two special values underlying c. 754: the responsibility of pastors to safeguard the integrity of faith and good morals, and the obligation of the Christian faithful to follow the guidance of their pastors.

In chapter four, we shall analyze the meaning and the implications of c. 754. The baptized are reminded of their obligation to hold and accept both the doctrine of the Church and the norms that legitimate ecclesiastical authority, through constitutions and decrees, provides for the participation of all the Christian faithful in the Church's teaching office. This participation exists in part through their response, conditioned by the doctrinal weight of the pronouncement. In some cases, however, there could be legitimate dissent on the part of some of the faithful who, despite sincere efforts to give an internal assent, have well-founded reasons to disagree with a teaching put forward by the non-infallible magisterium.

In the last chapter of our study, we shall try to apply the norm of c. 754 to the life of the Church today, offering some guidelines to help the faithful discern the weight and binding force of any ecclesiastical document and to give it an adequate response. Then,

we shall deal briefly with the various magisterial authorities and types of pronouncements used by them. Finally, we shall attempt to show to which documents c. 754 applies.

A work closely related to our topic goes back to the twenties, that of L. Choupin, who dealt with the authority and binding force of the decisions of the Holy See, from the point of view of the 17/CIC.¹ Among the more recent studies on the same issue, we count those of F.G. Morrissey and H. Grote.² While these works and other articles have offered valuable insights into the legislative and doctrinal significance of ecclesiastical pronouncements, they are not directly related to c. 754, the object of our study.

¹ L. Choupin, *Valeur des décisions doctrinales et disciplinaires du Saint - Siège. Syllabus, Index; Saint Office 21 septembre 1894: Galilée. Congrégations Romaines; L'Inquisition au Moyen Âge*, 3^a. ed. rev. et aug., Paris, Beauchesne, 1928, x-631p.

² F.G. Morrissey, *Papal and Curial Pronouncements: Their Canonical Significance in Light of the 1983 Code of Canon Law*, 2nd ed. revised and updated by M. Thériault, Ottawa, Faculty of Canon Law, Saint Paul University, 1995, 46p.; H. Grote, *Was verlautbart Rom wie? Eine Dokumentunde die Praxis*, Göttingen, Vandenhoeck & Ruprecht, 1995, 168p. (Bensheimer Hefte, 76).

CHAPTER I

UNDERLYING ECCLESIOLOGIES RELATED TO THE TEACHING OFFICE OF THE CHURCH

Canon 747§1 clearly states the Church's conviction regarding its teaching office:

"It is to the Church that Christ the Lord entrusted the deposit of faith so that, assisted by the Holy Spirit, it might reverently safeguard revealed truth, more closely examine it and faithfully proclaim and expound it . . ." This statement from the first Vatican Council¹ has not changed in its wording, although its understanding is now somewhat different. This is so because the Church itself, the depository of divine revelation, has been deepening more and more its understanding of its own mystery. As a result, there is also a new understanding of the relationship between the Church and the deposit of faith. In this chapter, then, we shall ask how the Church, to whom Christ entrusted the deposit of faith, has understood itself since the first Vatican Council. This will enable us, in subsequent chapters, to apply this understanding to the applicable legislation. To carry out our study, we shall first consider some ideas prevalent during the Vatican I and post Vatican I period, then the applicable teachings of the second Vatican Council, with particular reference to LG, n. 25.

¹ "Porro Ecclesia, quae una cum apostolico munere docendi, mandatum accepit, fidei depositum custodiendi....," Dogmatic constitution on the faith of the Church, *Dei filius*, Session III, Chap. IV, of the first Vatican Council, April 24, 1870, in *Acta et decreta sacrosancti oecumenici concilii vaticani, in quatuor prioribus sessionibus*, Romae, ex Typographia Vaticana, 1872, p. 183; English translation in H. Denzinger, *The Sources of Catholic Dogma*, translated by R. Deferrari from the Thirtieth Edition of *Enchiridion symbolorum*, Saint Louis, MO, B. Herder Book Co., 1957 (= *DZ*), n. 1798; cf. n. 1800.

1. Vatican I and the post Vatican I period: the Church as a perfect society

There is no doubt that the ecclesiology and mentality of the “perfect society” prevailed in the first Vatican Council. However, this approach was but the logical conclusion of a lengthy development which began in the Middle Ages and received its final configuration in the counter reformation.² To help us understand better the evolution of thought in this regard, we shall first ask ourselves what was the historical context of the first Vatican Council in relation to this understanding; then, what were the elements of a perfect society model, and for how long did this theology prevail?

1.1. The historical context: from Gregory XVI to John XXIII

The broad historical context of the “perfect society” ecclesiology could be said to extend from the reign of Gregory XVI (1830) to that of John XXIII (1962).³ Gregory XVI assumed the leadership of a Church shaken by the waves of liberalism. The *Ancien*

² “Il Vaticano I è il punto di arrivo di uno sviluppo che si inizia con le tendenze ierocratiche nel Medioevo e si configura con maggiore vigore a partire dalla Contrariforma” in H. Pottmeyer, “Continuità e innovazione nell’ecclesiologia del Vaticano II”, in G. Alberigo (ed.), *La ecclesiologia del Vaticano II: Dinamismi e prospettive*, Bologna, Edizioni Dehoniane, 1981 (Nuovi saggi teologici, 18), p. 89.

³ This period of time is taken from the title of an article by G. Alberigo, “Du bâton à la miséricorde. Le magistère catholique de 1830 à 1980”, in *Lumière et vie*, 35 (1980), n. 180, pp. 17-36. G. Alberigo refers to the encyclical *Mirari vos* (August 15, 1832) of Gregory XVI, where the Pope, alluding to Saint Paul (I Cor. 4: 21), decided, even very uncomfortably, to use the rod of severity and condemnation in his pontificate (*virga compescere*) to face “the grand conspiracy of evildoers.” This style of governing the Church was reversed by John XXIII in the opening address of the second Vatican Council (October 11, 1962), by referring to the medicine of mercy rather than severity; see *Journal of Ecumenical Studies*, 19 (1982), n. 2, pp. 119-145.

régime, a system of State religion and privileged Church, gave place to a *Nouveau régime* or “Modern Civilization”, a system of separation between Church and State. Pope Gregory XVI and his successor Pius IX, both of whom are called the *Popes of the restoration*,⁴ faced the reality of rational liberalism when trying to re-establish the Christian order of society.⁵ Pius X, on his part, had to deal with modernism while Pius XII had to warn against the perils of the so-called *nouvelle théologie*.

These three movements motivated and helped to maintain a somewhat rigid style of authority that characterized the ecclesiastical magisterium for more than a century. Each of these factors, in its own way, was seen and treated as an enemy of the Church and as an obstacle to the integral preservation of the deposit of faith.

1.1.1. Rational Liberalism

Rational liberalism was seen in the XIXth century⁶ as a real threat against Christianity. It influenced almost every sphere of socio-political life, giving to that century its own physiognomy. In politics, it inspired the conception of a liberal State; in

⁴ “Par le terme ‘Restauration’, on désigne habituellement la réaction des institutions, valeurs et personnes plus directement menacées par les principes du ‘Siècle des Lumières’ et du libéralisme, c’est-à-dire le trône, l’aristocratie, l’Église”, in J. Gómez Heras, “Foi et autorité ecclésiastique au Vatican I”, in *Concilium*, 117 (1976), p. 80.

⁵ In Rome, “La civiltà cattolica” was founded by the Jesuits as a mean of integral restauration, in the family, individual, social and political order. See R. Aubert, *Pio IX y su época*, in A. Fliche, V. Martin (dirs.), *Historia de la Iglesia. De los orígenes a nuestros días*, vol. 24, Valencia, EDICEP, [1974], p. 256.

economics, it gave rise to the capitalist system; in religion, the progressive group of so-called liberal Catholics arose. Rationalism, on the one hand, rejected transcendency and extolled reason; while liberalism, on the other, affirmed the freedom and autonomy of man and rejected any authority which tried to place itself above individual conscience.⁷

G. Alberigo summarizes under four headings the dimensions of liberalism that affected the Church: the Roman question caused by the erosion of temporal power; nostalgia for a Christendom protective of the faith and of the Church; conflicts among theologians of the Roman and German schools; and traces of gallicanism.⁸ In the eyes of the Church, liberalism implied contempt for the sovereignty of God, for revelation, for the Church and for Church authorities.

Among the diverse expressions of this movement we could mention the political system called Josephinism,⁹ the traces of the complex theological and political doctrine known as Gallicanism,¹⁰ and various philosophical or doctrinal systems such as

⁶ For a complete study of this, see R. Aubert, *Pío IX y su época*; J. Gómez Heras, "Foi et autorité ecclésiastique", pp. 79-87.

⁷ See J. Collantes, *La cara oculta del Vaticano I. La actualidad de un concilio olvidado*, Madrid, [Editorial Católica], 1970, (BAC, ediciones de bolsillo, 18), p. 103; J. Gómez Heras, "Foi et autorité ecclésiastique", pp. 80-83; R. Aubert, *Pío IX y su época*, p. 256.

⁸ See G. Alberigo, "Le concile Vatican I (1869-1870)", in G. Alberigo et al., *Les conciles oecuméniques*, vol. I, Paris, Les Éditions du Cerf, 1994, p. 339.

⁹ See F. Maas, "Josefinismo", in *Gran Enciclopedia Rialp*, vol. 13, Madrid, Ediciones Rialp, S.A., 1979, pp. 520-521.

¹⁰ See C. Berthelot du Chesnay, "Gallicanism", in *New Catholic Encyclopedia* [prepared by an Editorial Staff at the Catholic University of America, Washington, DC], (= *NCE*), vol. 6, New York, McGraw-Hill Book Co., [1967], pp. 262-266.

Naturalism,¹¹ Traditionalism,¹² and Ontologism.¹³

Within the Church, a debate emerged between two extremes, the conservatives (ultramontanists) on the one hand who were nostalgic for the *Ancien régime*, and the liberal Catholics on the other hand who tried to adapt revealed truth to the new world. This inevitably gave rise to tensions. For their part, theologians claimed freedom to deepen their knowledge of the revealed truth by using historical and critical methods to interpret the Scriptures and dogma or by referring to contemporary philosophies to make revelation more intelligible for the new society.¹⁴ At the same time, higher church authorities assumed for themselves the right to formulate revealed truth and to interpret it authentically.

The magisterium of the Church, which had come to identify itself with the Holy See, reacted against rational liberalism by condemning it. Although the “Syllabus of

¹¹ A movement affirming that “nature is the whole of reality; that man has his origin, growth and decay within nature; and that nature — defined as that which is amenable for scientific investigation — is self explanatory”, see J.P Dougherty, “Naturalism”, in *NEC*, vol. 10, pp. 271-274.

¹² A doctrine which opposes a primitive revelation based on ancient myths and superstitions to scholastic theology and philosophy based on the rationalism of Aristotle; see R. Aubert, *Pio IX y su época*, p. 217.

¹³ Ontologism is a form of Christian platonism which affirmed the possibility of an immediate perception of God through human intelligence, which saw in him the metaphysic essence or universal ideas without any created intermediary; see R. Aubert, *Pio IX y su época*, p. 218.

¹⁴ A clear example of this is found in the convention of theologians in Munich led by I. Döllinger in which they asked for greater freedom in scientific theological research and for more independence from Rome; see *DZ*, nn. 1679-1684; J. Hoffmann, “Théologie, magistère et opinion publique. Le discours de Döllinger au Congrès des Savants Catholiques de 1863,” in *Recherches de science religieuse*, 71 (1983), pp. 245-258. Among the doctrinal deviations condemned in the *Syllabus* by Pius IX are Febronianism, Hermeism, Frohschammerism, Günterism.

errors”¹⁵ was the most startling document, but probably the most important one was the dogmatic constitution *Dei filius* of Vatican I. We shall return to this constitution later in our study.

1.1.2. Modernism

Modernism is the name given by Pius X to a movement¹⁶ which reached its height in the first decade of the XXth century among certain catholic and non catholic theologians, whose most important representatives were A. Loisy, A. Sabatier, E. Le Roy, G. Tyrrell, B.F. von Hügel, M. Blondel and A. Laberthonnier. It comprised a number of intellectual trends, which endeavored to rethink catholic doctrine, according to modern categories, while leaning on the findings of the religious sciences of the time. The philosophical basis of modernism was the exclusion of the supernatural, of a personal God who can intervene both in the world and in history.¹⁷ For a better understanding of modernism, we shall see its historical context, its implications for the deposit of faith, and the response of the ecclesiastical magisterium.

¹⁵ See Collection of modern errors *Syllabus*, December 8, 1964, in Pii IX Pontificis Maximi, *Acta. Pars prima*, vol. III, [Romae], ex Typographia Bonarum Artium habita facultate, [1854-1878], pp. 701-717.

¹⁶ G. Daly does not agree in qualifying modernism as a movement. He defines it as follows: “Modernism was the term employed by Pius X and his senior curial advisers in their attempt to describe and condemn certain liberal, anti-scholastic, and historic-critical forms of thought occurring in the Roman Catholic Church between 1890 and 1910”; see G. Daly, “The Dissent of Theology. The Modernist Crisis”, in *Concilium*, 158 (1982), p. 54.

¹⁷ See J.J. Weber, “Du bon usage des documents pontificaux. La crise moderniste et la situation présente de l’Église”, in *La Documentation catholique*, 68 (1971), pp. 341-344.

1.1.2.1. The historical context of Modernism

We can take for granted that the very basis of modernism is the inheritance of rational liberalism. Near the end of Leo XIII's pontificate, several ideas converged to give rise to this movement. These were taken partly from liberal protestantism which, primarily under the influence of agnostic and immanentist philosophies,¹⁸ had already begun applying the historical critical method to Sacred Scripture, to Christianity's origins and to the history of dogma. Alongside these, there was the desire of Catholics to adapt Christian thought to the present world and to the findings of modern science.

Agnosticism held that we cannot penetrate the reality of things beyond forms and measures which are shown to our faculties; intelligence is unable to go beyond the level of phenomena. However, religion as a fact is explained by immanentism through a series of theorems which have their core in "religious feeling", that is, man knows the divine within himself. The logical consequence of this was a form of theological immanentism — God is immanent in man — and a theological symbolism — that the means of expressing the divine reality are really symbolic.

¹⁸ See L. Murillo, "La enciclica *Pascendi dominici gregis* sobre el modernismo", in *Razón y fe*, 19 (1907), pp. 445-458; 20 (1908), pp. 24-39.

1.1.2.2. A doctrinal system

Pius X defined modernism as a well-organized system which attacks the very roots of Christianity as a supernatural religion.¹⁹ In other words, modernism, by applying gnostic immanentist philosophy, relativized the bases of Christianity and of the Catholic Church itself; it declared that the Church was not instituted by Christ, but rather appeared as the result of a collective consciousness of individuals who felt the necessity of sharing the same religious experience. From this collectivity, the necessity of an authority arose to regulate collective action. At the same time, for the modernists, dogma was but the expression of religious experience which could change throughout the course of history. In the same way, Scripture and tradition were but the expression of a special religious experience. Hence, the Church and the hierarchy were not of divine institution; revelation did not come directly from God; the ecclesiastical magisterium had but a relative function because what is most important is the individual conscience.

1.1.2.3. The ecclesiastical Magisterium against Modernism

Modernism had, bit by bit, penetrated a number of seminaries, universities, and intellectual circles.²⁰ But perhaps the publication of A. Loisy's book *L'Évangile et*

¹⁹ See *ASS*, 40 (1907), pp. 593-594; see also A. Vieban, "Who are the Modernists of the Encyclical?", in *The Ecclesiastical Review*, 38 (1908), pp. 489, 508.

²⁰ See J.J. Weber, "Du bon usage des documents pontificaux", p. 341.

l'Église (1902),²¹ and the spreading of its ideas, motivated the intervention of the Congregation of the Holy Office. It placed Loisy's work on the *Index*, December 16, 1903, and then later issued the Decree *Lamentabili*, July 3, 1907,²² approved by Pius X the next day. The decree condemned 65 doctrinal errors without referring to specific persons. Two months later, Pius X issued the Encyclical letter *Pascendi dominici gregis*, September 8, 1907,²³ to justify the condemnation previously made in *Lamentabili*. Finally, he issued the Motu proprio *Sacrorum antistitum*, September 1, 1910,²⁴ to impose the anti-modernist oath.

Pius X, in his zeal for reforming the Church, undertook the task of eradicating what he considered to be the errors of modernism. He did so in two ways: firstly, by identifying these errors and condemning them; secondly, and at the same time, by reaffirming and strengthening the teaching on the authority and divine origin of the ecclesiastical magisterium, of the Church, of revelation, and of dogma. He also reaffirmed the place of scholastic philosophy in Christian doctrine. However, the most efficacious part of the campaign against modernism consisted in the disciplinary measures imposed by the Pope.

²¹ A. Loisy, *L'Évangile et l'Église*, troisième édition, Bellevue, Seine-et-Oise, chez l'auteur, 1904, xxxiv-279p.

²² *ASS*, 40 (1907), pp. 470-478.

²³ *ASS*, 40 (1907), pp. 593-650.

²⁴ *AAS*, 2 (1910), pp. 655-680.

Thus, for instance the Encyclical letter *Pascendi dominici gregis*²⁵ among others, imposed scholastic philosophy, vigilance over professors of philosophy and theology, censorship of books, restrictions against priests assembling, and even the establishment of a “Council of Vigilance” in each diocese. The Motu proprio *Sacrorum antistitum* bound all clerics and those who taught theology or philosophy as well as those who held any office in the Church, to swear an oath against the errors of modernism.²⁶ These prescriptions remained on the law books until the Vatican II period.

1.1.3 The New Theology

A third factor was what we have come to know as the “New Theology.” This was a theological movement born in France around the same time as existentialist philosophy,²⁷ among certain professors of theology and members of the secular and regular clergy.²⁸ This movement also exerted an influence in England and in Spain.²⁹

²⁵ Pius X, Encyclical letter *Pascendi dominici gregis*, September 8, 1907, in *ASS*, 40 (1907), pp. 640-650.

²⁶ “Me etiam, qua par est, reverentia, subiicio totoque animo adhaereo damnationibus, declarationibus, praescriptis omnibus, quae in Encyclicis litteris *Pascendi* et in Decreto *Lamentabili* continentur, praesertim circa eam quam historiam dogmatum vocant”, in *AAS*, 2 (1910), p. 670; see the list of those who are bound to swear the oath against errors of modernism on p. 669.

²⁷ This means that the New Theology and existentialism have certain convergent points, not because the latter was adopted by the former, but because both were born and nourished in the same environment, France of the 1940s. See G. Weigel, “The Historical Background of the Encyclical *Humani generis*”, in *Theological Studies*, 12 (1951), pp. 220-224.

²⁸ G. Weigel attributes the leadership of this movement to some members of the Society of Jesus and of the Dominicans; see G. Weigel, “The Historical Background”, p. 219.

²⁹ See D.L., Greenstock, “Thomism and the New Theology”, in *The Thomist*, 13 (1950), p. 569.

DERLY

are H

gy" be

no cor

theolo

Theo

OLOGIES

Daniélou, M.D. Ch

to this movement, on

and the fact that there

New Theology

ny in

er: the

ideal

by th

the ti

peo

aw a

is or

g an

on o

three groups who

Protestants

together to

other hand

operated

inary

need

ing

an gen

on

Among its principal exponents are H. de Lubac, J. Daniélou, M.D. Chénu, and L. Charlier. The name of “New Theology” became attached to this movement, only after the appearance of *Humani generis*. Thus, no commentator ignored the fact that there was an intimate bond between the Pope’s “new theology” and the French “New Theology.”³⁰

1.1.3.1. Historical Context of the New Theology

During the occupation of France by Germany in the forties, resistance groups who lived clandestinely came into contact with each other; there were Catholics, Protestants, Jews, Communists and Atheists. They had the same ideal, namely, to work together to achieve the restoration of fraternity and peace broken by the war. On the other hand, French catholicism was experiencing a division between the theologians, who operated within universities and in the clerical world, and the ordinary people. While the ordinary people appeared to be satisfied with the *status quo*, theology saw as a more urgent need the living of Christianity which touched the human person in his or her daily concrete situation, understanding his or her own way of thinking, feeling and reacting. This change of emphasis was taking place amidst a fusion and even confusion of philosophical thought and of religious and psychological feelings.³¹

³⁰ See G. Weigel, “Current Theology. Gleanings from the commentaries on *Humani generis*”, in *Theological Studies*, 12 (1951), pp. 529-530.

³¹ See J. Iturriz, “Nueva Teología. Su actitud histórica, filosófica, teológica”, in *Razón y fe*, 141 (1950), pp. 43-45.

1.1.3.2. An innovative attitude

The New Theology, rather than being an organized doctrinal system discussed in ecclesiastical centres, was a basic mood, the gradual realization of an idea.³² G. Weigel said that *what united the theologians was a mood rather than a theory*.³³ What was this basic mood or attitude?

Above all, it consisted in wishing to make the faith accessible to the person of our times, and to promote conciliation with other Christian and non-Christian groups. It was an attitude fostered by a true ecclesial perspective, because its proponents were convinced that theology was born along with the Church itself, lives with it, of it and for it. Hence, theology follows the same conditions as the Church throughout the various periods of history. It has necessarily had to adapt to every human culture, and shall continue to do so.³⁴

The theologians proposed, as a consequence, to return to the sources of revelation and dogma, to free them from extrinsic and accidental elements, such as wording, and to

³² It is necessary to make clear that when Pius XII in his Encyclical *Humani generis* warns against the perils which threatened to undermine the bases of catholic doctrine, he referred to this innovative attitude of a certain theology, that is, of this French movement when he wrote his encyclical, but his warning went beyond this movement; he addressed his encyclical to all theologians who felt tempted by novel ideas which put catholic doctrine in danger; cf. G. Weigel, "Current Theology. Gleanings from the Commentaries on *Humani Generis*", pp. 529-530.

³³ G. Weigel, "The Historical Background", p. 220.

³⁴ See J. Iturriz, "Nueva teología. Su actitud histórica", pp. 50-51.

reformulate them in contemporary forms. They did so because they considered that the modern cultural world detests abstract thought, and shows antipathy for scholasticism and its forms; instead, the theologian should call on the newer philosophical categories available to the younger generations to help present theological ideas and principles.³⁵

1.1.3.3. The reaction of the Magisterium

The first time Pius XII referred to the “new theology”, as a theological trend, was in 1946.³⁶ Then, in 1950, he promulgated the Encyclical letter *Humani generis*,³⁷ where he warned theologians against such a movement. The Pope did not direct his encyclical against the French movement, but we believe that it was in the back of his mind. Similarly, although no one is authorized to identify as one both new theologies, the French and the one referred to by the Pope, certainly in the French “New Theology” there were elements of the “new theology” condemned by the Roman Pontiff.

In *Humani generis*, the Pope praised the effort to return to the sources, i.e., to the Sacred Scriptures and the Fathers (see, for instance, *Sources chrétiennes*). But the main

³⁵ A number of theologians were convinced that there is no “absolutely absolute” philosophical system, but all systems are conditioned by the limitations of the human condition and of history; cf. J. Iturriz, “Nueva teología. Su actitud histórica”, pp. 53-65.

³⁶ It was in these terms that Pius XII referred to this movement in his address to the Jesuits, (*Allocutio ad Patres Societatis Iesu in XXIX Congregatione generali electores*, September 17, 1946, in *AAS*, 38 [1946], pp. 381-385), as well as to the Dominicans’ General Chapter, (*Allocutio ad Patres delegatos ad Capitulum generale Ordinis Fratrum Praedicatorum*, September 22, 1946, in *AAS*, 38 [1946], pp. 385-389).

issue of the encyclical was to warn theologians against the dangers which threatened to undermine the very foundation of Christian doctrine, especially the risk of falling into historical and doctrinal relativism. He also reminded them of the distinction between the office of the ecclesiastical magisterium and the task of the theologian:

The sacred magisterium, in matters of faith and morals, should be the proximate and universal norm of faith to any theologian, inasmuch as Christ the Lord entrusted the entire deposit of faith to it, namely, the Sacred Scriptures and divine “tradition”, to be guarded, and preserved, and interpreted.³⁷

As for the theologians, he stated that “it is their duty to indicate how what is taught by the living magisterium is found, either explicitly or implicitly, in Sacred Scriptures and in divine tradition.”³⁸

Throughout these various discussions, with liberalism, modernism, and the new theology, the Church was influenced by its own perception of itself and of its mission. To help us understand these reactions, we shall now examine the understanding of the perfect society model that prevailed during this period.

³⁷ *AAS*, 42 (1950), pp. 561-578.

³⁸ “Et quamquam hoc sacrum Magisterium, in rebus fidei et morum, cuilibet theologo proxima et universalis veritatis norma esse debet, utpote cui Christus Dominus totum depositum fidei — Sacras nempe Litteras ac divinam “traditionem” — et custodiendum et tuendum et interpretandum concredit”, in *AAS*, 42 (1950), p. 567: English translation in *DZ*, n. 2313.

³⁹ “Eorum enim est indicare qua ratione ea quae a vivo Magisterio docentur, in Sacris Litteris et in divina “traditione,” “sive explicite, sive implicite inveniantur”, in *AAS*, 42 (1950), p. 568: English translation in *DZ*, n. 2314.

1.2. The Church perceived as a perfect society

The notion that the Church is a perfect society, i.e., a society that is self-sufficient and independent, was a major focus of Vatican I.⁴⁰ This approach emphasized the external and visible dimension of the Church, overlooking somewhat its internal and invisible aspects. This conception of the Church finds its roots in the doctrine of the controversists⁴¹ of the XVI-XVIIIth centuries, mainly in that of St. Robert. Bellarmine, who faced the waves of protestantism with its spiritualist ecclesiology.

The ecclesiology of the perfect society is centered on the juridical and institutional aspects of the Church; the Church became identified with the hierarchy (the Pope and bishops), who held the threefold power of teaching, sanctifying and

⁴⁰ It is important to note that in the schema of the Dogmatic constitution on the Church of Christ given to the fathers of Vatican I the ecclesiology of the mystical body of Christ also was present — theologians of this ecclesiology were J.A. Möhler, F. Pilgram, J. Perrone, C. Passaglia, Cl. Schrader, J. Franzelin, J. Kleutgen and M.J. Scheeben — but obviously it was overshadowed by the juridical dimension of the Church, which was handed down even by the catechisms of the time; see for instance the definition of Cardinal Gasparri quoted by M. - J. le Guillou, “The Catholic Church instituted by Jesus Christ is a visible society, composed of men who have received baptism and who, united amongst themselves by the profession of the same faith and the bonds of mutual communion, strive for the same supernatural end, under the authority of the Roman Pontiff and the bishops in communion with him”, see M. - J. le Guillou et al., “Church”, in *Sacramentum Mundi. An Encyclopedia of Theology*, vol. I, London, Burns & Oates, 1968, p. 322. The ecclesiology of the Mystical Body of Christ was assumed by Pius XII in his Encyclical *Mystici corporis*, July 29, 1943, in *AAS*, 35 (1943), pp. 193-248.

⁴¹ “Controversists” is the name given to the theologians of the XVI-XVIIIth centuries, who developed their theology by facing up to protestant doctrine. A more detailed study can be found in A. Antón, *El misterio de la Iglesia. Evolución histórica de las ideas eclesiológicas*, vol. 2, Madrid, Editorial Católica, 1987 (BAC maior, 40), pp. 873-893; and M. Rivella, *Autorità dei dottori e magistero gerarchico nella canonistica posttridentina (1563-1730)*, Roma, Pubblicazione del Pontificio Seminario Lombardo in Roma, 1993, (Dissertatio, Series romana, 7), pp. 35-48, 90-106.

governing,⁴² independently of any civil power. Among the most important elements of this ecclesiology, we can point out the three following dimensions.

1.2.1. Authority as a central value

According to J. Lynch, the centralization of power in the Roman Pontiff which was one of the characteristics of the “perfect society” model, was initiated by Gregory VII (1073-1085) with the *Dictatus papae*, and it reached its climax in the definition of the dogma of the primacy of jurisdiction and the infallibility of the Roman Pontiff during the first Vatican Council. This stance was modified somewhat by the second Vatican Council (cf. LG, nn. 22, 25).⁴³

1.2.2. The power of teaching became part of the power of jurisdiction

Secondly, in the period immediately before Vatican I, and in subsequent decades, the function of governing and its accompanying authority entered into the doctrinal

⁴² In 1823 F. Walter proposed the doctrine of the threefold power in the Church: “potestas magisterii”, “potestas ministerii sive ordinis”, and “potestas iurisdictionis sive ecclesiastica in specie”, as quoted by Y. Congar, “Pour une histoire sémantique du terme *magisterium*”, in *Revue des sciences philosophiques et théologiques*, 60 (1976), p. 95.

⁴³ See J. Lynch, “Power in the Church: An Historical Survey”, in *Concilium*, 197 (1988), pp. 17-20.

field.⁴⁴ Dogma acquired a narrower meaning.⁴⁵ At the same time, the concept of the “ordinary and universal magisterium of the Church” was coined.⁴⁶ These too became characteristics of the Church seen as a “perfect society.”

A new concept of magisterium, based not on reason but on the authority of the Church was thus formulated. This new concept could hardly avoid falling into the extreme of recognizing the primacy of the hierarchical authority which teaches or defines — *principium quo* — instead of the deposit of faith — *principium quod*.⁴⁷ The ecclesiastical magisterium began to understand itself as the hierarchical body, exercising with authority the office of teaching,⁴⁸ at the same time as it weakened the emphasis

⁴⁴ In this regard, A. Antón says: “La afirmación del primado de jurisdicción del Romano Pontífice es el eje en torno al cual gira toda la doctrina eclesiológica del Vaticano I, no excluida la misma infalibilidad papal, entendida como una implicación de dicho primado”, in A. Antón, *El misterio de la Iglesia*, vol. 2, pp. 367-368; A. Descamps, on his part, states that Vatican I “semblait faire du magistère infaillible du Pape une *species* dans le *genus* ‘primat de juridiction.’” in A. Descamps, “Théologie et magistère”, in *Ephemerides theologiae lovanienses*, 52 (1976), pp. 87.

⁴⁵ In the XVIIIth century the word “dogma” began to assume its modern and narrower meaning, that is, a proposition that is an object of catholic and divine faith and that the Church explicitly proposes as divinely revealed; previously it was known as an “article of faith.” See J. Heft, *John XXII and Papal Teaching Authority*, Lewiston, Mellen Press, 1986 (Texts and studies in religion, 27), pp. 152-155.

⁴⁶ This concept was introduced in the Letter *Tuas libenter*, December 21, 1863, of Pius IX (see Pii IX Pontificis Maximi, *Acta pars prima*, vol. III, p. 642: *DZ*, n. 1863) and repeated later in the Dogmatic constitution *Dei filius*, Session III, Chap. III of the first Vatican Council (see *Acta et decreta sacrosancti oecumenici Concilii vaticani*, p. 179: *DZ*, n. 1792).

⁴⁷ See Y. Congar, “Bref historique des formes du ‘magistère’ et de ses relations avec les docteurs”, in *Revue des sciences philosophiques et théologiques*, 60 (1976), pp. 107-108.

⁴⁸ Y. Congar says: “Au sens de ‘corps des pasteurs’ exerçant avec autorité la fonction d’enseignement, *Magisterium*, ‘Le Magistère’ nous semble être d’un emploi récent. Cet emploi s’annonce chez Grégoire XVI et Pie IX: il est contemporain de la série des encycliques qu’on fait généralement commencer avec *Mirari vos* (15. VIII. 1832). Il est devenu commun sous Pie XII et, bien qu’avec moins de constance, chez Paul VI,” in Y. Congar, “Pour une histoire sémantique du terme *magisterium*”, p. 97; see also B. Sesboüé, “La notion du magistère dans l’histoire de l’Église et de la théologie”, in *L’Année canonique*, 31 (1988), p. 7; and J. Doré, “L’institution du magistère”, in *Revue des sciences religieuses*, 71 (1983), pp. 27-29.

placed on the content of the deposit of faith. It began also to distinguish the “living magisterium” or “active tradition” — *regula proxima fidei* — from the “passive tradition” — *regula remota fidei*.

With this new understanding of the function of the magisterium, the hierarchy, principally the Pope, assumed for itself the task, not so much of witnessing to the faith (*testificatio fidei*), but of formulating it (*instructio fidei*) under a new literary genre, such as encyclicals, apostolic letters, *motu proprio*s, and so forth. The hierarchy ceased being seen as a witness to the Truth and became instead the teacher of the Truth, stripping the theologians and the faculties of theology of a task that had been theirs for centuries.

The task of theologians was thus restricted to teaching under the vigilance of the pastors’ authority and supporting the teaching of the ecclesiastical magisterium with the texts of Sacred Scripture and of tradition.⁴⁹ This caused an imbalance in the relationship between bible-tradition on the one hand and ecclesiastical magisterium and theology on the other hand; in doctrinal terms, however, the imbalance was partially reversed by the second Vatican Council.⁵⁰

⁴⁹ “It is also true that theologians must always have recourse to the sources of divine revelation; for it is their duty to indicate how what is taught by the living magisterium is found, either explicitly or implicitly, in Sacred Scripture and in divine ‘tradition’”: Pius XII, Encyclical letter, *Humani generis*, August 12, 1950, in *AAS*, 42 (1950), p. 568; English translation in *DZ*, n. 2314; Cf. G. Alberigo, “The Authority of the Church in the Documents of Vatican I and Vatican II”, in *Journal of Ecumenical Studies*, 19 (1982), n. 2, p. 122.

⁵⁰ We read in the Dogmatic constitution on divine revelation *Dei Verbum* (= *DV*), n. 10, “Yet this magisterium is not superior to the word of God, but is its servant”, in A. Flannery (gen. ed.), *Vatican*

1.2.3. Dichotomic vision of the Church

A third characteristic of this model was that the Church itself became identified in the minds of the faithful with the hierarchy; consequently, the laity became a sort of *terra ignota*. The result was a dichotomic vision of the Church:⁵¹ “Ecclesia docens” - “Ecclesia discens”; pastors - faithful; infallibility *in docendo* - infallibility *in credendo*; active infallibility - passive infallibility; authority - obedience.

It was in this context that the fathers of the Council met in 1962 to begin re-examining the Church’s understanding of itself.

2. Vatican Council II: the Church as the People of God

The nature of the Church is very complex; its whole reality cannot be embraced under one idea or heading. However, in the second Vatican Council it was the image of “people of God” that prevailed, along with others;⁵² this is a comprehensive idea which attempts to express both dimensions of the Church, the social and the mystery. Due to the

Council II. The Conciliar and Postconciliar Documents, new revised edition, Northport, NY, Costello Publishing Company, 1992, (Vatican collection, 1), p. 756.

⁵¹ See B. Sesboüé, “La notion du magistère”, pp. 79-80.

⁵² Connolly says: “Vatican Council II sought to concretize the identity of the Church by an image consonant with the exigences of the modern world. In so doing, Vatican II recaptured the biblical image, the people of God on their pilgrimage to the Kingdom of God”; M.C. Connolly, “De munere docendi: Some Orientations”, in *Canon Law Society of America Proceedings*, 44 (1982), p. 221.

particular focus of this work, however, we are not going to develop the complete ecclesiology of Vatican II, but rather only those aspects related to the teaching office of the Church.

2.1. A change in perspective

Two elements motivated the Church's change of perspective: on the one hand, the discreet appearance of new ecclesiologies after World War II, such as Pius XII's theology of the *Mystical Body of Christ*,⁵³ or the canonists E. Eichmann's and K. Mörsdorf's rediscovering of the Church as the *new people of God*.⁵⁴ Then also appeared strong ideas of *communion* and *radical sacrament*. On the other hand, the crisis of authority in the world was also experienced within the Church itself.⁵⁵ Both elements, as well as John XXIII's opening discourse of Vatican II, encouraged a change in understanding.⁵⁶

⁵³ Pius XII, Encyclical letter *Mystici corporis*, July 29, 1943, in *AAS*, 35 (1943), pp. 193-248.

⁵⁴ See O. Semmelroth, "La Chiesa, nuovo popolo di Dio", in S. Olivieri (dir.), *Il popolo di Dio. Studi e commenti in torno al secondo capitolo della costituzione dogmatica Lumen gentium*, Firenze, Vallecchi Editore Firenze, [1968], p. 9.

⁵⁵ Cf. G. Alberigo, "The Authority of the Church", p. 134.

⁵⁶ The opening discourse of John XXIII fixed the climate and the perspective of the whole Council. He said: "The Church has always opposed these errors. Frequently she has condemned them with the greatest severity. Today, however, the Spouse of Christ prefers to use the medicine of mercy rather than of severity. She considers that she meets the needs of the present day more by demonstrating the validity of her teaching than by condemnation . . . She desires to show herself as the loving mother of all: benign, patient, full of mercy and goodness to the children separated from her", in John XXIII, "The Opening Address of the Second Vatican Council, *Gaudet mater Ecclesia*", October 11, 1962, in *AAS*, 54 (1962), p. 792: English translation in *The Teaching of the Second Vatican Council*, (introduction by G. Baum), Westminster, Maryland, The Newman Press, 1966, p. 8.

2.2. Elements of the ecclesiology of the People of God

It was during the first and second sessions of Vatican II that the fathers began to realize the significance of the doctrine of the Church as people of God. This doctrine is expressed in the second chapter of the Dogmatic constitution on the Church, *Lumen gentium* (= LG), balancing the Church as mystery (chapter I) with its hierarchical structure (chapter III).

The ecclesiology of the people of God is an integrative ecclesiology which embraces both dimensions of the Church: the invisible (mystical body of Christ, communion and sacrament of salvation) and the visible (social body, a pilgrim people).⁵⁷ Among the more important elements of this ecclesiology we can point out the following.

2.2.1. Historical and salvific dimensions of the Church

The Church is the new Israel based not on natural descent and common nationality as was the people of Israel, but on the covenant instituted in the blood of

⁵⁷ "But, the society structured with hierarchical organs and the mystical body of Christ, the visible society and the spiritual community, the earthly Church and the Church endowed with heavenly riches, are not to be thought of as two realities. On the contrary, they form one complex reality which comes together from a human and a divine element" (LG, n. 8), in A. Flannery (gen. ed.), *Vatican Council II...*, p. 357.

Christ.⁵⁸ This image by itself expresses the social and historical dimension of the Church both immersed in the world⁵⁹ and inserted into God's plan.⁶⁰ Thus, the Church is a pilgrim people journeying through this world toward an eternal homeland.⁶¹ These historical and salvific dimensions of the Church can help us to understand better the idea of communion so strongly underlined in Vatican II,⁶² a communion in a twofold dimension: the vertical, the communion in life of man and God through Christ in the Holy Spirit, and the horizontal, the communion among human beings. This twofold communion finds its practical expression in the various particular churches, as well as in the collegiality of bishops.⁶³

2.2.2. The free and gratuitous election from God

God's free and gratuitous election of each person is the fundamental element of

⁵⁸ "Christ instituted this new covenant in his blood (cf. 1 Cor. 11: 25); he called a race made up of Jews and Gentiles which would be one, not according to the flesh, but in the Spirit, and this race would be the new people of God" (*LG*, n. 9), in A. Flannery (gen. ed.), *Vatican Council II...*, p. 359.

⁵⁹ The very title of the Pastoral constitution on the Church in the modern world *Gaudium et spes* (= *GS*) of the second Vatican Council expresses this idea; see A. Flannery (gen. ed.), *Vatican Council II...*, pp. 903-1001.

⁶⁰ "La socialità di questo popolo è l'unità della vita in Dio, la sua storia è la storia dell'azione salvifica di Dio nei riguardi degli uomini", in O. Semelroth, "La Chiesa, nuovo popolo di Dio", p. 15.

⁶¹ See chapter VII of *LG* in A. Flannery (gen. ed.), *Vatican Council II...*, pp. 407-413. Cf also G. Phillips, *L'Église et son mystère au IIe Concile du Vatican. Histoire, texte et commentaire de la "Constitution Lumen gentium"*, t. 1, [Paris], Desclée, 1967, pp. 127-128.

⁶² Cf. *LG*, n. 1.

⁶³ Cf. *LG*, nn. 9, 13, 22, 23, 28; Decree on the pastoral office of bishops in the Church, *Christus Dominus*, of Vatican II (= *CD*), nn. 3, 11; Constitution on the sacred liturgy, *Sacrosanctum concilium*, of Vatican II (= *SC*), n. 42.

the people of God, because, since it is the continuation of the biblical people, it belongs to God by special disposition of his will.⁶⁴ All persons are called to belong to the people of God; however, there are several ways of belonging to it or of being called to it.⁶⁵

2.2.3. Equality within the People of God

The equality among all the faithful in dignity and in activity arises from baptism by which a person receives the gift of faith and enters into the baptized state, thus sharing in the office of Christ, priest, prophet and king, as well as in the mission of the Church. Nevertheless, there are distinctions among the faithful, arising from the different functions and ministries that each one is called to perform in order to build up the Body of Christ.⁶⁶ Hence, the hierarchical structure of the Church, that is, the distinction between sacred ministers and lay people, must be considered in the light of the fundamental equality of all the baptized.⁶⁷

⁶⁴ "He determined to call together in a holy Church those who should believe in Christ. Already present in figure at the beginning of the world, this Church was prepared in marvellous fashion in the history of the people of Israel and in the old alliance" (*LG*, n. 2), in A. Flannery (gen. ed.), *Vatican Council II...*, p. 351.

⁶⁵ "All men are called to belong to the new people of God . . . All men are called to this catholic unity which prefigures and promotes universal peace. And in different ways to it belong, or are related: the Catholic faithful, others who believe in Christ, and finally all mankind, called by God's grace to salvation" (*LG*, n. 13), in A. Flannery (gen. ed.), *Vatican Council II...*, pp. 364-365.

⁶⁶ "Although by Christ's will some are established as teachers, dispensers of the mysteries and pastors for the others, there remains, nevertheless, a true equality between all with regard to the dignity and to the activity which is common to all the faithful in the building up of the Body of Christ" (*LG*, n. 32), in A. Flannery (gen. ed.), *Vatican Council II...*, p.389.

⁶⁷ Cf. *LG*, n. 10.

2.3. The teaching office of the People of God

In addition to the newer dimensions in the understanding of the Church as a people of God, we also note that the concept of “teaching office of the Church” is richer than that of “ecclesiastical magisterium.” This latter expression identifies with the doctrine of the hierarchical magisterium exercised in the Church for more than a century; the former is more coherent with the ecclesiology of Vatican II, the Church seen as people of God. We see in it the principal changes in vision and in attitude toward this function which belongs to the entire Church.

Firstly, it is noteworthy that the proposition that the magisterium is a *proxima veritatis norma* was rejected.⁶⁸ Instead of this, Vatican II established a principle of great transcendence: “Yet, this magisterium is not superior to the word of God, but is its servant.”⁶⁹ Therefore, even when the task of providing the authentic interpretation of the word of God was entrusted to the living magisterium of the Church, its subordination to it is also clearly affirmed. In the same way, as we saw above, a more balanced relationship between Sacred Scriptures and tradition and magisterium of the Church was re-established,⁷⁰ namely, the magisterium of the Church is no longer the *locus theologicus*, but a servant of Christ and of his word, as well as of the Church.

⁶⁸Cf. G. Alberigo, “The Authority of the Church”, p. 134.

⁶⁹ *DV*, n. 10, in A. Flannery (gen. ed.), *Vatican Council II...*, p. 756.

As a result, there is an appropriate return to the sources of divine revelation, not by the *inductive* method of preconciliar theology which attempted to show that the explicit faith of the Church today, taught by the ecclesiastical magisterium, was implicitly present in the deposit of faith and in the life of the first Christian communities. Instead of this, Vatican II proposed a *deductive* and *progressive* method: to build up theology on the Sacred Scriptures and on tradition which hold the first place.⁷¹

The equality of all the faithful and their participation in the office of Christ, priest, prophet and king, enable us to understand that all in the Church participate in the same teaching office, as well as being a learning Church, each one though according to his or her own condition. This rediscovery of the faithful's active participation in the teaching office of the Church finds its meaning in the almost forgotten terms of *sensus fidei* and *consensus fidelium*, through which the Church reveals its infallibility.⁷²

The Pope and the bishops as successors of the apostles have the special mission, with the assistance of the Holy Spirit, of proclaiming authentically the gospel of Christ, and they carry out this mission, not above the Church but within it. In this regard, L. Örsy

⁷⁰ "They are so connected and associated that one of them cannot stand without the others. Working together, each in its own way under the action of the one Holy Spirit, they all contribute effectively to the salvation of souls", in *DI*, n. 10, in A. Flannery (gen. ed.), *Vatican Council II...*, p. 756.

⁷¹ Cf. D. Fernández, "Asunción y magisterio", in *Ephemerides mariologicae*, 35 (1985), p. 99; see also, *OT*, n. 16.

⁷² See H. Vorgrimler, "From *Sensus Fidei* to *Consensus Fidelium*", in *Concilium*, 180 (1985), pp. 3-11; and *LG*, n. 12.

speaks of a “sacramental task”⁷³ insofar as they are witnesses of the faith of the whole Church in matters of faith and morals; the mission of teaching is conferred on them through episcopal ordination as the way of entering into apostolic succession.⁷⁴ Likewise, they are also witnesses and custodians of the word of God, although not the exclusive possessors; they must accomplish their mission not in an authoritarian way, but in a pastoral one.

To accept the historicity of the Church is to accept that the deposit of faith must be adapted to the men and women of today, while retaining fidelity to its content. One of the principal issues, which has been causing difficulties between the ecclesiastical magisterium and theologians, centres on this very point. Vatican II, repeating Pope John XXIII’s opening discourse and without discarding the importance of St. Thomas, stimulates theologians to deepen their understanding of divine revelation and to teach it through the methods of research and literary forms of modern thought; of course, everything must be measured according to the magisterium of the Church which is to be predominantly pastoral in character.⁷⁵

A good summary of what has been previously said is found in the following conciliar text:

⁷³ L. Örsy, *The Church. Learning and Teaching*, Wilmington, Delaware, Michael Glazier Inc., 1987, p. 45; see also C. Duquoc, “Magistère et historicité”, in *Lumière et vie*, 35 (1986), pp. 88-91.

⁷⁴ See *LG*, nn. 21, 24, 25.

With the help of the Holy Spirit, it is the task of the whole people of God, particularly of its pastors and theologians, to listen to and distinguish the many voices of our times and to interpret them in the light of the divine word, in order that the revealed truth may be more deeply penetrated, better understood, and more suitably presented.⁷⁶

3. *Lumen gentium* n. 25 and the postconciliar period

All the documents of Vatican II belong to the doctrinal patrimony of the Church. Nevertheless, LG, n. 25, provides an excellent summary of the doctrine on the ecclesiastical magisterium.⁷⁷ The first part deals with the non-infallible teaching of the Pope and bishops sharing in Christ's authority, whereas the second part deals with their infallible teaching. This last part of LG, n. 25, repeats the dogma of infallibility of the Roman Pontiff proclaimed by Vatican I, extending it to the entire Episcopal College.

In regard to the non-infallible magisterium, its subjects are the Roman Pontiff alone and the bishops in communion with him; its content is matters of faith and morals; the response given to it by the faithful is the loyal submission of the will and intellect. The manifest mind and intention of the ecclesiastical magisterium "is made known principally either by the character of the documents in question, or by the frequency with

⁷⁵ See AAS, 54 (1962), p. 792: English translation in *The Teaching of the Second Vatican Council*..., pp. 7-8; cf. see also, OT, n. 16; GS, nn. 44, 62.

⁷⁶ GS, n. 44, in A. Flannery (gen. ed.), *Vatican Council II*..., p. 946.

⁷⁷ Speaking of ecclesiastical magisterium, we mean the authentic teaching authority in the Church which pertains especially to the bishops, successors of the apostles. LG, n. 24 states: "The bishops, in as much as they are the successors of the apostles, receive from the Lord, to whom all power is given in heaven

which a certain doctrine is proposed, or by the manner in which the doctrine is formulated.”⁷⁸

With the closing of Vatican II, the period of “reception of the Council” began, that is, the understanding, acceptance, and implementation of its documents. This is a complex task that only partially and gradually has been accomplished through these years.⁷⁹ It is beyond the scope of this work to present a complete analysis of this process; rather, we shall simply mention some of the principal issues of this postconciliar period relating to the magisterium of the Church.

First of all, the understanding and implementation of the task of the Church in safeguarding, deepening and proclaiming the deposit of faith is still in a state of

and on earth, the mission of teaching all peoples, and of preaching the gospel to every creature, so that all men may attain to salvation through faith, baptism and the observance of the commandments.”

⁷⁸ Although these elements are directly mentioned for knowing the mind and intention of the Roman Pontiff, we can also apply them to the bishops, insofar as the magisterium of the Roman Pontiff, has the same nature as the magisterium of the bishops, distinguished from it but in intensity; cf. U. Betti, “L’ossequio al magistero pontificio *non ex cathedra* nel n. 25 della *Lumen gentium*”, in *Antonianum*, 62 (1987), pp. 448, 451.

⁷⁹ Paul VI and John Paul II have played an important role in the application of Vatican II in the life of the Church. Undoubtedly the main events have been the promulgation of the two Codes of Canon Law (1983 and 1990) and the Catechism of the Catholic Church (1992); besides, for instance, Paul VI, on October 6, 1969, said to the members of the International Theological Commission: “Nous Nous réjouissons de l’heureuse occasion qui Nous est offerte de manifester Notre intention de mettre à exécution tout ce qui s’inspire authentiquement du récent Concile, et de mettre effectivement à profit les conseils judicieux de Nos frères dans l’épiscopat pour rendre le gouvernement de l’Église toujours plus efficace”, in *La Documentation catholique*, 66 (1969), p. 908; or as John Paul II said: “Vatican II has always been, and especially during these years of my pontificate, the constant reference point of my every pastoral action, in the conscious commitment to implement its directives concretely and faithfully at the level of each Church and the whole Church”, in “Apostolic Constitution *Fidei depositum*, October 11, 1992, on the Publication of the *Catechism of the Catholic Church* Prepared Following the Second Vatican Ecumenical Council”, in *Catechism of the Catholic Church*, Ottawa, On, CCCB, 1994, p. 6; cf. also, G. Alberigo, “The Authority of the Church”, p. 145; A. Antón, *El misterio de la Iglesia*, vol. 2, pp. 853-840.

development. From this process flow certain tensions in the relationship between theologians and the ecclesiastical magisterium, raising questions such as the right and limits of dissent,⁸⁰ the freedom of theologians and authority of the magisterium, academic freedom and the teaching Church, authority and obedience, and so forth. Of course, doctrinally speaking, the respective role of both, the ecclesiastical magisterium and the theologians is clear,⁸¹ but in reality there are still tensions between the two.⁸²

The development of theological pluralism after Vatican II, as manifested in the founding of *Concilium* (1965) and *Communio* (1972) is evident. These two reviews were born as a forum for dialogue among theologians, and between them and the world. Even the *Catechism of the Catholic Church* had to forestall the existence of this theological pluralism by presenting a compendium of all catholic doctrine regarding both faith and morals, in order to be used by teachers of catholic doctrine and for preparing local catechisms, as well as to preserve the unity of faith and fidelity to the same doctrine.

⁸⁰ B.C. AUZA deals broadly with this issue in his dissertation: *The Non-Infallible Magisterium and Theological Dissent: A Study on the Contemporary Phenomenon of Theological Dissent from the Second Vatican Council to the Present, from the Perspectives of the Theology of the Magisterium about Itself and of the Theories of Theological Dissent of Some Contemporary Theologians*, Romae, Pontificia Studiorum Universitas a S. Thoma Aq. in Urbe, 1990, xxxiii-608p.

⁸¹ Vatican Council II clearly teaches that the task of the ecclesiastical magisterium is a task of service (*diakonia*) to the word of God and to the Church (*LG*, n. 24); Paul VI repeats the same saying that magisterium and theologians are submitted to the primacy of the faith (Allocution to the members of the International Theological Commission, October 6, 1969, in *La Documentation catholique*, 66 [1969], pp. 908-909); see also Congregation for the Doctrine of the Faith, "Instruction on the Ecclesial Vocation of the Theologian, *Domum veritatis*", May 24, 1990, in *Origins*, 20 (1990-1991), pp. 117-126.

⁸² See an overview of this in J. R. García Murguía, "Magisterio y teología desde el Vaticano II a nuestros días. Actuaciones y documentos significativos con especial atención al contexto español", in *Estudios eclesiásticos*, 57 (1982), pp. 271-306.

In addition, there is the problem of interpreting magisterial documents, especially those which touch on the ethical field. Most of these documents are written in technical language, and the Christian faithful need some explanation to understand them. However, the process of their reception has been challenged through the modern means of social communication, through which they are directly received without due hermeneutics. There are many types of magisterial documents and we lack specific criteria to interpret them. Vatican Council II proposes three criteria, namely, the character of the documents in question, the frequency with which a certain doctrine is proposed, and the manner in which the doctrine is formulated (LG, n. 25); nevertheless, more than that is required to attain certainty. We will come back on this in the last two chapters.⁸³

Conclusion

We are now in a position to answer the question we posed at the beginning: how has the Church to whom Christ entrusted the deposit of faith understood itself since the first Vatican Council?

Through ecclesiology, which is relatively new as a science,⁸⁴ the Church has been deepening its understanding of its own nature and mission. The two pillars of

⁸³ See pp. 153-154 and 178-181.

⁸⁴ For instance, the treatises “De Ecclesia” abound only since the end of last century; furthermore this century is known as the “century of the Church.”

ecclesiology are the last two Councils, which complement each other.⁸⁵ Vatican II took the doctrine of Vatican I and enriched it by displaying a new image of the Church. Later, John Paul II offered us a clear synthesis of the nature of the Church and of its self understanding:

Foremost among the elements which express the true and authentic image of the Church are: the teaching whereby the Church is presented as the people of God (cf. LG, n. 2) and its hierarchical authority as a service (LG, n. 3); the further teaching which portrays the Church as a communion and then spells out the mutual relationships which must intervene between the particular and the universal Church, and between collegiality and primacy; likewise, the teaching by which all members of the people of God share, each in their own measure, in the threefold priestly, prophetic, and kingly office of Christ, with which teaching is associated also that which looks to the duties and rights of Christ's faithful and specifically the laity; and lastly the assiduity which the Church must devote to ecumenism.⁸⁶

Within this context, it is easy to see that the Church's mission of preaching the gospel to all mankind (Mk. 16: 15), and of safeguarding the deposit of faith (I Tim. 6: 20) with the help of the Holy Spirit, logically flows from its own nature. This task, in which all members of the people of God are to get involved, has been called "the teaching office of the Church." However, since the authentic teaching authority was entrusted to the hierarchy, it must accomplish it as a service to the people of God, knowing itself to be a

⁸⁵ See PAUL VI, Address, "L'actualité du premier concile du Vatican", December 10, 1969, in *La Documentation catholique*, 67 (1970), pp. 11-13.

⁸⁶ John Paul II, "Apostolic Constitution, *Sacrae disciplinae leges*", in *Code of Canon Law Annotated*, Latin-English edition of the *Code of Canon Law* and English-language translation of the 5th Spanish-language edition of the commentary prepared under the responsibility of the Instituto Martín de Azpilcueta, ed. by E. Caparros, M. Thériault, J. Thorn, Montréal, Wilson & Lafleur Limitée, 1993, p. 53.

witness of the faith of the Church. Theologians also share the invaluable mission of promoting a better understanding of the word of God and of looking for better ways to present it to the world of our times, because they are not only auxiliaries of the magisterium but also the interpreters of the *sensus fidei* of the people of God. We are a long way from a “perfect society” model.

The canons of Book III of the 1983 Code of Canon Law were given to help the Church carry out its mission in regard to the deposit of faith. Unfortunately, many of the introductory canons do not reflect the full spirit of Vatican II, at least in their wording, but rather a number of them reflect the preconciliar ecclesiology, in as much as the Church is still identified with the hierarchy; consequently, they deal only with the authentic magisterium of the Church and with the obligations of the faithful.⁸⁷ To complete the picture, then, we shall have to look at some other canons of Book III, to find references to the co-responsibility of all members of the Church in its teaching office (cf. cc. 756-759; see also cc. 204, 208, etc.). The 1990 Code of Canons of the Eastern Churches provides a rather new and more conciliar approach. We shall refer to these canons too on occasion.

We shall return to the canons in the third chapter of our study. However we must first focus on the doctrinal and juridical sources of canon 754, which express the

⁸⁷ Cf. L. Vela Sánchez, “La función docente de la Iglesia (el Libro III del nuevo código)”, in *Estudios eclesiológicos*, 58 (1983), pp. 219-220.

ecclesiologies we have referred to and which will enable us to understand better the principles and notions underlying the current legislation of the Latin Church.

CHAPTER II

JURIDICAL AND DOCTRINAL SOURCES OF CANON 754

Canon 754 has both a doctrinal and a juridical background. Since the 1917 Code, it has undergone notable changes in both its understanding and its application, partly because of the interplay between the development of the teachings of the magisterium of the Church and the new circumstances of the modern world. In this chapter we intend to examine the sources of this canon, following the development of the legislation up to the 1983 Code. To accomplish our task, we shall refer to the sources listed by the Pontifical Commission for the Authentic Interpretation of the Code of Canon Law (= PCCICAL), as well as to those of the corresponding canon 1324 of the previous Code.¹ We shall begin our study with the Dogmatic constitution *Dei filius*, then follow through with the other sources of canon 754. The underlying ecclesiologies regarding the teaching office of the Church will help us to discover the doctrinal and juridical elements contained in these sources and, consequently, enable us to understand our canon better.

¹ Pontificia Commissio Codici Iuris Canonici Authentice Interpretando, *Codex iuris canonici auctoritate Ioannis Pauli PP. II promulgatus, fontium annotatione et indice analytico-alphabetico auctus*, Città del Vaticano, Libreria Editrice Vaticana, 1989, p. 211. It will be also helpful for us to refer to the sources of canon 1324 of 1917 Code of Canon Law, in *Codex iuris canonici, Pii X Pontificis Maximi iussu digestus, Benedicti Papae XV auctoritate promulgatus, praefatione, fontium annotatione et indice analytico-alphabetico ab Em.mo Petro Card. Gasparri auctus*, Romae, Typis polyglottis Vaticanis, 1933, p. 384, footnote 3.

1. Conclusion of the dogmatic constitution *Dei filius* of Vatican I

In the conclusion of the Dogmatic constitution *Dei filius* we find, for the first time, the formula which will eventually become canon 1324 of the 17/CIC and later our canon 754. The promulgated text of this dogmatic constitution has a proemium recalling the principal errors which appeared after the Council of Trent — Protestantism, Rationalism, Naturalism, Pantheism, Materialism, and Atheism² —, and four chapters which develop the doctrine on the faith of the Catholic Church in response to these errors: (1) God, Creator of all things, (2) Revelation, (3) Faith, (4) Faith and reason. These were followed by eighteen anathemas. But it should be noted that the draft text had been structured quite differently. We shall recall briefly the development of the conclusion of *Dei filius*, which concerns us more particularly, both in the draft and in the actual text approved by the conciliar fathers and promulgated by Pius IX.

1.1. Development of the conclusion of *Dei filius*

1) The preliminary draft of the “Dogmatic constitution against errors derived from rationalism” together with 43 accompanying annotations, was distributed to the conciliar fathers at the first general congregation, December 10, 1869. It contained

² I. Simor, archbishop of Esztergom-Budapest, in his presentation of the revised schema of the constitution to the conciliar fathers, exposed the errors against which the constitution was directed; see *Sacrorum conciliorum nova et amplissima collectio*, curantibus L. Petit - J.B. Martin, vol. 51: *Sacrosancti*

eighteen chapters:³ two introductory ones condemned rationalism, materialism and pantheism; nine were concerned about theological methodology; and seven criticized the errors of semirationalism promoted by Günther. The debates on the schema took place from December 28, 1869 to January 10, 1870. This draft seemed to the fathers to be a work of university erudition rather than a conciliar text and, consequently, revisions were requested.

2) The task of modifying the text was carried out by C. Martin, bishop of Paderborn, who finally presented the results of his labours to the commission *de fide*, on March 1, 1870. He divided the new schema into two parts, the first — a proemium and four chapters — dealing with fundamentals and 29 anathemas, and the second — five chapters and a conclusion — dealing with particular doctrines of Christian belief, accompanied by 28 anathemas.⁴ Certainly, this text was more accessible to all the

Oecumenici Concilii Vaticani. Pars secunda. Acta synodalia, Arnheim (Pays - Bas) & Leipzig, Société nouvelle d'édition de la collection Mansi (A. Welter), (= *Mansi*), 1924, cols. 46-48.

³ 1) condemnatio materialismi et pantheismi, 2) condemnatio rationalismi, 3) de divinae revelationis fontibus in sacra scriptura et traditione, 4) de supernaturalis revelationis necessitate, 5) de mysteriis in divina revelatione propositis, 6) de fidei divinae distinctione a scientia humana, 7) de necessitate motivorum credibilitatis, 8) de supernaturali virtute fidei et de libertate voluntatis in fidei assensu, 9) de necessitate et supernaturali firmitate fidei, 10) de recto ordine inter scientiam humanam et fidem divinam, 11) de incommutabili veritate illius dogmatum sensus quem tenuit et tenet ecclesia, 12) de unitate divinae naturae seu essentiae in tribus distinctis personis, 13) de divina operatione tribus personis communi et de Dei libertate in creando, 14) de Iesu Christi una divina persona in duabus naturis; atque de redemptione et vicaria pro nobis satisfactione per eundem Iesum Christum dominum nostrum, 15) de communi totius humani generis origine ab uno Adami et de natura humana una composita ex anima rationali et ex corpore, 16) de ordine supernaturali et de supernaturali statu originalis iustitiae, 17) de peccato originali et de poena aeterna destinata cuilibet mortali peccato, 18) de supernaturali ordine gratiae, quae nobis per Christum redemptorem donatur, in *Mansi*, vol. 50, cols. 59-74.

⁴ "Itaque supremi pastoralis nostri officii debitum exsequentes omnes Christi fideles et maxime, qui praesunt vel docendi munere funguntur, per viscera Iesu Christi obtestamur, nec non eiusdem Dei et

Christian faithful than was the previous one. The commission *de fide* set to work discussing and amending the revised text. This task took eight sessions, March 1-11, 1870. On March 14, the commission *de fide* presented the newly revised text of the dogmatic constitution. It now contained a lengthy proemium, four chapters, seventeen anathemas and a conclusion.⁵ It could be noted that the second part of the constitution on the catholic faith never came before the Council.

3) At the 30th general congregation, March 18, 1870, the fathers began the discussion on the revised schema as a whole; this lasted until March 28. Then the detailed discussions of the proemium and of each chapter continued. Fifty amendments were presented to the fourth chapter, of which the last three referred to the conclusion.⁶

4) On April 6, the commission *de fide* asked the conciliar fathers to reserve the conclusion for the second constitution on the catholic faith.⁷ So, in the 44th general congregation, April 8, 1870, the Council agreed to keep this article for the end of the

Salvatoris nostri auctoritate iubemus, ut ad hos errores e sancta Ecclesia eliminandos et purissimae fidei lucem pandendam studium et operam conferant.

“Quoniam vero satis non est, haeticam pravitatem devitare, nisi ii quoque errores diligenter fugiantur, qui ad illam plus minusve accedunt; omnes officii monemus, servandi constitutiones et decreta, quibus pravae eiusmodi opiniones ab hac Sancta Sede proscriptae et prohibita sunt”, in *Mansi*, vol. 53, col. 177.

⁵ See *Mansi*, vol. 51, cols. 31-38; the conclusion is on col. 38.

⁶ See *Mansi*, vol. 51, cols. 378-379.

⁷ “Quoad conclusionem statutum est, eam ad finem integrae constitutionis transmittendam esse”, in *Mansi*, vol. 53, col. 221.

second constitution.⁸ Nevertheless, the next day the commission *de fide*, in its 26th meeting, April 9, 1870, considered anew placing the conclusion at the end of the fourth chapter, because the text had been published without authorization by the *Gazette d'Augsbourg*. To omit the conclusion could be interpreted as a rejection of the proposed doctrine. Thus, the commission unanimously agreed that the conclusion be proposed again to the conciliar fathers to decide where it should be placed.⁹

5) At the 45th general meeting, April 12, 1870, L.F. Pie bishop of Poitiers, on behalf of the commission *de fide*, gave a report on the three amendments related to the conclusion and asked that the Council place this text at the end of the constitution *Dei filius*, thus rejecting the amendment which called for its suppression. He explained that the commission *de fide* had seen it fitting to add the conclusion to the constitution, but

⁸ "Quoad quadragesimam octavam, quadragesimam nonam, et quinquagesimam (emendationem), cum referrentur ad monitum, quod in fine propositi schematis habetur, et cum monitum ipsum iuxta mentem commissionis non in hac, sed in sequenti constitutione poni debeat, quae secundam partem complectitur schematis, quod primo propositum fuit patribus; idcirco patres interrogati sunt, utrum iuxta mentem commissionis convenirent de tribus his postremis emendationibus in sequenti constitutione rationem habendam esse; et more solito experimento facto, fere omnes affirmative responderunt", in *Mansi*, vol. 51, col. 374.

⁹ At the same day a notification was delivered to the fathers informing them that the place of the conclusion would be discussed at the next general congregation: "Peractis precibus, denuo de conclusione capitis IV actum est, cum plurimi reverendissimi patres eminentissimo praesidi significassent, non bene fieri si de illa prorsus non agatur, eam potissimum ob causam, quia post divulgationem schematis per folia publica, quamvis per fraudem, factam, omissio facile pro reiectione accipi posset; atque conclusum est unanimiter, ut conclusio in congregatione generali proxima proponatur, reverendissimisque patribus occasio detur, conclusionem iam nunc approbandi, simulque decernendi, quo in loco collocanda sit", in *Mansi*, vol. 53, col. 221. The monitum sent to the conciliar fathers said: "Schematis *de fide catholica* conclusio, quae incipit ab his verbis: *Itaque supremi pastoralis* etc., cum de ea in ultima congregatione generalis non satis explicite actum fuerit, adhuc debet subiici Patrum suffragiis, antequam ad ferenda suffragia de toto capite IV procedatur. Ideo monentur reverendissimi patres, ut hunc in finem *emendationes de capite quarto* huius schematis propositas etiam ad proximam congregationem generalem secum deferre velint", in *Mansi*, vol. 51, col. 376.

noted that it might be repeated if necessary at the end of the second dogmatic constitution (on the catholic faith). He mentioned that if it were not added here, those who were following the deliberations closely, and not always with the best of intentions, could say that the Council had forsaken various points of doctrine that had been previously proposed.¹⁰ After the report, the first vote on the Constitution *Dei filius* as a whole was taken. There were 510 *placet*, 83 *placet iuxta modum* and no *non placet* votes.

6) In total 148 amendments were presented, of which 37 referred to the conclusion, especially to its second part. The commission *de fide* examined the amendments in its 27th meeting, April 16, 1870, and decided to take account of the 148th amendment,¹¹ which stated that the task of combating the errors condemned by the Council, while being a recommendation for the simple faithful, would be a mandate for those who were invested with some authority or who had charge of teaching.¹² This decision was communicated to the fathers during the 46th general congregation, April 19,

¹⁰ "Nunc autem, cum priori nostrae constitutioni iam evulgandae aliqua conclusio necessario addenda sit, pluribus hac de re libratis consiliis, quae novem nostris capitibus postponenda destinabatur, reservata facultate hanc eandem conclusionem iterandi sive transferendi in editione seu publicatione finali post alteram constitutionem dogmaticam. Ad hoc nos movit non solum quod iam ex hoc ambone diximus iuxta mentem perplurimorum patrum, quod nempe secunda pars huius conclusionis necessario retinenda est: sed alia etiam accessit ratio non parvi ponderis. Scitis enim, venerabiles patres, quod schemata nostra, tum primigenia, tum renascentia, pluribus in locis infelicitur divulgata typisque impressa huc illuc pervolitant: expedit igitur ut iis, qui nos oculo attentiori et forsitan minus aequo observant, nullam praebeamus ansam falso sibi persuadendi ac statim in vulgus spargendi, nos a tali vel tali proposita doctrina recessisse", *Mansi*, vol. 51, col. 378.

¹¹ "N. 148 admittitur ita ut eius ratio habeatur", in *Mansi*, vol. 53, col. 223.

¹² "... fideles per viscera Iesu Christi obtestamur, ut non solum ipsi ab erroribus heic damnatis recedant, sed et, pro suo quisque modulo, alios quoque omni opera remove studeant: praecipue vero iis, qui praesunt, vel docendi munere funguntur eiusdem Dei et Salvatoris nostri auctoritate iubemus, ut

1870. Finally, the commission *de fide*, in its 29th meeting, April 21, 1870, resolved to leave the text as it was, adding only the words *ad arcendos*.¹³ In this manner the final text of the conclusion was received unanimously and promulgated by Pius IX, in session III, April 24, 1870. The final voting received 667 *placet* without any abstentions or *non placet* votes.

1.2. The conclusion of *Dei filius*

The conclusion of *Dei filius* has two paragraphs. The first paragraph reminded the Christian faithful of their obligation in regard to errors condemned by the Council, while the second advised them about their duty regarding teachings more or less close to such errors, and which had been either proscribed or prohibited by the Holy See. The text reads as follows:

And so, fulfilling the obligation of our supreme pastoral office, by the incarnation of Jesus Christ we beseech all the faithful of Christ, but especially those who have charge of, or who perform the duty of teaching; and in fact, by the authority of our same God and Savior, we command that they bring their zeal and labor to arrest and banish these errors from holy Church, and to extend the light of a most pure faith.

But, since it is not sufficient to shun heretical iniquity unless these errors also are shunned which come more or less close to it, we remind all of the duty of observing also the constitutions and decrees

doctrinae sanae ac purissimae fidei lucem pandendo, praedictos errores sedulo caveant et sancta Dei Ecclesia diligenter satagant, quoad fieri potest, eliminare", in *Mansi*, vol. 51, col. 408.

¹³ "Deinde decretum, ut in prima parte schematis de fide [id est in prima constitutione de fide catholica] nihil mutetur a priori forma, excepto additamento *ad arcendos etc . . .*", in *Mansi*, vol. 53, col. 225.

by which base opinions of this sort, which are not enumerated explicitly here, have been proscribed and prohibited by this Holy See.¹⁴

1.2.1. First part of the conclusion

We can note that the Council addressed its conclusion principally to the ordinary Christian faithful (*omnes Christifideles*) rather than to the bishops, although it did not exclude them; otherwise the Council would have used another word, different from “Christian faithful”; furthermore, the constitution was promulgated by the Episcopal College with the Pope, its head. The constitution was addressed, above all, to those who were invested with some authority and to those who were in charge of educational institutions, or who carried out the duty of teaching (*maxime vero eos, qui praesunt vel docendi munere funguntur*). According to J.M.A. Vacant, when the conclusion speaks of those who are invested with some authority, it was not referring to bishops but to those who possessed civil or domestic authority or even ecclesiastical authority below the level of the bishops,¹⁵ i.e., heads of State, parents, parish priests, etc.

¹⁴ “Itaque supremi pastoralis Nostri officii debitum exequentes, omnes Christi fideles, maxime vero eos, qui praesunt vel docendi munere funguntur, per viscera Iesu Christi obtestamur, nec non eiusdem Dei et Salvatoris nostri auctoritate iubemus, ut ad hos errores a sancta Ecclesia arcendos et eliminandos, atque purissimae fidei lucem pandendam studium et operam conferant.

“Quoniam vero satis non est, haereticam pravitatem devitare, nisi ii quoque errores diligenter fugiantur, qui ad illam plus minusve accedunt; omnes officii monemus, servandi etiam Constitutiones et Decreta, quibus pravae eiusmodi opiniones, quae isthic diserte non enumerantur, ab hac Sancta Sede proscriptae et prohibita sunt”, in *Mansi*, vol. 51, col. 436: English translation in *DZ.*, nn. 1819-1820.

¹⁵ See J.-M.-A. Vacant, *Études théologiques sur les constitutions du Concile du Vatican d'après les actes du concile*, Paris-Lyon, Delhomme et Brugué, 1895, vol. 1, p. 329. Butler, for his part, interpreted this same statement differently saying that the first paragraph referred especially to pastors; see D.C. Butler,

Those who hold the office of teaching are catholic professors of either the sacred or the secular sciences. They have to accept not only the dogmas of the Church but also to recognize that they are subject to those decisions pertaining to doctrine issued by the Roman congregations, as well as to those teachings held, by the common and constant consent of Catholics, as theological truths and conclusions.¹⁶ The same idea was explained by V. Gasser bishop of Brixen in his report to the 46th general congregation, April 19, 1870.¹⁷ To hold otherwise would mean that the laicization proposed by liberalism with its proposals for separation of Church and State and neutral schools, could have been recognized as being in conformity with God's law. But obviously such was not the case.

A stop is to be put to these errors if there is any attempt to infiltrate the Church with them (*a sancta Ecclesia arcendos*), or, if they have already been received, they are to be extirpated from the Church (*eliminandos*). The zeal and labor applied to carry out this task are to be proportional to the strong tone used by the Council giving this command (*nec non eiusdem Dei et Salvatoris nostris auctoritate iubemus ...*).

The Vatican Council 1869-1870. Based on Bishop Ullathorne's Letters, London, Collins Harvill Press, [1962], p. 245.

¹⁶ See Pius IX, Letter, *Tuas libenter*, December 21, 1863, regarding a convention of theologians held in Germany in September 1863; in *DZ*, n. 1684.

¹⁷ "Commissionis de fide, quam addendo constitutioni dogmaticae de fide talem clausulam, seu talem conclusionem, qua monetur fideles officii sui in erroribus arcendis et in erroribus eliminandis, et qua admonetur magistri, quod non sufficit probato catholico solum modo ea vitare, quae de fide vitanda sunt, sed etiam ea (debet servare), qua per decreta Sedis Apostolicae sunt definita", in *Mansi*, vol. 51, col. 424.

This order did not take away from the fact that it was to the Roman Pontiff and the bishops that Christ entrusted the office of teaching Christian doctrine; it is they who are to take the proper measures to prevent the infiltration of atheism, rationalism and other errors condemned by the constitution *Dei filius*.

1.2.2. Second part of the conclusion

The second paragraph of the conclusion of *Dei filius* is the most important part for our study, in as much as this was the first time that it was mandated that the various constitutions and decrees were to be observed by all the Christian faithful. The constitutions and decrees referred to are those whereby the Holy See had proscribed or prohibited certain opinions which were more or less close to the errors examined by the Council but which had not been expressly condemned.

Firstly, the Council recognized *the principle of doctrinal authority of the Holy See*, by recognizing the authority that the decrees had at the time they were issued. The suppression of the conclusion would have put into question, in the eyes of public opinion, any decision taken by the Holy See prior to the Council.¹⁸ However, it is important to

¹⁸ J.M.A. Vacant gave the value of infallibility to the constitutions of the Roman Pontiff. So to him, the suppression of the conclusion of *Dei filius* after the definition of the infallibility of the Pope, would not have been too significant since those documents would have the Pope's authority; however, before the definition of infallibility, such a suppression could have been interpreted, by public opinion, that the Council was removing any doctrinal authority from the decisions of the Holy See. He said: "Les circonstances, et en particulier les indiscretions de la presse mettaient donc le Concile dans cette alternative, ou de paraître

note that the Council did not change the nature or character of these decrees; for instance, it did not convert them into conciliar teachings. On the other hand, when speaking of the “Holy See”, the Council meant the Roman Pontiff as well as the Roman congregations.¹⁹ Hence, the constitutions and decrees in question were those promulgated by the Roman Pontiff or by the various dicasteries, especially the Congregation of the Holy Office and, later, the Pontifical Biblical Commission.²⁰

Secondly, as regards the nature of these constitutions and decrees, J.M.A. Vacant reserved the name of *constitution* to specific acts of the Roman Pontiff and general Councils, and *decree* to the general acts of the Roman Pontiff or the Roman congregations; nevertheless, very often the constitutions of the Roman Pontiff were called decrees, especially when he issued them by his own initiative.²¹ L. Chopin, for his part, identified constitutions with encyclicals, where the Pope gave doctrinal direction or an obligatory and universal teaching.²² In some cases, these decrees could be disciplinary in character, but the text applied only when they were related to doctrinal matters; for

rejeter l'autorité doctrinale du Saint Siège, s'il supprimait ou modifiait cet avertissement, ou bien de reconnaître équivalement cette autorité, s'il maintenait la conclusion, telle qu'elle était formulée dans le schema distribué aux pères”, in J.-M.-A. Vacant, *Études théologiques sur les constitutions*, p. 334; cf. pp. 332-333.

¹⁹ Amendment 121, which proposed to change the words *a Sancta Sede* to *a Summo Pontifice*, was not accepted: *vel si omnes concedant, eam adiungi, verba 'a Sancta Sede' mutantur in haec alia: 'a Summo Pontifice'*, in *Mansi*, vol. 51, col. 408.

²⁰ Cf. L. Chopin, *Valeur des décisions doctrinales et disciplinaires du Saint - Siège. Syllabus, Index; Saint Office 21 septembre 1894: Galilée. Congrégations romaines; L'Inquisition au Moyen Âge*, 3e ed. rev. et aug., Paris, Beauchesne, 1928, pp. 57, 96.

²¹ See J.-M.-A. Vacant, *Études théologiques sur les constitutions*, p. 335.

instance, when they proscribed false opinions. The *monitum* of the conclusion encompassed all constitutions and decrees promulgated before the Council, and which were related to matters touched on by the Constitution *Dei filius*.²³

What was the reason for placing this *monitum* in the conclusion of *Dei filius*? Bishop L.F. Pie, commenting to the conciliar fathers on the 50th amendment, April 12, 1870,²⁴ said that because the door remained open to new controversies or opinions being eventually prohibited or proscribed by the ordinaries and the Holy See, the commission *de fide* considered it appropriate to add to the constitution the *monitum* that what had already been decreed and established by the Holy See regarding doctrinal discussions and evil opinions was to be observed respectfully and religiously. Thus, the silence of the Council would not bring into disrepute the authority of the Holy See, mother and teacher, which has discarded and rejected such errors.²⁵ Therefore, it was not sufficient to refer only to the decrees and apostolic constitutions of ecumenical councils, as the amendment had proposed.

Bishop V. Gasser for his part, in the 46th general meeting, April 19, 1870, said

²² See L. Chopin, *Valeur des décisions doctrinales*, pp. 51-52.

²³ See *ibid.*, pp. 337, 339-340.

²⁴ The amendment proposed that the conclusion be more specific, and read: "decrees and apostolic constitutions of ecumenical councils": *servandi conciliorum oecumenicorum decreta et apostolicas constitutiones, quibus pravae istiusmodi opiniones damnatae sunt, vel in posterum damnabuntur*, in *Mansi*, vol. 51, col. 379.

²⁵ See *Mansi*, vol. 51, col. 379.

that the commission *de fide* had considered that the only means for the Council to put an end to the opinion which would have permitted that any point not contained either in the chapters or in the canons of *Dei filius* could be discussed freely, was to add a conclusion to the dogmatic constitution reminding the Christian faithful of the duty of preventing and discarding errors, and advising professors that it is not sufficient to avoid that which must necessarily be avoided if the catholic faith is to be safeguarded, but they are also to observe the decrees issued by the Holy See as well.²⁶ This was the last speech prior to the final voting on the constitution *Dei filius*.

This dogmatic constitution, being completely doctrinal in scope, was a magisterial act in the most technical sense of the term; it had an apologetic tone in favour of the hierarchy, instead of simply bearing witness to revelation.²⁷ Along with the goal of placing itself as a shield against doctrinal errors of the time, the constitution also became an obstacle, especially for theologians, for the free development of theology. It required the acceptance of the meaning of dogmas, as the Church had understood and understands them, and the conclusion warned not only against heresy but also against other opinions proscribed and prohibited by the non infallible magisterium of the Church prior to Vatican I.

²⁶ See *Mansi*, vol. 51, col. 424.

²⁷ According to E. Campana, the principal reason for Pius IX to convoke and to carry out Vatican I was not to define the infallibility of the Pope, but to offer suitable remedies to the gravest evils of the time — as we have already pointed out; see E. Campana, *Il Concilio Vaticano, vol. I: il clima del concilio*, Lugano - Bellinzona, Stabilimenti d'Arti Grafiche Grassi & Co., 1926, pp. 8-9.

2. Canon 1324 of the 1917 Code of Canon Law

The fourth part of the third book of the 17/CIC is entitled *De magisterio ecclesiastico*. According to some commentators, this part of the Code belonged to the divinely constituted power of jurisdiction of the Church, whereby the ecclesiastical magisterium was to guard, spread and defend the catholic faith with the assistance of the Holy Spirit. Therefore the Church could impose authoritatively on its members those truths of the catholic faith which were to be believed, and those doctrinal errors which were forbidden.²⁸ In other words, the general *power of jurisdiction* of the Church, as distinct from the *power of orders*, was divided into two: the *power of teaching* — concerning those things to be believed —, and the *power of jurisdiction* — concerning those things to be done.²⁹

In this sense, the office of preserving and spreading the deposit of faith could be said to belong only to the hierarchical body, in as much as the power of jurisdiction could

²⁸ Wernz defined ecclesiastical magisterium as “illa pars potestatis ecclesiasticae, quae ordinatur ad diffusionem, conservationem et defensionem fidei catholicae, et praecipua quadam ratione exercetur imponendo praecepta fidei et circa catholicam doctrinam intra ambitum competentiae cuiusque praelati ecclesiastici”, in F. X. Wernz - P. Vidal, *Ius canonicum*, t. IV, vol. II, Romae, Apud aedes Universitatis Gregorianae, 1935, n. 615, p. 5.

²⁹ See F.X. Wernz - P. Vidal, *Ius Canonicum*, t. IV, vol. II, n. 614, pp. 4-5; A. Vermeersch - I. Creusen, *Epitome iuris canonici, cum commentariis ad scholas et ad usum privatum*, t. II, 7th. ed., Mechliniae-Romae, H. Dessain, 1954, n. 656, p. 461; E. Regatillo, *Institutiones iuris canonici*, vol. II, Santander, Sal terrae, 1942, n. 167, p. 84; G. Cocchi, *Commentarium in codicem iuris canonici ad usum scholarum*, vol. VI, 3rd. ed., Taurinorum Augustae, Marietti, 1933, pp. 3-4; A. de Meester, *Iuris canonici et iuris canonico-civilis compendium*, vol. III, nova editio, Brugis, Desclée de Brouwer, 1926, p.

be granted only to the clergy,³⁰ whereas, to the laity belonged the obligation of belief in the doctrines proposed by the ecclesiastical magisterium.

2.1. Sources of canon 1324

Canon 1324 reflects, in its sources, the working method given by Cardinal Gasparri and followed by the commissions. Among the rules given to the consultors of these commissions, we could mention two:

1.° to consider the disciplinary aspect of the issues, but not the doctrinal ones;

2.° to examine the *Corpus iuris canonici*, the decrees of the Council of Trent, the papal bulls, and the instructions of the Roman congregations and tribunals, as regards each point of the Church's law.³¹

We thus find nineteen sources for canon 1324: one was taken from the *Corpus*

188; S. Sipos, *Enchiridion iuris canonici. Ad usum scholarum et privatorum*, 6th. ed., Romae, Orbis catholicus, 1954, § 33, p. 137.

³⁰ Cf. c. 118; See also S. Sipos, *Enchiridion iuris canonici*, §33, p. 137.

³¹ Cf. R. Epp, et al., "Le droit et les institutions de l'Église catholique latine de la fin du XVIIIe siècle à 1978. Sources, communauté chrétienne et hiérarchie", in G. Le Bras - J. Gaudemet (dirs.), *Histoire du droit et des institutions de l'Église en occident*, vol. 16, Paris, Éditions Cujas, 1981, p. 230.

iuris canonici,³² and another from Vatican I.³³ There were also eight papal constitutions,³⁴ one letter,³⁵ one encyclical letter,³⁶ and one *motu proprio*.³⁷ Finally, there were six decrees from the Congregation of the Holy Office.³⁸ The constitutions of the Popes and the decrees of the Holy Office condemned collectively erroneous doctrines on matters of faith and morals. Yet it should be noted that it was only the constitutions of the Pope which qualified certain doctrines as heretical;³⁹ the Holy Office merely proscribed and prohibited those doctrines, not as heretical but as rash, or scandalous, or

³² See c. 2, *de haereticis*, V, 3, in *Extravag. commun.*, in *Corpus iuris canonici. Editio Lipsiensis secunda post Aemilii Ludovici Richter, curas ad librorum manu scriptorum et editionis Romae fidem recognovit et adnotatione critica instruxit Ae. Friedberg*, Pars secunda, Lipsiae, ex officina Bernhardi Tauchnitz, reprinted 1918, cols. 1291-1292.

³³ See Vatican I, Dogmatic constitution, *Dei filius*, April 24, 1870, sess. III, in *Mansi*, vol. 51, col. 436: English translation in *DZ*, n. 1820.

³⁴ Martinus V, "*Inter cunctas*," February 22, 1418, §§ 4, 14, in *Codicis iuris canonici fontes*, cura P. Card. Gasparri (ed.), Romae, Typis polyglottis Vaticanis, 1926-1939 (= *Fontes*), vol. 1, n. 43, pp. 47-48, 55-56: English translation in *DZ*, n. 661; Leo X, "*Exsurge Domine*," January 15, 1520, §4, in *Fontes*, vol. 1, n. 26, pp. 132-133: *DZ*, n. 781; Innocent XI, "*Caelestis pastor*," November 20, 1687, §1, in *Fontes*, vol. 1, n. 252, p. 483: *DZ*, n. 1288; Clement XI, "*Unigenitus*," September 8, 1713, §4, in *Fontes*, vol. 1, n. 270, p. 541: *DZ*, n. 1451; "*Pastoralis Officii*," August 28, 1718, §4, in *Fontes*, vol. 1, n. 276, pp. 575-576: *DZ*, p. 347, note 2; Pius VI, "*Auctorem fidei*," August 28, 1794, §57, in *Fontes*, vol. 2, n. 475, p. 712: *DZ*, n. 1599; Pius IX, "*Apostolicae sedis*," October 12, 1869, §II, 1, in *Fontes*, vol. 3, n. 552, p. 26; Leo XIII, "*Officiorum ac munerum*," January 25, 1897, n. 14, in *Fontes*, vol. 3, n. 632, p. 507.

³⁵ Pius IX, "*Tuas libenter*," December 21, 1863, in *Fontes*, vol. 2, n. 538, pp. 979-983: English translation in *DZ*, nn. 1679-1648.

³⁶ Pius IX, "*Quanta cura*," December 8, 1864, n. 6, in *Fontes*, vol. 2, n. 542, p. 994: English translation in *DZ*, n. 1699.

³⁷ Pius X, "*Praesentia Scripturae*," November 18, 1907, n. 4, in *Fontes*, vol. 3, n. 681, pp. 725-726: English translation in *DZ*, n. 2113.

³⁸ June 20, 1602, §1, in *Fontes*, vol. 4, n. 716, p. 2: English translation in *DZ*, nn. 1088-1089; September 24, 1665, §§ 2-3, in *Fontes*, vol. 4, n. 734, pp. 18-19; March 18, 1666, §§2-3, in *Fontes*, vol. 4, n. 735, p. 20: both in *DZ*, n. 1145; March 4, 1679, in *Fontes*, vol. 4, n. 754, pp. 30-31: *DZ*, n. 1215; December 7, 1690, in *Fontes*, vol. 4, n. 760, p. 39: *DZ*, n. 1321; and "*Lamentabili sine exitu*," July 4, 1907, prop. 8 and condemnations, in *Fontes*, vol. 4, n. 1283, pp. 549 and 553: *DZ*, nn. 2008 and 2065a.

evil-sounding, or injurious, or close to heresy, or smacking of heresy, or erroneous, or schismatic. Perhaps, the reason for this was that only the Roman Pontiff had the power of doctrinal infallibility, not the congregations.

2.2. Context of canon 1324

Canon 1324 was not found in the first drafts of the Code of Canon Law,⁴⁰ but was eventually inserted among the five general introductory canons of *De magisterio ecclesiastico*. Canon 1322 spoke on the power of teaching with which the Church is endowed; c. 1323 dealt with the object of divine and catholic faith; cc. 1324 and 1325 exposed the obligations of the faithful as regards the catholic faith; and c. 1326 explained the magisterium of the bishops. To understand c. 1324, then, we must bear in mind the following assumptions:

1) Although the deposit of faith was entrusted to the entire Church (c. 1322 §1), the canonists, when explaining the canon, taught that the power of teaching belonged to the Roman Pontiff and to the bishops, who were the bearers of such a power, for they

³⁹ In the decrees of the Congregation of the Holy Office, the condemnation of a doctrine as heretical appears only once: the condemnation of the errors of the jansenists, December 7, 1690; see *Fontes*, vol. 4, n. 760, p. 39; English translation in *DZ*, n. 1321.

⁴⁰ Canon 1234 was not even in the last draft of the 1917 Code of Canon Law before the promulgated text; see *Codex iuris canonici cum notis Petri Card. Gasparri*, Romae, Typis polyglottis Vaticanis, 1916, p. 562 (Schema Codicis iuris canonici. Sub secreto Pontificio).

held the power of jurisdiction.⁴¹ In addition, the Church held the power to carry out its mission throughout the world, independently of any civil authority, for its condition of universal and perfect society was above that of any civil society, and its power came from Christ himself (c. 1322 §2).⁴²

2) All those matters which are contained in the *deposit of faith*⁴³ and are proposed for belief as divinely revealed truths by the authority of the Church acting either through a *solemn pronouncement* or through its *ordinary and universal magisterium*, are the object of *divine and catholic faith* (c. 1323 §1). A solemn pronouncement of this kind may be made either by an *ecumenical council* or by the *Roman Pontiff* speaking *ex cathedra* (c. 1323 §2). No matter is to be considered dogmatically declared or defined unless that fact is made clearly manifest (c. 1323 §3). Any baptized person, who obstinately denies one or more of these truths or puts them into doubt, becomes a heretic (c. 1325 §2).

⁴¹ Cf. Matt. 28: 18-20; Mark 16: 15.

⁴² Cf. S. Alonso Morán y M. Cabrerós de Anta, *Comentarios al código de derecho canónico con el texto legal latino y castellano*, vol. III, Madrid, [Editorial Católica], 1964 (BAC, 234), p. 4.

⁴³ Deposit of faith refers to the written word of God and to tradition, i.e., public revelation, which ended with the death of the last apostle and the last evangelist. A doctrine is of *divine faith* if it has been revealed by God; it is of *divine and catholic faith* if it has been infallibly declared by the Church to be revealed by God (i.e., a dogma of faith); it is of *ecclesiastical faith* if the Church has infallibly declared it, but has not presented it formally as having been revealed by God; see M.C.A. Coronata, *Compendium iuris canonici ad usum scholarum*, vol. II, Taurini, Marietti, 1938, nn. 1472-1474, p. 100.

2.3. Analysis of canon 1324

Canon 1324 is a negative exposition in relation to the revealed truth and of the corresponding obligation of the faithful. It reads as follows:

It is not enough to avoid heresy, but one must also carefully shun all errors which more or less approach it; hence all must observe the constitutions and decrees by which the Holy See has proscribed and forbidden opinions of that sort.⁴⁴

1) The object of this canon is *theological conclusions*, those truths which, although not divinely revealed, bear such an intimate relation to revealed truths that, without them, the latter could not easily and fully be preserved, expounded, and defended.⁴⁵ We reach this conclusion by examining the wording of the canon itself, “*satis non est haereticam pravitatem devitare*”, it is not enough to avoid heresy, namely, it is not enough to avoid doctrinal errors against the object of divine and catholic faith. Nevertheless, the Church can also proscribe infallibly — by solemn judgement — or non infallibly — by the Roman Pontiff without solemn judgement, or by the sacred

⁴⁴ “*Satis non est haereticam pravitatem devitare, sed oportet illos quoque errores diligenter fugere, qui ad illam plus minusve accedunt; quare omnes debent etiam constitutiones et decreta servare quibus pravae huiusmodi opiniones a Sancta sede proscriptae et prohibita sunt*”; English translation in T.L. Bouscaren - A.C. Ellis - F.N. Korth, *Canon Law. A Text and Commentary*, 4th rev. ed., Milwaukee, The Bruce Publishing Co., [1966], p. 748.

⁴⁵ See P.Ch. Augustine, *A Commentary on the New Code of Canon Law*, vol. VI, 3rd. ed., London, B. Herder Book Co., 1931, p. 318; A. Blot, *Commentarium textus codicis iuris canonici*, Book III, vol. 2, 2nd. ed., Romae, Institutum Pontificium Internationale ‘Angelicum,’ 1934, n. 205, pp. 273-274; F.X. Wernz, *Ius canonicum*, t. IV, vol. II, n. 617, pp. 9-11.

congregations⁴⁶ — matters relating to theological conclusions.⁴⁷

2) The purpose of the canon is to impose on the faithful the obligation of shunning diligently any errors which more or less approach heresy (“*sed oportet illos quoque errores diligenter fugere, qui ad illam plus minusve accedunt*”), and which are proscribed and prohibited by the Holy See (“*a Sancta Sede proscriptae et prohibita sunt*”). Sometimes, these errors were condemned *specifically*, as when a doctrinal censure was attached; at other times they were condemned *collectively*, when censures were generically attached to various errors. In the latter case, at least the lightest censure was applied to each error.⁴⁸ Besides heresy, the Church has distinguished various degrees of error in the doctrines condemned, which the canonists more or less agree to classify as follows: very close to heresy (*haeresi proxima*), i.e., the doctrine is contrary to a truth that is generally held to be divinely revealed; erroneous (*erronea*), i.e., contrary to a truth derived as a conclusion from a truth whose divine revelation is certain; very close to erroneous (*errori proxima*), i.e., contrary to a truth almost certainly derived as a conclusion from a truth which has been divinely revealed; rash (*temeraria*), i.e., imprudently proposed in opposition to the common view of theologians; scandalous (*scandalosa*) or evil-sounding (*piis auribus offensiva*), i.e., condemned not as false but as leading to false conclusions.

⁴⁶ See S. Sipos, *Enchiridion iuris canonici*, p. 607.

⁴⁷ See G. Cocchi, *Commentarium in codicem iuris canonici*, vol. VI, pp. 16-17.

⁴⁸ See E. Regatillo, *Institutiones iuris canonici*, vol. II, n. 170, p. 86.

3) Such constitutions and decrees, coming from the Holy See or from the Biblical Commission, even though they are not proposed infallibly, merit the religious assent of the faithful. This means that an inner assent of conscience is required to the doctrine proposed, as well as respect and obedience to the authority of the ecclesiastical magisterium. It is not a blind religious assent, but one that is motivated by *moral certitude*⁴⁹ that the propositions of the magisterium of the Church are true doctrines. Therefore, the propositions condemned are indeed erroneous, rash, etc., according to the note proscribing and prohibiting them.

4) The Holy See is the authority which condemns such erroneous doctrines (*quibus pravae huiusmodi opiniones a Sancta Sede proscriptae et prohibita sunt*). At the time, the expression “Holy See” meant the Roman Pontiff, the congregations, tribunals, and offices through which the Roman Pontiff settled the affairs of the universal Church; it did not, however, include the Pontifical commissions and institutes (cf. c. 7);⁵⁰ nevertheless, the Biblical Commission was given the same authority as the congregations, according to the Motu proprio of Pius X, *Praesentia Scripturae*, November 18, 1907.⁵¹

⁴⁹ See L. Chopin, *Valeur des décisions doctrinales*, p. 53-54; G. Cocchi, *Commentarium in codicem iuris canonici*, vol. VI, p. 17; A. Blat, *Commentarium textus codicis iuris canonici*, Book III, vol. 2, n. 205, p. 274; T.L. Bouscaren - A.C. Ellis, *Canon Law. A Text and Commentary*, pp. 724-725.

⁵⁰ Paul VI in his Constitution, *Regimini Ecclesiae universae*, August 15, 1967, included also the Secretariat of State in the juridical person of the Holy See; see *AAS*, 59 (1967), pp. 885-928.

⁵¹ See *ASS*, 44 (1907), p. 724: English translation in *DZ*, n. 2113; see also, Pontifical Biblical Commission, Letter to Cardinal Suhard, January 16, 1948, in *AAS*, 40 (1948), p. 46.

5) The constitutions and decrees (*omnes debent etiam constitutiones et decreta servare*) of the Holy See are the means through which those erroneous doctrines were proscribed and prohibited. Even though the canon mentions the constitutions and decrees of the Holy See, we certainly understand that those which come from ecumenical councils have their own binding force. As regards the decrees of bishops and of particular councils, they might fall under c. 1326. “Constitution”, in the broad sense, meant all pontifical acts, whereas in the strict sense, it meant at the time the written law given by the Roman Pontiff, distinct from the statutes or laws given by lower authorities.⁵² But as we noted above, the constitutions of the Pope, very often were called decrees, and sometimes they were identified with encyclicals.

Under the expression “decree”, we understand the decisions issued by the Roman congregations with the common or special approval of the Roman Pontiff. There are doctrinal decrees and there are disciplinary ones. The former declare certain points of catholic doctrine on matters of faith and morals or condemn opposing opinions; the latter deal with the discipline of the Church, for instance, a decree which simply condemns or forbids a book without assigning any qualifying characteristic to its content.⁵³

The purpose of canon 1324 was to provide a means for the defense of the deposit

⁵² See S. Sipos, *Enchiridion iuris canonici*, §9, pp. 26-28.

⁵³ For a more detailed study of this, see L. Chopin, *Valeur des décisions doctrinales*, pp. 56-107; A. de Meester, *Iuris canonici et iuris canonico-civilis*, vol. II, n. 584, pp. 72-73.

of faith. Hence, it covered only those constitutions and decrees — doctrinal and disciplinary ones — which protected revealed truth by proscribing and prohibiting errors dangerous to the faith of the members of the Church. The sources of this canon clearly show that the Pope and the Congregation of the Holy Office accomplished faithfully their commitment of defending the deposit of faith against doctrinal errors. On the other hand, regarding the application of canon 1324, the *Canon Law Digest* gives a somewhat broader perspective by recording under this canon, for practical purposes, not only the acts of the Pope and of the dicasteries, but also those of bishop's conferences and individual cardinals or bishops; for, along with the constitutions and decrees, it includes *monita*, private letters, declarations, communications or instructions.⁵⁴ It is to be noted that such acts were considered to include, not only the defense of the deposit of faith, but also the reaffirmation of the authority of the magisterium of the Church as the proximate norm of faith for all the faithful. This shall be explained later.

Canon 1324 took a step beyond *Dei filius*, by imposing a norm to defend the deposit of faith, not only against certain doctrinal errors such as rationalism, but also against any doctrine contrary to revealed truth. In the same way, this canon has no frontier in time, i.e., it includes the constitutions and decrees of the Holy See of the past

⁵⁴ Taking into account only the decisions of the Holy See (and not those of bishops), we find listed in *Canon Law Digest*, from the promulgation of the 1917 Code of Canon Law to the new Code, under c. 1324: 3 encyclical letters, 5 letters (3 private), 5 allocutions, and 1 radio address, of the Pope; 6 decrees, 3 instructions, 5 declarations, 12 letters (3 private), 12 replies, 2 *monita*, from the dicasteries; during Vatican II, the Commission on the Doctrine of the Faith issued one reply; see *Canon Law Digest*, 1934-1986; vols.

as well as those of the future.⁵⁵

3. Post 1917 Code of Canon Law sources

The following sources of c. 754 given by the PCCICAI come from the teachings of the Pope, from the Congregation for the Doctrine of the Faith (= CDF), and from a report of the Synod of Bishops.⁵⁶ They will help us to understand our canon better, even though it appears to be simply a repetition of the 1917 Code.⁵⁷ For a better approach to these sources, we shall distinguish those of the pre-Vatican II period from those of the post-conciliar years.

3.1. Encyclical letter *Humani generis*

In passing, we could mention that although the only source for c. 754 mentioned by the PCCICAI, between 1917 and 1962, is the Encyclical letter *Humani generis* of Pius

1-6, ed. by T. L. Bouscaren - J. I. O'Connor, Milwaukee, The Bruce Publishing Co; vol. 7-10 ed. by J.L. O'Connor, Chicago (and Mundelein), Illinois, Canon Law Digest.

⁵⁵ See Pius X, *Motu proprio, Praesentia Scripturae*, November 18, 1907, in *ASS*, 40 (1907), p. 724: English translation in *DZ*, n. 2113.

⁵⁶ R.J. Castillo Lara stated that the criteria to choose the sources of the canons were not only those from which the canons originated, but also those sources which have an indirect and remote relationship with the canon, and even are opposite to it; see *Codex iuris canonici auctoritate Ioannis Pauli PP. II promulgatus, fontium annotatione et indice analytico-alphabetico auctus*, Preface, p. xii.

⁵⁷ Cf. *ibid.*, pp. xi-xii; J. FOX, "Fontes and Analytical Index to Code", in *Canon Law Society of Great Britain and Ireland: Newsletter*, 77 (1989), pp. 14-18.

XII, August 12, 1950, which quotes *Dei filius* and c. 1324 of the 17/CIC,⁵⁸ some twenty years earlier, the Encyclical letter *Casti connubii*, December 31, 1930, of Pius XI, already contained the same quotation.⁵⁹

We can point out two lines of development in the understanding and application of c. 1324 of the 17/CIC:

1) Firstly, we could note the inclusion of *encyclical letters* and other documents by which the Pope, in safeguarding entire and incorrupt the deposit of faith, condemns a general trend as fraught with future perils for the faith, or gives a direction or an obligatory and universal teaching;⁶⁰ there was also the inclusion of *instructions* and *doctrinal decrees* of the Roman congregations, especially of the Holy Office and the Biblical Commission, by which doctrine on faith and morals was defended, pernicious books condemned, and Sacred Scriptures correctly interpreted.⁶¹ With the 1917 Code, a lengthy change of attitude began in regard to the Church as depository of faith: the

⁵⁸ See *AAS*, 42 (1950), p. 567: English translation in *DZ*, n. 2314.

⁵⁹ See *AAS*, 22 (1930), p. 580: English translation in *CLD*, I, p. 618.

⁶⁰ J.C. Fenton clearly stated that the conclusion of *Dei filius* included encyclical letters, to which all the Christian faithful must give their religious assent; see J.C. Fenton, "The Doctrinal Authority of Papal Encyclicals", in *The American Ecclesiastical Review*, 121 (1949), p. 145; cf. also p. 147; L. Chopin, *Valeur des décisions doctrinales*, p. 93, note 2; P. NAUD, *Une source doctrinale: les encycliques. Essai sur l'autorité de leur enseignement*, Paris, Éditions du Cèdre, 1952, pp. 30-32.

⁶¹ See J. A. Abbo, J. D. Hannan, *The Sacred Canons. A Concise Presentation of the Current Disciplinary Norms of the Church*, vol. II, rev. ed., B. Herder Book Co., St. Louis, Mo., [1957], p. 560; S. Alonso Morán y M. Cabreros de Anta, *Comentarios al Código de derecho canónico*, vol. III, p. 5; L. Chopin, *Valeur des décisions doctrinales*, pp. 51-52.

practice of condemning false opinions was ceding more and more to the positive exposition of the doctrine of the Church. For instance, the Popes began to use “encyclicals” more frequently; these lacked precise dogmatic definitions, rigorous censures, or anathemas; rather, they were means by which the Pope exposed the doctrine of the Church in general terms, and pointed out errors to be avoided.⁶² Apostolic constitutions, whereby the Pope personally condemned doctrinal errors,⁶³ were now being used to issue doctrinal,⁶⁴ disciplinary,⁶⁵ or administrative decisions.⁶⁶ The Roman congregations, especially the Holy Office, and the Biblical Commission on their part, continued their task of safeguarding faithfully the deposit of faith, but without the severity of the Decree *Lamentabili*.

It would not be superfluous to mention that the increasing number of encyclical letters helped in some way to bring about this change, because they turned the attention of scholars to them. They were generally considered under the former c. 1324 and treated

⁶² For instance, Pius XI, Encyclical letter, *Casti connubii*, December 31, 1930, on morals of marriage (AAS, 22 [1930], pp. 539-592); Pius XII, Encyclical letter, *Humani generis*, August 12, 1950, on some opinions which threaten to undermine the foundation of catholic doctrine (AAS, 42 [1950], pp. 561-578).

⁶³ See, for instance, the eight apostolic constitutions listed as sources of the previous canon 1324.

⁶⁴ See, for instance, Pius XII, *Munificentissimus Deus*, November 1, 1950: definition of the Assumption of Mary (AAS, 42 [1950], pp. 753-773).

⁶⁵ See, for instance, the promulgation of new laws after Vatican II by Paul VI: *Indulgentiarum doctrina*, January 1, 1967, on indulgences (AAS, 59 [1967], pp. 5-24); *Divinae consortium naturae*, August 15, 1971, on the sacrament of confirmation (AAS, 63 [1971], pp. 657-664); *Sacram unctionem infirmorum*, November 30, 1972, on the sacrament of the anointing of the sick (AAS, 65 [1973], pp. 5-9).

⁶⁶ See, for instance, the erection of a new diocese, December 13, 1972 (AAS, 65 [1973], pp. 123-124).

as the most important means for the exercise of the ordinary and universal magisterium of the Pope. They were also qualified as pertaining to his non infallible magisterium. Canonists and theologians of the period agreed that these documents required the religious assent of the faithful.⁶⁷

2) On the other hand, the reaffirmation of the doctrinal authority of the ecclesiastical magisterium also influenced the development of the understanding of the former canon 1324. Pius XII, following the thinking of Leo XIII,⁶⁸ in his solemn allocution, *Si diligis*, May 31, 1954,⁶⁹ to the cardinals and bishops gathered in Rome on the occasion of the canonization of Pius X, condensed his thought on this point, making a strong statement on behalf of the *living magisterium of the Church*. He based his defense on the divine institution of the magisterium of the Church: the apostles and their successors are the doctors and teachers of the Church:

The apostles are therefore by divine right the true doctors and teachers in the Church. Besides the lawful successors of the apostles, namely the Roman Pontiff for the universal Church and the bishops for the faithful entrusted to their care, there are no other teachers

⁶⁷ Among the studies done on this topic of that time, see L. Chopin, *Valeur des décisions doctrinales*; J.C. Fenton, "The Doctrinal Authority of Papal Encyclicals"; P. Nau, *Une source doctrinale: les encycliques. Essai sur l'autorité de leur enseignement*.

⁶⁸ Leo XIII, Encyclical letter, *Satis cognitum*, June 29, 1896, on the unity of the Church, in *ASS*, 28 (1896), pp. 708-739; English translation in C. Carlen (ed.), *The Papal Encyclicals*, [Wilmington], McGrath Publishing Co., 1981, vol. 1, pp. 387-404; cf. also Encyclical letter, *Sapientia christiana*, January 10, 1890, in *ASS*, 22 (1889-1890), p. 391; English translation in C. Carlen (ed.), *The Papal Encyclicals*, vol. 1, p. 215.

⁶⁹ Pius XII, Allocution, *Si diligis*, May 31, 1954, in *AAS*, 46 (1954), pp. 313-317; English translation in *The Pope Speaks*, 1 (1954), pp. 153-158.

divinely constituted in the Church of Christ.⁷⁰

However, the ecclesiastical magisterium of the Church can have helpers in the task of teaching, who are strictly subordinate to the power of the magisterium:

Those who are called to the doctrinal work in this way act as teachers in the Church, not in any way in their own name nor by reason of theological knowledge they may possess, but rather because of the mandate they have received from the lawful magisterium. Their faculty always remains subject to that magisterium, nor is it ever exercised in its own right and independently.⁷¹

Therefore, the Roman Pontiff and the bishops have the responsibility before God, of defending sound doctrine and of preserving it free from errors. The Pope reminded his listeners — alluding to the “new theology” — that without opposing the progress of science, matters of religion and morals, which transcend truths of the senses and the material plane, pertain exclusively to the office and authority of the Church. The bishops also have the right to examine and supervise the doctrinal activity of teachers:

Therefore the legitimate teaching authority [magisterium] of the Church is guilty of no injury or no offence to any of those to whom it has given a canonical mission, if it desires to ascertain what they, whom it has sent to teach, are proposing and defending in their lectures, in books, notes, and reviews intended for the use of their students, as well as in books or other publications intended for the general public.⁷²

⁷⁰ *AAS*, 46 (1954), p. 314: English translation in *The Pope Speaks*, 1 (1954), p. 154.

⁷¹ *AAS*, 46 (1954), p. 314: English translation in *The Pope Speaks*, 1 (1954), p. 154.

⁷² *AAS*, 46 (1954), p. 315: English translation in *The Pope Speaks*, 1 (1954), p. 155.

Finally, the Pope ended his allocution by referring to *lay theology*,⁷³ and stating that, there can be no teaching activity in the Church except under the direction of the ecclesiastical magisterium:

Nevertheless, it is necessary to maintain to the contrary that there never has been, there is not now, and there will never be in the Church a legitimate teaching authority of the laity withdrawn by God from the authority, guidance and watchfulness of the sacred teaching authority.⁷⁴

The two lines of development in the understanding of canon 1324, the positive presentation of the doctrine of the Church, and the reaffirmation of the doctrinal authority of the ecclesiastical magisterium of the Church, can be found in the Encyclical letter *Humani generis*. First of all, there is no condemnation of errors, but only a warning against some false opinions, which threatened to undermine the foundation of catholic doctrine, summarized under the general heading of “new theology.” Among such false opinions we could mention: *dogmatic relativism*, nourished by evolutionism, existentialist philosophy, historicism, and false irenicism;⁷⁵ the *symbolic* or *spiritual* exegesis of the Sacred Scriptures instead of a literal exegesis;⁷⁶ and some specific errors

⁷³ “Lay theology” was a trend of some lay people who declared themselves independent. They distinguished their magisterium from the public magisterium of the Church. They appealed to the charism of teaching as found in the Sacred Scriptures (Rom. 12: 6-7; I Cor. 12: 28-30, etc.), or to the lessons of history.

⁷⁴ *AAS*, 46 (1954), p. 317: English translation in *The Pope Speaks*, 1 (1954), p. 157.

⁷⁵ See *AAS*, 42 (1950), pp. 562-563, 566.

⁷⁶ *AAS*, 42 (1950), p. 570.

regarding the interpretation of dogmas.⁷⁷ In the same way, the Pope exposed the fittingness of the scholastic system, best expressed in thomism. He stated:

If these matters are thoroughly examined, it will be evident why the Church demands that future priests be instructed in the philosophic disciplines “according to the manner, doctrine, and principles of the Angelic Doctor” (c. 1366, 2), since it knows well from the experience of many ages that the method and system of Aquinas, whether in training beginners or investigating hidden truth, stand out with special prominence: moreover, that this doctrine is in harmony, as in a kind of symphony, with divine revelation, and is most efficacious in laying safe foundations of faith, and also in collecting usefully and securely the fruits of sound progress.⁷⁸

Pope Pius XII insisted on the doctrinal authority of the ecclesiastical magisterium. It is striking to realize how many times he referred to the divine institution of the magisterium of the Church. The first time he mentioned this, he stated that some Catholics, by withdrawing themselves from the direction of the magisterium, expose themselves to fall and to attract others into error:

We have found that catholic doctors in general are on their guard against those errors, yet it is well established that there are not lacking today, just as in apostolic times, those who, in their extreme zeal for novelty and also in their fear of being held ignorant of those matters which the science of a progressive age has introduced, strive to withdraw themselves from the temperateness of the sacred magisterium; and thus they become involved in the danger of gradually and imperceptibly departing from the truth revealed by God, and of leading others into error along with themselves.⁷⁹

⁷⁷ *AAS*, 42 (1950), pp. 570-571.

⁷⁸ *AAS*, 46 (1950), p. 573: English translation in *DZ*, n. 2322.

⁷⁹ *AAS*, 46 (1950), p. 564: English translation in *DZ*, n. 2308.

In the core of *Humani generis*, the Pope regrets the fact that those who are eager for novelty, easily pass from a contempt for scholastic theology to a neglect of, and even a disrespect for the magisterium of the Church, which supports such a theology by its authority; rather, they consider the magisterium as an obstacle to science and progress. The Pope affirms some important points regarding the exaltation of the doctrinal authority of the ecclesiastical magisterium. He declared the total dependence of theologians on the living magisterium of the Church:

And, although this sacred magisterium, in matters of faith and morals, should be the proximate and universal norm of faith to any theologian, inasmuch as Christ the Lord entrusted the entire deposit of faith to it, namely, the Sacred Scriptures and divine “tradition”, to be guarded, and preserved, and interpreted; yet its office, by which the faithful are bound to flee those errors which more or less tend toward heresy, and so, too, “to keep its constitutions and decrees, by which such perverse opinions are proscribed and prohibited”, is sometimes ignored as if it did not exist.⁸⁰

The Pope also stated that encyclicals exact the religious assent of all the faithful, for being the teachings of the ordinary magisterium, most of the times they contain what already belongs to the patrimony of catholic doctrine. He continues:

But if the supreme Pontiffs in their acts, after due consideration, express an opinion on a hitherto controversial matter, it is clear to all that this matter, according to the mind and will of the same Pontiffs, cannot any longer be considered a question of free discussion among theologians.⁸¹

⁸⁰ *AAS*, 46 (1950), p. 567: English translation in *DZ*, n. 2313.

⁸¹ *AAS*, 46 (1950), p. 568: English translation in *DZ*, n. 2313.

The task of theologians will be to indicate how what is taught by the living magisterium, as a proximate and universal norm, is found in the deposit of faith:

It is also true that theologians must always have recourse to the sources of divine revelation; for it is their duty to indicate how what is taught by the living magisterium is found, either explicitly or implicitly, in Sacred Scripture and in divine "tradition."⁸²

The Pope also reminds us that the authentic interpretation of the deposit of faith belongs only to the magisterium of the Church, and that the Sacred Scriptures and tradition are to be interpreted according to the mind of the Church, which was established by Christ as the guardian and interpreter of the whole deposit of faith revealed by God:

For, together with these sacred sources God has given a living magisterium to his Church, to illumine and clarify what is contained in the deposit of faith obscurely and implicitly. Indeed, the divine Redeemer entrusted this deposit not to individual Christians, nor to the theologians to be interpreted authentically, but to the magisterium of the Church alone. Moreover, if the Church exercises this duty of hers, as has been done again and again in the course of the ages, whether by ordinary or extraordinary exercise of this function, it is clear that the method whereby clear things are explained from the obscure is wholly false; but rather all should follow the opposite order.⁸³

Therefore, it is not surprising that the Pope ends his encyclical letter requiring obedience and reverence, from all professors in ecclesiastical institutes, to the

⁸² *AAS*, 46 (1950), p. 568: English translation in *DZ*, n. 2314.

⁸³ *AAS*, 46 (1950), p. 569: English translation in *DZ*, n. 2314.

magisterium of the Church, avoiding crossing the *limits* established by the same magisterium for the defense of the faith and catholic doctrine.⁸⁴

3.2. Post-conciliar sources of canon 754

There is no text of Vatican II mentioned as a source of canon 754. However, the celebration of the Council itself as a whole, and its pastoral character, represents an indispensable key for a better understanding of the teaching office of the Church as well as of our canon. In Vatican II, there was a new attitude toward the task of safeguarding, deepening, and proclaiming faithfully the deposit of faith as Christ entrusted it to the Church. John XXIII in his opening discourse had manifested the intention that the Council would leave behind the posture of condemnation and instead would present the gospel to the modern world in a suitable manner so that it could readily be understood.

Among the new elements offered by Vatican II, we could mention: the opening of the Church to the modern world,⁸⁵ the promotion of the collegiality of bishops, the establishment of episcopal conferences, the celebration of synods and particular councils,⁸⁶ and involvement in the ecumenical movement.⁸⁷ In view of the pastoral nature

⁸⁴ *AAS*, 46 (1950), p. 578.

⁸⁵ See, for instance, the Pastoral constitution, *GS*; cf. PAUL VI, "Le radio message de Noël", December 25, 1965, in *AAS*, 58 (1966), pp. 90-95; French translation in *La Documentation catholique*, 63 (1966), cols. 151-156.

⁸⁶ See, for instance, the Decree *CD*, n. 37.

of Vatican II, there was no definition of any new dogma; this also allowed for the work accomplished by theologians in the Council to be the basis for a new attitude toward them regarding their special participation in the teaching office of the Church.⁸⁷

However, as we have noted, we find in *Lumen gentium* n. 25, reference to the task of the ecclesiastical magisterium regarding non infallible doctrine, a task which is to be understood in the light of the entire Dogmatic constitution on the Church, *Lumen gentium*, and of the Dogmatic constitution on divine revelation, *Dei verbum*. The supreme teaching authority of the Roman Pontiff is to be acknowledged with respect, and one must sincerely adhere to decisions made by him whose authority is made known principally either by the character of the documents in question, or by the frequency with which a certain doctrine is proposed, or by the manner in which the doctrine is formulated. *Lumen gentium* also stated that the faithful are obliged to submit to their bishop's decision, made in the name of Christ, in matters of faith and morals, and to adhere to it with a ready and respectful allegiance of mind.

After the Council, people became involved in the task of putting the doctrine and discipline of Vatican II into practice. The Pope instituted various commissions to

⁸⁷ See, for instance, the Decree of Vatican II on ecumenism, *Unitatis redintegratio*.

⁸⁸ See PAUL VI, "Allocution to the Participants of the International Congress on the Theology of Vatican II", October 1, 1966, in *AAS*, 58 (1966), pp. 889-896: English translation in *The Pope Speaks*, 11 (1966), pp. 348-355.

implement the decrees of the Council,⁸⁹ established the Synod of Bishops representing the bishops of all the world,⁹⁰ suppressed the antimodernist oath,⁹¹ changed the name of the Holy Office into Congregation for the Doctrine of the Faith as well as reformed and reorganized it,⁹² etc. An international congress on the theology of Vatican II was held in Rome (September 26 - October 1, 1966). Nevertheless, since every change has risks, it is not surprising that certain false interpretations and distortions of the conciliar decisions in matters of doctrine and discipline also appeared.⁹³ This inclined certain bishops, in an effort to safeguard the purity of the faith, to return to the former attitude of proscribing false doctrines or simply to a mood of distrust, dissatisfaction, uneasiness and confrontation.

This is the context for the last two documents mentioned by the PCCICAI as sources of canon 754: (1) a private letter sent to the presidents of episcopal conferences by the CDF, and (2) a report of the Synod of Bishops which was submitted to the Pope.

⁸⁹ See Paul VI, Motu proprio, *Finis concilio*, January 3, 1966, in *AAS*, 58 (1966), pp. 37-40: French translation in *La Documentation catholique*, 63 (1966), cols. 295-298; "Allocution to the Postconciliar Central Commission", January 31, 1966 in *AAS*, 58 (1966), pp. 159-161: English translation in *The Pope Speaks*, 11 (1966), pp. 159-160; Motu proprio, *Ecclesiae sanctae*, August 6, 1966, in *AAS*, 58 (1966), pp. 757-787: English translation in A. Flannery, (gen. ed.), *Vatican Council II: The Conciliar and Post Conciliar Documents*, new rev. ed., Northport, New York, Costello Publishing Company, 1992, (Vatican Collection, vol. 1). pp. 591-610, 624-633, 857-862.

⁹⁰ See Paul VI, Apostolic letter given motu proprio, *Apostolica sollicitudo*, September 15, 1965, in *AAS* 57 (1965), pp. 775-780: English translation in *CLD*, VI, pp. 388-393.

⁹¹ See *AAS*, 59 (1967), p. 1058.

⁹² See Paul VI, Apostolic letter given motu proprio, *Integrae servandae*, December 7, 1965, in *AAS*, 57 (1965), pp. 952-955: English translation in *CLD*, VI, pp. 358-359.

⁹³ Cf. Letter from the German bishops to their faithful, September 3, 1966: "Les évêques allemands et l'après-concile", in *La Documentation catholique*, 63 (1966), cols. 2049-2053.

3.2.1. CDF, letter *Cum oecumenicum concilium*

The Letter *Cum oecumenicum concilium* was sent privately by Cardinal A. Ottaviani, prefect of the CDF, with the approval of Paul VI, to all episcopal conferences on July 24, 1966, to remind the bishops of their responsibilities in regard to the renewal of the life of the Church:

On the other hand, the hierarchy has the right and duty to supervise, direct, and promote the renewal which the Council set in motion, so that the documents and decrees of the Council may be rightly interpreted and be put into effect with precise fidelity to their proper sense and intention.⁹⁴

But the aim of the letter was to warn bishops against some statements and errors arising from a misinterpretation of the doctrine of the Council:

Unfortunately, however, from many sources dismaying reports have come, of growing abuses in the interpretation of the Council's doctrine, and of strange and bold opinions springing up here and there, which have seriously disturbed a number of the faithful [...]. But documents which this sacred congregation has examined show that there are many current declarations which go far beyond the limits of simple opinions or hypotheses and seem to affect in some degree the very dogma and foundations of the faith.⁹⁵

By way of example, the letter mentions ten errors and dangers regarding revelation, the interpretation of dogmas, the ordinary magisterium of the Church,

⁹⁴ AAS, 58 (1966), p. 659; English translation in *CLD*, VI, p. 261.

Christology, Eucharist, the sacrament of penance, original sin, moral theology, and ecumenism.⁹⁶ Finally, the CDF requested that the episcopal conferences take action against these errors:

This sacred congregation earnestly prays the local ordinaries, when united in their respective episcopal conferences, to take action in this matter and to report to the Holy See offering their advice on it, before the feast of the Nativity of our Lord Jesus Christ of this current year.⁹⁷

The strict secret demanded of local ordinaries, and above all, the attitude of requesting a report on those errors and dangers which the letter referred to, was not appreciated by all the bishops. The replies of the bishops of France (December 17, 1966) and of Holland (February 2, 1968) illustrate this point.⁹⁸ Both conferences praised the initiative of dialogue between the CDF and bishops in the spirit of Vatican II, but they also deplored the interrogatory style of the letter.⁹⁹ They said that they were aware of the existence of doctrinal difficulties which accompany renewal of the Church's life, but instead of repeating condemnations, the magisterium must encourage theologians in their task of being mediators between the word of God, the teachings of the Church, and the

⁹⁵ *AAS*, 58 (1966), pp. 659-660: English translation in *CLD*, VI, p. 261.

⁹⁶ See *AAS*, 58 (1966), pp. 660-661.

⁹⁷ *AAS*, 58 (1966), p. 661: English translation in *CLD*, VI, p. 263.

⁹⁸ See "Réponse de la conférence épiscopale française à la lettre circulaire de la Congrégation pour la Doctrine de la foi", in *La Documentation catholique*, 64 (1967), cols. 327-338; "Réponse des évêques hollandais au questionnaire du cardinal Ottaviani", in *La Documentation catholique*, 65 (1968), cols. 1096-1112.

⁹⁹ See *La Documentation catholique*, 64 (1967), cols. 328-329; 65 (1968), cols. 1096-1097.

people of God, since the ecclesiastical magisterium must exercise its responsibility of teaching more positively than negatively.¹⁰⁰ The bishops from Holland end their reply stating:

We are deeply moved by the same preoccupations that Cardinal A. Ottaviani refers to in his letter, but nevertheless we ask emphatically that if any intervention is made, it is only to mention to theologians that it is their duty to integrate new developments within the fullness of faith. In our opinion, a syllabus of new "semi-heresies" would do more harm than good to the faith.¹⁰¹

Generally speaking, the responses of these conferences are in the same line as those of the first Synod of Bishops, regarding the positive attitude the magisterium of the Church must assume in its task of proclaiming faithfully the word of God to the modern world.

3.2.2. Synod of Bishops, report *Ratione habita*, October 28, 1968

The document *Ratione habita* is a report of the first meeting of the Synod of Bishops prepared by one of the synodal commissions. It contains three points: (1) on the current crisis concerning catholic faith and doctrine, (2) six principles which should

¹⁰⁰ See *La Documentation catholique*, 64 (1967), cols. 330-331; 65 (1968), cols. 1097-1099.

¹⁰¹ "Sincèrement émus des mêmes préoccupations dont S. Em. le cardinal A. Ottaviani témoigne dans sa lettre, nous demandons néanmoins avec insistance de n'intervenir que pour signaler tout au plus aux théologiens qu'il est de leur devoir d'intégrer les aspects nouveaux dans la plénitude de la foi. A notre avis, un syllabus de nouvelles 'semi-hérésies' fera plus de tort que de bien à la foi", in *La Documentation catholique*, 65 (1968), col. 1112.

inspire the manner of acting, especially of pastors of the Church and of theologians, and (3) two proposals to meet present difficulties.¹⁰²

It is important to point out that the style and the tone of the document are quite different from the letter of the CDF to episcopal conferences. The fathers were aware of the challenges that the modern crisis of civilisation and of human culture presented to the faith of the people of God; they also made clear that the Church must face these challenges by exposing revealed truth positively, through new formulations adapted to a new view of conditions, while keeping the same meaning and the same thought, instead of just condemning them.¹⁰³ They listed some general causes of such dangers: a certain decrease in the sense of the supernatural and a lesser relationship to God, insufficient pastoral ministry in teaching the truth or preventing errors, ignorance of or disrespect for the teaching and the authority of the Church, a certain arbitrary and false interpretation of the spirit of the Council, a certain confusion between those matters which belong to catholic doctrine and those which are left to the free and legitimate discussion of theologians, and the fact that publications and other means of communication immediately, and not always accurately, spread any news of a religious nature to the whole world without considering circumstances or persons.¹⁰⁴

¹⁰² See A. Flannery (gen. ed.), *Vatican Council II...*, pp. 663-671.

¹⁰³ See A. Flannery (gen. ed.), *Vatican Council II...*, p. 663.

¹⁰⁴ See *ibid.*, pp. 665-666.

The fathers proposed six pastoral principles to be observed in these circumstances: (1) the necessity for the unceasing proclamation of the faith, (2) the individual and the collegial exercise of the authentic magisterium, (3) a pastoral approach in exercising the magisterium, (4) the activity and responsibility of theologians in deepening the word of God in order to provide answers to the new questions which continually arise, (5) the diffusion of doctrine by the means of social communications, observing a special pastoral prudence and respecting sound pedagogical principles, (6) the joining of the witness of teaching to the witness of life.¹⁰⁵

The two proposals of the fathers consisted in the setting up of a theological commission of theologians from different schools and nations, and the drawing up of a positive pastoral declaration concerning questions involved in the doctrinal 'crisis' of today.¹⁰⁶

Conclusion

In these two chapters on the background of canon 754, we have shown that the

¹⁰⁵ See A. Flannery (gen. ed.), *Vatican Council II...*, pp. 666-670.

¹⁰⁶ The Pope, by executing the Synod's proposals, decreed the establishment, *ad experimentum*, of the Theological Commission to help CDF; its statutes were promulgated on July 12, 1969; see *AAS*, 61 (1969), pp. 540-541 (John Paul II gave a definitive status and statutes to it, see Apostolic letter given *motu proprio*, *Tredecim anni iam*, July 6, 1982, in *AAS*, 74 [1982] pp. 1201-1205; English translation in *CLD*, X, pp. 31-34); He also promulgated a profession of the faith of the Church on June 30, 1968; see *AAS*, 60 (1968), pp. 433-445.

law must be understood in the light of its historical context, because law itself and its understanding develop and evolve through time. We have followed a historical and progressive method because the PCCICAI, in collecting the sources of the 1983 Code of Canon Law, did not limit itself to the texts strictly consulted by the commissions during the revision process. Rather, it listed those doctrinal and disciplinary sources which are related directly or indirectly to each canon, whether they were taken into account or not. However, it always notes that the 1917 Code of Canon Law and the texts of Vatican II were the most important sources.¹⁰⁷ The advantage of having followed this method is that it will help us to understand our canon in an ecclesial context, that is, in the continuity of the canonical tradition of the Church, and in the context of a renewed ecclesiology.

We find the source of the text of canon 754 in the Dogmatic constitution *Dei filius*, which was promulgated to put an end to certain doctrinal errors of that time, errors which endangered the integrity of the deposit of faith, and undermined the authority of the Church. On the other hand, the operative ecclesiology of *Dei filius* was that which considered the Church as a perfect society; this approach lasted throughout the first half of the twentieth century. Perhaps it was a fitting model for the time, when civil society struggled to release itself from the leadership of the Church. In view of the attacks against it, the Church tried to steady its unity by strengthening the central authority of the

¹⁰⁷ See Pontificia Commissio Codici Iuris Canonici Authentice Interpretando, *Codex iuris canonici auctoritate Ioannis Pauli PP. II promulgatus, fontium annotatione et indice analytico-alphabetico auctus*, Preface, p. xii.

Holy See and proclaiming the definition of the primacy of jurisdiction and the infallibility of the Roman Pontiff. Along with this, the hierarchy, as bearer of the powers of jurisdiction and order, acted as the only guardian and herald of the deposit of faith, and thus developed a magisterium of authority based on its power of jurisdiction and apostolic succession, and demanded the observance not only of dogmas, but also of the non infallible doctrine of the Church, which was basically stated in a negative way: “to observe constitutions and decrees by which the Holy See proscribes and prohibits erroneous opinions, which more or less are close to heresy.”

The magisterium of the Church adopted a defensive attitude toward doctrinal errors, and, trying to avoid dangers to the deposit of faith, also delayed, to some extent, the progress of theology and biblical science. This attitude was drawn from many decisions of the Holy See; Vatican I, as the fruit of its time, supported the same mood; finally, it became law (c. 1324). As a consequence, the important role of theologians and exegetes in deepening and proclaiming the revealed truth was diminished. The ecclesiastical magisterium proclaimed itself as the proximate and universal norm of faith to any theologian. The latter, in turn, became auxiliaries of the magisterium of the Church and were limited to providing arguments to support what the magisterium taught. Understandably, this nourished a certain prejudice toward the authority of the Church, by qualifying it as being an obstacle for the progress of science and of theology.

Nevertheless, the historical context changed. Scientific advances speeded up, society found itself involved in vertiginous changes, at the same time becoming more pluralistic and democratic. In such circumstances, an authoritarian attitude on the part of the hierarchy no longer was accepted. It became necessary to insist on the positive and fitting exposition of the revealed truth, rather than focusing on the condemnation of errors.

Vatican II was the convergent point of many efforts and wishes of renewal for the Church. It was a Council where the Church discovered itself to be the people of God, on pilgrimage through this world toward the eternal homeland. A people, which recognizes itself as a mystery, sustained by the Holy Spirit and made up of men and women; a people endowed with many charisms, and a hierarchy that rediscovered its place as a minister of the people of God as well as sharing with theologians the task of preserving, deepening, and proclaiming faithfully the revealed truth. The Church is a people inserted in the world to whom it must be a sacrament of salvation.

As the Church deepens the understanding of its own identity and mission, in the same way it continues to renew the laws which regulate its life and activity. Canon 754 is the fruit of a lengthy and evolutionary development. Previously, the law referred only to the constitutions and decrees issued by the Holy See; now it also covers some documents issued by bishops, collegially or individually; previously, it was limited to proscribe and prohibit doctrinal errors, now it also refers to the documents which propose positively the

doctrine of the Church. It is good to mention that the increasing use of encyclicals, as one of the principal means of exercising the ordinary magisterium of the Roman Pontiff, has played an important role in the development of what became canon 754; even though they are not mentioned in the law, these documents helped to widen somewhat the understanding of constitutions and decrees, the object of our canon.

How can we link this disciplinary and doctrinal evolution with canon 754 itself? This will be the matter of the next chapters. So we now leave behind a norm which was mostly identified with the office of the ecclesiastical magisterium (c. 1324 of the 17/CIC), and undertake the study of a law which is an integral part of the teaching office of the Church.

CHAPTER III

THE TEXT OF CANON 754

Canon 1324 of the 1917 CIC implicitly dealt with the doctrine relating to the non-infallible magisterium of the Church, although it did so in a negative way. For, after dealing with the object of *divine and catholic faith* (c. 1323), this Code turned to the object of what would be called *obsequium religiosum* (c. 1324). We reach this conclusion by linking the words of this latter canon with those of the preceding one: “it is not enough to avoid heresy, *but* one must also carefully shun all errors which more or less approach it; *hence* all must observe...” Thus, the Code covered both the object of divine and catholic faith (c. 1323: doctrine divinely revealed), and the object of religious assent (c. 1324: the non-infallible teaching of the Church).

As we saw in the previous chapter, the understanding and application of c. 1324 developed not only negatively by proscribing and prohibiting erroneous opinions, but also positively by proposing doctrine, although not necessarily in an infallible manner. The result of this juridical and doctrinal development, as well as the impulse of Vatican II, led to some changes being made to what was to become c. 754, as well as to the drafting of c. 752, a new canon in the current Code.

At this moment, it is important to consider the immediate revision process of c. 754. This will help us find out the true meaning of the norm, according to the intention of

the legislator. In carrying out our task, we shall proceed, step by step, through the revision accomplished by the *coetus de magisterio ecclesiastico*, noting the changes in the norm throughout its different stages. We shall first examine the three drafts of the Code. Then, we shall focus on the promulgated text itself and its relation to the Code of Canons of the Eastern Churches (= CCEO). A deeper analysis of the content and application of this canon will be matter for the next chapters.

Before going further, we can note that at times the legislator's intention is not always clearly shown in the words of the norm. This is one of some norm's deficiencies. So, this lacuna calls for a deeper study and discernment into the mind of the legislator, as well as a study of the actual words of the canon, to reconcile both so as to have a more accurate understanding of the law. With regard to the intention of the legislator, there is no doubt that he wished to offer to the Church a legislation faithful both to the juridical tradition of the Church and to the doctrine and spirit of Vatican II.¹ However, as to the form in which the norm is expressed, the process was not always successful; at times, we must recognize that certain norms do not clearly reflect the doctrine and spirit of Vatican II. Perhaps, this was partly caused by the struggle between remaining faithful both to Vatican II and to the juridical tradition of the Church, knowing that the prior Code was based on a pre-Vatican II ecclesiology, that of the perfect society, which extolled the

¹ On the one hand, the 1917 Code remained as the first juridical source for the revision process; on the other hand, various events show the legislator's intention to integrate the ecclesiology of Vatican II into the future laws. Both Paul VI and John Paul II, several times, expressed their intention that the new Code would be the living image of the spirit and doctrine of Vatican II.

juridical and institutional aspect of the Church, rather than its mystery. These tensions will come to the surface throughout our study.

1. The *coetus de magisterio ecclesiastico* and Vatican II

The promulgated text of the Code of Canon Law, as well as the entire process of its revision, must be studied in the light of Vatican II. Indeed, eight months after John XXIII constituted the Pontifical Commission for the Revision of the Code of Canon Law, the first plenary session was held on March 28, 1963. In this session, the fathers of the commission decided to delay the work until the conclusion of Vatican II, in order to be able to apply the doctrine of its decrees in the new Code. In the meanwhile, the secretariat of the commission started privately to prepare the groundwork.²

During the solemn inauguration of the work (November 20, 1965), Paul VI spoke to the commission, to the 70 consultants, and to the secretaries and officials of the secretariat. Among other things, he said that the commission's work would be easier if the Code of Canon Law served as a guide, and the second Vatican Council provided the appropriate orientations.³ This meant that the task was not simply to prepare a new

² "Sodales, post aliquam discussionem, convenerunt cum praeside, Card. Ciriaci, formales labores recognitionis Codicis differendos esse post conclusionem Concilii Vaticani II, attamen initium dari posse modo privato laboribus praeparationis", in *Communicationes*, 1 (1969), p. 36.

³ "Sed expeditior est via, siquidem et Codex iuris canonici veluti ducis munere fungitur et Concilium Oecumenicum Vaticanum secundum quasi lineamenta praebet operis novi, ita ut multa tantummodo fusius et accuratius sint definienda ac statuenda", in *Communicationes*, 1 (1969), p. 41.

collection of the law, as had been the case with the Pio-Benedictine Code; rather, the commission was mandated to reform the laws, to adapt them to a new way of thinking and to new demands, even though it was to maintain the prior law as its foundation. It also meant that in its revision, constant attention was to be paid to the spirit of the decrees and acts of the second Vatican Council, since in them were to be found the features of the new legislation.⁴

To remain faithful both to the juridical-legislative tradition of the Church and to the doctrine and spirit of Vatican II⁵ was not an easy task. On the contrary, it was a source of many tensions throughout the entire revision process. One reason was the difficulty of harmonizing the preconconciliar ecclesiology of the 1917 Code, with that of Vatican II.⁶ This was brought to the fore very clearly in the project of a Fundamental Law

⁴ Cardinal R.J. Castillo Lara, in the official presentation of the new Code of Canon Law, pointed out the same two fundamental principles which guided the revision of the Code. "Il primo criterio è la fedeltà al Concilio, che si è cercato di tradurre il più fedelmente possibile in norme giuridiche ... L'altro criterio, che non è meno importante, è la fedeltà alla tradizione giuridico-legislativa della Chiesa", in *Communicationes*, 15 (1983), p. 31; see also, *Codex iuris canonici, auctoritate Ioannis Pauli PP. II promulgatus*, Vatican City, Libreria Editrice Vaticana, 1983, pp. xx-xxi. For an explanation of the change in the thrust of the revision of the Code, from the mere task of refining the 1917 legislation in the light of the modern world to an in-depth revision of the text in the light of the pastoral decisions of Vatican II, see J.A. Alesandro, "The Revision of the Code of Canon Law: A Background Study", in *Studia canonica*, 24 (1990), pp. 92-101.

⁵ When we speak of Vatican II's ecclesiology, we refer to the Church conceived as the people of God; when we speak of its spirit, we have in mind the spirit of communion and participation promoted by the Council as well as its pastoral character and its openness to the changing circumstances of the world and the variety of cultures.

⁶ M.C. Connolly states: "That tension is essentially one generated by two distinct visions of the Church, one seeking to preserve an older ecclesiology (*societas perfecta*) and the other striving to incarnate the Church's renewed vision of her identity and mission (pilgrim people) in the modern world"; M.C. Connolly, "De munere docendi: Some Orientations", in *Canon Law Society of America Proceedings*, 44 (1982), p. 221.

of the Church (= LEF).⁷ Even though the LEF was based on the perennial teaching of the magisterium, especially on Vatican II, however, as a whole, it appeared to be a contradiction of the same Vatican II ecclesiology, i.e., the proposal that the LEF would serve as a constitutional law for both the Latin Church and the Eastern Churches, seemed either to contradict pluralism in the Church of Christ spread throughout the world, or to provide a fundamental law that was out of context with the other laws of both Codes.⁸ People soon began to realize that doctrine and theology cannot always be adequately expressed in juridical terms.

There are some facts which illustrate clearly the influence of the doctrine and spirit of Vatican II throughout the revision of the Code. For instance, the coordinating group, with the help of the study groups and in the light of the decrees of the Council and subsequent executory norms, elaborated ten general principles for the revision of the Code of Canon Law. Among those which are more expressive of the doctrine and spirit of Vatican II, we could mention the pastoral character of the Code (3°), the decentralization of the power of dispensation from general laws (4°), the principle of subsidiarity (5°), the equality of all the Christian faithful, and the exercise of power in the

⁷ In the second plenary session of the commission, November 25, 1965, the proposal of having a unique "Fundamental Law" for both Latin Church and the Oriental Churches was suggested and accepted; see *Communicationes*, 1 (1969), p. 42. A complete study on this matter is found in D. Cenalmor Palanca, *La ley fundamental de la Iglesia. Historia y análisis de un proyecto legislativo*, Pamplona, EUNSA, 1991, 526p.

⁸ G. Alberigo, speaking about the viability of a LEF, said: "Lo sforzo di realizzare un pluralismo effettivo e dinamico appare ancora sterile, mentre si costruisce l'ennesima prevaricazione occidentale"; in G.

Church seen as a service (6°), and the proposal for a new systematic order of the Code, more in the line of Vatican II (10°).⁹

Another illustrative fact is the broad consultation carried out during the revision process. This consultation took place twice: the first (1966) had as its purpose to establish as it were a bridge of communication between the commission and the episcopal conferences.¹⁰ The second consultation (1972-1978) was much broader than the first one; it was based on the first drafts of the various sections of the Code, submitted to the bishops, to episcopal conferences, ecclesiastical universities and faculties, the dicasteries of the Roman curia, the Union of Religious General Superiors, and in some cases to other organs. This allowed for the participation of the entire Church, by expressing its needs, problems, and requests. In short, this gave the commission the opportunity to draw up a Code more attuned to the different circumstances of a Church spread throughout the world.¹¹

Alberigo, et al., *Legge e Vangelo. Discussione su una legge fondamentale per la Chiesa*, Brescia, Paideia editrice, 1972, p. 38.

⁹ See *Communicationes*, 1 (1969), pp. 77-85.

¹⁰ On January 15, 1966, P. Ciriaci, president of the commission, sent a letter to the presidents of episcopal conferences, asking for suggestions about the revision of the new Code, how to establish a better collaboration between them and the commission, and for the names of expert canonists; see N. Pavoni, "L'iter del nuovo codice", in F. Coccopalmerio, P. A. Bonnet, N. Pavoni, *Perché un codice nella Chiesa*, Bologna, Edizioni Dehoniane, 1984 (*Il Codice del Vaticano II*, 1), p. 134.

¹¹ Cf. the account of the commission's work addressed by P. Felici, president of the commission, to the plenary session, October 20-28, 1981, in *Communicationes*, 13 (1981), pp. 262-263.

However, those who were principally entrusted with the complex task of harmonizing the fundamental principles of being faithful both to the juridical-legislative tradition of the Church and to Vatican II, were the members of the commission and the consultors. This task became more arduous yet richer in so far as they were people of different status and offices in the Church: cardinals and bishops who worked in the Roman curia, bishops from around the world, pastors of souls, and experts in canon law and theology from universities of different nationalities and opinions, both clerics and laity.

How did this affect the *coetus de magisterio ecclesiastico*? Shortly after the principles for the revision of the Code were approved by the first Synod of Bishops (September 30 - October 4, 1967), a special study group *De ordinatione systematica novi codicis* was appointed. This special group, responding to the 10th principle, in its first meeting (April 2-4, 1968), among others, agreed on abandoning the systematic order of the prior Code based on the Roman law structure (*de personis-rebus-actionibus*), and to adopt a new one.¹² The changes specifically touched the structure of Book III of the prior Code, which contained a variety of matters.¹³ In its place, the commission decided to adopt a new structure based on the threefold *munera* of the Church, *de magisterio seu*

¹² "... componendus igitur est sive ad mentem et spiritum Decretorum sacri Concilii sive ad scientificas legislationis canonicae exigentias", in *Communicationes*, I (1969), p. 85.

¹³ "Praesens structura libri III Codicis, qui sub rubrica *de rebus* materias inter se valde diversas complectitur, servari non posse", in *ibid.*, p. 106.

*munere docendi, de munere sanctificandi, de munere regendi.*¹⁴ This new structure fitted more with the mind and spirit of Vatican II, especially with regard to the *munera* as well as to the technical requirements of modern canonical legislation.¹⁵ This study group proposed a new systematic order which was approved, on a provisional basis, by the commission during its second plenary session (May 28, 1968).¹⁶

¹⁴ To the question "An placeat ut in parte distincta conficiatur legislatio de tribus muneribus in Ecclesia, videlicet: 1^a pars: de magisterio ecclesiastico seu munere docendi; 2^a pars: de sacramentis et sacramentalibus et de culto divino (ubi agetur etiam de locis et temporibus sacris), seu de munere sanctificandi; 3^a pars: de regimine Ecclesiae seu de munere regendi, id est de variis organis regiminis et de exercitio potestatis regiminis, tum in Ecclesia universali tum in Ecclesiis particularibus", they voted 8 *placet* and 2 *non placet*, in *Communicationes*, 1 (1969), p. 107.

¹⁵ "... componendus igitur est sive ad mentem et spiritum Decretorum Sacri Concilii sive ad scientificas legislationis canonicae exigentias."

"In studiis peragendis atque canonibus redigendis ac proponendis attente semper considerata sunt criteria fundamentalia et normae quae omnibus consultoribus patent in documento *Principia quae Codicis iuris canonici recognitionem dirigant*. Adhibeatur praeterea terminologia sibi constans atque stylus canonum talis sit, qui naturam propriam legislationis ecclesiasticae atque spiritum Sacrosancti Concilii Vaticani II prae se ferat", in *Communicationes*, 1 (1969), pp. 85, 46.

Cardinal P. Felici corroborated this in his letter to the consultative organs presenting the last five schemata for consultation: "Cum elaborationem horum postremorum schematum universa disciplina hodierni Codicis recognita est iuxta Decreta et spiritum Concilii Oecumenici Vaticani II, necnon iuxta *principia quae Codicis iuris canonici recognitionem dirigant* a Synodo Episcoporum anno 1967 approbata...", in *Communicationes*, 9 (1977), p. 227.

¹⁶ The following provisional outline was approved by the commission:

Liber I: Legislatio de fontibus iuris (leges et constitutiones) atque de actibus administrativis qui influunt in conditionem iuridicam personae (dispensationes, privilegia, etc.).

Liber II: Legislatio de Populo Dei in genere et in specie: 1. de personis physicis in genere... de personis iuridicis seu moralibus; 2. de personis physicis in specie... (de clericis, de laicis, de iis qui sunt in statu perfectionis); 3. normae de Hierarchia in Ecclesia constituta.

Liber III: Legislatio de tribus muneribus (de magisterio, de sacramentis, de regimine).

Liber IV: Legislatio de bonis Ecclesiae temporalibus seu de iure patrimoniali Ecclesiae.

Liber V: Legislatio de iure poenali.

Liber VI: Legislatio de tutela iurium in Ecclesia: 1. de procedura iudiciali; 2. de procedura administrativa.

Cf. *Communicationes*, 1 (1969), pp. 111-112.

Likewise, after the approval of the provisional systematic order of the new Code, Cardinal P. Felici —newly appointed president of the commission — reorganized the study groups or *coetus*. The section on the Church's teaching office was entrusted to the *coetus de magisterio ecclesiastico*,¹⁷ which was part of Book III of the provisional systematic order of the Code along with the *de sacramentis*, and *de regimine*.

2. Toward canon 754: the 197 / Draft

Compared with the work of the other study groups involved in the revision of the Code of Canon Law, the history of Book III, "the teaching office of the Church", is very modest both as to the number of meetings, and to the hours spent on it.¹⁸ The revision began with the constitution of the study group responsible for revising the section on "ecclesiastical magisterium" (March 24, 1966),¹⁹ directed by W. Onclin, adjunct

When the last five sections of the Code were sent to the consultative organs in 1977, they were accompanied by a new provisional general index of the Code comprising seven books as in the current Code. See *Communicationes*, 9 (1977), p. 229.

¹⁷ The different study groups were as follows: *de ordinatione systematica Codicis*, *de lege fundamentali Ecclesiae*, *de normis generalibus*, *de sacra hierarchia*, *de institutis perfectionis*, *de laicis*, *de personis physicis et moralibus in genere*, *de matrimonio*, *de sacramentis*, *de magisterio ecclesiastico*, *de iure patrimoniale Ecclesiae*, *de processibus*, *de iure poenali*; see *Communicationes*, 1 (1969), p. 45.

¹⁸ Book III is among the five last drafts sent out for consultation; however, it is one of the first three which required less time and effort to be completed: the study group *De magisterio ecclesiastico* was comprised of 22 members; 12 sessions were held, 144 meetings, and 360 hours were spent in collegial work; see the statistical chart on the number of people and hours of work involved in preparing the 1983 Code of Canon Law in *Communicationes*, 12 (1980), pp. 223-224.

¹⁹ The first members of the *coetus de magisterio* were the Archbishops P. Palazzini (relator), J. Schröffer, and I. Sansierra Robia; Bishop P. Plesca (who could not participate in the sessions); Monsignors J. Graneris, A. Galletto, V. Che, and J. Ratzinger (who later resigned); and the priests Ch. Berutti, A. Dominguez de Sousa, and O. Semmelroth; see *Communicationes*, 1 (1969), p. 33. The list of consultors was constantly updated.

secretary of the commission. In all, twelve sessions were held by the *coetus de magisterio ecclesiastico*.²⁰

The revision of Book III was carried out in the five stages of the revision process: (1) the preparation of the 1977 draft, (2) the consultation, (3) the 1980 draft, (4) the 1982 draft, and (5) the promulgated text of the code. We shall now examine the work of the *coetus*, in so far as the understanding of c. 754 requires it.²¹

2.1. The revision of canon 1324 of the 1917 Code

The preparation of the first draft of the schema was more technical and redactional in character; it lasted for nine sessions.²² What became c. 754 was explicitly

²⁰ See *Communicationes*, 19 (1987), pp. 281-284.

²¹ For a wider study of the process of revision carried out by the *coetus de magisterio ecclesiastico*, besides *Communicationes*, see R.J. Castillo Lara, "Le Livre III du CIC de 1983. Histoire et principes", in *L'Année canonique*, 31 (1988), pp. 17-54; J.A. Alesandro, "The Revision of the Code of Canon Law: A Background Study", in *Studia canonica*, 24 (1990), pp. 91-146; N. Pavoni, "L'iter del nuovo codice", in F. Coccopalmerio, P.A. Bonnet, N. Pavoni, *Perché un codice nella Chiesa*, Bologna, Edizioni Dehoniane, 1984 (Il codice del Vaticano II, 1), pp. 127-170; F. D'Ostilio, *La storia del nuovo codice di diritto canonico. Revisione-promulgazione-presentazione*, Città del Vaticano, Libreria editrice Vaticana, 1983, 143p. (Studi giuridici, 6).

²² See a chronological synthesis of the *coetus de magisterio ecclesiastico*'s work in *Communicationes*, 19 (1987), pp. 281-284; the first session, January 23-28, 1967, was on general norms, and on the preaching of the word of God (*Communicationes*, 19 [1987], pp. 221-260); the second session, February 13-17, 1969, was on schools (*Communicationes*, 20 [1988], pp. 122-147); the third session, October 21-26, 1968, on schools, universities in general, ecclesiastical universities and faculties, and seminaries (*Communicationes*, 8 [1976], pp. 108-122, and 20 [1980], pp. 169-203); the fourth, April 21-24, 1969, was on Christian education, superior institutes, ecclesiastical universities and faculties, and the formation of clerics (*Communicationes*, 20 [1988], pp. 214-252; the fifth, April 7-10, 1970, was on the formation of clerics (*Communicationes*, 21 [1989], pp. 56-93; the sixth session, March 15-18, 1971, was on the formation of clerics, prior censure and prohibition of books, sacred missions, and the profession of faith

touched on or mentioned only in the first, second, third, and seventh sessions. We also note that the entire schema *de magisterio ecclesiastico* was essentially completed in the first seven sessions; it then remained at the secretariat of the commission for more than three years, until it was taken back for two more revisions because of subsequent observations made by the Congregations for the Clergy, for Catholic Education, and for the Doctrine of the Faith.²³

The first session of the *coetus de magisterio ecclesiastico* dealt with general norms on the ecclesiastical magisterium, cc. 1322-1326 of the 1917 Code of Canon Law, as well as with the canons on the preaching of the word of God, cc. 1327-1351.²⁴ However, before examining the canons, the study group agreed on the necessity of declaring some doctrinal principles, which would form the theological basis and the *ratio* of the disciplinary laws with regard to the ecclesiastical magisterium.²⁵ The group also

(*Communicationes*, 21 [1989], pp. 274-315; the seventh session, January 17-22, 1972, was on some canons on ecclesiastical magisterium in general, Christian education, the formation of clerics, books and the means of social communication, sacred missions, and the profession of faith (we have not yet the report of this session, nor of the next two ones); session eight, October 13-17, 1975, was on some canons on general questions relating to the ecclesiastical magisterium, Christian education, and on the formation of clerics; session nine, May 3-7, 1976, was on some canons on the formation of clerics, books and means of social communication, sacred missions, and on the profession of faith.

²³ R.J. Castillo Lara, "Le Livre III du CIC de 1983", p. 31.

²⁴ See *Communicationes*, 19 (1987), pp. 221-260.

²⁵ W. Onclin concluded as follow: "1. Necesse videtur ut praecipua principia doctrinalia enuntientur in novo Codice: haec principia sunt fundamentum theologicum regularum disciplinarium et rationes praebent ipsius disciplinae; iam autem hodie praesertim breviter saltem indicari debent rationes ob quas regulae disciplinares statuuntur; quae rationes sunt necessario tradendae ut normae disciplinares rationabiles et acceptabiles appareant et insimul ut normae disciplinares debite declarari valeant. 2. Sola principia doctrinalia enuntianda sunt ea quae ad intelligentiam normarum disciplinarium requiruntur et quae efficient ut legislatio appareat ut aliquid unum sibi cohaerens. 3. Principia haec doctrinalia enuntiari debent quae sunt inconcussa, praesertim attenta doctrina in Concilio Vaticano II proposita; sed Commissionis C.I.C.

dealt with the title of this section: it was explained that the term *Ecclesia* is not to be understood as referring only to the hierarchy; rather, it is to be understood as referring to the whole Church, as was clearly exposed in LG, n. 12 and c. 1322 § 1. With this clarification, it was proposed that the title remain as it was.²⁶ Hence, what is said about the Church in this paragraph applies to the entire Church. In the same sense, in the opinion of some consultors, the whole section on *de magisterio ecclesiastico* ought to have been substantially reviewed in the light of the Vatican II documents, and those organs which participate *ex natura rei* and those that participate *ex ordinatione Ecclesiae* in the teaching office of the Church should be clearly delineated. It was further requested that the competence of the ecclesiastical magisterium with regard to revealed truth and to the precepts of natural law and their binding force be defined.²⁷

recognoscendo non est questiones theologicas, quibus Concilium non tradit certam doctrinam vel noluit certas tradere normas, dirimere", in *Communicationes*, 19 (1987), p. 223.

²⁶ "Videtur tamen titulum conservari posse, imo et canonis 1322 § 1 principium recte intelligi, si postea de magisterio quod etiam a tota Ecclesia exercetur distincta quaestio fit'. Proponit igitur ut titulus maneat...", in *Communicationes*, 19 (1987), p. 224; in dealing with c. 1322 § 1, a consultor noted the risk of identifying Church and magisterium: "Secundum quemdam Rev.dum consultorem in verbis textus permanet periculum identificandi ipsam Ecclesiam cum Magisterio, et propterea suggerit addendam esse sententiam ad probandam quaestionem esse de magisterio, nempe de hierarchia." However, the paragraph substantially remained as it was, as a consultor proposed: "Ex.mus consultor nihil mutandum esse opinatur, quia vocabulum *Ecclesia* comprehendit ipsum Romanum Pontificem una cum fidelibus", in *ibid.*, p. 225.

²⁷ "Ad mentem cuiusdam Ill.mi Consultoris, tota materia haec 'de magisterio ecclesiastico' substantialiter recognosci debet, attentis declarationibus Const. *Lumen gentium*, nn. 19 et 25; *Dei verbum*, n. 10; Decret. *Presbyterorum ordinis*, n. 2; et *Inter mirifica*, nn. 3 et 13."

"Requiritur, iuxta eundem, praecisa determinatio organorum qui in Ecclesia participant *ex natura rei* aut *ex ordinatione Ecclesiae* functionem Magisterii et in specie requiritur: a) ut ambitus Magisterii ecclesiastici definiatur, eius competentia circa revelata et circa praecepta iuris naturalis; item vis obligandi; b) ut subiecta Magisterii activa determinentur, scil. quanam illud exercent *iure divino* (Hierarchia) et *iure ecclesiastico* (organa S. Sedis, Conferentiarum Episcopaliū, Curiae dioecesanæ, etc.)", in *Communicationes*, 19 (1987), p. 224.

Afterwards, the consultors discussed the first part of c. 1324. This text was completely transformed; i.e., the reference to a “heretical perverseness” (*haereticam pravitatem*) was deleted in accordance with Vatican II’s decree on ecumenism, since “heresy” could have been understood as including those Christians separated from the Catholic Church.²⁸ Likewise, W. Onclin suggested a text including the assent of faith as the response to be given to matters which are to be believed with an act of divine and catholic faith; consequently, all must avoid any teachings which are contrary to these truths as well as those which do not agree with catholic doctrine. The text reads as follows:

Because one must adhere with an assent of faith to those things which have been proposed by the Church as having to be believed with an act of divine and catholic faith, therefore, all are held to avoid whatever teachings which are contrary to them, and indeed also those teachings which do not agree with catholic doctrine.²⁹

With regard to the second part of c. 1324, four consultors proposed that the text remain unchanged. However, the discussions continued when one of the consultors and W. Onclin proposed that reference be made not only to the constitutions and decrees of the Apostolic See, but also to those of one’s bishop. The following text was then proposed:

²⁸ “Est Exc.mus Consultor qui putat mutandam esse locutionem: ‘haereticam pravitatem’, propter allusionem his verbis ad fratres separatos”, in *Communicationes*, 19 (1987), p. 230.

²⁹ C. 1324, *pars prima*: “Cum eis quae ab Ecclesia [proponuntur] tamquam de fide divina et catholica credendis fidei obsequio adhaerendum sit, tenentur omnes quascumque devitare doctrinas iisdem

In matters of faith and morals not only heresy has to be avoided, but also errors more or less approaching it; hence, the faithful must adhere with a religious assent of the mind to their bishop's teaching, but especially to the constitutions, decrees, and other acts of the Apostolic See.³⁰

W. Onclin, for his part, proposed the following text:

Hence, all are held to comply with a religious assent of the mind to constitutions and decrees which the Apostolic See or one's proper bishop have issued to declare true doctrine and to denounce errors creeping against it.³¹

One of the consultors proposed that only the negative part of the text be retained, and the positive one omitted.³² Another consultor proposed that both the negative and the positive parts remain, but in two distinct paragraphs.³³ A third said that the reference to internal assent should be excluded, since the legislator cannot rule on internal acts.³⁴ Finally, a fourth consultor suggested that not only the proper bishop but also the

contrarias, immo et eas quae cum doctrina catholica non congruunt", in *Communicationes*, 19 (1987), p. 230.

³⁰ "In rebus fidei et morum non solum evitanda est haeresis sed etiam errores ad illam plus minusve accedentes: quare fideles suo Episcopo docenti religioso animi obsequio adhaerere debent, singulari vero ratione Constitutionibus, aliisq[ue] actis Sedis Apostolicae", in *ibid.*, p. 230.

³¹ "Quare omnes religioso animi obsequio obsecundare tenentur constitutionibus et decretis quos ad veram doctrinam declarandam erroresque contra eas serpentes denunciandos dederint Apostolica Sedes aut proprius Episcopus", in *ibid.*, p. 230.

³² "Iuxta Exc.mum Consultorem melius est servare tantum partem negativam et positivam omittere", in *ibid.*, p. 230.

³³ "Iuxta Rev.mum Consultorem melius est facere duas paragraphos, quarum una negativam, altera positivam partem comprehendat", in *ibid.*, p. 231.

³⁴ "Notat alter Exc.mus Consultor de interno animi obsequio canonem nihil statuere posse, quia legislator non valet actus internos regere", in *ibid.*, p. 230.

episcopal conferences should be mentioned, since they too possess some power.³⁵

Taking all the interventions into account, W. Onclin proposed a new text omitting the reference to the positive presentation of doctrine and to the obligation of supplying an internal assent of the mind, but he included a reference to one's proper bishop.

Hence, all must also observe the constitutions and decrees which one's proper bishop issues so as to proscribe and prohibit erroneous opinions, and especially those which the Apostolic See publishes.³⁶

In the first session, W. Onclin did not consider including episcopal conferences in the canon, for they did not have power on all matters;³⁷ however, at the beginning of the second session (February 13-17, 1968), the consultors reconsidered whether or not reference should be made to doctrinal issues raised by episcopal conferences. W. Onclin agreed, but also noted that episcopal conferences are mentioned in c. 1326.³⁸ Thus, the

³⁵ "Iuxta alium Rev.mum Consultorem in hoc canone non tantum Episcopus proprius, sed etiam Conferentiae episcopales nominari debent, quippe quae hodie in quibusdam potestatem habeant", in *Communicationes*, 19 (1987), p. 231.

³⁶ C. 1324, *pars secunda*: "Quare omnes debent etiam constitutiones et decreta servare quibus erroneae opiniones proscribit aut prohibet proprius Episcopus speciali vero ratione quae edit Apostolica Sedes", in *ibid.*, p. 231.

³⁷ "Rev.mus secretarius Ad. aestimat melius esse ut canon tantum de 'Episcopo proprio' et non de 'Conferentiis Episcoporum' statuatur, quia Conferentiae Episcoporum potestatem non habent in omnibus materiis, sed in certis tantum", in *ibid.*, p. 231.

³⁸ "Ad mentem Rev.mi cuiusdam Consultoris, mentio etiam fieri debet de litteris doctrinalibus, quas edunt Episcoporum Conferentiae."

"Aestimat Rev.mus Secretarius Ad. talem mentionem non requiri, quia quaestio est de Episcoporum Conferentiis in can. 1326; censet tamen etiam in can. 1324 hanc mentionem addi posse: '...ferunt proprius Episcopus, Episcopi regionis aut Provinciae ecclesiasticae in Conciliis particularibus aut

complete revised text of c. 1324 approved in the second session reads as follows:

Since one must adhere with an assent of faith to all that the Church proposes as of divine and catholic faith, everyone is held to avoid any contrary teaching or even teaching not in harmony with it. Hence, all must also observe those constitutions and decrees which their own bishop or the bishops of the region or ecclesiastical province enact in particular councils or in episcopal conferences proscribing or prohibiting erroneous opinions, and in a special way those that the Apostolic See publishes.³⁹

In the third session (October 21-26, 1968), there were no changes proposed for c. 1324. The canons approved in the previous sessions were reaffirmed.⁴⁰ Finally, as *Communicationes* reports, in the seventh session (January 17-22, 1972), the final changes made on c. 1324 refer to its second part, namely the verbs *ferre* and *edere* which were changed from the present to the subjunctive mood (*ferunt* to *ferant*, and *edit* to *edat*), and the two parts of the canon divided by a period were reunited by a semicolon.⁴¹ As a result of the first stage of revision of what became c. 754, we have c. 3 as it appeared in the 1977 draft:

Episcoporum Conferentiis, speciali vero ratione quae edit Apostolica Sedes. Probatur textus propositus ab omnibus", in *Communicationes*, 20 (1988), p. 123.

³⁹ "Cum eis quae ab Ecclesia [proponuntur] tanquam de fide divina et catholica credendis fidei obsequio adhaerendum sit, tenentur omnes quascumque devitare doctrinas iisdem contrarias, immo et eas quae cum doctrina catholica non congruunt. Quare omnes debent etiam constitutiones et decreta servare quae ad proscribendas prohibendasque erroneas opiniones ferunt proprius Episcopus, Episcopi regionis et provinciae ecclesiasticae in Conciliis particularibus aut Episcoporum Conferentiis, speciali vero ratione quae edit Apostolica Sedes", in *ibid.*, pp. 123-124.

⁴⁰ "Approbantur canones 1322, 1322bis, 1323, 1324 aliique, de quibus mentio fit in relatione sessionis praecedentis, usque ad p. 8 (textus typis editus in *Comm.* 20 [1988], 122-126); approbantur nempe cum mutationibus admissis", in *ibid.*, p. 170.

⁴¹ See *Communicationes*, 19 (1987), p. 283. We lack the minutes of the seventh session, since they have not yet been published.

Since one must adhere with an assent of faith to all that the Church proposes as of divine and catholic faith, everyone is held to avoid any contrary teaching or even teaching not in harmony with it; hence all must also observe those constitutions and decrees which their own bishop or the bishops of the region or ecclesiastical province may enact in particular councils or episcopal conferences proscribing or prohibiting erroneous opinions, and in a special way those that the Apostolic See may publish.⁴²

2.2. Consultation on the schema

On November 15, 1977, with the approval of the Pope, the schema on the *Teaching office of the Church*, along with the remaining four drafts,⁴³ was submitted for consultation to various consultative organs. The schema included an introduction where it was explained that some of the principles pertaining to the Church's teaching office were omitted, as for example c. 1323 of the 17/CIC, because they were found in the schema on the Church's Fundamental Law and hence were not repeated in the present draft.⁴⁴

⁴² PCCICR, *Schema canonum Libri III, De Ecclesiae munere docendi*, Romae, Typis polyglottis Vaticanis, 1977, p. 9.

⁴³ The other drafts sent for consultation were on general norms, on the people of God, on sacred places and times as well as on divine worship, and on the patrimonial law of the Church.

⁴⁴ "Canones aliqui generales principia quaedam enuntiant quae ad munus Ecclesiae docendi pertinent. Mirum quidem quibusdam videri potest aliqua principia quae in Codice Iuris Canonici a. 1917 proponuntur hoc in schemate legis recognitae deficere; ita revera in hoc schemate non habentur principia in can 1323 CIC enuntiata (...). Haec vero principia generalia, sicut et alia quaedam, enuntiantur in schemate quod inscribitur *Lex Ecclesiae Fundamental*is et ideo in schemate canonum *De Ecclesiae munere docendi* iterum enuntianda non sunt", in PCCICR, *Schema canonum Libri III*, p. 3.

The results of the consultation were rich, varied, and positive.⁴⁵ The process allowed particular churches to express their needs and problems, helping the commission and study groups to make the new Code more realistic and coherent with the needs of the universal Church. Concerning the schema on the Church's teaching office, the observations were varied and contrasting in many cases. There were more suggestions and criticisms than praises for the schema. While it was mentioned that the schema was a significant improvement over the current laws, it was nevertheless judged inadequate and not ready for promulgation unless thoroughly revised. Among the principal objections, we can note the following six observations:

* that it was excessively hierarchical in character, since it reflected the old twofold Church: *docens* and *discens*, i.e., with the exception of the first canon, the others all identify the Church with hierarchy; likewise, the general canons ignore the vision of Vatican II which declares that the people of God share in Christ's prophetic office (LG, n. 12; AA, n. 3);⁴⁶

⁴⁵ There were responses from 41 episcopal conferences, 56 bishops, 15 dicasteries of the Roman curia, 7 cardinals members of the commission for the revision of the Code, 22 universities, 3 general superiors, and 2 private ones. The secretary of the commission made a thorough synthesis of the responses, and compiled them in 117 pages. Cf. R.J. Castillo Lara, "Le livre III du CIC de 1983", p. 33.

⁴⁶ "Videtur mihi (...) Pars De magisterio ecclesiastico manere, sicut in CIC, fere exclusive de munere hierarchicae Ecclesiae, ita scilicet ut nihil contineatur in his canonibus generalibus de responsabilitate prophetica presbyterorum, quatenus suo modo particeps sunt sacerdotii Christi; immo omnium fidelium, iuxta mensuram et modum eorum participationis in munere prophetico Christi et Ecclesiae, a Concilio Vaticano inaequivoce affirmatae", in F.J. Urrutia, "De magisterio ecclesiastico: observationes quaedam ad propositam reformationem pars IV, Libri III, CIC", in *Periodica*, 68 (1979), p. 328; for the other critics, see also J. A. Coriden, "Book III: De Ecclesiae munere docendi. Preliminary Report on the Draft of Canons on the Church's Teaching Office", in *Task Force Critiques of the Initial Schemata for the Revision of the Code of Canon Law*, Washington, CLSA [1978], 7p.; N. Pavoni, "L'iter del nuovo codice", pp. 147-148; R.J. Castillo Lara, "Le livre III du CIC de 1983", pp. 33-34; The Canon Law Society of Great Britain and Ireland, *Report on the Schema Canonum Libri III 'De Ecclesiae munere docendi'*, [London, The CLSGBI, 1978], 7p.

- * that it was very diffuse, exhortative in style, more fitted for a directory, with many doctrinal statements;

- * that it was presented in a negative way, i.e., its main concern was the struggle against errors instead of the positive diffusion of revealed truth;

- * that it seemed more like an addition of some new laws to the old Code than a true revision;

- * that it did not deal with the function of theologians and theology, but only with catechesis.

- * that it provided for excessive interventions by the episcopal conferences (in 30 canons), which would interfere and limit the rights and duties of the bishops in their proper office.

These observations were examined in three sessions (February 4-9, March 24-28, and April 21-26, 1980). Basically, the work consisted in introducing the suggestions either into the schema as a whole or into particular canons. According to Cardinal Castillo Lara, several canons containing doctrinal affirmations or principles were to be suppressed, as well as those already found in the LEF.⁴⁷ Detailed prescriptions were also to be suppressed, and the intervention of episcopal conferences diminished.

⁴⁷ Among the preliminary canons, c. 6 (c. 1326 of the 1917 Code) was suppressed, since it was already found in the LEF schema; see c. 59 of the 1971 schema, in PCCICR, *Schema Legis Ecclesiae fundamentalis. Textus emendatus cum relatione de ipso schemate deque emendationibus receptis*, Romae, Typis polyglottis Vaticanis, 1971, p. 38.

3. Toward canon 754: the subsequent revisions

The final changes of our canon occurred between 1980 and 1982. C. 753 of the 1982 draft passed into the promulgated text as c. 754 without any change.

3.1. From the 1980 Draft

The consultors of the *coetus de magisterio ecclesiastico* held three more meetings to revise the schema. The same title, *De Ecclesiae munere docendi* was retained, for what was to become an independent Book III in the 1980 draft.⁴⁸ The text of the future c. 754 (c. 708 in the 1980 draft) reads as follows:

§ 1. One must adhere with an assent of faith to those things which have been proposed by the Church as having to be believed with a divine and catholic faith; therefore all are held to avoid whatever teaching is contrary to them.

§ 2. The Christian faithful should give a religious *obsequium* to a doctrine which the legitimate authority of the Church proposes about faith and morals and they should take care to avoid those teachings which do not agree with it.

§ 3. 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 to proscribe erroneous opinions; this holds especially for those that the Roman Pontiff or the Episcopal College may publish.⁴⁹

⁴⁸ PCCICR, *Codex iuris canonici: Schema Patribus Commissionis reservatum*, Città del Vaticano, Libreria Editrice Vaticana, 1980, xxiii-382p.

⁴⁹ C. 708 § 1. "Eis quae ab Ecclesia proponuntur tanquam de fide divina et catholica credenda, fidei obsequio adhaerendum est; tenentur igitur omnes quascumque devitare doctrinas iisdem contrarias."

Looking more closely at this canon, we find that new important elements were introduced into the text, as a result of the observations received; this text now has greater clarity and a more positive tone.

§ 1 was taken from the first part of c. 3 of the 1977 schema, now transformed into an independent paragraph, where the *assent of faith* to those teachings which have been proposed by the Church as having to be believed with a divine and catholic faith, is required from the faithful. Hence, all are obliged to avoid doctrines contrary to those teachings.

§ 2 is a new paragraph inserted in the canon, which speaks of the *religious assent* to be provided to a doctrine on faith and morals proposed by the legitimate authority of the Church; hence, anything which does not agree with such doctrines should be avoided. As we can see, the response of a *religious obsequium* (of the mind) was reintroduced; it had been proposed in the first session (1967), as well as the object of such an assent, namely doctrine on faith and morals; however, it was found at the time to be an improper statement, since dogmatic definitions are also matters of faith and morals and require not just a religious assent, but an assent of faith.

§ 2. "Religiosum obsequium praestent christifideles doctrinae quam de fide et moribus proponit legitima Ecclesiae auctoritas et devitare curent quae cum eadem non congruunt."

§ 3. "Omnes christifideles obligatione tenentur servandi constitutiones et decreta quae ad doctrinam proponendam et erroneas opiniones proscribendas fert legitima Ecclesiae auctoritas, speciali vero ratione quae edat Romanus Pontifex vel Collegium Episcoporum", in PCCICR, *Codex iuris canonici: Schema Patribus Commissionis reservatum*, p. 170.

§ 3 was taken from the second part of c. 3 of the 1977 draft. Three changes were introduced into this part: firstly, a positive clause, *quae ad doctrinam proponendam* was added; thus, the Christian faithful must observe the constitutions and decrees, which not only proscribe erroneous opinions, but also those which propose true doctrine. Secondly, the verb “to prohibit” (*prohibendas*) was removed, softening this negative clause. In this manner the two verbs, *proscribere* and *prohibere* were separated; they had always been together since the Dogmatic constitution *Dei filius* of Vatican I. Finally, the reference to the authors of the constitutions and decrees, “one’s proper bishop or the bishops of the region or ecclesiastical province, whether in particular councils or episcopal conferences”, was simplified by a more embracing and general formula, “the legitimate authority of the Church.” Without denying that this formula embraces what was substituted, we can nevertheless deduce that the consultants preferred to avoid the unsettled issue among theologians and canonists as to the conflict of powers between the individual bishops and particular councils and, principally, the episcopal conferences.⁵⁰

The entire 1980 draft was sent (June 29, 1980) for a subsequent revision to the fathers of the commission now enlarged by the addition of 18 cardinals, and 18

⁵⁰ See, for instance, the various changes in the actual c. 753 on the non infallible teaching of bishops, in PCCICR, *Schema Legis Ecclesiae fundamentalis. Textus emendatus*, 1971, pp. 38, 103, 147-148; *Communicationes*, 13 (1981), p. 67; 16 (1984), p. 98. Kothuis for his part, says with regard to § 3: “This legitimate authority includes not only the Roman Pontiff and the College of Bishops, as specified in the canon itself, but might also be said to refer to one’s proper bishop and the bishops of an ecclesiastical region or province in a particular council or even in conferences of bishops, as had been mentioned in canon 3 of the 1977 Schema, as well as the Congregation of the Holy Office”, in H. Kothuis, *The Response of the Christian Faithful to the non Infallible Magisterium. A Canonical Investigation from Pius IX until the Revised Code of Canon Law*, Romae, Pontificia Università Gregoriana, 1988, (P.U.G., 761), pp. 365-366.

residential archbishops and bishops. They presented observations which were given to the different study groups who in turn examined and answered them. From all the observations, 81 touched on Book III, but only 18 were accepted: 10 of those referred simply to wording modifications or accommodation of canons. In addition, the secretariat added six corrections *ex officio*.

First of all, in spite of the suggestion of changing the title of the Book, it remained as it was approved in the consultation.⁵¹ As regards c. 708, Cardinal J. Parecattil made two observations: 1) he said that what c. 708 added to cc. 59-60 of the LEF was of little value, but what was omitted was very important. Indeed, omitting the clause “even though they do not intend to proclaim that doctrine by definitive act”, in c. 708 § 2, could be misleading by stating that religious *obsequium* would be sufficient for dogmatic definitions, since they are also doctrines on faith and morals proposed by the legitimate authority.⁵² The response of the consultors to this observation was to propose an inversion of §§ 1 and 2, adding *vero* after *Eis* to this latter; § 3 would be a new canon.⁵³ 2) He also pointed out that the force of the obligation imposed through the words

⁵¹ Some fathers suggested that the title *De magisterio ecclesiastico* be restored, or changed into *De fide promovenda*, to which was answered: “Omnibus perpensis, melius est ut maneat titulus Schematis qui a consultatione probatus est. *Magisterium* praeterea est terminus technicus sub quo valde improprie venirent omnes canones Libri III”, in *Communicationes*, 15 (1983), p. 89.

⁵² “Id quod canon adiungit LEF cann. 59-60 pretii minimi est, id quod omittitur grave est. Etenim can. 708 § 2 omittit ‘etsi definitivo actu eandem proclamare non intendat’, can. 60 LEF. Unde religiosum obsequium sufficeret ‘doctrinae quam de fide vel moribus proponit legitima Ecclesiae auctoritas’, ergo etiam definitioni dogmaticae (est enim doctrina de fide et moribus a legitima auctoritate proposita)”, in *ibid.*, 15 (1983), p. 90.

themselves by §§ 1 and 3 (*adhaerendum est*, and *tenentur*) was not the same as in § 2 (*praestent*); c. 60 of the LEF also establishes *praestandum est*.⁵⁴ The consultants said that the observations which touched on the canons of the LEF should receive their own response. However, many of these canons eventually were inserted into the Code.⁵⁵

3.2. From the 1982 Draft

The observations made to the 1980 draft, along with the responses, were printed in a volume⁵⁶ and sent to the commission in July 1981, for the coming plenary assembly, which took place October 20-28, 1981. In the assembly, taking into consideration the responses of the consultants, the fathers studied and voted on the text. In the meantime, the Pope had decided not to promulgate the LEF, so the plenary assembly added the canons of the LEF to the Code. With regard to Book III, five canons were added (cc.57-61), to complete or replace some of the preliminary canons.⁵⁷

⁵³ "Admittitur: ordo §§ invertitur — § 1 fit § 2, ubi post 'Eis' adiungitur 'vero' — § 3 fit canon per se stans qui erit can. 708-bis", in *Communicationes*, 15 (1983), p. 90.

⁵⁴ "Prae oculis habeatur quod dum in § 1 et § 3 eiusdem can. 708 obligatio stricte dicta imponitur ('adhaerendum est', 'tenentur'), in § 2 idem not fit ('religiosum obsequium praestent'). E contra in LEF can. 60 invenitur 'praestandum est'. Haec mutatio non iustificatur", in *ibid.*, p. 90.

⁵⁵ *Nota*. "Animadversiones quae LEF respiciunt propriam considerationem habebunt ex eo quod plures canones LEF probabiliter in C.I.C. nunc inserendi sunt (cfr. Appendicem)", in *ibid.*, p. 88.

⁵⁶ PCCICR, *Relatio complectens synthesim animadversionum ab Em.mis atque Exc.mis Patribus Commissionibus ad novissimum schema Codicis iuris canonici exhibitarum, cum responsionibus a Secretaria et Consultoribus datis. (Patribus Commissionibus stricte reservata)*, in Civitate Vaticana, Typis polyglottis Vaticanis, 1981, 358p.

⁵⁷ See *Communicationes*, 16 (1984), pp. 97-98.

Concretely, c. 706 of the 1980 draft was replaced by c. 57 of the LEF, becoming c. 747; cc. 58 and 61 were added, becoming cc. 749 and 752. As regards c. 708 of the 1980 draft, it was completely changed: § 1 was replaced by c. 59 of the LEF, becoming c. 750, keeping only the last phrase (“therefore all are held to avoid whatever teaching is contrary to them”);⁵⁸ likewise, § 2 was replaced by c. 60 of the LEF, becoming c. 751, keeping only the last phrase (“hence, they should take care to avoid those teachings which do not agree with it”);⁵⁹ and § 3 remained unchanged as c. 753.⁶⁰ The other preliminary canons remained unchanged (cc. 748, 754 and 755). Apart from the preliminary canons, the only change made to Book III referred to the norm concerning the canonical mission for professors of theology: part of c. 767 of the 1980 draft was modified and replaced by a less technical and more general text.⁶¹ The following chart shows the changes that the preliminary canons of Book III underwent:

⁵⁸ C. 750, 1982 draft: “Fide divina et catholica ea omnia credenda sunt quae verbo Dei scripto vel traditio, uno scilicet fidei deposito Ecclesiae commisso, continentur, et insimul ut divinitus revelata proponuntur, sive ab Ecclesiae magisterio sollemni, sive ab eius magisterio ordinario et universali, quod scilicet communi christifidelium sub ductu sacri magisterii adhaesione manifestatur; *tenentur igitur omnes quascumque devitare doctrinas iisdem contrarias*”, in PCCICR, *Codex iuris canonici: Schema novissimum iuxta placita Patrum Commissionis emendatum atque Summo Pontifici praesentatum*, in Civitate Vaticana, Typis polyglottis Vaticanis, 1982, p. 140.

⁵⁹ C. 751, 1982 draft: “Non quidem fidei assensus, religiosum tamen obsequium praestandum est doctrinae, qua sive Summus Pontifex sive Collegium Episcoporum de fide vel de moribus enuntiant, cum magisterium authenticum exercent, etsi definitivo actu eandem proclamare non intendunt; *christifideles ergo devitare curent quae cum eadem non congruunt*”, in PCCICR, *Codex iuris canonici: Schema novissimum*, p. 140.

⁶⁰ C. 753, 1982 draft: “Omnes christifideles obligatione tenentur servandi constitutiones et decreta, quae ad doctrinam proponendam et erroneas opiniones proscribendas fert legitima Ecclesiae auctoritas, speciali vero ratione, quae edat Romanus Pontifex vel Collegium Episcoporum”, in *ibid.*

⁶¹ C. 767 of the 1980 draft: “Qui in studiorum superiorum Institutis quibuscumque lectiones tradunt theologicas aut cum theologia conexas missione egent canonica.” C. 812 of the 1982 draft: “Qui in studiorum superiorum institutis quibuscumque disciplinas tradunt theologicas auctoritatis ecclesiasticae mandatum habeant oportet.”

1977 CIC Draft	1980 CIC Draft	LEF 1980 Draft	1982 CIC Draft	1983 CIC
c. 1 (c. 1322)	c. 706	c. 57	c. 747	c. 747
c. 2 (new)	c. 707		c. 748	c. 748
		c. 58	c. 749	c. 749
c. 3 (c. 1324)	c. 708 § 1	c. 59	c. 750	c. 750
	§ 2	c. 60	c. 751	c. 752
c. 6 (c. 1326)		c. 61	c. 752	c. 753
	§ 3		c. 753	c. 754
c. 5 (new)	c. 709		c. 754	c. 755
c. 4 (c. 1325)	c. 710		c. 755	c. 751

As we can see, c. 708 §§ 1, 2, 3 of the 1980 Draft, and cc. 59 and 60 of the LEF gave place to cc. 750, 751 and 753 of the 1982 Draft. This latter canon remained the same as c. 754 of the promulgated text of the Code of Canon Law.

After the plenary assembly, the secretariat revised the canons, taking into account the observations and modifications voted upon by the fathers, noticing carefully the Latin wording as well as a uniformity in terminology. Finally, the fathers of the plenary assembly decided to present the Code to the Pope for its promulgation.⁶² Thus, the 1982

⁶² "Conclusio Plenariae: die 28 octobris 1981 Plenaria conclusa est. Dubio Cardinali Praeside proposito: 'placetne Patribus ut post examinata in Plenaria Schema C.I.C. et emendationes iam inductas, idem Schema, introductis quae in Plenaria maioritatem obtinuerint, prae oculis quoque habitis aliis, quae datae fuerint, animadversionibus, atque perpolitione facta quoad stilum et latinitatem (quae omnia Praesidi et Secretariae committuntur) dignum habeatur quod Summo Pontifici, qui tempore et modo, quae sibi videantur, quam primum praesentetur'. Patres unanimi consensu responderunt: Placet", in *Communicationes*, 13 (1981), pp. 268-269.

draft⁶³ was printed and presented to him on April 22, 1982. The Pope then appointed seven independent experts and a committee⁶⁴ to examine the new text of the Code. There were around 60 observations on Book III, which were expressed to the Pope, especially from the experts during the meetings held from September 4-10, 1982. The next month, when he discussed the observations collegially, only six of them were retained, none of which concerned our canon, except for a grammatical change of *edere* (from the subjunctive, *edat*, to the present tense, *edit*).⁶⁵ Finally, Pope John Paul II promulgated the new Code of Canon Law on January 25, 1983.⁶⁶

4. Canon 754, the promulgated text

Comparing c. 1324 of the 17/CIC with this new canon, we can conclude that the latest norm is more positive, broader, and specific. It is more positive, or we might say balanced, for the emphasis is no longer focused in the proscribing or prohibiting of erroneous opinions, but in both the proscribing and the proposing of doctrine by constitutions and decrees. It is broader, for not only is the Apostolic See the authority

⁶³ PCCICR, *Codex iuris canonici: Schema novissimum iuxta placita Patrum Commissionis emendatum atque Summo Pontifici praesentatum*, in Civitate Vaticana, Typis polyglottis Vaticanis, 1982, xviii-308p.

⁶⁴ Bishops I. Mester, Z. Grocholewski, Msgr. E. Egan, and Fathers U. Betti, E. Corecco, J. Ochoa, and L. Diez; the Committee was composed of Cardinals A. Casaroli, J. Ratzinger, N. Jubany, and Bishop V. Fagiolio.

⁶⁵ R.J. Castillo Lara, "Le livre III du CIC de 1983", pp. 38-39.

⁶⁶ Apostolic constitution, "Sacrae disciplinae leges", in *Codex iuris canonici, auctoritate Ioannis Pauli PP. II promulgatus*, pp. vii-xiv.

which issues such documents, but rather the legitimate authority of the Church, which includes especially the Roman Pontiff and the Episcopal College, and other lower authorities in the Church as well. Finally, it is more specific, for in one paragraph it proposes the norm in a straightforward way without blending it in with other ideas as the old canon did. Nevertheless, in order to have a complete overview of the canon, we must consider the context, the content, and the nature of c. 754.

4.1. The context of canon 754

The study of the historical and ecclesiological background of the teaching office of the Church, the sources of c. 754, as well as its process of revision, gave us a broad overview of the context of the canon. What we intend to do now is to study the context of the canon in the Code itself, although focusing primarily on the preliminary canons of Book III, on the teaching office of the Church, and on the response which the Christian faithful ought to give to the teachings of the ecclesiastical magisterium.

4.1.1. C. 754 among the preliminary canons of Book III

It is common for the new Code to place some canons as theological or juridical principles before the norms. With regard to Book III, the consultors of the *coetus de magisterio ecclesiastico*, in their first session, discussed and approved the fittingness of having some preliminary canons, both theological and juridical in character, as the basis

of the whole Book.⁶⁷ Thus, some of these canons come from the preliminary texts of the section on the *ecclesiastical magisterium* of the 17/CIC, although duly renewed by the *coetus de magisterio ecclesiastico* or by the *coetus de LEF*, according to the language of Vatican II (cc. 747 § 1, 750, 751, 753, 754); others are new, proposed by the *coetus de magisterio ecclesiastico* (cc. 748 and 755), or by the *coetus de LEF* (cc. 749 and 747 § 2), or even by both *coetus* (c. 752).⁶⁸

4.1.2. The response of the Christian faithful to the ecclesiastical magisterium

We do not intend to deal with those of the preliminary canons of Book III which declare fundamental principles, as for instance, that the entire Church is the depository of divine revelation and holds the *munus propheticum* (c. 747); or all are compelled to look for the truth concerning God and his Church, and to adhere to it (c. 748 § 1); freedom of worship (c. 748 § 2); the infallibility of the Roman Pontiff and the College of Bishops (c. 749); and the promoting of ecumenism in the Church (c. 755). Instead, we shall focus our study on the canons which are intimately linked with c. 754, namely, cc. 750-753; for they too deal with the response required of the Christian faithful to the teachings of the authentic ecclesiastical magisterium.

⁶⁷ See *Communicationes*, 19 (1987), pp. 221-223.

⁶⁸ See chart on page 103.

Basically, the Code requires two kinds of response from the Christian faithful to the teachings of the ecclesiastical magisterium: the assent of faith (c. 750), and religious *obsequium* (cc. 751-753).

The assent of faith, that is, to believe with divine and catholic faith, is required for the truths contained in the deposit of faith, and which the Church proposes as divinely revealed (c. 750) either by the solemn magisterium, that is the Roman Pontiff speaking *ex cathedra* (c. 749 § 1) or the Episcopal College (c. 749 § 2), or by its ordinary and universal magisterium (cc. 749 § 2 and 750), which in fact is manifested by the common adherence of the Christian faithful under the guidance of the magisterium. The baptized person who denies obstinately or doubts such a truth which must be believed by divine and catholic faith, falls into heresy; one who totally repudiates the Christian faith falls into apostasy (c. 751). To preserve intact the revealed truth, and consequently to avoid falling into heresy or apostasy, all baptized persons are bound to avoid any contrary doctrines.⁶⁹

The religious *obsequium* to be given to the non-infallible teachings of the authentic magisterium of the Church is the object of cc. 752 and 753. A religious *obsequium* of intellect and will is to be given to any doctrine which either the Roman Pontiff or the Episcopal College, exercising their authentic magisterium, declare on

⁶⁹ The Code attaches a sanction to these norms; see, for instance, c. 1364.

matters of faith and morals, even though they do not intend to proclaim it by a definitive act. Examples of this are the documents of Vatican II and the papal encyclicals. Consequently, all baptized persons are bound to avoid whatever does not accord with the doctrine contained in these teachings (c. 752); otherwise, they could incur the sanctions imposed by c. 1371, 1°. ⁷⁰ However, it does not mean that someone, having strong reasons to doubt or to question some of these teachings, cannot disagree with them or carry out further investigations, since they are not irreformable teachings.

Canon 753 deals with the religious *obsequium* of the mind to be given to the non-infallible authentic magisterium of the bishops, whether they teach individually or gathered in episcopal conferences or in particular councils, on the condition that they are in communion with the head and the members of the College. This is because they are authentic instructors and teachers of the faith for the Christian faithful entrusted to their care, ⁷¹ i.e., there is a relation between the faithful and the bishops, and a dependence of these latter on Christ. ⁷² There are no explanations given for the reference to religious

⁷⁰ Cc. 752 and 753 are the object of L.M. Blyskal's dissertation. After analysing various opinions on the meaning of *obsequium religiosum*, she agrees in translating it as "religious submission." As far as I am concerned, I prefer to keep the Latin word *obsequium*, since it has broad and varied meanings, from simple "respect" to "obedience." See L. M. Blyskal, *The Ordinary Ecclesiastical Magisterium from the Antepreparatory Documents of Vatican Council to Canon 752 and 753 of the 1983 Code*, Ann Arbor, MI, U.M.I., 1987, viii-428 p. (Canon Law Studies, 523).

⁷¹ See *LG*, n. 25.

⁷² M.R. Sobaski commenting on c. 753 says: "À l'ancien canon [1326] ont été empruntés les termes remontant à la tradition apostolique d'*enseignant* et de *maître*, qui expriment non seulement la relation des évêques avec les fidèles, mais aussi leur dépendance du Christ. Cette dépendance s'exprime de façon formelle et de façon matérielle. Formellement, elle trouve son expression dans la mission conférée par l'ordination et dans l'union avec le pape, ainsi qu'avec tout le collège des évêques. Matériellement, la

obsequium of mind, rather than to religious *obsequium* of intellect and will; however we note that the Latin word *animus* (mind) includes both intellect and will. We also note that there is no clause in the canon saying that all the baptized are to avoid any contrary doctrine, as is noted in cc. 750 and 752; this might be so because these teachings fall into a lower degree in the scale of the hierarchical truths regarding the teachings of the ecclesiastical magisterium.⁷³

Canons. 750, 752 and 753 are intimately linked with c. 754. We base this statement on various clues given to us by the previous drafts of the Code. Although, expressed in a certain negative way, both the object of the assent of faith and the object of the religious *obsequium* could be found in c. 3 of the schema *de Ecclesiae munere docendi* of 1977;⁷⁴ these were linked, as a consequence, with the observance of constitutions and decrees, by which contrary opinions were proscribed or prohibited. Likewise, the second paragraph of the same canon made reference to the authentic magisterium of one's bishop or of the bishops gathered in particular councils or in episcopal conferences, in the sense that they could enact decrees to proscribe or prohibit

dépendance se manifeste dans le fait que la doctrine est enseignée par tout le collège des évêques avec le pape", in M.R. Sobanski, "Les canons 753 et 754: problèmes choisis", in *Studia canonica*, 23 (1989), p. 287.

⁷³ Cf. L. Schick, "La fonction d'enseignement de l'Église dans le Code de droit canonique", in *Nouvelle revue théologique*, 108 (1986), p. 378.

⁷⁴ "Since one must adhere with *an assent of faith* to all that the Church proposes as of divine and catholic faith, every one is held to avoid any contrary teaching or even teaching not in harmony with it", in PCCICR, *Schema canonum Libri III* (1977), p. 9. (Emphasis added).

erroneous opinions.⁷⁵

In the 1980 draft, c. 708 in its three distinct paragraphs describes the object of the assent of faith (§ 1), the object of the religious *obsequium* (§ 2), and the obligation of observing the constitutions and decrees by which the legitimate authority proposes and proscribes erroneous opinions (§ 3). Although, they were three different paragraphs, they had in common either the proposing of doctrine or the negative clause that required the avoidance of contrary teachings.

Next, we shall explain the content of c. 754. In so doing, we are to keep in mind that since cc. 750, 752 and 753 are closely linked together, they can best be understood by referring one to another.

4.2. The content of canon 754

It is common in the Code to find canons of a general character which declare theological and juridical principles. The nine preliminary canons of Book III are both doctrinal and juridical in character, providing the norms on the teaching office of the

⁷⁵ “Hence, all must also observe those constitutions and decrees which their own bishop or the bishops of the region or ecclesiastical province may enact in particular councils or in episcopal conferences proscribing or prohibiting erroneous opinions...” in PCCICR, *Schema canonum Libri III* (1977), p. 9.

Church with a theological and a rational foundation.⁷⁶ Some define terms related to the Church's teaching mission, others make doctrinal assertions or assign certain responsibilities. Likewise, some of them come from the prior Code, as is the case of c. 754,⁷⁷ while others are taken directly from Vatican II. Regarding cc. 750, 752 and 753, they give us the general principle that all the Christian faithful are to give either an assent of faith or a religious *obsequium* to the teachings of the authentic magisterium of the Church. The specific response depends on whether such teachings are infallible or not, as well as on the authority from whom they emanate. C. 754 for its part reads as follows:

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 holds especially for those published by the Roman Pontiff or by the College of Bishops.⁷⁸

It declares that the faithful are obliged to observe, i.e., to put into action, all that is taught or ordered in the constitutions and decrees, according to their authority. The legitimate authority issuing these documents could be bishops, individually or gathered

⁷⁶ "In ea tradenda disciplina indicentur fundamenta theologica generalia Iuris Canonici, et particularia cuiusque instituti iuridici. Hac ratione efferetur spiritus quo animatur ius Ecclesiae — aliter atque cetera iura —, eiusque munus pastorale." Sacra Congregatio pro Institutione Catholica, Circular letter, "De doctrina Iuris Canonici Candidatis ad Sacerdotium tradenda", April 2, 1975, in *Communicationes*, 7 (1975), p. 16; see also R. Castillo Lara, "Le livre III du CIC de 1983", p. 40; A. Montan, "Il Libro III: la funzione di insegnare della Chiesa", in *La Scuola cattolica*, 112 (1984), p. 252.

⁷⁷ See *Communicationes*, 19 (1987), pp. 221-223.

⁷⁸ C. 754: "Omnes christifideles obligatione tenentur servandi constitutiones et decreta, quae ad doctrinam proponendam et erroneas opiniones proscribendas fert legitima Ecclesiae auctoritas, speciali vero ratione, quae edit Romanus Pontifex vel Collegium Episcoporum."

together, the Roman congregations, the Pope, or the Episcopal College as a whole.⁷⁹ We also note that these documents are not primarily the exposition or the explanation of the Church's doctrine (the matter of cc. 750, 752 and 753), but rather they are juridical texts at the service of the deposit of faith. The conjunction *et*, in the canon, joining the proposing of doctrine and the proscription of erroneous opinions, shows that this latter must be accompanied by an exposition of sound doctrine.⁸⁰ Thus, despite the positive tone of c. 754, the *defense of the faith against erroneous opinions* remains as its first intention.⁸¹ Nevertheless, teachings which might require a religious *obsequium*, or even an assent of faith will often be contained in these documents.⁸²

⁷⁹ J.P. Boyle, basing himself on the historical and juridical background of c. 754, says that the emphasis is on the Roman congregations. "Given the antecedents of the canon in the old Code and the sources of the old canon 1324 in the epilogue of the Constitution *Dei Filius* of Vatican I, and recalling the nineteenth century disputes over the authority of the Roman congregations in doctrinal matters, the thrust of the canon is to lay emphasis on the congregations, even though they are not mentioned. Once again, while the College of Bishops is mentioned along with the Roman Pontiff, the fact that there is now no organism other than a general council for a strictly collegial act of teaching by bishops leaves the emphasis on the Roman congregations", in J.P. Boyle, "Church Teaching Authority in the 1983 Code", in *The Jurist*, 45 (1985), p. 149.

⁸⁰ In the first session, the consultors discussed whether to refer or not to the positive part in the canon. Finally they decided to omit it. However, they re-inserted it in c. 708 § 3 of the 1980 draft. "Iuxta Exc.mum Consultorem melius est servare tantum partem negativam et positivam omittere. (...) Iuxta Rev.mum Consultorem melius est facere duas paragraphos, quarum una negativam, altera positivam partem comprehendat", in *Communicationes*, 19 (1987), pp. 230-231; cf. also c. 3, in PCCICR, *Schema canonum Libri III, De Ecclesiae munere docendi* (1977), p. 9; and c. 708 § 3 in Id., *Codex iuris canonici: Schema Patribus Commissionis reservatum* (1980), p. 140.

⁸¹ This assertion is supported by the sources of the previous c. 1324, the first juridical source of c. 754, which applied mostly to constitutions of Popes and decrees of the Holy Office condemning erroneous opinions. E. Tejero, in commenting on c. 754, says that the same doctrine (the obligation to observe constitutions and decrees of the Roman Pontiff and of the Episcopal College) was proposed by Pius IX, Leo XIII, Pius XII and the Holy Office; see *Code of Canon Law Annotated*, Latin-English edition of the *Code of Canon Law* and English-language translation of the 5th Spanish-language edition of the commentary prepared under the responsibility of the Instituto Martín de Azpilcueta, ed. by E. Caparros, M. Thériault, J. Thom, Montréal, Wilson & Lafleur Limitée, 1993, p. 499.

⁸² With regard to this, J. A. Fuentes Alonso says: "La observancia supone poner por obra, con exactitud y puntualidad, todo lo que se manda ejecutar, es decir, se pide a los fieles al menos un

It is also to be noted that c. 754 suggests that the doctrinal authority of the ecclesiastical magisterium is exercised with the authority of governance. Indeed, on the one hand, the canon involves the doctrinal authority of the magisterium of the Church and its concrete role with regard to the proposing and safeguarding of the integrity of the revealed truth;⁸³ on the other hand, in doing so, the legitimate authority of the Church, which issues these constitutions and decrees, engages its juridical power,⁸⁴ in order to bind the Christian faithful with legal duties toward the word of God.

According to some authors, c. 754 applies either to the infallible and the non-infallible teaching of the magisterium of the Church,⁸⁵ or only to the latter.⁸⁶ For others,

cumplimiento externo de todo lo que se les manda por la legítima autoridad, siempre que se refiera a materias en las que puede mandar y sean congruentes con su condición. En especial deben prestar observancia a las constituciones y decretos de la autoridad suprema, pero hay que tener en cuenta que en este magisterio con frecuencia habrá contenidos que exijan un asentimiento religioso, e incluso un asentimiento de fe", in *Manual de derecho canónico*, por Instituto Martín de Azpilcueta, Pamplona, EUNSA, 1988, p. 380.

⁸³ "The task of giving an authentic interpretation of the word of God, whether in its written form or in the form of tradition, has been entrusted to the living teaching office of the Church alone. Its authority in this matter is exercised in the name of Jesus Christ. Yet this magisterium is not superior to the word of God, but is its servant" (LG, n. 10), in A. Flannery (gen. ed.), *Vatican Council II...*, p. 755-756.

⁸⁴ When c. 754 speaks of "legitimate authority" it is not reducing the sense of "authority" only to a teaching authority, but also implies the power of jurisdiction, for both *munera* of teaching and of governing are intimately united. For instance, c. 212 § 1 states: "The Christian faithful, conscious of their own responsibility, are bound to show Christian obedience to what the sacred pastors, who represent Christ, declare as teachers of the faith and prescribe as rulers of the Church." C.J. Errázuriz for his part says: "In primo luogo, si distingue tra i doveri immediatamente dottrinali, riguardanti cioè l'adesione alla verità proposta dalla dottrina magisteriale, da quelli d'indole direttamente disciplinare, relativi ad altri comportamenti obbligatori consistenti nell'osservare le norme che l'autorità ecclesiastica ha stabilito allo scopo di proteggere l'autenticità della parola", in C.J. Errázuriz, *Il "munus docendi Ecclesiae": diritti e doveri dei fedeli*, p. 125.

⁸⁵ Cf. C.J. Errázuriz, *Il "munus docendi Ecclesiae": diritti e doveri dei fedeli*, Milano, Giuffrè, 1991, pp. 124-126; *Manual de derecho canónico*, p. 380.

it is the lowest degree on the scale of the obligations of the Christian faithful toward the teaching authority of the Church and the revealed truth.⁸⁷ Or again, for some, it refers indirectly to a teaching or a doctrine, which might be important for the spreading and keeping of the integrity of the faith.⁸⁸ For some, it is a canon directed to ensure the integrity of the deposit of faith.⁸⁹ In any case, to weigh the scope of the obligation imposed in virtue of c. 754, it shall be necessary to consider the authority who issues these documents, as well as the type of doctrine involved in them and the nature of the documents themselves.

⁸⁶ For instance, V. De Paolis says: "In conclusione, il c. 754 riassume l'obbligo che si deve al magistero autentico non infallibile..." in V. De Paolis, "La funzione di insegnamento nel Codice di diritto canonico", in *Seminarium*, 41 (1989), p. 460; L. M. Blyskal for her part, commenting on c. 708 § 2 and the response of a religious *obsequium* to the teaching proposed in the ordinary manner by legitimate authority, says: "These teachings are articulated in the form of constitutions and decrees issued to set forth doctrine and proscribe erroneous opinions", in L. M. Blyskal, *The Ordinary Ecclesiastical Magisterium...*, p. 172.

⁸⁷ For instance, D. Composta says: "... un grado inferiore è l'obbligo *servandi constitutiones et decreta* (c. 754) che riguardamo. Le dichiarazioni circa opinioni erronee", in D. Composta, "Il munus docendi nel nuovo Codice di diritto canonico", in *Palestra del clero*, 63 (1984), p. 94.

⁸⁸ According to L. Schick, "Ils comprennent en règle générale des normes, prescriptions et dispositions *pour exposer la doctrine et proscrire les opinions erronées* comme le dit ce canon. Ils doivent être observés par tous les croyants. Sans doute ne représentent-ils qu'indirectement un enseignement et une doctrine; toutefois ils revêtent une grande importance pour la propagation de la foi et pour son intégrité", in L. Schick, "La fonction d'enseignement de l'Église", p. 378. M.R. Sobanski for his part, says: "Il faut prendre les décrets dans le sens qui leur est donné par les cc. 29-33. Les constitutions doivent être entendues non seulement dans le sens ancien de loi portée par le pape, mais aussi comme une forme de documents pontificaux qui concernent les affaires importantes de l'Église. Il ne s'agit pas dans ce canon d'affirmations pontificales transmettant ou expliquant l'enseignement de l'Église. C'est le c. 752 qui en parle", in M.R. Sobanski, "Les canons 753 et 754: problèmes choisis", p. 295.

⁸⁹ For instance, the professors of the Pontifical University of Salamanca, in commenting on the canon say: "El depósito de la fe tiene en torno a él una especie de *zona de seguridad* en la que operan las constituciones y decretos promulgados por la legítima autoridad de la Iglesia," in *Código de derecho canónico*, edición bilingüe comentada, dir. por L. de Echeverría, 7ª ed. rev., Madrid, Editorial Católica, 1986 (BAC, 442), p. 395; C.J. Errázuriz, for his part, says that c. 754 imposes disciplinary obligations in doctrinal matters to protect the authenticity of the word of God; see C.J. Errázuriz, *Il "munus docendi Ecclesiae": diritti e doveri dei fedeli*, p. 125.

However, c. 754, being of a general character, does not specify directly what kind of constitutions and decrees are to be observed, whether doctrinal and/or disciplinary, nor the type of doctrine involved; furthermore, it does not prescribe any penalties for those who do not observe them. It simply declares an obligation that, in general terms, already exists: to believe with an assent of faith all that is proposed as divinely revealed (cc. 750-751), or to give a religious *obsequium* to what is taught by the authentic magisterium of the Church on matters of faith and morals, although not by a definitive act (cc 752-753);⁹⁰ anyhow, such an obligation is to be specified in each case.

4.3. No penalty is prescribed

The doctrinal and a juridical dimension of c. 754 implies that, even though there is no mention of a penalty, the non observance of the constitutions and decrees which propose doctrine or proscribe erroneous opinions could be taken as a violation of the ecclesial order. Furthermore, the penal law of the Church also establishes some penalties to protect the teachings of the authentic magisterium of the Church, whether they are proclaimed infallibly or not. Thus, a baptized person who denies or doubts a doctrine to be believed with divine and catholic faith, incurs the penalty of excommunication and, depending on the contumacy or the gravity of scandal, other penalties not excluding

⁹⁰ The obligation to obey the sacred pastors is already prescribed among the fundamental rights and duties of the Christian faithful (c. 212, § 1); likewise, the documents and other singular administrative acts, which could be legitimately used by the ecclesiastical magisterium in carrying out its office, are already listed (cc. 29-33; 48-58).

dismissal from the clerical state may be added (cc. 750, 751, 1364). Moreover, a baptized person who teaches a doctrine condemned by the Roman Pontiff or by an ecumenical council, or who obstinately rejects the non-infallible teaching of the supreme authority of the Church, is to be punished with a just penalty, if, after being forewarned by the Apostolic See or the ordinary or the superior, does not retract (cc. 752, 1371, 1.º).⁹¹

4.4. A legal and religious obligation

The unity and inviolability of the faith and of ecclesial communion are values underlying c. 754,⁹² but the canon also involves the faith, freedom, and responsibility of all the Christian faithful. For instance, c. 212 § 1, calls for Christian obedience by all the faithful to what the sacred pastors, as representatives of Christ, declare as teachers of the faith or determine as rulers of the Church, conscious of their own responsibility. Thus, the purpose of Christian obedience is to imitate Christ in dedication to the truth,⁹³ so the

⁹¹ For instance, in the seventies, the Apostolic See dealt with the H. Küng case. The Congregation for the Doctrine of the Faith asked him to explain some of his opinions which seemed to be erroneous; then, the same Congregation issued the Declaration *Mysterium Ecclesiae*, June 24, 1973, which recalled the doctrine that H. Küng taught differently, namely, on the infallibility in the Church, on the necessity of ordained ministers to perform the Eucharist and on the fact that the authentic interpretation of the deposit of faith was entrusted only to the living magisterium of the Church. See *AAS*, 65 (1973), pp. 396-408; English translation in *Origins*, 3 (1973-1974), pp. 97-112. Finally, on December 15, 1979, the Congregation promulgated a declaration, to the effect that H. Küng is no longer to be considered a catholic theologian; see *AAS*, 72 (1980), p. 90; English translation in *CLD*, IX, pp. 753-756.

⁹² Cf. *LG*, n. 23; cc. 209 § 1, 223 § 1; cc. 604-605 of CCEO, etc.; see also M.R. Sobanski, "Les canons 753 et 754: problèmes choisis", p. 297, and R. Castillo Lara, "Le livre III du CIC de 1983", pp. 53-54.

⁹³ *LG*, n. 37: "Like all Christians, the laity should promptly accept in Christian obedience what is decided by the pastors who, as teachers and rulers of the Church, represent Christ. In this they will follow

object of that obedience is the truth taught in the name of Christ, and not the authority of the one teaching it; likewise, obedience is directed toward the common good and not merely to the authority of the person decreeing something.⁹⁴

Canon 212 § 3, for its part, speaks of the right and duty of all the Christian faithful to free speech and to express their opinions in matters concerning the good of the Church — the word of God is a paramount good in the Church.⁹⁵ All the Christian faithful have the right and at times the duty of manifesting their opinions to their pastors and to the other faithful. However, they must exercise that freedom according to their knowledge, competence and position in the Church, as well as keeping the integrity of faith and morals, showing reverence to the pastors and considering the common good and the dignity of individuals. It is important to note that the right to express one's opinion publicly, sometimes, would become a duty, when silence would lead to harm to the Church.⁹⁶

Christ's example who, by his obedience unto death, opened the blessed way of the liberty of the sons of God to all men"; cf. also *DV*, n. 5.

⁹⁴ See J.A. Coriden - T.J. Green - D.E. Heintschel (eds.), *The Code of Canon Law: A Text and Commentary*, New York, NY, Paulist Press, 1985, pp. 144-145.

⁹⁵ C.J. Errázuriz calls the word of God the paramount juridical good in the Church. So, the canons on the teaching office of the Church regulate the safeguarding, deepening and proclamation of this revealed truth. Cf. C.J. Errázuriz, "La dimensione giuridica del *munus docendi* nella Chiesa", in *Ius Ecclesiae*, 1 (1989), pp. 192-193; cf. also M.R. Sobanski, "Les canons 753 et 754: problèmes choisis", p. 297.

⁹⁶ See J.A. Coriden - T.J. Green - D.E. Heintschel (eds.), *The Code of Canon Law: A Text and Commentary*, p. 147.

With regard to those who are directly engaged in teaching sacred disciplines, clerics and laity alike (cc. 229 § 2, 250, 1032), they have a just academic freedom to research matters in which they are expert, and to express their findings prudently. However, this freedom is not absolute, for it is to be exercised with responsibility to avoid confusion or scandal among the faithful, and with due *obsequium* to the ecclesiastical magisterium (c. 218),⁹⁷ in order to preserve public order in the Church.⁹⁸

In short, c. 754, being of a general character, expresses both a legal and a religious obligation. It is a legal obligation, since the rights and duties involved in safeguarding the integrity of revealed truth and of ecclesial communion are related to the external order in the Church. It is a religious obligation as well, for in one sense this is also an obedience of faith, since the Church is a community of faith where the grace of God works in both the pastors, who act as Christ's representatives, and the laity, who recognize the action of the Holy Spirit through them.⁹⁹

⁹⁷ According to J. Hervada, the scope of freedom of these scholars is limited to the field of the debatable. However, we think that their field of research is broader, so as to deepen the understanding of the revealed truth, but not to change dogma. Cf. *Code of Canon Law Annotated*, Latin-English edition of the *Code of Canon Law*, pp. 194-195.

⁹⁸ See J.A. Coriden - T.J. Green - D.E. Heintschel (eds.), *The Code of Canon Law: A Text and Commentary*, p. 152.

⁹⁹ Cf. J.A. Coriden - T.J. Green - D.E. Heintschel (eds.), *The Code of Canon Law: A Text and Commentary*, p. 145.

4.5. The discipline serving the doctrine of the Church

Incorporation into the Church through baptism (c. 204 § 1, 208) entails the acquisition of rights and duties (cc. 208-223); many of them are directly related to faith and ecclesial communion (cc. 205, 209).¹⁰⁰ At times, however, these rights and duties require, besides the internal adhesion of the faithful, a certain external behaviour. For the same reason, canonical sanctions for the offences against faith and communion can also be imposed.¹⁰¹

On the other hand, among the Christian faithful, the bishops are endowed with both the authority of teaching authentically and the power of governance. So, they have the duty (or service) of fostering the observance of the discipline in the Church, specially concerning the teaching office of the Church (cf. 392).¹⁰² For besides being witnesses of the faith and heralds of the gospel, they are also doctors and teachers who in safeguarding

¹⁰⁰ R. Castillo Lara in the fifth, sixth and seventh principles for interpreting the norms of Book III, says that the *munus docendi* serving the revealed truth has a pastoral, social, cultural and political dimension, as well as being closely related to ecclesial communion; see R. Castillo Lara, "Le livre III du CIC de 1983", pp. 50-54.

¹⁰¹ See R. Castillo Lara, "Le livre III du CIC de 1983", p. 48.

¹⁰² Regarding this, V. De Paolis says: "Tuttavia va notato che la gerarchia rispetto al deposito della fede non esercita solo la potestà di magistero, ma anche quella di governo, anche se non sempre è facile discernere il limite tra l'una e l'altra. In linea di principio si può dire che la potestà di governo riguarda la vigilanza sulla funzione di insegnamento, il controllo e la normativa che ne ordina l'esercizio e le istituzioni e i mezzi che hanno la funzione di insegnamento, come è in genere tutta la normativa data dal libro III del Codice", in V. De Paolis, "La funzione di insegnamento nel Codice di diritto canonico", p. 456.

and interpreting the gospel, apply it to the concrete circumstances of today's life.¹⁰³

It is also true that major religious superiors, although they are not authentic teachers of the faith, are endowed with the power of jurisdiction, and are to foster the observance of the Church's discipline in their institutes. They do this either in virtue of universal law (cc. 694, 765), or according to their constitutions (cc. 765, 832, 833, 8.º) or even according to norms laid down by the bishop or by the conference of bishops (cc. 772, 831).

All in all, c. 754 supposes not that the teaching power is part of the power of jurisdiction as some authors held before Vatican II, but that juridical power is at the service of the word of God, i.e., the bishops, endowed with authority to exercise the *munera* given to them through episcopal consecration,¹⁰⁴ use their juridical power while carrying out their duty of safeguarding the integrity of the faith and good morals. So, accordingly, they can issue documents containing doctrinal elements legally binding on the Christian faithful, and can even apply sanctions if necessary.¹⁰⁵

¹⁰³ Cf. D. Composta, "Il *munus docendi* nel nuovo Codice di diritto canonico", in *Palestra del clero*, 63 (1984), p.95.

¹⁰⁴ LG, n. 21.

¹⁰⁵ C.J. Errázuriz says that between the *munus docendi* and the *munus regendi* there is a particular link, so when pastors teach and rule, they give both the word of God and the discipline to the faithful as a guide to put into action that same word. Cf. C.J. Errázuriz, *Il "munus docendi Ecclesiae": diritti e doveri dei fedeli*, pp. 138-139. R. Castillo Lara enunciates the third principle to interpret the norms of Book III saying that by reason of the particular link between the three *munera*, the *munus docendi* has an important juridical connotation; see R. Castillo Lara, "Le livre III du CIC de 1983", pp. 45-48.

5. Canon 754 and the Code of Canons of the Eastern Churches

Before going further, we have to ask: does the Code of Canons of the Eastern Churches have anything to say on the matter of c. 754? Did it cause the law to evolve at least in its interpretation? These shall be the questions to answer in this section.

The principal juridical source of c. 754, c. 1324 of the previous code, was also used in formulating the preliminary canons of *De magisterio ecclesiastico* of the Oriental Code. However it was treated differently, and the outcome was not the same as in the Latin one. The Pontifical Commission for the Revision of the Oriental Code of Canon Law, instituted on June 10, 1972,¹⁰⁶ based its work on the then current Oriental legislation, promulgated by Pius XII in four Motu proprios *Crebrae allatae sint* (1949), *Sollicitudinem nostram* (1950), *Postquam apostolicis litteris* (1952), and *Cleri sanctitati* (1957), as well as on the canons which remained in a stage of formulation without being promulgated. Among these latter were the canons on *De fide catholica*, taken mostly from the preliminary canons of *De magisterio ecclesiastico* of the 17/CIC (cc. 1322-1326).¹⁰⁷ So, c. 1324 of the 17/CIC was repeated among the canons of *De fide catholica* (c. 2).

¹⁰⁶ See *Nuntia*, 23 (1986), p. 111.

¹⁰⁷ See *Nuntia*, 2 (1976), pp. 56-57.

The *coetus de clericis et de magisterio ecclesiastico* held its first session from March 12-24, 1979,¹⁰⁸ and revised and reformulated the preliminary canons on the ecclesiastical magisterium for the Oriental Code. In doing so, the *coetus* took note of cc. 54-63 of the LEF, of the seven canons of *De fide catholica*, and of the three preliminary canons of the *initial text*:

Preliminary canons. Norms of general nature on ecclesiastical magisterium are given here in ten canons. In formulating them, the study group first took note of the fundamental norms in this matter, as are canons 54-63 of the *Lex Ecclesiae fundamentalis*. It also examined the 7 canons *De fide catholica*, formulated by the previous Oriental Code Commission (cf. *Nuntia*, 2, pp. 71-72). The present canons, while keeping to their general character, are complementary to the norms of the *Lex Ecclesiae fundamentalis*, but omit such purely moral rules as are found in the initial text.¹⁰⁹

Canon 1324 of the 17/CIC did not appear among the ten preliminary canons of the draft sent out to the consultative organs on June 6, 1981. However, this canon was replaced by cc. 19 and 20, which stated that pastors have the prime responsibility for the unity of faith and catholicity of the Church, because of which they may sometimes have to condemn a certain doctrinal position. These canons read as follows:

C. 19: Pastors of the Church above all are to take care that amidst the varieties of doctrinal enunciations in the various churches or cultures the same sense of faith be preserved and promoted, and unity of faith suffer no harm, rather that the great catholicity of the Church be put in a better light through pluralism.

¹⁰⁸ See *Nuntia*, 10 (1980), p. 65.

¹⁰⁹ *Ibid.*, p. 66.

C. 20: It is the responsibility of bishops, particularly when gathered in synods, and in a unique way of the Apostolic See, authoritatively to take care of and religiously defend the catholic integrity and unity of faith and morals, even disapproving, if need be, opinions that may be contrary to them or warning about those things that may put them in danger.¹¹⁰

After the consultation, minor changes were made in the text of these canons.¹¹¹ A second draft was then sent out (October 17, 1986) for another consultation. Cc. 19-20 of the previous draft became cc. 601-602.¹¹² Finally, in the promulgated text, they became cc. 604-605, which read as follows:

C. 604: Pastors of the Church above all are to take earnest care that amidst the varieties of doctrinal enunciations in the various churches the same sense of faith is preserved and promoted, so that the integrity and unity of faith suffer no harm, rather that the catholicity of the Church is put in a better light through legitimate diversity.

C. 605: It is the responsibility of bishops, particularly when gathered in synods or councils, and in a unique way of the Apostolic See, authoritatively to promote, preserve and religiously to defend the integrity and unity of faith and good morals, even disapproving, if need be, opinions that are contrary to them or warning about those things that can endanger them.¹¹³

¹¹⁰ C. 19: "Ecclesiae Pastoribus imprimis est curare ut inter varietates enuntiationum doctrinae in variis Ecclesiis vel culturis idem sensus fidei servetur atque promoveatur neve unitas fidei damnum patiatur, immo magis catholicitas Ecclesiae per pluralismum in meliorem lucem ponatur."

C. 20: "Ad Episcopos praesertim in Synodis coadunatos, singulariter vero ad Apostolicam Sedem, pertinet, catholicam integritatem et unitatem fidei et morum auctoritative tueri et religiose defendere, etiam reprobando quatenus opus est sententias quae eisdem contrariae sint vel monendo de iis quae eadem in discrimen ponant", in *Nuntia*, 12 (1981), p. 18.

¹¹¹ See *Nuntia*, 17 (1983), pp. 22-23.

¹¹² See *Nuntia*, 23 (1986), pp. 109-110; and 24-25 (1987), p. 114.

¹¹³ C. 604: "Ecclesiae Pastorum imprimis est sedulo curare, ut inter varietates enuntiationum doctrinae in variis Ecclesiis idem sensus fidei servetur atque promoveatur ita, ut integritas et unitas fidei damnum patiatur, immo catholicitas Ecclesiae per legitimam diversitatem in meliorem lucem ponatur."

It is c. 605 which is especially close to c. 754 of the Latin Code. However, its formulation stresses more the responsibility of the pastors regarding the promotion and defense of the integrity and unity of the faith and good morals, rather than the obligation of the Christian faithful to observe the constitutions and decrees issued by the legitimate authority of the Church, as the Latin Code does.¹¹⁴ Firstly, c. 605 points out that the responsibility of authoritatively promoting and preserving, as well as of religiously defending faith and good morals, belongs to the bishops, and in a unique way to the Apostolic See. The bishops can carry out this responsibility individually, but the canon suggests that it is preferable that they do so when they are gathered in synods or in councils (principally an ecumenical council). “Apostolic See”, as in the Latin Code, includes both the Roman Pontiff and the Roman congregations (c. 48).

C. 605: “Ad Episcopos praesertim in Synodis vel consiliis coadunatos, singulariter vero ad Apostolicam Sedem, pertinet catholicam integritatem et unitatem fidei bonosque mores auctoritative promovere, custodire et religiose defendere, etiam reprobando quatenus opus est, sententias, quae eisdem contrariae sunt, vel monendo de eis, quae eadem in discrimen ponere possunt.” The English translation is taken from the *Code of Canons of the Eastern Churches*. Latin - English Edition; translation prepared under the auspices of the Canon Law Society of America, Washington, DC, Canon Law Society of America, 1991, p. 307; we have corrected two mistranslations: the addition of “or cultures” of c. 604, words omitted from the previous draft, and the omission of the important adverb “authoritatively” (*auctoritative*) in translating c. 605. See G. Nedungatt, *A Companion to the Eastern Code. For A New Translation of 'Codex Canonum Ecclesiarum Orientalium'*, Roma, Pontificio Istituto Orientale, 1994 (Kanonika, 5), pp. 165-166.

¹¹⁴ The canon, in saying *auctoritative promovere, custodire et religiose defendere*..., authoritatively to promote, preserve and religiously to defend..., does not want to limit the responsibility of promoting, preserving and defending the faith and good morals to the bishops and the Apostolic See; rather, it only wishes to underline that among all the Christian faithful, they (the bishops and the Apostolic See) have a special responsibility of serving the word of God (cf. *DI*, n. 10). Unfortunately, the English translation of the *Codex Canonum Ecclesiarum Orientalium* omitted this. Cf. *Code of Canons of the Eastern Churches*, p. 307.

They carry out their responsibility of promoting, preserving and defending the integrity and unity of the faith and good morals, above all, in a positive way; however, at times they are to disapprove contrary opinions or to warn about those opinions which can be dangerous to them. The canon does not specify the means whereby the bishops are to fulfil their duty; rather, it refers to legitimate means, which include certainly constitutions, decrees and other binding documents.

In sum, cc. 604 and 605, to some extent, have the same purpose as c. 754 of the Latin Code, that is, of promoting and safeguarding the integrity and unity of the faith and good morals. While one Code stresses the prime responsibility of pastors (CCEO), the other insists on the obligation of the Christian faithful to obey the dispositions of their pastors in carrying out their task (CIC); finally, both envision either to promote sound doctrine or to proscribe erroneous opinions. Nevertheless, it seems that the Oriental Code grasped and expressed, better than the Latin one, what the legislator intended to establish.¹¹⁵

¹¹⁵ From this analysis, we think that cc. 604 and 605 have a substantial or at least a partial correspondence with c. 754 of the Latin Code. Other authors think otherwise; for instance, *Code of Canons of the Eastern Churches*. Latin - English Edition; translation prepared under the auspices of the Canon Law Society of America, pp. 744, 765; C.G. Fürst, *Canones Synopse. Zum Codex Iuris Canonici und Codex Canonum Ecclesiarum Orientalium*, Freiburg, Herder, 1992, pp. 49, 117.

CONCLUSION

After this narrow approach to the process of formulating c. 754, we are now able to draw attention to some important conclusions emerging from our study.

1. The revision process of c. 754 was, in fact, a revision of the old c. 1324, its principal juridical source. The process was marked by tension between different points of view, within the commission, among the consultors and the consultative organs. As a result, the promulgated text retained elements from the former canon and added new ones. In this sense, the current text advanced the development of the law. However, its shape still maintains traces of the pre-Vatican II ecclesiology which extolled the hierarchical and institutional dimension of the Church; a dimension where the hierarchy was seen as the *ecclesia docens*, which taught and ruled, as distinct from the rest of the Christian faithful, the *ecclesia discens*, those who should learn and obey. Firstly, the *coetus de magisterio ecclesiastico* discussed whether to maintain the negative tenor of the canon or not; the consultors decided to formulate a more positive canon, according to the spirit of Vatican II; they deleted the allusion to the *pravitatem haereticam*, and also added the *proposing of doctrine* as one of the ends of the promulgation of constitutions and decrees.¹¹⁶ Secondly, the *coetus* dealt with the person or body issuing those documents; it was decided to decentralize this faculty from the Apostolic See; instead,

¹¹⁶ See *Communicationes*, 19 (1987), pp. 230-231.

the legitimate authority of the Church remained as the active subject, including bishops, whether individually or gathered in groups and the Roman congregations; but the canon pointed out that those documents issued by the Roman Pontiff and the College of Bishops must be observed in a special way by the faithful.¹¹⁷ Finally, with regard to the means whereby the doctrine is to be proposed or erroneous opinions proscribed, instead of establishing *documents in general*, as some consultors suggested, it was decided to maintain *constitutions and decrees*, as the original source had established.¹¹⁸

2. From the revision process, we also learned that c. 754 is related intimately to the previous canons. Then, the doctrine to be proposed or the erroneous opinions to be proscribed are those referring either to a doctrine which is the object of divine and catholic faith (c. 750), or to a doctrine which calls for a religious *obsequium* (cc. 752, 753). This can be seen from c. 3 of the 1977 schema on the teaching office of the Church, and from c. 708 of the 1980 draft.

3. On the other hand, the canons of the CCEO on *the teaching office of the Church in general* listed c. 1324 of the 17/CIC among their sources, although no one canon appears to be similar to it at first sight. However, a closer study of the norms led us to conclude that cc. 604 and 605 are indeed rooted in it, as well as in the doctrine of Vatican II. Indeed, these canons establish that the pastors of the Church are to take into

¹¹⁷ See *Communicationes*, 19 (1987), p. 231; 20 (1988), p. 123.

account the doctrinal pluralism present in the Church because of the diversity of cultures; they also have the responsibility of authoritatively promoting, preserving and religiously defending the integrity and unity of the faith and good morals, even by disapproving contrary opinions or warning about those things which are dangerous to them. This duty belongs especially to the Apostolic See.

4. We also note that in order to grasp the scope of c. 754, we have to consider other important elements. First of all, we have to keep in mind the fundamental doctrinal principle of the teaching office of the Church, which belongs to the constitution of the Church itself, i.e., that Christ entrusted the deposit of faith to the entire Church, so that by the help of the Holy Spirit, it might guard, deepen, and proclaim it faithfully (c. 747 § 1).¹¹⁹ Nevertheless, the peculiar task of interpreting authentically and of teaching in the name of the Church, as well as of defending authoritatively the same deposit, was entrusted to the ecclesiastical magisterium alone, which does not contradict the participation of all the Christian faithful in the *munus propheticum*.¹²⁰ On the other hand, c. 754 is to be understood in light of some fundamental rights and duties of the faithful previously declared in the Code; for instance, the duty of giving christian obedience to what the pastors of the Church declare as teachers of the faith or prescribe as rulers of the Church (c. 212 § 1), or the right, and at times the duty, to express one's opinion publicly

¹¹⁸ See *Communicationes*, 19 (1987), p. 230.

¹¹⁹ See *DI*, n. 10.

¹²⁰ See *DV*, n. 10; *LG*, nn. 12, 23, 25, 37.

on matters concerning the good of the Church (c. 212 § 3), or the just freedom to research and to express its findings in the field of sacred disciplines (c. 218). It is also helpful to take into account any sanctions to be imposed so as to protect the teachings of the authentic magisterium of the Church (cc. 1364, 1371, 1.º).

5. In the light of all of this, we can say that c. 754 has as its end to promote and defend, with the help of the power of jurisdiction, the integrity and unity of the faith and good morals, already declared in cc. 750, 752 and 753. We recognize the advance obtained by the canon, but we also note that the CCEO expressed it better by stressing the responsibility of the pastors instead of the obligation of the Christian faithful. We think that in order for the end to be achieved, it is necessary to take the canon as a guide and possibly even go beyond it. For on the one hand, the means of communication have developed greatly today; on the other hand, in fact, the authority of the Church in carrying out its task of presiding over and guiding the people of God in its participation in the *munus docendi*, uses several means. Hence, the pastors, in accomplishing their task, cannot limit themselves to use only constitutions and decrees; nor are the Christian faithful to observe only these documents. We believe that both the pastors and the faithful have the responsibility of using all the means available to preserve the integrity of the revealed truth and to transmit it in its entirety to all peoples.¹²¹

¹²¹ See *CD.*, n. 13.

CHAPTER IV

AN ANALYSIS OF CANON 754

The historical, juridical and theological context of c. 754 gave us valuable elements with which to determine the mind of the legislator in the process of formation of this canon. The process, illuminated by some insights from the Code of Canons of the Eastern Churches, helped us to determine the values underlying the norm, especially those of promoting and safeguarding the unity and integrity of faith and good morals.

Further questions arise as the canon is examined: what does the obligation “to observe constitutions and decrees” entail? What are the implications involved in this obligation regarding the relationship between the Christian faithful and the magisterium of the Church? We intend to respond to these questions throughout this chapter, adopting both a doctrinal and a juridical approach.

However, before beginning our analysis of c. 754, it would be appropriate to deal first with some of the complex concepts related to the magisterium of the Church. For, indeed, the last century witnessed the great confrontation between the Church and the movements of political liberalism and philosophical rationalism, which challenged the authority of divine revelation and of the Church itself. As a consequence of this situation, the Church introduced new concepts, or gave new meanings to others already existing,

such as “magisterium”, “ordinary and universal magisterium”, “authentic magisterium”, the “*tria munera*”, etc. More recently, Vatican II introduced into the doctrine of the Church the concept of “religious *obsequium* of will and intellect” as the response due to the authentic non-infallible magisterium. Most of these concepts do not yet have one single meaning, neither among canonists and theologians, or even in the documents of the Church itself. We do not intend here to address the entire issue, but simply to present some unifying criteria in order to avoid confusion in the subsequent sections of our study.

1. Some concepts related to the magisterium of the Church

The norms on the teaching office of the Church determine, among other things, the duties and rights of all the Christian faithful regarding the word of God. Certainly, the entire people of God has the right to receive the gospel and the responsibility to proclaim it; however, only to some of them have been entrusted the powers of interpreting it authentically and of teaching it, with Christ’s authority and in the name of the Church. These persons are the pastors of the Church, who are also called the *magisterium of the Church* when exercising their teaching office.¹ They must fulfil their mission, always and in all circumstances (2 Tim. 2: 1-4). In so doing, they may have recourse to any

¹ It was in the eighteenth and nineteenth centuries that *magisterium* began to signify the teaching authority of the hierarchy. See L. Örsy, “Magisterium: Assent and Dissent”, in *Theological Studies*, 48 (1987), pp. 477-478. Hereafter, we will use “magisterium” to designate the office of teaching of the hierarchy, or the hierarchy itself, as a body, exercising this office. “Doctrine” or “teaching” of the Church shall refer to the body of doctrine.

legitimate means, and engage their authority in varying degrees. Likewise, according to the teaching authority invoked, a distinct response shall be required from the faithful. We shall now examine this point more in detail.

1.1. The word of God was entrusted to the entire People of God

Book III on the teaching office of the Church must be seen in the light of a fundamental principle: divine revelation was entrusted to the entire people of God. For this reason, it is the Church's obligation and inherent right to preach the gospel to all peoples (cc. 211, 747 § 1). This is a task belonging to all the members of the Church in virtue of their sharing, in their own way, through baptism, in the priestly, prophetic, and royal office of Christ (c. 204 § 1). However, the concrete manner of exercising this common responsibility is not uniform for all; rather, it depends on their own state and role in the Church. The Code, especially throughout Book III, shows the different ways in which each member of the faithful fulfils his or her own prophetic office.²

² See CDF, "Instruction on the Ecclesial Vocation of the Theologian, *Domum veritatis*", May 24, 1990, n. 5, in *AAS*, 82 (1990), p. 1552; English translation in *Origins*, 20 (1990-1991), p. 119; R. Castillo Lara uses the expression *differentiated joint responsibility* to describe this form of participation of all the faithful in the teaching office of the Church; cf. R. Castillo Lara, "Le livre III du CIC de 1983. Histoire et principes", in *L'Année canonique*, 31 (1988), pp.42-45; D. Composta, for his part, says: "Da una oculata lettura del 'liber tertius', ma in particolare dei primi canoni introduttivi, si possono stabilire due principi fondamentali: uno, riguardante i pastori che chiamerei *di insostituibilità*; l'altro che riguarda tutti i fedeli (compresi i pastori) che chiamerei *di corresponsabilità* di fronte alla parola di Dio e al Vangelo"; the former refers to the authoritative teaching of the hierarchy, which cannot be replaced or delegated; the latter means that the task of evangelizing belongs to the entire people of God; see D. Composta, "Il *munus docendi* nel nuovo Codice di diritto canonico", in *Palestra del clero*, 63 (1984), p. 94. This same author had previously stated: "Gli effetti del *munus propheticum* dei fedeli sono: a) il *consensus universalis de rebus fidei et*

Among the Christian faithful, there are some who, through the sacrament of orders, are consecrated and sent out to fulfil in the name of Christ the head, the offices of teaching, sanctifying, and ruling, and so they nourish the people of God (c. 1008). Others share in the common participation of all in the teaching office of the Church. Another way of saying this is that while all the Christian faithful participate in the *tria munera*, only the bishops are endowed with the power of exercising these *munera* with the authority of Christ and in the name of the Church (LG, n. 25).³ This power is granted through episcopal ordination and exercised only in hierarchical communion (LG, n. 21).⁴ Hence, only the bishops are to be considered authentic teachers of doctrine.

1.2. The authentic magisterium of the Church

The faithful participate in the teaching office of the Church in different ways; one expression of this office is the so-called *magisterium authenticum*. The doctrine of the Church and most of the authors understand this concept as referring to what is translated

morum, b) una infallibilità *in credendo* vincolata alla indefettibile preservazione della fede nella Chiesa e ciò non già nel senso che ogni singolo fidele detenga la verità infallibilmente, ma nel senso che la verità di Dio, pur attraverso oscuramenti, eresie, errori, non verrà mai meno nella Chiesa (*Dei Verbum*, 8, 10)", in Id., "Magistero della Chiesa e diritto. Studio teologico-juridico della potestà di magistero", in *Divinitas*, 18 (1974), p. 471.

³ Regarding this, V. De Paolis says: "Mentri Egli (Cristo) ha reso partecipi tutti i fedeli della sua triplice funzioni, ha conferito soltanto agli Apostoli e successori la triplice potestà, con la quale la triplice funzione viene esercitata, a nome e per mandato del fondatore nella Chiesa", in V. De Paolis, "La funzione di insegnamento nel Codice di diritto canonico", in *Seminarium*, 41 (1989), p. 455.

⁴ Cf. F.J. Urrutia, "De exercitio muneris docendi a Conferentiis Episcoporum", in *Periodica*, 76 (1987), p. 634; V. De Paolis, "La funzione di insegnamento nel Codice", p. 451.

as “authoritative magisterium” or the “proper doctrinal authority” of the Church.⁵ Indeed, Vatican II states:

[The bishops] are authentic teachers, that is, teachers endowed with the authority of Christ, who preach the faith to the people assigned to them, the faith which is destined to inform their thinking and direct their conduct; and under the light of the Holy Spirit they make that faith shine forth, drawing from the storehouse of revelation new things and old (cf. Mt. 13:52).⁶

To teach with authority belongs only to the bishops who have received this authority through episcopal ordination, as the same Council notes: “episcopal consecration confers, together with the office of sanctifying, the duty also of teaching and ruling, which, however, of their very nature can be exercised only in hierarchical communion with the head and members of the College.”⁷

⁵ See F.A. Sullivan, *Magisterium. Teaching Authority in the Catholic Church*, Dublin, Gill and Macmillan, 1983, p. 27; B.C. Butler, for his part, translates *authenticum* as *official*; see B.C. Butler, “Infallible: Authenticum: Assensus: Obsequium. Christian Teaching Authority and the Christian’s response”, in *Doctrine and Life*, 31 (1981), p. 87; see also L. Örsy, *The Profession of Faith and the Oath of Fidelity. A Theological and Canonical Analysis*, Wilmington, Delaware, Michael Glazier, Inc., 1990, p. 29.

⁶ *LG*, N. 25; cf. also *DV*, n. 10. The Declaration *Mysterium Ecclesiae* repeats the same teaching: “But by divine institution it is the exclusive task of these pastors alone, the successors of Peter and the other apostles, to teach the faithful authentically, that is with the authority of Christ shared in different ways; so that the faithful, who may not simply listen to them as experts in catholic doctrine, must accept their teaching given in Christ’s name with an assent that is proportionate to the authority that they possess and that they mean to exercise”, in CDF, “Declaration in Defense of Catholic Doctrine, *Mysterium Ecclesiae*”, 24 June 1973, *AAS*, 65 (1973), p. 399; English translation in *Origins*, 3 (1973-1974), p. 100; cf. also L. Schinella, “Il magistero autentico. Genesis semantica e significato teologico di *autentico*”, in *La scuola cattolica*, 118 (1990), pp. 258- 261. L. Örsy for his part, calls simply this authoritative teaching *magisterium*, without any further qualification; cf. L. Örsy, *The Church: Learning and Teaching*, pp. 46-55.

⁷ *LG*, n. 21.

This authoritative magisterium can be exercised either infallibly or not infallibly. In other words, when the ecclesiastical magisterium exercises its *munus docendi* authentically, it teaches with the authority of Christ and under the guidance of the Holy Spirit, whether infallibly or not infallibly.⁸ But, what is meant by teaching infallibly or non-infallibly?

1.3 The infallible magisterium

The infallible magisterium is the highest degree of the teaching authority by which the ecclesiastical magisterium defines or proposes as definitive a doctrine on faith or morals. Undoubtedly, it is a charism granted to the Church by its divine founder, and which is made evident in what is called *sensus fidei*, a supernatural appreciation of the faith: it exists when the entire people of God, from the bishops to the last of the faithful, manifests what could be considered a universal consent in matters of faith and morals (*infallibilitas in credendo*);⁹ it is an inner action of the Holy Spirit in the faithful, giving

⁸ We believe that the opinion which simply identifies authentic magisterium with the non-infallible teaching of the Church is not accurate, in as much as in Vatican II, the adjective *authenticum* qualifies both the infallible and the non-infallible teaching alike. For instance, I. Schinella says: “L’*autentico* qualifica teologicamente il ministero magisteriale e tutti i suoi atti. Si può dire che *autentico* è il genere teologico del ministero magisteriale, di cui fallibile o infallibile, ordinario e straordinario costituiscono la specie”, in L. Schinella, “Il magistero autentico. Genesis semantica e significato teologico di *autentico*”, in *La scuola cattolica*, 118 (1990), p. 254; cf. also, J.H. Provost, “Canon 752 and the Assent of Faith”, in *The Jurist*, 46 (1986), p. 660.

⁹ A. Flannery describes the *sensus fidei* as the instinctive sensitivity and discrimination which the members of the Church possess in matters of faith; see A. Flannery (gen. ed.), *Vatican Council II. The Conciliar and Post Conciliar Documents*, new rev. ed., Northport, New York, Costello Publishing

each of the baptized the capacity to bear witness to the faith. But it is a faith that flowers and yields fruit only within the community of the faithful.¹⁰ Thus, the *sensus fidei* implies by its nature a profound accord of mind and heart with the Church, *sentire cum Ecclesia*.¹¹ However, the charism of infallibility to define a doctrine (*infallibilitas in docendo*) resides only with the Roman Pontiff and the College of Bishops. Vatican II states:

The Roman Pontiff, head of the College of Bishops, enjoys this infallibility in virtue of his office, when, as supreme pastor and teacher of all the faithful — who confirms his brethren in the faith (cf. Lk. 22:32) — he proclaims in an absolute decision a doctrine pertaining to faith and morals [...]. The infallibility promised to the Church is also present in the body of bishops when, together with Peter's successor, they exercise the supreme teaching office. Now, the assent of the Church can never be lacking to such definitions on account of the same Holy Spirit's influence, through which Christ's whole flock is maintained in the unity of the faith and makes progress in it.¹²

The Pope exercises his charism of infallibility when he defines a doctrine *ex*

Company, 1992, (Vatican Collection, vol. 1), p. 363, footnote. L. Scheffczyk, for his part, says: "Celui-ci (*sensus fidei*) se rapporte au contenu objectif et à l'esprit interne de la foi, qui n'est pas simplement déposée en la personne des fidèles, mais qui leur est proposée et à laquelle il leur appartient de se rallier"; L. Scheffczyk, "*Sensus fidelium*", in *Communio*, 13 (1988), p. 98.

¹⁰ Cf. L. Scheffczyk, "*Sensus fidelium*", pp. 98-99; H. Vorgrimler, "From *sensus fidei* to *consensus fidelium*", in *Concilium*, 180 (1985), pp. 3-11.

¹¹ See CDF, "Instruction on the Ecclesial Vocation of the Theologian, *Donum veritatis*", n. 35, in *AAS*, 82 (1990), p. 1565; English translation in *Origins*, 20 (1990-1991), p. 124.

¹² *LG*, n. 25. L. Örsy, for his part, thinks that the term *infallibility* is not the best expression to tell the whole truth, because it is negative and does not specify the object of the charism, as well as it leaves the door open for all kinds of sinister conjectures; for him *fidelity to the revelation* is much better; see L. Örsy, *The Church: Learning and Teaching*, p. 56.

cathedra. In fact he has personally used it only twice in the last 150 years: in the definition of the Immaculate Conception (1854) and that of the Assumption of Mary (1950). The College of Bishops also shares this charism, and can define or propose a doctrine infallibly, whether gathered in an ecumenical council or dispersed throughout the world, provided the bishops are in hierarchical and doctrinal communion with one another and with the head of the College (c. 749).¹³ Vatican I was the last ecumenical council to define a dogma of faith, precisely on the infallibility of the Roman Pontiff (1870).

The Code requires three conditions for a doctrine to be held as definitive: (1) only the Roman Pontiff and the College of Bishops are the legitimate authority to define or propose a doctrine as definitive; (2) it has to be on matters of faith or morals; (3) the intention of declaring or proclaiming infallibly a doctrine is to be manifestly demonstrated.¹⁴

The object of the infallible magisterium comprises matters of faith and morals,

¹³ The infallibility of the Roman Pontiff was defined by Vatican I in the Dogmatic constitution *Pastor aeternus*. A declaration on the infallibility of the College of Bishops was prepared by the same Council, although it was stated only by Vatican II, in the Dogmatic constitution *Lumen gentium*, n. 25.

¹⁴ C. 749 §§ 1-3.

either those divinely revealed¹⁵ or those which are strictly and intimately connected with divine revelation, necessary for the safeguarding of its unity and integrity.¹⁶ There is a general consensus that this latter may refer to the natural law, to the universal truths fixed by philosophy, or to dogmatic facts.¹⁷ These truths can be formally defined by the solemn magisterium, or proposed for belief by the universal and ordinary magisterium. We also have to keep in mind that these truths are not such in virtue of the definition itself. Rather, they were so before the definition.¹⁸ The magisterium only authenticates and

¹⁵ The doctrine on matters of faith or morals included in divine revelation has been called the *primary object* of infallible teaching. See G. MUCCI, "La competenza del magistero infallibile", in *La civiltà cattolica*, 139 (1988), n. 3, pp. 19-21.

¹⁶ The doctrine on matters of faith or morals, not divinely revealed but necessary for safeguarding the unity and integrity of the deposit of faith, has been called the *secondary object* of the infallible teaching. See CDF, "Instruction on the Ecclesial Vocation of the Theologian, *Donum veritatis*", n. 23, in *AAS*, 82 (1990), pp. 1559-1560; English translation in *Origins*, 20 (1990-1991), p. 122; see also, G. MUCCI, "La competenza del magistero infallibile", pp. 21-23.

¹⁷ "By reason of the connection between the orders of creation and redemption, and by reason of the necessity, in view of salvation, of knowing and observing the whole moral law, the competence of the magisterium also extends to that which concerns the natural law", in CDF, "Instruction on The Ecclesial Vocation of the Theologian, *Donum veritatis*", n. 16 in *AAS*, 82 (1990), p. 1557; English translation in *Origins* 20 (1990-1991), p. 121; U. Betti, for his part, says that this secondary object of infallible teaching may also refer to the natural law. He stated: "Puo' reintrare nell' oggetto di definizioni irreformabili, anche se non di fede, tutto ciò che si riferisce a la legge naturale, essa pure espressione della volontà di Dio. A tale titolo appartiene anch'esse alla competenza interpretativa e propositiva della Chiesa, in ragione del suo ministero di salvezza", in U. Betti, "Professione di fede e giuramento di fedeltà. Considerazioni dottrinali", in *Notitiae*, 25 (1989), p. 324. A. Naud is among the few authors who think otherwise; he maintains that the infallibility of the Church does not extend to philosophical truths or to those of natural reason, but only to those truths contained in divine revelation; he stated: "Il faut rappeler ici aux rédacteurs négligents de cette profession de foi que le Concile Vatican I a formellement et explicitement refusé d'inclure dans la définition de l'infalibilité pontificale, et donc de l'infalibilité de l'Église les vérités qui ne sont pas contenues dans la révélation et plus particulièrement les vérités philosophiques qui ne relèvent que de la recherche de la raison naturelle", in A. NAUD, *Devant la nouvelle profession de foi et le serment de fidélité*, Montréal, Fides, 1989 (Collection Débets de l'Église, 1), p. 43; see also F.A. SULLIVAN, *Magisterium. Teaching Authority in the Catholic Church*, pp. 135-152; cf. G. THILS, *La profession de foi et le serment de fidélité*, Louvain-la-Neuve, Publications de la faculté de théologie, 1989 (Cahiers de la Revue théologique de Louvain, 23), pp. 26-27, 43.

formulates them. For instance, the infallibility of the Episcopal College was not defined formally by Vatican II, but, it was declared as a doctrine pertaining to the universal and ordinary magisterium.

This leads us to differentiate between defining a doctrine infallibly and teaching a doctrine already so defined.¹⁹ The universal and ordinary magisterium is a mode of teaching the entire doctrine of the catholic Church, either by the Pope or the College of Bishops dispersed throughout the world in communion with its head. Examples of such could be the Apostolic letter *Ordinatio sacerdotalis* (May 22, 1994),²⁰ and the Encyclicals *Veritatis splendor* (August 6, 1993)²¹ and *Evangelium vitae* (March 25, 1995).²² In them, Pope John Paul II has repeated a doctrine which is presented as belonging to the divine constitution of the Church, already taught by the ordinary and universal magisterium, and which has to be received with a definitive assent.²³ He

¹⁸ To some authors, an infallible teaching proposed by the universal and ordinary magisterium is just a stage before its formal definition by the solemn magisterium; see, for instance, J. Galot, "La profession de foi et le serment de fidélité", in *Esprit et vie*, 99 (1989), pp. 695-696.

¹⁹ Cf. J.C. Ford, G. Grisez, J. Boyle, J. Finnis, W.E. May, *The Teaching of "Humanae vitae." A Defense. Is this Teaching Infallible? Are Its Norms Defensible?*, San Francisco, Ignatius Press, 1988, p. 128, 129-155.

²⁰ *AAS*, 86 (1994), pp. 545-548; English translation in *Origins*, 24 (1994-1995), pp. 49-ff; cf. also CDF, "Response to *dubium* on Inadmissibility of Women to Ministerial Priesthood", 28 October 1995, in *AAS*, 87 (1995), p. 1114; English translation in *Origins*, 25 (1995-1996), pp. 401, 403.

²¹ *AAS*, 85 (1993), pp. 1133-1228; English translation in *Origins*, 23 (1993-1994), pp. 297-ff.

²² *AAS*, 87 (1995), pp. 401-522; English translation in *Origins*, 24 (1994-1995), pp. 689-727.

reaffirmed this in an address given to the Congregation for the Doctrine of the Faith:

In the Encyclicals *Veritatis splendor* and *Evangelium vitae* as well as in the Apostolic letter *Ordinatio sacerdotalis*, I wished once again to set forth the constant doctrine of the Church's faith with an act confirming truths which are clearly witnessed to by Scripture, the apostolic tradition and the unanimous teaching of the pastors. These declarations, by virtue of the authority handed down to the successor of Peter to "confirm the brethren" (Lk. 22:32), thus express the common certitude present in the life and teaching of the Church.²⁴

The Pope implies then that these constant teachings of the Church refer, among other things, to principles of moral teaching,²⁵ such as the declaration concerning abortion and euthanasia as grave moral disorders and grave violations of the law of God,²⁶ and the declaration that the Church has no power to admit women to the

²³ Basically, the Pope recalls a doctrine already taught. See PAUL VI, *Rescriptum* addressed to F.D. Coogan, Anglican Archbishop of Canterbury, November 30, 1975, in *AAS*, 68 (1976), pp. 599-600; CDF, *Declaratio Inter insigniores*, October 15, 1976, in *AAS*, 69 (1977), pp. 98-116.

²⁴ John Paul II, Address to the CDF, November 24, 1995, in *Origins*, 25 (1995-1996), pp. 573-574.

²⁵ "The specific purpose of the present encyclical is this: to set forth, with regard to the problems being discussed, the principles of a moral teaching based upon Sacred Scripture and the living apostolic tradition", in John Paul II, Encyclical letter, *Veritatis splendor*, nn. 5, 30, in *AAS*, 85 (1993), pp. 1137-1138, 1157-1158; English translation in *L'Osservatore Romano*, 26 (1993), n.40, pp. ii, v.

²⁶ The Pope stated: "Therefore, by the authority which Christ conferred upon Peter and his successors, in communion with the bishops (...) I declare that direct abortion, that is, abortion willed as an end or as a means, always constitutes a grave moral disorder, since it is the deliberate killing of an innocent human being" (n. 62). "Taking into account these distinctions, in harmony with the magisterium of my predecessors and in communion with the bishops of the catholic Church, I confirm that euthanasia is a grave violation of the law of God, since it is the deliberate and morally unacceptable killing of a human person. This doctrine, based upon natural law and upon the written word of God, is transmitted by the Church's tradition and taught by the ordinary and universal magisterium" (n. 65), in *AAS*, 87 (1995), pp. 472, 477; English translation in *Origins*, 24 (1994-1995), pp. 711, 712.

ministerial priesthood.²⁷

1.4 The non-infallible magisterium

The non-infallible magisterium teaches authentically on matters of faith and morals without engaging the charism of infallibility. Matters of faith refer to matters of belief contained in divine revelation; morals includes not only the moral teaching of divine revelation, but also the natural moral law (cf. c. 747 § 2).²⁸ This magisterium “intends to aid a better understanding of revelation and make explicit its contents, or to recall how some teaching is in conformity with the truths of faith or finally to guard against ideas that are incompatible with these truths.”²⁹ Furthermore, the non-infallible

²⁷ The Congregation for the Doctrine of the Faith, replying in the affirmative to the *dubium* concerning the teaching contained in the Apostolic letter *Ordinatio sacerdotalis*, stated: “This teaching (that the Church has no authority whatsoever to confer priestly ordination on women) 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...”, in *AAS*, 87 (1995), p. 1114; English translation in *Origins*, 25 (1995-1996), pp. 401, 403.

²⁸ Vatican II states: “The Catholic Church is by the will of Christ the teacher of truth. It is her duty to proclaim and teach with authority the truth which is Christ and, at the same time, to declare and confirm by her authority the principles of the moral order which spring from human nature itself”, *DH*, n. 14, in A. Flannery, (gen. ed.), *Vatican Council II...*, p. 811; cf. also F.A. Sullivan, “Some Observations on the New Formula for the Profession of Faith”, in *Gregorianum*, 70 (1989), pp. 555-556.

²⁹ See CDF, “Instruction on The Ecclesial Vocation of the Theologian, *Donum veritatis*”, nn. 17, 23, in *AAS*, 82 (1990), pp. 1557-1560; English translation in *Origins*, 20 (1990-1991), p. 122; L. Blyskal lists 6 different ways of exercising this type of magisterium: (1) the pronouncements of the Pope when he is not teaching *ex cathedra*; (2) the declarations of an office of the Roman See with the special approval of the doctrine by the Pope as his own; (3) the declarations of a curial office with routine but not special papal approval; (4) the promulgation of a doctrine by the Pope together with the College of Bishops in council; (5) the teachings of an individual bishop; (6) the pronouncements of a grouping of bishops in an episcopal

magisterium could comprise teachings which though part of God's revelation, are mixed or fused with changeable human thought, forming an organic unity. To attempt to separate one from the other would not be an easy task. To determine if a given point of doctrine is an integral part of divine revelation or not, requires a slow but steady process of discernment and study.³⁰ Meanwhile, for the purpose of warning the people of God against dangerous opinions which could lead to error, the magisterium can intervene in questions under discussion which involve, in addition to solid principles, certain contingent and conjectural elements.³¹

1.5. The ordinary and extraordinary magisterium

The teaching office of the pastors of the Church, that is, the authentic magisterium, can be exercised either in an ordinary or in an extraordinary manner.³² The latter is exercised by the Roman Pontiff speaking *ex cathedra*, or by the College of Bishops gathered in an ecumenical council; it is generally exercised in exceptional circumstances, when there is a particular need for safeguarding the integrity and unity of

conference or a particular council", in L. Blyskal, "The Challenge of Church Teachings: How Do I Respond?", in *Review for Religious*, 48 (1989), p. 51.

³⁰ Cf. L. Ōrsy, *The Church: Learning and Teaching*, pp. 58-59; *Id.*, "Magisterium: Assent and Dissent", p. 481.

³¹ CDF, "Instruction on The Ecclesial Vocation of the Theologian, *Domum veritatis*", n. 23, in *AAS*, 82 (1990), p. 1560; English translation in *Origins*, 20 (1990-1991), p. 122.

the faith. The former is exercised by the Roman Pontiff or by the bishops in their daily authentic teaching office.

The extraordinary magisterium is used mostly to define a doctrine infallibly. The ordinary magisterium is mostly a mode of teaching a doctrine of the Church authentically but non-infallibly; however, it can also be a form of teaching doctrines already pronounced infallibly, or of proposing doctrines to be held as definitive — called by the Code, the ordinary and universal magisterium, cc. 750, 749 § 2.³² In fact, Vatican II although a solemn mode of teaching, did not define any doctrine as definitive.³⁴

Hence, we have to be aware that a doctrine can be proposed infallibly either by the solemn magisterium or by the ordinary and universal magisterium.³⁵ Canon 749 gives

³² Cf. A.G. Urru, *La funzione di insegnare della Chiesa. Un breve commento al libro III del Codice di Diritto Canonico*, Rome, Vivere in, 1989, p. 29.

³³ G. Philips said: “enfin, ne perdons pas de vue que le magistère ordinaire peut rappeler l’attention sur des thèses qu’ont déjà fait ailleurs l’objet d’une définition stricte”, in G. Philips, *L’Église et son mystère au IIe Concile du Vatican. Histoire, texte et commentaire de la constitution “Lumen gentium”*, t. I, Paris, Desclée, 1967, p. 324.

³⁴ J.A. Fuentes stated: “El juicio solemne del magisterio se reconoce por su formalidad, su solemnidad, y porque es un juicio, es decir, se trata de una determinación prudencial concreta. Hay en el magisterio muchas actuaciones y enseñanzas solemnes, que por no tener determinaciones definitivas, no son infalibles. Así, por ejemplo, en el Concilio Vaticano II, que como todo concilio universal es en sí mismo solemne, no contiene juicios definitivos solemnes, aunque en muchas afirmaciones, aun faltando esos juicios definitivos, es infalible por recoger determinaciones magisteriales definitivas anteriores, o por recoger el magisterio ordinario y universal”, in J.A. Fuentes, “Sujeción del fiel a las nuevas fórmulas de fe y del juramento de fidelidad”, in *Ius canonicum*, 60 (1990), p. 530.

³⁵ L. Ōrsy says: “Interestingly enough, this understanding of ordinary magisterium (the one which used to refer to the manner in which a part of doctrine was determined as an integral part of our faith; it was

us some elements to determine the difference. A doctrine defined infallibly by the solemn magisterium, i.e., by the Pope speaking *ex cathedra* or by an ecumenical council, must fulfil the following conditions: (1) the Pope as chief shepherd and teacher of all the Christian faithful proclaims, by a definitive act, a doctrine to be held concerning faith or morals; (2) the bishops, gathered in an ecumenical council, as teachers and judges of faith and morals, declare, for the universal Church, a doctrine to be held definitively concerning faith or morals. The bishops, dispersed throughout the world, maintaining the bond of union among themselves and with the pope, all together teach authentically matters of faith or morals, and agree that a particular teaching is to be held definitively. However, while the intention of proclaiming a doctrine as definitive can be known with certainty in the case of the solemn magisterium, it is not possible to know with absolute certitude the fulfilment of the conditions of a doctrine taught definitively by the ordinary and universal magisterium.³⁶

opposed to an extraordinary manner) is retained in the new Code of Canon Law, canon 750", in L. Örsy, "Magisterium: Assent and Dissent", p. 481. The CDF in a letter to C.E. Curran, July 25, 1986, stated that "... the Church does not build its life upon its infallible magisterium alone but on the teaching of its authentic, ordinary magisterium as well." In other words, sometimes, the Church is compelled to use its charism of infallibility *to define* some points of doctrine as definitive, when the faith is in danger. However, in normal circumstances, in its ordinary and usual teaching and preaching activity, it also teaches the divine revelation authentically although mixed or fused organically with human opinions. L. Örsy and L. Blyskal simply identify "ordinary magisterium" with "non-infallible magisterium." See CDF, "Epistula R.D. Carolo Curran", in *AAS*, 79 (1987), pp. 116-118; English translation in C.E. Curran, *Faithful Dissent*, Kansas City, MO, Sheed and Ward, 1986, p. 268; cf. also J. Ratzinger, *Le nouveau peuple de Dieu*, Paris, Aubier Montaigne, 1971, pp. 94-95; L. Örsy, *The Church: Learning and Teaching*, pp. 60-62; L. Blyskal, *The Ordinary Ecclesiastical Magisterium from the Antepreparatory Documents of Vatican Council to Canon 752 and 753 of the 1983 Code*, Ann Arbor, MI, U.M.I., 1987, viii-428 p. (Canon Law Studies, 523); Id., "Obsequium: a Case Study", in *The Jurist*, 48 (1988), pp. 559-589. For a broader treatment of ordinary universal magisterium, see R.R. Gaillardetz, *Witnesses to the Faith: Community, Infallibility and the Ordinary Magisterium of Bishops*, New York, NY, Paulist Press, 1992, vi-238p.

³⁶ See R.R. Gaillardetz, *Witnesses to the Faith*, p.183.

Today, it is more common simply to speak of the *ordinary magisterium*, either of the Pope, or of the bishops.³⁷ The ordinary magisterium of the Pope is exercised in his daily pastoral ministering, either personally or by the Roman curia. This magisterium is also exercised in various forms of writings: encyclicals, apostolic exhortations, doctrinal statements issued by the Roman congregations, etc. On the other hand, the ordinary magisterium is also exercised by the bishops in their own dioceses or by groups of bishops, when they engage their pastoral authority over the faithful entrusted to them.³⁸

2. The obligation to observe constitutions and decrees

The obligation imposed by c. 754 recognizes the authority of the magisterium of the Church to use certain means in the exercise of its mission. Canon 212 § 1 already stated that the faithful owe Christian obedience to what the sacred pastors declare as teachers of the faith and prescribe as rulers of the Church. This means that the faithful are bound to obey their pastors in the exercise of their twofold power of teaching and governing. It follows that our canon could be understood as a species of c. 212 § 1, that is, the pastors in the exercise of their mission as teachers and rulers can issue constitutions and decrees having binding force. These documents might contain either

³⁷ See CDF, "Instruction on the Ecclesial Vocation of the Theologian, *Donum veritatis*", n. 17, in *AAS*, 82 (1990), p. 1557; English translation in *Origins*, 20 (1990-1991), p. 121.

³⁸ Cf. X. Thévenot, "Magistère et discernement moral", in *Études*, 362 (1985), pp. 240-241; see also J. Ratzinger, *Le nouveau peuple de Dieu*, pp. 94-95.

doctrinal decisions or juridical dispositions.³⁹ Both must be related, somehow, to the word of God.

Therefore, it is necessary to determine the authority issuing these documents, the type of doctrine or discipline involved, and whom they oblige. When the doctrine involved is infallible, “to observe” shall mean to receive the doctrine with an assent of faith, or firmly to accept and hold it. If it is a non-infallible teaching, “to observe” shall mean to receive it with a religious *obsequium*. However, when the object of such documents are norms set up to propose or to protect divine revelation, “to observe” shall mean to put these norms into practice.⁴⁰ In this matter, it will not always be easy to separate both aspects, the doctrinal and the disciplinary. For instance, the profession of faith and the oath of fidelity, issued for the faithful service of the deposit of faith, are true juridical means in the hands of the magisterium.⁴¹

³⁹ Cf. *The Canon Law. Letter and Spirit. A Practical Guide to the Code of Canon Law*, by the Canon Law Society of Great Britain and Ireland in Association with the Canadian Canon Law Society, Great Britain, Geoffrey Chapman, 1995, p. 419.

⁴⁰ P. Huizing, for his part, says that because faith cannot be imposed, then every one must act according to one's conscience. Cf. P. Huizing, “Magistère: pouvoir ou témoignage?”, in *Revue de droit canonique*, 25 (1975), pp. 200-202.

⁴¹ Regarding this, J.A. Fuentes says: “La nueva profesión de fe y el juramento de fidelidad, además de las consecuencias morales que originen, son instrumentos jurídicos, cauces de exigibilidad jurídica, por eso su requerimiento por la autoridad, ayudará a la eficacia y al recto entendimiento de los derechos y deberes fundamentales”, in J.A. FUENTES, “Sujeción del fiel a las nuevas fórmulas de la profesión de fe y del juramento de fidelidad”, p. 528; cf. p. 523.

2.1. The obligation to observe the doctrine of the Church

The new formula for the profession of faith, mandated for those who hold certain ecclesiastical offices or teach sacred doctrine, sheds light regarding the obligation of the faithful toward the doctrine of the Church. It points out three basic kinds of response, corresponding to the various degrees of authority of a doctrine which is taught: (1) the assent of faith, (2) irrevocable adherence, (3) religious *obsequium* of will and intellect. The *primary* or *direct object* of the infallible magisterium requires an assent of faith; the *secondary* or *indirect object*, namely, those truths without which the deposit of faith cannot be rightly preserved and expounded,⁴² must be firmly accepted and held.⁴³ The authentic non-infallible teaching requires a religious *obsequium* of will and intellect.

2.1.1. The response to the infallible magisterium (c. 750)

The assent of faith implies “an unconditional internal acceptance of the faith and of infallible propositional judgments concerning the faith”;⁴⁴ but it also calls for a full

⁴² See CDF, “Declaration *Mysterium Ecclesiae*”, n. 3, in *AAS*, 65 (1973), p. 401: English translation in *Origins*, 3 (1973-1974), p. 110.

⁴³ See CDF, “Instruction on the Ecclesial Vocation of the Theologian, *Domum veritatis*”, n. 23, in *AAS*, 82 (1990), pp. 1559-1560: English translation in *Origins*, 20 (1990-1991), p. 122; see also, J. Galot, “La profession de foi et le serment de fidélité”, p. 696.

⁴⁴ B.C. Butler, “Infallible: Authenticum: Assensus: Obsequium. Christian Teaching Authority and the Christian Response”, pp. 80-82.

acceptance of a way of life worthy of a redeemed person. The secondary object of infallible teaching does not require a divine assent of faith, for it is not part of the deposit of faith; rather, it requires what used to be called “catholic” or “ecclesiastical” faith.⁴⁵ However, the new formula for the profession of faith does not use this term but says: “to embrace and to hold firmly”, that is, an act of acceptance in a grace-filled environment.⁴⁶

2.1.2. The response to the non-infallible magisterium (cc. 752-753)

The object of the non-infallible magisterium requires from the faithful a religious *obsequium* of will and intellect. This implies not only due respect for legitimate authority, but also the acceptance of the proposed doctrine. For the intellect, by nature, longs for the truth; and having found it, will adhere to it. So, any type of respect or reverence which implies no acceptance of the doctrine, would disregard LG, n. 25.⁴⁷ However, acceptance of and adhesion to a doctrine must always be proportionate to the

⁴⁵ Some call this response, “catholic faith.” See J. Galot, “La profession de foi et le serment de fidélité”, p. 696; cf. F.A. Sullivan, “Some Observations on the New Formula for the Profession of Faith”, pp. 551. However, G. Philips said that “catholic faith” is not the best way of describing this response, since faith is more than simple knowledge; indeed, it is due only to God; see G. Philips, *L’Église et son mystère au IIe Concile du Vatican*, p. 326.

⁴⁶ See L. Örsy, *The Profession of Faith and the Oath of Fidelity*, p. 28.

⁴⁷ See F.J. Urrutia, “La réponse aux textes du magistère pontifical non infaillible”, in *L’Année canonique*, 31 (1988), pp. 97-99. L. Örsy for his part proposes a *searching process* for the truth, as a response to the non-infallible teaching, which shall end when a given doctrine is defined as a truth of faith; see L. Örsy, “Reflections on the Text of a Canon”, in *America*, 154 (1986), p. 397. However, we ask ourselves, will every doctrine end in a definition of faith? Not necessarily.

thought and will of the authoritative teacher.⁴⁸ This can be weighed by the character of the document, the frequency with which a doctrine is taught, or the manner itself of expressing it.⁴⁹

The specific and decisive motive for adhesion is not based precisely on the scientific or rational competence of the ecclesiastical magisterium, but on its religious competence, that is, the pope and bishops teach in virtue of the mission entrusted to them by the Lord, and they teach in his name. Nor can the motives of our adhesion rely on a critical examination of the intrinsic reasons underlying the proposed doctrine; that would be a judgment on the teaching according to one's personal perception.⁵⁰ Nevertheless, there should be an intimate relationship between the ecclesiastical magisterium and the

⁴⁸ See G. Philips, *L'Église et son mystère au IIe Concile du Vatican*, p. 323; cf. also, B.C. Butler, "Infallible: Authenticum: Assensus: Obsequium", p. 85.

⁴⁹ LG, n. 25; G. Philips commenting on LG, n. 25, said: "Son intention sera manifestée avec une clarté suffisante, soit par le texte lui-même, soit par les circonstances qui l'entourent et l'expliquent. Même le style du document peut fournir des indications. Cela nous amène à la conclusion qu'en ce domaine aussi le genre littéraire n'est pas sans importance. Une recommandation faite en passant ou une pieuse exhortation adressée à un groupe de pèlerins n'a pas la même portée qu'une déclaration formelle, surtout si cette dernière est faite et répétée avec insistance. L'assentiment requis n'est ni irrévocable ni absolu; si le Pape voulait obtenir une soumission de ce genre, il aurait recours à une définition proprement dite", in G. Philips, *L'Église et son mystère au IIe Concile du Vatican*, p. 323.

⁵⁰ F. J. Urrutia says: "Ce motif *religieux* place notre adhésion à la doctrine enseignée de manière non infallible sur un terrain qui n'est point celui des évidences scientifiques ni, du même coup, celui du *marché d'idées*"; in F.J. Urrutia, "La réponse aux textes du magistère", p. 104; cf. pp. 10-102. U. Betti, for his part, commenting on LG, n. 25, says: "Bisogna, in altre parole, non far dipendere l'autenticità del magistero ecclesiastico dalla evidenza della dottrina che propone né misurare l'autenticità stessa proporzionalmente a tale evidenza, analogamente al magistero scientifico che è autentico solo in ragione degli argomenti probanti delle sue conclusioni", in U. Betti, "L'ossequio al magistero pontificio *non ex cathedra* nel n. 25 della *Lumen gentium*", in *Antonianum*, 62 (1987), p. 450; cf. p. 452; M.R. Gagnebet, in defending "*Humanae vitae*" said the magisterium of the Church is a magisterium of authority, not a scientific

truth of the doctrine taught.⁵¹ Pope John Paul stated: "its power [of the magisterium] and its authority are actually the power and authority of Christian truth, to which it bears witness."⁵² F.A. Sullivan sums up the same with the following words:

It [the *obsequium*] is of will and intellect in the sense that, acknowledging the teaching authority of their lawful pastors, the Catholic faithful are called upon to be willing to accept their teaching and to make it their own. This readiness of will should then result in an attitude of docility, whereby the will brings its influence to bear on the judgment, to move it to assent to the teaching, even beyond the extent to which the person might naturally find the reasons given for it convincing.⁵³

Such an *obsequium* is above all, an attitude of the mind; it is an attitude flowing from faith, rooted in the virtue of religion.⁵⁴ It is accompanied by the conviction that the

magisterium; see M.R. Gagnebet, "La autoridad de la *Humanae vitae*", in *Ecclesia*, 14 (1968), pp. 1355-1361.

⁵¹ See U. Betti, "L'ossequio al magistero pontificio *non ex cathedra*", p. 450.

⁵² John Paul II, Address to the CDF, November 24, 1995, in *Origins*, 25 (1995-1996), p. 573.

⁵³ F.A. Sullivan, "Some Observations on the New Formula", p. 557.

⁵⁴ G. Philips stated: "Cela [l'*obsequium* religieux] veut dire: ils [les fidèles] doivent s'y attacher pour des motifs de foi et conformer leur manière de voir, non pour les motifs scientifiques que leur pasteur pourrait faire valoir, mais en raison de la docilité d'esprit que l'évêque exerçant sa fonction sacrée d'enseignement est en droit d'attendre de la part de ceux qui lui sont confiés", in G. Philips, *L'Église et son mystère au IIe Concile du Vatican*, p. 322. On the other hand, LG, in putting *will* before *intellect*, wanted to underline that the *obsequium* due to the non-infallible magisterium of the Church is dictated by motivations of faith rather than by the personal comprehension of the given doctrine; see U. Betti, "L'ossequio al magistero pontificio *non ex cathedra*", p. 432; see also, L. Örsy, "Magisterium: Assent and Dissent", p. 490. J. Galot, for his part, speaks of a general and habitual attitude that is not compromised when one disagrees with a certain point of non-infallible doctrine. See J. Galot, "La profession de foi et le serment de fidélité", p. 697; B.C. AUZA, *The Non-Infallible Magisterium and Theological Dissent: A Study on the Contemporary Phenomenon of Theological Dissent from the Second Vatican Council to the Present, from the Perspectives of the Theology of the Magisterium about Itself and of the Theories of Theological Dissent of Some Contemporary Theologians*, Romae, Pontificia Studiorum Universitas a S. Thoma Aq. in Urbe, 1990, p. 109.

Lord has instituted the ecclesiastical magisterium to guide us with authority in our religious life, although we have to recognize humbly that this non-infallible magisterium is also subject to error, to correction and to progress.⁵⁵ Paul VI already said:

The person who spurns or rejects this magisterium assails the one true Church, weakens its apostolic force, works against the unification of all Christians in truth and charity, and fosters their dispersion. Such a person does grave wrong to the souls that seek or have faith, and he will have to make an accounting before God's judgment seat.⁵⁶

However, moving into the area of certitude, we, as Christians, are to give first place to the judgment of the authoritative magisterium in the field of religious matters, rather than to our own judgment, for we have more probability to fail than it has.⁵⁷ Therefore, we understand why where faith is lacking, the authority of the ecclesiastical magisterium has no sense;⁵⁸ for, only in a faith context we can accept the authority of the magisterium of the Church.

⁵⁵ Cf. F.J. Urrutia, "La réponse aux textes du magistère", pp. 108-109. U. Betti calls this possibility of mistake, on the part of the non-infallible magisterium, an inherent limitation to religious *obsequium* of will and intellect; see U. Betti, "L'ossequio al magistero pontificio *non ex cathedra*", pp. 456-457.

⁵⁶ Paul VI, Allocution to the International Theological Commission, October 6, 1969, in *AAS*, 61 (1969), p. 1714; English translation in *The Pope Speaks*, 14 (1969), p. 201.

⁵⁷ This is what Father Urrutia calls *priority* in religious matters; cf. F.J. Urrutia, "La réponse aux textes du magistère", p. 108; cf. also, B.C. Butler, "Infallible: Authenticum: Assensus: Obsequium", pp. 84-85.

⁵⁸ P. Huizing says: "Dans les cas où les membres de l'Église, laïcs, religieux ou prêtres, perdent la foi, l'autorité juridictionnelle ecclésiastique n'a plus aucune puissance sur eux." P. Huizing, "Magistère: pouvoir ou témoignage?", pp. 202-203.

The religious *obsequium* due to the non-infallible magisterium will vary according to the authorities who teach and to the type of doctrine.⁵⁹ In the scale of such authorities, the Roman Pontiff and the College of Bishops have first place, for they exercise their magisterium for the entire Church.⁶⁰

Thus, the response due to this authentic magisterium shall require from the faithful a serious discernment to evaluate the theological weight of every document. And establishing a hierarchy of these types of teachings will allow them to find a space for their own inalienable freedom. For, whereas the faithful recognize the authority of the magisterium of the Church, this magisterium should be aware of the fact that between its word and that of God there can be a distance, in which the faithful could exercise their true freedom.⁶¹

Indeed, there is a gradation in the response not only from infallible to non-

⁵⁹ B.C. Auza speaks of *intensity* in differentiating the non-infallible magisterium of the Pope and that of the bishops; it follows that the response of the faithful must also vary in intensity; see B.C. AUZA, *The Non-Infallible Magisterium and Theological Dissent*, pp. 77, 91-92.

⁶⁰ In fact, the new formula for the profession of faith does not refer to the teachings of the individual bishops or of bishops gathered in groups. Rather, it speaks of the religious *obsequium* due to the doctrine taught by the Roman Pontiff or the College of Bishops.

⁶¹ C.J. Errázuriz, for his part, explains that there is always a space of freedom in which the Church cannot impose obligations or sanctions on the faithful, because the word of God must be accepted and lived in freedom; see C.J. Errázuriz, "La dimensione giuridica del *munus docendi* nella Chiesa", in *Ius Ecclesiae*, 1 (1989), pp. 185-186; cf. also X. Thévenot, "Magistère et discernement moral", p. 241.

infallible doctrine, but also within this latter.⁶² B.C. Auza speaks of three degrees of intensity in the response to non-infallible teachings: (1) to the teaching of the individual bishops in hierarchical communion with the Holy See, (2) to the decision of one's proper bishop, (3) to the non-infallible teaching of the Pope.⁶³ But certainly, it is Vatican II which gives us the criteria to weigh the mind and intention of the teacher, that is, the degree of certitude by which certain doctrines are taught. It states:

... indeed, that this supreme teaching authority be acknowledged with respect, and that one sincerely adhere to decisions made by him, conformably with his manifest mind and intention, which is made known principally either by the character of the documents in question, or by the frequency with which a certain doctrine is proposed, or by the manner in which the doctrine is formulated.⁶⁴

These three criteria are to be applied not to doctrines already belonging to the catholic faith, but to the authentic non-infallible teaching. And while they were given for the teachings of the Pope, it seems they can be applied proportionately to any statement. The *character of the document* refers to its formal presentation, from the more solemn to

⁶² A. Naud says: "Celui qui ne perçoit pas ces degrés est donc incapable d'accueillir l'enseignement magistériel tel qu'il est, avec ses nuances, avec ses certitudes mais aussi avec ses hésitations, avec son caractère souvent provisoire", in A. NAUD, *Le magistère incertain*, Montreal, Fides, 1987, (Héritage et projet, 39), p. 226. G. Thils sums this up saying, "Or, constater cette graduation, c'est reconnaître, en même temps, que l'acceptation de ces enseignements et doctrines est plus ou moins contraignante, que leur rejet est plus ou moins condamnable, que leur perfectibilité est plus ou moins grande, que leur intangibilité est plus ou moins stricte, que leur adaptation est plus ou moins recevable", in G. Thils, *La profession de foi et le serment de fidélité*, p. 29.

⁶³ See B.C. AUZA, *The Non-Infallible Magisterium and Theological Dissent*, pp. 110-112.

⁶⁴ LG, n. 25.

the less solemn; for instance, apostolic constitutions, encyclicals, apostolic exhortations, etc. The *frequency a doctrine is proposed* refers to the consistency in which a teaching is taught, in order to bring it into the conviction and praxis of the entire Church. The *manner in which the doctrine is formulated* refers to the verbal expression used to communicate it; for instance it could be preceptive, declarative, exhortative, and so forth.⁶⁵

2.2. The obligation to observe juridical dispositions

Although the obedience mandated by c. 754 could be interpreted in a spirit of collaboration with the pastors, obedience determined by legal justice can be demanded juridically. Thus, the Congregation for the Doctrine of the Faith stated: “For this reason, magisterial decisions in matters of discipline, even if they are not guaranteed by the charism of infallibility, are not without divine assistance and call for the adherence of the faithful.”⁶⁶ The power of jurisdiction, acting along with the magisterial power, sets up norms to organize the *munus docendi* of the entire Church. Since the same authentic magisterium enjoys the power of jurisdiction, it also makes decisions on doctrinal matters, needed for the safeguarding of the unity and communion in the faith within the

⁶⁵ Cf. U. Betti, “L’ossequio al magistero pontificio *non ex cathedra*”, pp. 454–455.

⁶⁶ CDF, “Instruction on the Ecclesial Vocation of the Theologian, *Domum veritatis*”, n. 17, in *AAS*, 82 (1990), p. 1559; English translation in *Origins*, 20 (1990-1991), p. 122.

Church universal or the particular Churches.⁶⁷ Speaking of this, J.A. Fuentes Alonso says that the observance of these documents implies to do exactly and specifically what the lawful authority orders through them. It is an external fulfilment. Especially, the constitutions and decrees of the Roman Pontiff and the College of Bishops have to be observed, keeping in mind that very often in this magisterium there can be matters demanding a religious assent and even an assent of faith.⁶⁸

Some examples of this are the following: John Paul II promulgated the Code of Canon Law for the Latin Church with the Apostolic constitution *Sacrae disciplinae leges* (January 25, 1983). At the end he stated: "We therefore, exhort all our beloved children to observe, with sincere mind and ready will, the precepts laid down, buoyed up by the hope that a zealous Church discipline will flourish anew, and that from it the salvation of souls also will be ever more fervently promoted."⁶⁹

⁶⁷ Cf. P. Huizing, "Magistère: pouvoir ou témoignage?", p. 202.

⁶⁸ "La observancia supone poner por obra, con exactitud y puntualidad, todo lo que se mande ejecutar; es decir, se pide a los fieles al menos un cumplimiento externo de todo lo que se les manda por la legítima autoridad, siempre que se refiera a materias en las que puede mandar y sean congruentes con su condición. En especial deben prestar observancia a las constituciones y decretos de la Autoridad suprema, pero hay que tener en cuenta que en este magisterio con frecuencia habrá contenidos que exijan un asentimiento religioso, e incluso un asentimiento de fe." In J.A. Fuentes Alonso, "La función de enseñar", p. 380.

⁶⁹ AAS (special ed.), 75 (1983), p. xiv: English translation in *Code of Canon Law Annotated*, Latin-English edition of the *Code of Canon Law* and English-language translation of the 5th Spanish-language edition of the commentary prepared under the responsibility of the Instituto Martín de Azpilcueta, ed. by E. Caparros, M. Thériault, J. Thorn, Montreal, Wilson & Lafleur Limitée, 1993, p. 57.

Almost ten years later, he promulgated the Catechism of the Catholic Church with the Apostolic constitution *Fidei depositum* (October 11, 1992). He declared there that the Catechism is a sure norm for teaching the faith and thus a valid and legitimate instrument for ecclesial communion. He also asked pastors and the Christian faithful alike to receive and use it as a sure and authentic reference of catholic doctrine. He made clear that new local catechisms must be in conformity with it.⁷⁰ Both the Code and the Catechism were promulgated through an apostolic constitution and oblige all the Christian faithful. However, each one touches in different ways on the deposit of faith and has its own way of binding the members of the Church.

A third example would be the general executory decree of the Episcopal Conference of Spain issued to implement in Spain the general norms of the Apostolic constitution *Ex corde Ecclesiae* (August 15, 1990). Although it is a full disciplinary decree which obliges juridically, the norms themselves, however, intend to guard the identity of the catholic universities in Spain and to provide for the faithful teaching of the sacred disciplines in those institutions.⁷¹

⁷⁰ See *Catechism of the Catholic Church*, Ottawa, On., CCCB, 1994, pp. 8-9.

⁷¹ See Conferencia Episcopal Española, "Decreto general para aplicar en España la Constitución apostólica *Ex corde Ecclesiae*, sobre universidades católicas (February 11, 1995)", in *Ius Ecclesiae*, 7 (1995), pp. 833-841.

2.3. Does this obligation bind in conscience?

Conscience is the ultimate concrete judgment, for it formulates the proximate norm of morality of a voluntary act, applying the doctrine of revealed truth and of natural law to concrete situations. It commands the person to perform an act after a prudential and practical judgment.⁷² Thus, we can ask whether the obligation to observe the decisions of the authentic magisterium binds in conscience?

There is no doubt that the infallible doctrine of the Church binds in conscience at the highest level, for it demands the assent of faith or an irrevocable adherence. "God calls men to serve him in spirit and in truth. Consequently, they are bound to him in conscience although not coerced."⁷³ The question arises when we deal with the non-infallible doctrine of the Church, especially in the moral field, or with norms prompted to propose or protect the same deposit of faith. Is conscience bound by the non-infallible teaching of the Church?⁷⁴ Furthermore, what is the authority of the magisterium in matters of ethics? In fact, a certain number of the people of God would appear not to

⁷² Cf. John Paul II, Encyclical letter, *Veritatis splendor*, nn. 60-61, in *AAS*, 85 (1993), pp. 1181-1182; English translation in *L'Osservatore romano*, 26 (1993), n. 40, p. ix.

⁷³ *DH*, n. 11.

⁷⁴ For instance, in the past, the Motu proprio *Praesentia sacrae Scripturae* (1907) imposed an obligation in conscience to accept the decrees of the Biblical Commission, which was granted the same authority as had the Holy Office. Cf. F.P. Ramos, "El magisterio universal y la exégesis en el último siglo", in *Estudios eclesiásticos*, 57 (1982), p. 311.

follow certain norms of the magisterium, as for instance, the prohibition against using contraceptives.

First of all, we have to admit the fact that the ecclesiastical magisterium has the duty of speaking out on matters of faith and morals, which include matters of ethics, which although not based directly on Scripture or tradition, are intimately related to them.⁷⁵ This is so because the Church, expert in humanity, has the task of revealing to all humans the meaning of their existence.⁷⁶ Pope John Paul II said to the second International Congress of Moral Theology:

Since the magisterium of the Church has been instituted by Christ the Lord to enlighten our consciences, to appeal to this very conscience precisely in order to question the truth of what has been

⁷⁵ Pope John Paul II, recalling the doctrine of St. Thomas Aquinas on natural law, says that moral law has its origin in God and always finds its source in him. To say that reason is autonomous cannot mean that reason itself creates values and moral norms, but that man possesses in himself his own law received from the Creator. Therefore, the magisterium of the Church has competence not only in matters of faith and morals found in divine revelation, but also in norms of moral law derived from human nature. Both divine revelation and human nature support each other and intersect. See John Paul II, Encyclical letter, *Veritatis splendor*, nn. 40-46, in *AAS*, 85 (1993), pp. 1165-1171; English translation in *L'Osservatore romano*, 26 (1993), n. 40, pp. vi-vii. However, there still are theologians who think that matters of normative morality are not *per se* of the competence of the magisterium of the Church; see for instance Dietmar Mieth (ed.), *Moraltheologie im Abseits? Antwort auf die Enzyklika "Veritatis splendor"*, Herder, Freiburg im Br.-Basel-Wien, 1994 [*Quaestiones disputatae*, 153], cited in *L'Osservatore romano*, n. 6, February 7, 1996, p. 2. Or that the magisterium does not have the same authority over natural law as it has it over the deposit of faith, see A. Naud, *Le magistère incertain*, p. 254.

⁷⁶ See *GS*, n. 41; B. Schüller calls the intervention of the ecclesiastical magisterium in the field of ethics a *subsidiary task*, which helps the individual conscience to make its decisions; see B. Schüller, "Apuntes sobre las manifestaciones auténticas del magisterio eclesiástico", in *Selecciones de teología*, 7 (1968), p. 224; A. Sanchis Quevedo, for his part, says that the magisterium has only a *critical function* with regard to social and political matters; see A. Sanchis Quevedo, "Función crítica del magisterio de la Iglesia en materias sociales", in *Escritos del vedat*, 2 (1972), pp. 221-255.

taught by the magisterium, is to reject the catholic conception both of the magisterium and of the moral conscience.⁷⁷

Indeed, only in the mystery of Christ does the mystery of humanity become clear.⁷⁸ The Church gives important insights to us about who we are and how to act in the world. Secondly, the reception of the Kingdom of God must be reflected in one's ethical behaviour. The Church discerns if a certain behaviour is coherent with evangelical love.⁷⁹ To deny this would empty the cross of Christ of its meaning, as well as the mystery of humanity itself.⁸⁰

On the other hand, it is important to be aware that in moral teachings, there is a part situated on the level of *principles* and another on the level of *concrete application*. It is when it comes to applying these principles, that the magisterium finds itself dependant on the concrete circumstances of history and culture.⁸¹ Thus, from one place or time to

⁷⁷ John Paul II, Address to the Second International Congress of Moral Theology, November 12, 1988, n. 4, in *AAS*, 81 (1989) p. 1208: English translation in "*Humanae vitae*": 20 anni dopo. *Atti del II Congresso Internazionale di Teologia Morale* (Roma, Novembre 9-12, 1988), Milano, Edizioni Ares, 1989, p.15.

⁷⁸ See *GS*, n. 22.

⁷⁹ See X. Thévenot, "Magistère et discernement moral", pp. 239-240.

⁸⁰ See John Paul II, Address to the Second International Congress of Moral Theology, November 12, 1988, n. 5, in *AAS*, 81 (1989) pp. 1209-1210: English translation in "*Humanae vitae*": 20 anni dopo, p. 16.

⁸¹ It is in the application of principles to concrete situations that some theologians disagree with the magisterium of the Church. Some of them accord to conscience the status of a supreme tribunal, of a *locus theologicus*, which hands down categorical and infallible decisions about good and evil. Others extol the autonomy of human reason to the extent of denying to the Church and its magisterium a specific doctrinal

another, the application of moral principles may vary, as well as their understanding.⁸² However, “the existence of particular norms in the area of man’s activity in this world which have such an obligatory force as to exclude always and every possibility of exceptions, is a constant teaching of the magisterium of the church that cannot be questioned by a catholic theologian.”⁸³

Nevertheless, it is not impossible that faced with a text on morals, at times one may assent to the conclusions but not to the arguments; or even, one may eventually disagree with both. That is what some authors call *conflict of the Christian conscience*,⁸⁴ which at times can even end up in dissent, either in action or in thought.⁸⁵

It is a well-known principle that every person is bound faithfully to follow his or

competence with regard to particular moral norms, for these would not be part of the proper content of revelation. See John Paul II, Encyclical letter, *Veritatis splendor*, nn. 32-37, in *AAS*, 85 (1993), pp. 1159-1163; English translation in *L'Osservatore romano*, 26 (1993), n. 40, pp. v-vi; cf. A. Del Portillo, “Conscienza morale e magistero”, in “*Humanae vitae*”: 20 anni dopo, pp. 32; W.H. May, “*Humanae vitae*, Natural Law, and Catholic Moral Thought”, in *ibid.*, p. 48.

⁸² See X. Thévenot, “Magistère et discernement moral”, p. 242.

⁸³ John Paul II, Address to the Second International Congress of Moral Theology, November 12, 1988, n. 5, in *AAS*, 81 (1989), p. 1209; English translation in “*Humanae vitae*”: 20 anni dopo, p. 16.

⁸⁴ See, for instance, X. Thévenot, “Magistère et discernement moral”, pp. 242-244; cf. also John Paul II, Encyclical letter, *Veritatis splendor*, n. 55, *AAS*, 85 (1993), p. 1178; English translation in *L'Osservatore romano*, 26 (1993), n. 40, p. ix.

⁸⁵ For instance, some clinics of catholic universities continued “homologous in vitro fertilization”, despite the fact that the CDF declared it illicit in its instruction on “Respect of Human Life in Its Origin and on the Dignity of Procreation”, *Domum vitae*. Their argument was that they do not have certitude of conscience on the illicitness of this method of fecundating; see *La Documentation catholique*, 86 (1989), p. 114.

her own conscience in all activities; therefore, no one must be forced to act contrary to it.⁸⁶ Nevertheless, it is also true that before following one's own conscience, one must also form it,⁸⁷ for conscience is not an independent and infallible faculty; nor is it exempt from the possibility of error.⁸⁸ A correct conscience is one duly enlightened by faith, and by the principles of the moral order which spring from human nature itself. It also presupposes the uprightness of will in the pursuit of the true good by allowing it to be guided by truth in concrete actions. Precisely, the Church and its magisterium are to be placed among the means that Christ has provided us to form our consciences and to avoid the danger of error.⁸⁹

Therefore, the correct conscience of the faithful, and especially of the theologian, presumes not only faith in the word of God, whose riches must be explored, but also love for the Church, from whom the teaching mission is received, and respect for the divinely

⁸⁶ *DH*, n. 3; cf. *GS*, n. 16.

⁸⁷ Recently, John Paul II said that for a member of the faithful to form his conscience or to seek the truth, he has to take into account the teaching of the magisterium, rather than placing himself as its judge, or when in doubt preferring to follow his own opinion or that of theologians rather than the certain teaching of the magisterium; see John Paul II, Address to the Second International Congress of Moral Theology, November 12, 1988, n. 5, in *AAS*, 81 (1989) p. 1209; English translation in "*Humanae vitae*": 20 anni dopo, pp. 15-16; see also John Paul II, Encyclical letter, *Veritatis splendor*, n. 64, in *AAS*, 85 (1993), pp. 1183-1184; *DH*, n. 14.

⁸⁸ See John Paul II, Encyclical letter, *Veritatis splendor*, n. 62, in *AAS*, 85 (1993), p. 1182.

⁸⁹ See John Paul II, Address to the Second International Congress of Moral Theology, November 12, 1988, n. 4, in *AAS*, 81 (1989), pp. 1208-1209; English translation in "*Humanae vitae*": 20 anni dopo, p. 15; see, also, John Paul II, Encyclical letter, *Veritatis splendor*, n. 64, in *AAS*, 85 (1993), pp. 1183-1184; cf. also D. Compostà, "Il magistero ecclesiastico informa o insegna la morale?", in *Divinitas*, 20 (1976), pp. 199-203.

assisted magisterium.⁹⁰ So, before acting or dissenting contrary to the teaching of the magisterium, one must consider the following: (1) to take care not to scandalize the members of the community; (2) to verify the personal climate of prayer through which the Holy Spirit illumines one's conscience; (3) to search for dialogue with ecclesiastical authority and with one's community, influenced by the concrete circumstances of the here and now.⁹¹ Otherwise, one can easily fall into insubordination, and lead others to confusion.

Having established that the constitutions and decrees would contain either infallible or non-infallible doctrine, we have to admit that the obligation to observe them binds in conscience proportionately to the certitude by which the doctrine is proposed. In other words, when the authentic magisterium defines or proposes a certain doctrine as definitive, it means that this doctrine is necessarily free from error; so the faithful are certainly bound in conscience to give it an assent of faith or an irrevocable adherence. However, when the teaching concerning a proposed doctrine or a proscribed error is not infallible, its certainty is not absolute; in such cases, a serious discernment on the part of the faithful is needed to ascertain the authority and certitude of such a teaching. Thus, the faithful will find that the obligation to observe the documents of the magisterium may

⁹⁰ See CDF, "Instruction on the Ecclesial Vocation of the Theologian, *Donum veritatis*", n. 38, in *AAS*, 82 (1990), pp. 1567-1568; English translation in *Origins*, 20 (1990-1991), p. 125.

⁹¹ Cf. X. Thévenot, "Magistère et discernement moral", pp. 243-244.

bind in conscience in various degrees.⁹² Furthermore, a member of the faithful who has strong reasons to think otherwise, or at least has serious doubts, cannot be obliged to give an internal assent nor be prohibited from resuming research on the subject.⁹³

The duty regarding the deposit of faith and matters involving human nature and salvation (c. 747 §§ 1-2) carries both a moral responsibility and juridical bonds.⁹⁴ The moral responsibility flows from the fact that faith is necessary for salvation, while the juridical bonds arise from the duty of remaining in the communion of faith.⁹⁵ So, we conclude that, since these documents are serving the word of God to preserve its integrity, the faithful have the obligation, even in conscience, to avoid anything that can endanger the faith, and to fight against it. Otherwise, those errors could obscure the moral conscience itself.⁹⁶ In this sense, the magisterial office of pastors, which is also exercised by publishing certain documents, helps the faithful receive the faith and

⁹² Some authors call this type of response a “conditional religious assent”; B.C. AUZA, *The Non-Infallible Magisterium and Theological Dissent*, p. 106; A. NAUD, *Le magistère incertain*, pp. 213-214.

⁹³ See A. MONTAN, “Il Libro III: la funzione di insegnare della Chiesa”, in *La Scuola cattolica*, 112 (1984), p. 218.

⁹⁴ However, strictly speaking, the fulfilment of the norms can be exacted only in the external forum, as one of the consultors expressed during the canon’s revision: “Notat alter Exc.mus Consultor de interno animi obsequio canonem nihil statuere posse, quia legislator non valet actus internos regere”, in *Communicationes*, 19 (1987), p. 230.

⁹⁵ Cf. C.J. ERRÁZURIZ, *Il “munus docendi Ecclesiae”: diritti e doveri dei fedeli*, Milano, Giuffrè, 1991, p. 78.

⁹⁶ *Ibid.*, p. 81.

persevere in its purity.⁹⁷

As we said above, the observance of such constitutions and decrees first requires from the faithful, before anything else, a serious reflection on the reasons given in these documents; then, a decision to put into action or not what was mandated. But a decision to act or not to act according to the documents, must also take into account both ecclesial communion and the unity of faith.⁹⁸ So, acting according to one's proper conscience presupposes a well-formed conscience, which respects any doctrine authentically taught by the Church. Hence, at times, instead of proclaiming publicly an opinion contrary to the teachings of the magisterium of the Church, it would be better to keep silence (*silentium obsequiosum*) and to continue research on the matter, in order to avoid scandal among the Christian faithful.

In conclusion, there is a moral obligation to obey the word of God. Is there the same obligation to what is demanded in these constitutions and decrees? We believe that there is an obligation to obey them according to their authority and certitude. Furthermore, those who hold an ecclesiastical office or teach subjects which deal with faith or morals, and have made the profession of faith and taken the oath of fidelity (c.

⁹⁷ Cf. C.J. Errázuriz, *Il "munus docendi Ecclesiae": diritti e doveri dei fedeli*, p. 83.

⁹⁸ See M.R. Sobanski, "Les canons 753 et 754: problèmes choisis", p. 297.

833), are undoubtedly bound in conscience.⁹⁹ Indeed, the revealed truth entrusted to the Church for salvation demands fidelity both to God who reveals himself and to the person who has the right to receive the authentically proclaimed message.¹⁰⁰

2.4. Can we dissent from the authentic non-infallible magisterium?

The unsettled issue on dissent is fundamentally based on attitudes.¹⁰¹ On the one hand, some pastors still exercise their magisterium with an authoritarian attitude, with traces of a preconciliar conception of the magisterium.¹⁰² On the other hand, some theologians claim absolute freedom in researching, teaching, and publishing their conclusions, ignoring the particular mission of the magisterium of the Church, and

⁹⁹ The profession of faith not only contains the Nicene-Constantinopolitan Creed, but also three paragraphs which summarize the task of the magisterium and the response due to its pronouncements. The oath of fidelity also contains two paragraphs (3rd and 5th) related to duties toward the deposit of faith and the magisterium of the Church.

¹⁰⁰ See V. De Paolis, "La funzione di insegnamento nel Codice di diritto canonico", in *Seminarium*, 41 (1989), p. 451.

¹⁰¹ Much has been written on the matter of dissent. However, a detailed exposition on it goes beyond our study. We refer the reader to doctoral dissertations on the matter, such as: B.C. AUZA, *The Non-Infallible Magisterium and Theological Dissent*, xxxiii-608p, and S. P. Rohlf, *The Notion of Public Dissent in the Thought of Charles Curran and the Response of the Holy See*, Rome, Pontificia Studiorum Universitas a S. Thoma Aq. in Urbe, 1988, vi-317p.

¹⁰² For instance, recently, the bishop of Lincoln, NE, issued an administrative act warning catholic members of twelve organizations. He also imposed, by the same document, penalties of interdiction and excommunication *latae sententiae* on those who remained in such organizations after April 25, 1996; see *Origins*, 25 (1995-1996), p. 725. A. Naud calls this attitude "magisterial totalitarianism", see A. NAUD, *Le magistère incertain*, p. 184.

refusing to be subjected to any authority.¹⁰³ Both forget that the primacy belongs to the revealed truth alone.¹⁰⁴

The entire people of God is called to recognize that the Pope and the bishops ultimately receive their authority from Christ to teach matters of faith and morals in his name. However, at times, despite honest efforts to give one's sincere adherence, reasons opposing a particular point of doctrine of the non-infallible teaching are so strong that one is really unable to give an honest internal assent.¹⁰⁵ At this moment a conflict of conscience arises, as well as the question of dissent, especially among theologians. What is dissent? Is it even permitted?

First of all, it is important to be aware that dissent is a phenomenon present within the Church,¹⁰⁶ which has increased significantly since the Encyclical *Humanae vitae*.¹⁰⁷

¹⁰³ Cf. A. Naud, *Le magistère incertain*, p. 185.

¹⁰⁴ Paul VI, Allocution to the International Theological Commission, October 6, 1969, in *AAS*, 61 (1969), p. 715; English translation in *The Pope Speaks*, 14 (1969), p. 202. John Paul II, for his part, said that a dissenting attitude is rooted in a widespread misunderstanding of the meaning and role of the Church's magisterium, a misunderstanding of the magisterium's authority; see John Paul II, Address to the CDF, November 24, 1995, in *Origins*, 25 (1995-1996), p. 573.

¹⁰⁵ F.A. Sullivan, "The New Formula for the Profession of Faith", p. 557.

¹⁰⁶ Many years ago, Archbishop J. Quinn proposed to the Synod of Bishops a formal discussion between representatives of the Holy See and of theologians with a view to arriving at some kind of guidelines in matters of dissent; see J. Quinn, "Norms for Church Dissent", in *Origins*, 4 (1974-1975), pp. 319-320; cf. also Id., "Considering the Papacy", in *Origins*, 26 (1996-1997), pp. 119-127; cf. pp. 127-128.

¹⁰⁷ See G. Mattai, "Magistero e teologia. Alle radici di un dissenso", in *Asprenas*, 37 (1990), pp. 28-29.

Today, it is still a matter of discussion among theologians. In fact, the term itself is an ambivalent word with many connotations;¹⁰⁸ therefore, a variety of opinions and conclusions on the issue can be easily found. For instance, some authors do not admit the possibility of public dissent in the Church at all;¹⁰⁹ others, including some pastors and episcopal conferences, do admit it, but under certain conditions.¹¹⁰ Some speak of a legitimate dissent, others of the right to dissent in the Church.¹¹¹

Today, a certain distinction between private and public dissent is being used by some authors. However, because these terms have not been used consistently, we prefer to use *legitimate dissent*, which may appear as private for some authors and public for others. A description of such a dissent may contain the following elements: (1) the dissent must be from the non-infallible teaching; (2) the dissenter must be competent on the matters in question; (3) the dissent must be the ultimate recourse, after a sincere

¹⁰⁸ See L. Ōrsy, *The Church. Learning and Teaching*, Wilmington, Del., Michael Glazier Inc., 1987, p. 91.

¹⁰⁹ See, for instance, P. Crane "Assent and Dissent", in *Christian Order*, 24 (1983), pp. 281-189; T. Dubay, "No Future in Dissent", in *Christian Order*, 24 (1983), pp. 293-303; G. Grisez, "Charity and Dissenting Theologians", in *Homiletic and Pastoral Review*, 80 (1979-1980), n. 2, pp. 11-21.

¹¹⁰ The United States Catholic Bishops already referred to a *licit dissent* in the Church in 1968; see "Pastoral Letter on Human Life in Our Day" (November 1968), in H.J. Nolan (ed.), *Pastoral Letters of the United States Catholic Bishops*, vol. III: 1962-1974, Washington, DC., National Conference of Catholic Bishops, 1983, pp. 173-174; see also, R. Mahony, "The Magisterium and Theological Dissent", in *Origins*, 16 (1986-1987), pp. 372-375; J. Arzube, "Criteria for Dissent in the Church", in *Origins*, 7 (1977-1978), pp. 748-750.

¹¹¹ See, for instance, P. Huizing and K. Wolf, "What Does the 'Right to Dissent' Mean in the Church?", in *Concilium*, 158 (1982), pp. 3-9; R.P. McBrien, "Theologians under Fire", in *The Tablet*, 240

effort to assent to the authentic teaching of the Church; (4) it should be formulated with propriety and show due respect for the teaching authority; (5) the dissent must be proposed prudently, depending on the type of audience, so as to avoid scandal in the community. A dissent of this type could be something positive and constructive in the Church if it contributes to the deepening and understanding of doctrine in the process of searching for the truth.¹¹²

On the contrary, these same authors agree that an *organized dissent*, which stands against the magisterium of the Church and intends to be a counter-magisterium, must be rejected from the Church. Such a dissent could inflict harm to the community and confuse it, as well as undermining the legitimate magisterium of the Church.

But the CDF does not seem to like the word *dissent* itself. For unlike the authors, the Congregation defines dissent, then concludes that it is not allowed in the Church at all. To the CDF, *dissent* is “the fundamental attitude of general opposition to the Church teaching, which even comes to expression in organized groups”; personal difficulties to agree on a certain point of doctrine, after serious study marked by a desire to listen to and understand the magisterium’s teaching without hesitation, and which is open to a deeper

(1986), pp. 675-677; R.M. Gullo, “The Right to Private and Public Dissent from Specific Pronouncements of the Ordinary Magisterium”, in *Église et théologie*, 9 (1978), pp. 319-343.

¹¹² See L. Örsy, *The Church. Learning and Teaching*, p. 98.

examination of the question is not dissent.¹¹³ However, for some authors this kind of difficulty is called *public dissent* if it is proclaimed publicly, knowing that it could take on a variety of forms and degrees. For instance, B.C. Auza states:

In our view, public dissent is that which is intended or willed by the dissenter himself for public consumption. This can take several forms or several degrees. For instance, there would be a difference between going public with one's dissent with the view to merely inform the public what one's idea about certain teaching is and going public with the claim to have the true teaching and, at the same time, inviting the faithful to reject the allegedly erroneous magisterial teaching and substitute it with the dissenting position.¹¹⁴

For him, the latter position is the worst kind of *public dissent*. On the contrary, certain dissent (*private dissent*) is permitted, whether making known one's *dissent* directly to the teaching authority, or through scholarly theological journals in view of the need for mutual theological discussion.¹¹⁵

The Congregation offers a synthesis of the arguments used by those who defend *public dissent* (at least in certain cases) from the non-infallible magisterium. For instance, in the order of *hermeneutics* and *theology*, some argue that the documents of

¹¹³ See CDF, "Instruction on the Ecclesial Vocation of the Theologian, *Domum veritatis*", nn. 30-32, in *AAS*, 82 (1990), pp. 1562-1563; English translation in *Origins*, 20 (1990-1991), p. 123.

¹¹⁴ B.C. AUZA, *The Non-Infallible Magisterium and Theological Dissent*, p. 545.

¹¹⁵ See *ibid.*, p. 546.

the magisterium reflect nothing more than a debatable theology.¹¹⁶ They claim that the interventions of the magisterium would have their origin in one theology among many, while no particular theology, however, could presume to claim universal normative status (theological pluralism). Sometimes from this argumentation arises a counter-magisterium of theologians, in opposition to and in competition with the authoritative magisterium. A *sociological argumentation* holds that the opinion of a large number of Christians would be a direct and adequate expression of the 'supernatural sense of the faith' (*sensus fidei*). This approach also appeals to the argument of *freedom of conscience*, that is, to the obligation to follow one's own conscience.¹¹⁷

The CDF concludes by saying that religious *obsequium* owed to the non-infallible magisterium does not allow theologians to dissent publicly.¹¹⁸ Instead, it suggests an

¹¹⁶ Cf. L. Örsy, "Magisterium: Assent and Dissent", p. 479.

¹¹⁷ D.M. Cowdía stated: "A moral commitment to religious liberty as a civil right implies a corresponding commitment to internal religious liberty in the form of a right to dissent [within the Church]", in D.M. Cowdía, "Religious Liberty, Religious Dissent and the Catholic Tradition", in *The Heythrop Journal*, 32 (1991), p. 26; see also CDF, "Instruction on the Ecclesial Vocation of the Theologian, *Donum veritatis*", nn. 34-38, in *AAS*, 82 (1990), pp. 1564-1568; English translation in *Origins*, 20 (1990-1991), pp. 124-125.

¹¹⁸ One of the first signs of the fact that public dissent is not allowed in the Church appeared in the first text on the ordinary magisterium of the Roman Pontiff in the schema on the Church (chap. VII, n. 30) presented to the Council for discussion; see U. Betti, "L'ossequio al magistero pontificio *non ex cathedra*", pp. 432-433; J. A. Fuentes, for his part, says that religious *obsequium* to the non-infallible magisterium of the Church excludes the possibility of dissenting; see J.A. Fuentes, "Sujeción del fiel a las nuevas fórmulas de fe y del juramento de fidelidad", pp. 538-539. B.C. Auza concludes his study likewise, giving three reasons: (1) there cannot be two magisteria in the Church, (2) it cannot be true that the dissenting position is in the truth and the magisterial position in the wrong, (3) public dissent can be, has been and is divisive and confusing. See B.C. AUZA, *The Non-Infallible Magisterium and Theological Dissent*, pp. 547-548.

attitude of dialogue between theologians and legitimate authority.¹¹⁹ The Congregation says: "In the dialogue a twofold rule should prevail. When there is a question of the communion of faith, the principle of 'unity of truth' (*unitas veritatis*) applies. When it is a question of differences which do not jeopardize this communion, the 'unity of charity' (*unitas caritatis*) should be safeguarded."¹²⁰ As part of the people of God, theologians ought to give to this magisterium a fundamental openness, loyally accepting it as is fitting for every believer by reason of the obedience of faith.¹²¹

The CDF seems to be uncomfortable with the expression *dissent*. To declare, in general, that dissent is not allowed in the Church is to ignore the various aspects of the reality contained in the term itself as well as the different degrees of its manifestation. Likewise, the attitude of dialogue suggested should be applied to both sides, to the theologians and to the Congregation itself. At the same time, a person who dissents should make known to other theologians his or her ideas by suitable means, in order to allow theological dialogue or discussion and to contribute to the maturing of reflection on the deposit of faith. It should be a just and charitable dialogue.

¹¹⁹ This dialogue may deal with problems raised by the teaching in itself, in the arguments proposed to justify it or even in the manner in which it is presented. See CDF, "Instruction on the Ecclesial Vocation of the Theologian, *Donum veritatis*", n. 30, in *AAS*, 82 (1990), p. 1562: English translation in *Origins*, 20 (1990-1991), p. 123.

¹²⁰ CDF, "Instruction on the Ecclesial Vocation of the Theologian, *Donum veritatis*", n. 26, in *AAS*, 82 (1990), p. 1561: English translation in *Origins*, 20 (1990-1991), p. 123.

¹²¹ See CDF, "Instruction on the Ecclesial Vocation of the Theologian, *Donum veritatis*", n. 29, in *AAS*, 82 (1990), pp. 1561-1562: English translation in *Origins*, 20 (1990-1991), p. 123.

Several theologians and canonists accept that one can publicly dissent in some cases, because in the area of the non-infallible magisterium there are various levels and degrees of relationships to faith: some are close to, while others are remote from the central realities of christian faith.¹²² However, although only a definitive teaching is guaranteed by infallibility, there is a continuity between that teaching and a doctrine not taught infallibly.¹²³ Therefore, dissent should not be a general disposition in the Church; rather, legitimate authority must treat each case of dissent very carefully.

Conclusion

Throughout the working of this chapter, we were navigating in turbulent waters; for we have attempted to analyze c. 754 doctrinally and juridically amidst debatable issues, while seeking for clearer meanings in theology, in canon law, as well as in the life

¹²² See C.E. Curran, *Faithful Dissent*, Kansas City, MO, Sheed and Ward, 1986, p. 61; C.E. Curran, R.E. Hunt and the "Subject Professors" with J.F. Hunt and T.R. Connelly, *Dissent in and for the Church. Theologians and "Humanae vitae"*, New York, Sheed and Ward, 1969, xli-237p., in which professors of the Catholic University of America dissent from the absolute prohibition of the use of artificial contraception, as it is a non-infallible teaching based on a preconciliar ecclesiology and on an unclear expression of natural law and deductive methodology; cf. pp. 114-116; 123-126. U. Betti, for his part, prefers to pose the question in terms of *reception* rather than in terms of *dissent*; cf. U. Betti, "L'ossequio al magistero pontificio *non ex cathedra*", p. 457. L. Örsy prefers to use other expressions rather than dissent, for instance, *to hold another opinion*, or *to come to another conclusion*, or *to propose a different hypothesis*; cf. L. Örsy, "Magisterium: Assent and Dissent", p. 491.

¹²³ M.R. Sobanski says: "Les vérités définies constituent le tronc de l'enseignement ordinaire qui proclame et explique les mystères de la foi pour qu'ils soient reçus et fructifient par la compréhension et la pratique quotidienne de la vie chrétienne. Dans l'enseignement ordinaire, l'Eglise annonce les vérités de la foi, soit par le pape soit par le collège des évêques, ou encore par les évêques, pris individuellement ou

of the Church. We referred to issues such as the “infallible - non-infallible magisterium”, the “ordinary and universal magisterium”, the role of theologians, the appropriate response of the faithful to the teaching of the magisterium, and the possibility and limits of legitimate dissent from the non-infallible magisterium. In the hope that we agreed about some criteria to manage these issues, we now intend to draw some conclusions from our study.

1. The understanding of the obligation to observe constitutions and decrees, imposed by c. 754 on all the Christian faithful, relies largely on cc. 212 § 1, 750, 752, 753. These canons mandate the faithful to give Christian obedience to their pastors as teachers and rulers of the Church. More concretely, the faithful are to give a due response to the magisterium according to the different degrees of its exercise. Thus, the faithful are asked for an assent of faith to the teachings defined or proposed infallibly as divinely revealed; they must give an irrevocable adherence to those truths proposed definitively, and which although not divinely revealed, are necessary for the right preservation and exposition of the deposit of faith. Finally, they are asked to give a religious *obsequium* of will and intellect to the authentic non-infallible magisterium, which must be proportionate to the thought and will of the authentic magisterium.

2. This observance must be qualified according to the nature of the constitutions and decrees. These documents would be understood first as disciplinary means in the hands of the magisterium of the Church to carry out its teaching office, as it was their sense in c. 1324 of the 17/CIC.¹²⁴ However, the adding of the verb *proponere*, i.e., to propose, to expose, to display the doctrine, suggests otherwise. These documents must then also be understood as being doctrinal in character such as the constitutions and decrees of Vatican II and other post-conciliar documents.

3. In the strict sense, constitutions and decrees may refer to those used by ecumenical councils to expose either the doctrine of the Church or general principles, or to proscribe erroneous opinions, such as those of the last two universal Councils. They would also refer to those issued by the Roman Pontiff, the Roman curia, or by bishops, to propose doctrine, or to establish norms intended to serve the word of God, as would be the Apostolic constitution *Depositum fidei*, by which the Pope ordered the Catechism of the Catholic Church to be published, or the decrees of episcopal conferences. However, in a broader sense, constitutions and decrees might also be understood as the acts of legitimate authority, related somehow to the deposit of faith, whether to propose doctrine or to proscribe erroneous opinions. In this sense, they could also include papal encyclicals, and pastoral letters of bishops in their own dioceses, each of them to be

¹²⁴ R.M. Gula would call it "juridical teaching authority"; see R.M. Gula, "The Right to Private and Public Dissent...", p. 331; cf. also J. Provost, "The Catholic Church and Dissent", in *Concilium*, 152 (1982), p. 15.

received according to their nature.

4. All the Christian faithful have the obligation, even in conscience, to avoid anything that can endanger the faith and to fight against it. But, the constitutions and decrees of c. 754 bind the faithful according to their nature. *Doctrinal* constitutions and decrees call for a religious *obsequium* of will and intellect (cc. 752-753); that is, a response which shall be proportionate to the thought and will of the authoritative teacher. In exceptional cases a constitution may declare a dogma of faith, which would call for an assent of faith.¹²⁵ We also have to keep in mind that, usually these doctrinal documents may contain doctrine belonging to the deposit of faith already proposed by the ordinary and universal magisterium. *Disciplinary* constitutions and decrees bind juridically those for whom they are intended, which means that they are to be put into practice. We also presume that they would be just and contain well-founded dispositions.

5. According to some authors, with whom we agree, the religious *obsequium* of will and intellect is not in absolute contradiction to legitimate dissent from a certain point of doctrine of the non-infallible magisterium, in the sense we have explained above. Rather, it could contribute to the deepening and understanding of the truth, in a sound context of open dialogue with legitimate authority and other theologians. But it must be a

¹²⁵ For instance, Pius XII declared the dogma of the Assumption of Mary with the Apostolic constitution *Munificentissimus Deus* (1950).

dissent that does not cross the limits of the religious *obsequium* due to the magisterium endowed with a special mission in the Church. In this area, we still need better means to deal with erroneous opinions and persons who have objections against certain points of doctrine of the non-infallible magisterium; but especially, we have every reason to expect a more just and charitable attitude on the part of Church authorities in dealing with these situations.¹²⁶

6. Finally, we draw attention to the fact that “legitimate authority” refers to pastors (c. 212 § 1), to those who must know their flock (John 10: 14-15). This is important, in order to avoid a voluntaristic juridical approach to their authority,¹²⁷ i.e., that the pastors do not confuse their power to teach with their power to rule and vice versa; that they do not demand from the faithful the religious *obsequium* only on the basis that they act with the authority of Christ and are assisted by the Holy Spirit. Rather, they must present a doctrine that is coherent with revealed truth; they should also listen to the Holy Spirit working in the Church through the *sensus fidei* and the theologians.

Now, we shall proceed to apply the study of our canon to the life of the Church today. That is, looking at the various pronouncements of the legitimate authority of the Church, we shall intend to find to which of them c. 754 applies and to what extent.

¹²⁶ J. Provost stated: “The position of the CDF for dialogue with theologians is hindered by the overly juridical approach to magisterium and the role of theologians”, in J. Provost, “The Catholic Church and Dissent”, p. 16.

¹²⁷ Cf. R.M. Gulq, “The Right to Private and Public Dissent”, p. 330.

CHAPTER V

A PRACTICAL APPLICATION OF CANON 754 IN THE LIFE OF THE CHURCH TODAY

In recent years, the crisis regarding the reception of ecclesiastical documents has been the object of concern for Church authorities at all levels. For instance, the 1985 extraordinary Synod of Bishops suggested that a more profound explanation of the doctrinal authority of episcopal conferences would be needed;¹ in November 1995, the plenary assembly of the Congregation for the Doctrine of the Faith was particularly concerned with the problem of the reception of pronouncements made by the ecclesiastical magisterium.² We will not try to propose an explanation for this crisis; rather, in this last chapter of our study, we are going to try to apply c. 754 to the life of the Church today. In other words, we will try to study how our canon is to be used by competent authority in proposing doctrine or proscribing erroneous opinions. We will also attempt to provide some elements to help the faithful receive Church documents rightly, and to give an adequate response to the various kinds of official pronouncements. This is all the more necessary, for on many occasions, without indicating the certitude of its teachings, the magisterium states a doctrine or condemns an opinion in such a manner that the ordinary faithful might consider it to be declared with absolute certitude.³

¹ See X. Rynne, *John Paul's Extraordinary Synod. A Collegial Achievement*, Wilmington, Delaware, Michael Glazier, 1986, p. 127.

² See John Paul II, Address to the Congregation for the Doctrine of the Faith, "How Authority is Conceived", November 14, 1995, in *Origins*, 25 (1995-1996), p. 572.

³ See A. Naud, *Le magistère incertain*, Montréal, Fides, 1987, (Héritage et projet, 39), pp. 227-228.

We shall first proceed by giving a description of the nature of ecclesiastical documents, then offer a brief listing of the various authorities issuing such documents as well as the types of documents they promulgate. Finally, we will mention the documents to which c. 754 specifically applies.

1. The nature of ecclesiastical documents

Since the mission of the Church is carried out through the functions of teaching, sanctifying and governing, its decisions may fall into any one of these three fields. Furthermore, since these three functions are in the hands of the same authority, they are intimately interconnected in the service of one another. In the Code of Canon Law we find elements to help us grasp the nature of each type of ecclesiastical document as well as to determine the due response of the faithful. At times these elements are clearly shown, but sometimes we have to have recourse to the constant practice of the Church for a proper interpretation.

Generally speaking, each document could be qualified as being either disciplinary or doctrinal, and may deal with any issue concerning the life of the Church. However, our interest at this point is directed toward those texts which, in some way, are linked with the proposing of revealed doctrine or the preserving of its integrity. These may touch on matters of faith or morals or on related issues; they may also contain matters related to the faithful carrying out the teaching office of the Church, namely, the ministry of the

divine word (cc. 756-780), catholic education (cc. 793-821), writings and other means of social communication (cc. 822-832), ecumenism (c. 755), or even the missionary activity of the Church (cc. 781-792). They may also touch on other questions redounding on the doctrinal field.

Concretely, the faithful are to be aware of certain elements in discerning the response to be given to a particular pronouncement of church authorities. Some of these elements are external and much easier to recognize than the internal ones relating to the content itself. Among the fundamental external elements to be considered in any pronouncement, we could mention the following:

1. The author of the documents. According to c. 754, the legitimate authority issuing such documents must enjoy, above all, doctrinal authority: the Roman Pontiff, the College of Bishops, the Roman curia, individual bishops, particular councils and, according to circumstances, episcopal conferences.

2. The type of documents. It is important to determine whether the document is doctrinal or disciplinary in character. At times, a document could contain both elements. Its character can be determined by the type of document used, as for instance, a decree which is basically disciplinary, or an encyclical which is doctrinal. However, some church authorities have not always followed the proper import of the documents, as it is determined by law. Thus, we can find *instructions* with a doctrinal content, and norms

spelled out in *letters*.

3. The addressee of the documents. Generally, each document specifies for whom it is intended. Otherwise, no one would be concerned with it. Not every pronouncement, however, is addressed to all the Christian faithful. At times, some are sent only to bishops or to special groups in the Church; at other times, they are addressed only to parish priests, or to religious, and so forth.⁴

Having considered these three external elements, we shall now examine the actual content of the pronouncements:

4. The level of authority engaged. Most documents fall into the category of non-infallible teachings. Only the Roman Pontiff and the College of Bishops can engage the charism of infallibility. However, we must consider the possibility of a mixture of infallible and non-infallible teaching in a particular pronouncement.

5. The circumstances of the document. Every pronouncement must be contextualized in its proper circumstances. The author of a pronouncement usually justifies the decisions. At times, he deals with new questions arising from the progress of science; at other times, he discusses certain difficulties or events in the world; still again,

⁴ Bishops, parish priests and other informed persons may help the faithful to discern the elements to be considered. Cf. L. Blyskal, "Obsequium: A Case of Study", in *The Jurist*, 48 (1988), p. 567.

on occasion, he provides certain norms for the good service of the word of God, and so forth.

6. To judge the document as a whole. A good writing is usually built up around a principal idea on which each part relies. A wise discernment must consider each part of a document in the light of the whole and not just independently.

In addition, further elements which require a basic knowledge of catholic doctrine must be taken into consideration.

7. Determine to what extent a given teaching is related to the faith. Divine revelation is always the ultimate criterion for judging any doctrine. Thus, a document may expose, explain or apply divine revelation, or even may warn against or proscribe contrary opinions. In this sense, it must be discerned whether the document is concerned with matters of faith or morals, or solely with moral principles, or even with the application of both of these.

We shall now consider the various authorities capable of issuing documents related to divine revelation, mentioning the different types of documents currently used by the pastors of the Church. This will help us discern the nature of ecclesiastical documents and respond justly to them.

2. Legitimate authority and its pronouncements

Canon 754 speaks of the legitimate ecclesiastical authority that issues certain documents to propose doctrine or to proscribe erroneous opinions. This authority refers especially to the Roman Pontiff and to the College of Bishops, but also includes individual bishops in their particular churches, as well as intermediate groupings of bishops such as episcopal conferences and particular councils. In this section, we intend to outline some elements relating to the doctrinal and juridical authority of each of these subjects, along with the pronouncements they usually enact for the faithful entrusted to their care.

2.1. The Roman Pontiff

The Roman Pontiff is the first legitimate authority who can enact either doctrinal or normative documents. He enjoys the power to teach infallibly (*ex cathedra*) or non-infallibly (ordinary magisterium). Nevertheless, in his teaching office, he mostly uses his *ordinary magisterium*. We also recall that both levels of magisterium have as their object matters of faith and morals, i.e. the doctrine to be believed and applied to behaviour.

Along with doctrinal authority, the Roman Pontiff enjoys legislative power as part of the power of jurisdiction, which extends over the entire Church in virtue of his

primacy.⁵ Therefore, he can issue normative documents to ensure faithful service to the word of God in the Church.

Certainly, it is much easier to deal with legislative texts than with magisterial pronouncements of the Roman Pontiff. The significant increase in the number of documents used for the Pope's ordinary magisterium since the last century has made it more difficult to ascertain their doctrinal authority.⁶ There are several acts and forms by which the Roman Pontiff's power of teaching and ruling are expressed. Leaving aside the historical treatment of the changes they have undergone or a detailed study of these, we shall limit ourselves to mentioning and classifying them according to their import.⁷

Among the legislative texts, we find *apostolic constitutions*⁸ and *apostolic letters*

⁵ See *LG*, n. 22.

⁶ U. Betti says: "Il magistero pontificio non ex cathedra ha, infatti, una gamma vastissima di espressioni, quali sono le Costituzioni apostoliche, le Encicliche, le Esortazioni apostoliche, postsinodali o no, i discorsi pressoché quotidiani. Una quantità di documenti pluriformi che, anche a causa delle accresciute richieste pastorali che hanno fatto dello stesso ministero papale un ministero itinerante, è divenuta ormai ingente, e di non sempre facile descifrazione", in U. Betti, "L'ossequio al magistero pontificio *non ex cathedra* nel n. 25 della *Lumen gentium*", in *Antonianum*, 62 (1987), p. 454.

⁷ For a detailed study of the papal and curial documents see F.G. Morrissey, *Papal and Curial Pronouncements: Their Canonical Significance in Light of the Code of Canon Law*, 2nd ed. revised and updated by M. Thériault, Ottawa, Faculty of Canon Law, Saint Paul University, 1995, 46p.; H. Grote, *Was verlautbart Rom wie? Eine Dokumentunde die Praxis*, Göttingen, Vandenhoeck & Ruprecht, 1995 (Bensheimer Hefte, 76), 168p.; R. Epp et al., *Le droit et les institutions de l'Église Catholique latine de la fin du XVIIIe siècle à 1978. Sources, communauté chrétienne et hiérarchie*, Paris, Éditions Cujas, 1981 (Histoire de droit et des institutions de l'Église en Occident, 16), pp. 157-172.

⁸ The Apostolic constitution, being the most solemn act of the Pope, deals not only with disciplinary matters, but also with important doctrinal issues. For instance, the dogma of the Assumption of Mary was defined in the Apostolic constitution *Munificentissimus Deus*, November 1, 1950 (*AAS*, 42 [1950], pp. 753-773); the *Catechism of the Catholic Church* was published in the Constitution *Fidei depositum*, October 11, 1992 (*AAS*, 86 [1994], pp. 113-118). Furthermore, apostolic constitutions are also used for administrative decisions, such as the erection or division of dioceses, or even the erection of

given *motu proprio*.⁹ Doctrinal documents are more frequent and varied: *encyclical letters*, addressed to the entire Church or even to the world, are the means by which the Pope expounds important points on matters of Christian doctrine or Christian ethics belonging to the ordinary magisterium.¹⁰ *Encyclical epistles*, *apostolic epistles*, and *epistles*, are more circumstantial writings on diverse matters, and usually are addressed to a bishop, or to a group of or all the bishops, or another category of persons.¹¹ *Decretal letters* are used today as the official document to proclaim the canonization of the blessed.¹² *Apostolic letters*, which are very frequent, have varied objects: concession of the title of blessed, concession of patron saints, the establishment of apostolic

ecclesiastical provinces, although these latter are signed by the Secretary of State, the Prefect of the Congregations for Bishops or for the Evangelization of Peoples, and a Notary, but not by the Pope.

⁹ Most of the post-conciliar legislation was laid down through apostolic letters given *motu proprio*; at times, they are called simply *motu proprios*. See, for instance, Apostolic letter given *motu proprio*, *Matrimonia mixta*, January 7, 1970 [AAS, 62 (1970), pp. 257-263], or *Motu proprio*, *Sacram liturgiam*, January 25, 1964 [AAS, 56 (1964), pp. 139-144]. However, after the promulgation of the Code of Canon Law, this type of document has been used mostly to issue regulations concerning certain affairs of Vatican City, or to establish certain commissions or other institutes in the Church; see for instance some of the recent Apostolic letters given *motu proprio*: *Iusti iudicis*, June 28, 1988, (AAS, 80 [1988], pp. 1258-1261) on the regulations on the role of advocates of the Roman curia; *Europa Orientalis*, January 15, 1992, to turn the Pontifical Commission "pro Russia" into the Pontifical Interdicasterial Commission for the Church in Eastern Europe (AAS, 85 [1993], pp. 309-310); *Socialium scientiarum*, January 1, 1994, for the constitution of the Pontifical Academy of Social Sciences (AAS, 86 [1994], pp. 209-217); *La preoccupazione*, September 8, 1992, on regulations regarding the pension of those who work for the Apostolic See (AAS, 84 [1992], pp. 1033-1053).

¹⁰ See, for instance, *Evangelium vitae*, March 25, 1995 (AAS, 87 [1995], pp. 401-522); *Ut unum sint*, May 25, 1995 (AAS, 88 [1996], pp. 921-982).

¹¹ Exceptions to this can be found. For instance, the Apostolic letter *Tertio millennio adveniente*, November 10, 1994, was addressed to bishops, priests, deacons, religious and laity (AAS, 87 [1995], pp. 5-41); see also the Apostolic encyclical *Slavorum apostoli*, to bishops, priests, religious and the Christian faithful, June 2, 1985 (AAS, 72 [1985], pp. 779-813); Apostolic epistle *Ordinatio sacerdotalis*, to bishops, May 22, 1994 (AAS, 86 [1994], pp. 545-548).

¹² See, for instance, the Decretal letter of canonization of Blessed Henrique d'Osso y Cervelló, June 16, 1993 (AAS, 86 [1994], pp. 625-628).

nuntiatures, concession of the title of minor basilicas, and so on.¹³ *Apostolic exhortations* are being used principally to put forward teachings on the matters touched on at synodal sessions.¹⁴

Among other doctrinal pronouncements of the Pope are his oral interventions in ceremonies or through radio or television, allocutions (*allocutiones*), homilies (*homiliae*), radio messages (*nuntii radiophonici*), telecast messages (*nuntii radiotelevisifici*), common declarations (*declarationes communes*), exhortations (*hortationes*), messages (*nuntii*), messages given in writing (*nuntii scripto dati*), addresses in sacred consistories (*sacra consistoria*), solemn canonizations (*sollemnes canonizationes*), sermons (*sermones*), speeches (*orationes*), congratulatory messages (*nuntii gratulatorii*), agreements (*conventiones*), telegraphic messages (*nuntii telegraphici*), solemn profession of faith (*sollemnis professio*).¹⁵

2.2. The College of Bishops

The College of Bishops has the same prerogatives as the Pope, i.e., it has legislative power over the universal Church as well as doctrinal authority. However, it

¹³ See, for instance, the concession of the title of minor basilica: *AAS*, 87 (1995), pp. 831-832; the concession of the title of blessed: *AAS*, 88 (1996), pp. 88-90; the concession of a patron saint: *AAS*, 88 (1996), p. 100.

¹⁴ For instance, the post-synodal Apostolic exhortation *Ecclesia in Africa*, September 14, 1995 (*AAS*, 88 [1996], pp. 5-82; Post-synodal exhortation *Vita consecrata*, March 25, 1996 (*AAS*, 88 [1996], pp. 377-486).

can act only with the consent of its head, either in an ecumenical council or dispersed throughout the world. Here, we are considering the decisions taken in an ecumenical council, since it is almost impossible to find a specific decision taken in the other mode. While Vatican I issued only two *dogmatic constitutions*, Vatican II enacted two *dogmatic constitutions*,¹⁶ one *pastoral constitution*,¹⁷ one *constitution*,¹⁸ nine *decrees*¹⁹ and three *declarations*.²⁰ There were also various *messages* of lesser doctrinal weight. In the strict sense, only the decrees and the constitution on the sacred liturgy contain disciplinary matters; the others could be qualified as doctrinal.

¹⁵ See R. Epp et al., *Le droit et les institutions de l'Église catholique latine*, p. 167.

¹⁶ Dogmatic constitutions are essentially doctrinal in character which are consistent with the doctrinal tradition of the great ecumenical councils. However, while Vatican I attached canons to its constitutions and defined the dogma of infallibility of the Roman Pontiff (in *Pastor aeternus*), Vatican II, faithful to its pastoral character, merely exposed the doctrine of the Church without defining any dogma or condemning any erroneous opinion.

¹⁷ The first note to *Gaudium et spes* states: "The constitution is called 'pastoral' because, while resting on doctrinal principles, it seeks to set forth the relation of the Church to the world and to the men of today." Thus, while the first part is mainly doctrinal, the second part is pastoral. Nevertheless, they should not be opposed one to another; rather, they coalesce into the same pastoral office of bishops. Therefore, in interpreting this pastoral constitution, the general norms of theological interpretation shall be applied, taking into consideration that some elements are permanent and others contingent because of the changing circumstances. See A. Flannery (gen. ed.), *Vatican Council II...*, p. 903; see also, A. Dulles, "Doctrinal Authority of Episcopal Conferences", in T.J. Reese (ed.), *Episcopal Conferences. Historical, Canonical and Theological Studies*, Washington, DC, Georgetown University Press, [1989], pp. 224-225.

¹⁸ The Conciliar constitution, *Sacrosanctum concilium*, could be equated with the apostolic constitutions of the Roman Pontiff. Indeed, it laid down doctrinal principles and norms concerning the promotion and reform of the liturgy as well as declaring that the Council was not opposed to assigning the feast of Easter to a fixed Sunday in the Gregorian Calendar and the idea of introducing a perpetual calendar into civil society; see SC, nn. 3-4, appendix.

¹⁹ The decrees of Vatican II are directed to a given category of faithful or to a special form of apostolate; they laid down general principles, guidelines, directives and regulations, which in turn would need further specification and implementation; see F.G. Morrissey, *Papal and Curial Pronouncements*, p. 21.

²⁰ With regard to this, F.G. Morrissey stated: "The declarations were policy statements giving the teaching of the Church on certain more controversial matters, and thus are more liable to be revised with time," in F.G. Morrissey, *Papal and Curial Pronouncements*, p. 21. In particular, the Declaration on

2.3. The Roman Curia

A third subject endowed with normative and doctrinal power is the Roman curia, which “is the complex of dicasteries and institutes which help the Roman Pontiff in the exercise of his supreme pastoral function for the good and service of the whole Church and of the particular churches...”²¹ It has a vicarious character, for it does not operate by its own right or on its own initiative, but it receives its power from the Roman Pontiff, and exercises it within its own essential and innate dependence on him.²² Therefore, since it acts in the name and with the power of the Roman Pontiff, decisions of major importance are to be submitted for the approbation of the supreme Pontiff, except for those decisions for which special faculties have been granted to the moderators of the dicasteries, and for the sentences of the Tribunal of the Roman Rota and the Supreme Tribunal of the Apostolic Signature within the limits of their proper competence.²³

In terms of normative power, the dicasteries enjoy only executive power; however, they can receive legislative power by delegation (c. 135 § 2; cf. c. 30). Therefore, they cannot issue laws or general decrees having the force of law or derogate from the prescriptions of current universal law. This power is granted only in individual

Christian education, *Gravissimum educationis*, laid down fundamental principles on Christian education which in turn required to be further developed and adapted to concrete circumstances; see *GE*, Preface.

²¹ Apostolic constitution *Pastor Bonus* (= *PB*), art. 1; *CD*, n. 9.

²² See *PB*, *Proemium*, nn. 7-8.

cases and with the *specific approval*²⁴ of the Roman Pontiff. It is of utmost importance that nothing grave and extraordinary be transacted unless the supreme Pontiff be previously informed by the moderators of the dicasteries.²⁵

With regard to doctrinal authority, the congregations share in the ordinary magisterium of the Pope, since they help him to fulfil his mission as pastor and teacher of the universal Church. Thus, they enjoy the power of teaching authoritatively and the Christian faithful are bound to receive their teachings with religious *obsequium* of intellect and will.²⁶ Furthermore, when the congregations issue documents, they may recall the common doctrine of the Church, or apply it to new circumstances. Besides, the members of the congregations are bishops,²⁷ and therefore authoritative teachers, for they belong to the Episcopal College.

²³ Considering the nature of the documents we are dealing with, we shall refer only to the dicasteries of the Roman curia, i.e., the Secretariat of State, the Roman congregations, the tribunals and the pontifical councils (except the Offices).

²⁴ The Roman Pontiff can approve the curia's decisions either in *specific form* or in *common form*. Approval in *specific form* means that, after a serious examination, the Roman Pontiff makes the Roman curia's act his own. "*Actus natura mutatur; transformatur in actum Papae; Papa fit iuridice responsabilis actus.*" Approval in *common form* means a general approval from the Pope; the act remains under the responsibility of the Roman curia. Cf. F.J. Urrutia, "Quandonam habeatur approbatio *in forma specifica*", in *Periodica*, 80 (1991), pp. 7-9. A specific approval is often made manifest; for instance, the peculiar norms of the Roman Rota, February 7, 1994 (*AAS*, 86 [1994], pp. 508-540) were approved in specific form by a Rescript on February 23, 1995 (*AAS*, 87 [1995], p. 366); the Congregation for the Clergy issued the Decree on multi-intentional or collective masses, February 22, 1991 (*AAS*, 83 [1991], pp. 443-446) with the specific approval of the Pope.

²⁵ *PB*, art. 18.

²⁶ F.J. Urrutia says: "Il me semble que, comme les documents du pape lui-même, les documents de la congrégation peuvent eux aussi exiger une adhésion de certitude par le motif religieux de la mission reçue du Seigneur", in F.J. Urrutia, "La réponse aux textes du magistère pontifical non infaillible", in *L'Année canonique*, 31 (1988), p. 114.

²⁷ See *PB*, art. 3 § 3.

Within the Roman curia, the Congregation for the Doctrine of Faith has a special function concerning divine revelation. “The proper function of the Congregation for the Doctrine of Faith is to promote and safeguard the doctrine on faith and morals in the whole catholic world; so it has competence in things that touch this matter in any way.”²⁸ Its mission is directed to *promote* and to *safeguard* the integrity of faith and morals. It promotes doctrine by fostering studies to deepen the understanding of the faith, and to respond to new questions arising from the progress of the sciences or from human culture. It also fulfils this task by helping the bishops carry out their function as authentic teachers and doctors of the faith.²⁹ Its other function is to take care that faith and morals suffer no harm. In fulfilling this task, the Congregation requires that competent authority examine, before their publication, books and other writings touching on faith and morals. It also examines writings and opinions that seem to be contrary or dangerous to the true faith, and acts accordingly with due process. When errors or dangerous doctrines are already spread among the Christian people, it rebukes them. It also examines the documents of other dicasteries.³⁰

By their very nature, then, these congregations are helpers of the Pope. Therefore, they need the approval of the Roman Pontiff before issuing certain documents.³¹ The

²⁸ *PB.*, art. 48.

²⁹ See *ibid.*, arts. 49-50.

³⁰ See *ibid.*, arts. 51, 52, 54.

³¹ Some of the documents issued by the pontifical councils do not have the approval of the Roman Pontiff; they might be considered of lesser doctrinal weight than those which do have it. See, for instance,

Roman Pontiff gives his approval mostly in the *common form*, that is, he corroborates and reaffirms the document without modifying its nature and its author; the congregations act with the power given to them. However, the Pope may give his approval in *specific form*, that is, after a careful examination of the content and circumstances of the document, he adopts it as his own, and gives it his personal authority.³² Thus, documents approved in *specific form* by the Pope are to receive the same treatment as those personally issued by him. Here, we shall focus on those documents issued by the congregations and approved in common form.

The decisions of the dicasteries can be found in different types of documents.³³ Among those that seem to have higher relevance in the Church universal we find *decrees*,³⁴ *instructions*,³⁵ *declarations*,³⁶ *epistles (letters)*,³⁷ *directories*,³⁸ and *official*

The Pontifical Council for the Family, *The Truth and Meaning of Human Sexuality*, 8 December 1995, Sherbrooke, Médiaspaul, 1996, 62p.

³² See A. Viana, "La potestad de los dicasterios de la Curia Romana", in *Ius canonicum*, 30 (1990), p. 111.

³³ We prefer to exclude the acts of the tribunals (Apostolic Signatura, Roman Rota and Apostolic Penitentiary), since they deal with specific matters and particular persons. They may issue judicial and administrative documents, such as dispensations, absolutions, commutations, validations, and so on. However, exceptionally, we can come across legislative texts, as for instance the general decree issued by the Supreme Tribunal of the Apostolic Signatura, May 6, 1993, regarding the right application of c. 1673, 3°, in *AAS*, 85 (1993), pp. 969-970. For a more detailed treatment of these documents, see F.G. Morrissey, *Papal and Curial Pronouncements*, pp. 23-39; cf. also R. Epp et al., *Le droit et les institutions de l'Église catholique latine de la fin du XVIIIe siècle à 1978*, p. 173.

³⁴ We do not refer to singular administrative acts but to legislative and general executory decrees (cc. 29-33). Dicasteries can issue legislative general decrees only by express authorization of the Roman Pontiff (cc. 30, 135 § 2), as for instance, CDF, Decree *Ecclesiae pastorum* on the supervision of books by the pastors of the Church, March 19, 1975 (*Communicationes*, 7 [1975], pp. 8-11); Id., General decree by which is prescribed an excommunication *latae sententiae* to those who record or publish sacramental confession by any mass media, September 23, 1988 (*AAS*, 80 [1988], p. 1367); Congregation for Divine Worship, General decree *Christi mysterium* on the collection of Masses for the Blessed Virgin Mary, August 15, 1986 (*AAS*, 79 [1987], pp. 454-455); both decrees were promulgated by special faculties

granted by the Pope. With regard to general executory decrees, they do not need delegation from the Pope to be issued, since the dicasteries enjoy executive power. Some examples are the following: Congregation for the Causes of the Saints, General decree on the causes of the servants of God whose processes still remain in the hands of the Congregation, February 7, 1983 (*AAS*, 75 [1983], pp. 403-404); Sacred Congregation for Rites, Decree *Ecclesiae semper* on concelebration and communion under both kinds, March 7, 1965 (*AAS*, 57 [1965], pp. 410-412). Perhaps, because of the importance of the matter, this latter decree was approved in specific form by the Pope.

³⁵ Instructions are perceived by the Code of Canon Law to be a normative act of the authority endowed with executive power. They are to clarify the prescriptions of laws and elaborate on and determine the manner to be followed in implementing them (c. 34 § 1). However, of the 8 instructions issued after the promulgation of the Code, most of them have been issued to give guidance on certain doctrinal matters in the Church, such as CDF, *Libertatis nuntius*, August 6, 1984, (*AAS*, 76 [1984], pp. 876-909), and *Id.*, *Libertatis conscientia*, March 22, 1998, on liberation theology (*AAS*, 79 [1987], pp. 554-599), *Id.*, *Domum vitae*, February 22, 1987, on the respect of life (*AAS*, 80 [1988], pp. 70-102; *Id.*, *Domum veritatis*, May 24, 1990, on the ecclesial vocation of the theologian (*AAS*, 82 [1990], pp. 1550-1570). We even find a Pastoral instruction: Pontifical Council of Social Communications, *Aetatis novae adventu*, February 22, 1992, on the 20th anniversary of the instruction *Communio et progressio*, (*AAS*, 84 [1992], pp. 447-468).

³⁶ A declaration may be related to the interpretation of laws, as explained by F.G. Morrissey, but it has also been used to recall or summarize important truths that may have been threatened, to give correct interpretation of them, or even to respond to certain questions raised by episcopal conferences, such as CDF, Declaration in defense of catholic doctrine, *Mysterium Ecclesiae*, June 24, 1973 (*AAS* 65 [1973], pp. 396-408); *Id.*, Declaration *Iura et bona* on euthanasia, May 5, 1980 (*AAS*, 72 [1980], pp. 542-552). In presenting the Declaration *Mysterium Ecclesiae*, J. Hamer, secretary of the Congregation for the Doctrine of the Faith, stated: "Le terme déclaration indique que le document n'enseigne pas des doctrines nouvelles; mais il rappelle et résume le doctrine catholique définie ou enseignée dans des documents précédents du magistère de l'Église, en donne la juste interprétation, en indique les limites et la portée", in J. Hamer, "Note sur la déclaration *Mysterium Ecclesiae*", in *La Documentation catholique*, 70 (1973), p.670; see also F.G. Morrissey, *Papal and Curial Pronouncements*, pp. 29-32.

³⁷ At times, the *epistles* are called *letters* or *circular letters*. They may express the intentions and policies of the congregations involving doctrinal matters, such as CDF, Epistle, *Annus internationalis familiae*, on the reception of communion for divorced and remarried Catholics, September 14, 1994 (*AAS*, 86 [1994], pp. 974-979); *Id.*, Letter, *Communio notio*, on certain aspects of the Church understood as communion, May 28, 1992 (*AAS*, 85 [1993], pp. 838-850); *Id.*, Epistle, *Homosexualitatis problema*, on the pastoral care of homosexual persons, October 1, 1986 (*AAS*, 79 [1987], pp. 543-554); *Id.*, Epistle, *Sacerdotium ministeriale*, on the true ministers of the Eucharist, August 6, 1983 (*AAS*, 75 [1983], pp. 1001-1008). They may also outline procedures or even give norms to be observed in certain cases, as for instance, Congregation for Sacraments, Circular letter, *De processu super matrimonio rato et non consummato*, on the preparation of non-consummation marriage cases, December 20, 1986 (*Communicationes*, 20 [1988], pp. 78-84); Congregation for Religious and Secular Institutes, Letters to supreme moderators of institutes regarding a report to be sent regularly to the Holy See on the status and life of the institute, January 2, 1988 (*AAS*, 80 [1988], pp. 104-105, 106-107).

³⁸ A directory is rather a post-Vatican II type of ecclesiastical document. It may contain decrees (c. 33 § 1), but mostly it provides doctrinal and pastoral principles, norms, pastoral guidelines and so forth, as implementation of norms or principles of the universal Church. Most of the time, a directory may comprise parts of different weight, and dealing with anything that can be part of the pastoral ministry of bishops. The following are some examples: Congregation for Bishops, Directory, *Ecclesiae imago*, on the pastoral ministry of bishops, February 22, 1973 (*Enchiridion Vaticanum. Testo ufficiale e versione italiana*, vol. 4,

responses.³⁹ Besides these documents, we may find others such as notifications (*notificationes*), rescripts, (*rescripta*) profession of faith (*professio fidei*), notes (*notae*), directive notes (*notae directivae*), and norms (*normae*). All of them may fall under both normative power and the sharing in the ordinary magisterium of the successor of Peter.⁴⁰

We consider that two recent controversial documents need a few words. Firstly, the Response of the CDF concerning the doctrine on the inadmissibility of women to the ministerial priesthood found in the Apostolic letter of John Paul II, *Ordinatio sacerdotalis*. This was a response to a *dubium* proposed on the initiative of the Congregation itself; it was approved in *common form* by the Roman Pontiff and was intended to declare the level of certitude with which the Pope spoke in his apostolic letter.⁴¹ From a closer view, two things should be pointed out: 1) whereas the apostolic letter was sent only to bishops, the Response was intended for all Catholics; 2) while the

Bologna, Edizioni Dehoniane, 1980, pp. 1226-1487); Sacred Congregation for the Clergy, the Catechetical directory *Ad normam decreti*, April 11, 1971 (*AAS*, 64 [1972], pp. 97-176); Pontifical Council for the Promotion of Christian Unity, Directory *La recherche de l'unité*, March 25, 1993, for the application of principles and norms on ecumenism (*AAS*, 85 [1993], pp. 1039-1119).

³⁹ Leaving aside legal replies of the Pontifical Council for the Interpretation of Legislative Texts, the official *responses* of other dicasteries deal with varied doctrinal matters or facts. Their doctrinal authority relies on the intrinsic authenticity of the doctrine or fact to which they are related. See, for instance, CDF, Response concerning hysterectomy and other questions, July 31, 1993, in *AAS*, 86 (1994), pp. 820-821; *Id.*, Response on sterilization in catholic hospitals, March 13, 1975, in *AAS*, 68 (1976), pp. 738-740. Among the more recent official responses given by the Holy See, we find the one on the doctrine of the Apostolic letter *Ordinatio sacerdotalis*, given by the CDF, October 28, 1995, in *AAS*, 88 (1996), p. 1114.

⁴⁰ See A. Viana, "La potestad de los dicasterios de la Curia Romana", p. 101.

⁴¹ The Pope stated: "Ut igitur omne dubium auferatur circa rem magni momenti, quae ad ipsam Ecclesiae divinam constitutionem pertinet, virtute ministerii Nostri confirmandi fratres (cf. Lc. 22, 23), declaramus Ecclesiam facultatem nullatenus habere ordinationem sacerdotalem mulieribus conferendi, hancque sententiam ab omnibus Ecclesiae fidelibus esse *definitive tenendam*", in *AAS*, 86 (1994), p. 548, (emphasis added).

Pope declared that the doctrine on inadmissibility of women to the ministerial priesthood is to be *held definitively*, the response raised the doctrine to the level of belonging to the deposit of faith.⁴² Might the Congregation have gone beyond its authority in so doing?

Secondly, we could consider the new formula for the profession of faith and the oath of fidelity.⁴³ From a juridical point of view, the formula for the profession of faith can be seen as a direct application of c. 833 which prescribes that the profession of faith is to be made in certain cases. However, concerning the oath of fidelity, the statement extends the obligation beyond the prescription of c. 833. Did not this require at least a decree from the Congregation with special faculties or specific approval of the Pope?⁴⁴ In cases like these two, the one thing that remains, among the faithful, is more confusion.

⁴² See *AAS*, 87 (1995), p. 1114. The formula of the profession of faith and oath of fidelity (1989) carefully distinguishes between a doctrine *proposed as divinely revealed* and to be believed, and a doctrine *definitively proposed* and to be firmly embraced and held. According to the same Congregation and the common theological interpretation, this latter refers to those matters without which the deposit of faith cannot be rightly preserved and expounded; some call it the indirect object of infallibility. Therefore, although a doctrine definitively proposed is intimately related with the deposit of faith, it does not belong to its core. See CDF, Declaration *Mysterium Ecclesiae* on the defense of catholic doctrine, n. 3, June 24, 1973, in *AAS*, (1973), p. 401; *Id.*, Instruction *Domum veritatis* on the ecclesial vocation of the theologian, n. 23, May 24, 1990, in *AAS*, (1990), pp. 1559-1560.

⁴³ *AAS*, 80 (1988), p. 1367; see also, *AAS*, 81 (1989), pp. 104-106; F.G. Morrissey, *Papal and Curial Pronouncements*, pp. 23-24.

⁴⁴ See J. Coriden, "Inflating the Oath: the Rule Maker Breaks the Rules", in *Canadian Canon Law Society Newsletter*, 15 (1989), pp. 65-66.

2.4. Episcopal Conferences

Episcopal conferences⁴⁵ were formally recognized and given juridical status in the Church by Vatican II.⁴⁶ Although they existed in some countries before the Council, since then, they have been established everywhere, and exercise their pastoral office. They may be considered a legitimate authority with the faculty to issue the documents referred to in c. 754.⁴⁷ This means that episcopal conferences enjoy doctrinal authority as well as juridical power to enact such pronouncements. However, their doctrinal authority as well as their normative power are still the object of further studies.

⁴⁵ What we will say of episcopal conferences is to be applied, with appropriate adaptation, to *particular councils*, plenary or provincial, which enjoy legislative power and can lay down particular laws through general decrees (cc. 439, 446; cf. c. 29). Particular councils also have doctrinal authority, and through suitable means, they are to safeguard the integrity of faith and morals, especially with regard to writings and to other media of communication (cc. 753, 823 § 2).

Other groups of bishops may be taken into account such as the Latin-American Episcopal Council, the Symposium of Episcopal Conferences of Africa and Madagascar, the Federation of Episcopal Conferences of Asia and the Council of Episcopal Conferences of Europe. They do not have juridical status recognized by canon law nor enjoy any normative power; however, since they are theologically rooted on the ecclesiology of communion and on the principle of collegiality, they enjoy certain magisterial authority. In general assembly, they may issue pastoral criteria, guidelines of pastoral action, doctrinal reflections, or messages to their particular churches. These would serve, according to each bishop or episcopal conference, to implement plans of evangelization or of pastoral action at the diocesan or national level. For the faithful, these pronouncements do not have binding juridical force. Their doctrinal authority must be judged in the same way as that of episcopal conferences. Cf. A. Antón, "Santo Domingo: IV Conferencia General del Episcopado Latinoamericano. Su status teológico y el valor magisterial de su documento", in *Gregorianum*, 73 (1992), pp. 437-467; see also Consejo Episcopal Latinoamericano, *Rio de Janeiro, Medellín, Puebla, Santo Domingo: Conferencias Generales del Episcopado Latinoamericano*, Santa Fe de Bogotá, CELAM, 1994, 823p.

⁴⁶ *CD*, n. 38.

⁴⁷ In this sense, we think that c.754 could be called a *convergent point* of cc. 455 § 2 and 753. While the latter deals with doctrinal decisions, the former refers to juridical ones.

2.4.1. Doctrinal authority of Episcopal Conferences

Indeed, neither Vatican II, the 1983 Code of Canon Law, nor the 1969 and 1985 synods settled the questions about the nature, theological foundation and teaching authority of episcopal conferences. In an attempt to reach some consensus, Pope John Paul II established a commission to study the status and the magisterial authority of these conferences. The commission, under the direction of the Congregation for Bishops, drew up a draft document (*instrumentum laboris*) that was sent out to all episcopal conferences for comments.⁴⁸ It was welcomed, but also received many observations.⁴⁹ Furthermore, it was suggested that a new draft, due to the inconsistencies of the statement, be prepared.⁵⁰ Since the last report from Cardinal B. Gantin, at the end of 1990, we have not heard anything more on the matter.

The same question on the teaching authority of episcopal conferences has been a matter of discussion among theologians and canonists. Basically, there are two representative stances: on the one hand, G. Ghirlanda and J.P. Green do not recognize teaching authority for the episcopal conference as a body. For them, the subject of authentic teaching is not the episcopal conference, but the individual bishops teaching

⁴⁸ See "Draft Statement on Episcopal Conferences", in *Origins*, 17 (1987-1988), pp. 731-737.

⁴⁹ See B. Gantin, "An Update on the Bishops' Conferences Study", in *Origins*, 20 (1990-1991), p. 355.

⁵⁰ See, for instance, NCCB, "Response to Vatican Working Paper on Bishops Conferences", in *Origins*, 18 (1988-1989), pp. 397-402.

jointly.⁵¹ In this sense, interpreting c. 753, they say that bishops exercise their power of authentically teaching either individually in their dioceses, or in common when gathered in episcopal conferences or in particular councils.⁵² On the other hand, F.J. Urrutia defends the contrary.⁵³ For him, c. 753 must be interpreted in the sense that an episcopal conference, issuing doctrinal statements, acts collegially in the juridical sense, although not as the whole College of Bishops.⁵⁴

The teaching authority of episcopal conferences remains a complex theological reality that admits of many shades of meaning and variations. A full treatment of the

⁵¹ Among those who defend this standpoint are G. Ghirlanda, "De episcoporum conferentia deque exercitio potestatis magisterii," in *Periodica*, 76 (1987), pp. 573-603; J.P. Green, *Conferences of Bishops and Exercise of the *Munus Docendi* of the Church*, Rome, Gregorian University, 1987, 2 vols.; G. MUCCI, "Le Conferenze episcopali e l'autorità di magistero," in *La Civiltà cattolica*, 138 (1987), I, pp. 321-337; J. Ratzinger - V. Messori, *Rapporto sulla fede*, Cinisello Balsamo (Milano), Edizioni Paoline, 1985, pp. 59-61.

⁵² See G. Ghirlanda, "De episcoporum conferentia", p. 575.

⁵³ See F.J. Urrutia, "De exercitio muneris docendi a Conferentiis episcoporum. Impugnatio sententiae praecedentis," in *Periodica*, 76 (1987), pp. 605-636; among other authors who defend this stance we can mention J. Manzanares, "La autoridad doctrinal de las Conferencias episcopales", in H. Legrand, J. Manzanares, A. García y García (eds.), *Naturaleza y futuro de las Conferencias episcopales*, Salamanca, Departamento de publicaciones de la Universidad Pontificia, 1988 (Actas del coloquio internacional de Salamanca, Enero 3-8, 1988), pp. 289-321; A. Antón, *Conferencias episcopales ¿Instancias intermedias? El estado teológico de la cuestión*, Salamanca, Ediciones Sígueme, 1989, 491p.; Id., "Ejercen las conferencias episcopales un *munus magisterii*?", in *Gregorianum*, 70 (1989), pp. 439-494; L. Örsy, "Reflections on the Teaching Authority of the Episcopal Conferences", in T. J. Reese (ed.), *Episcopal Conferences. Historical, Canonical and Theological Studies*, Washington, D.C., Georgetown University Press, [1989], 233-252; A. Dulles, "Doctrinal Authority of Episcopal Conferences", in T.J. Reese, *Episcopal Conferences*, pp. 207-232; Id., "The mandate to Teach", in *America*, 158 (1988), pp. 293-295; Id., "The teaching Authority of Bishops' Conferences", in *America*, 148 (1983), pp. 453-455; Id., "Bishops' Conference Documents: What Doctrinal Authority?", in *Origins*, 14 (1984-1985), pp. 528-534.

⁵⁴ The CDF says that although an episcopal conference cannot be equated with the College of Bishops as a whole, however it contributes to the concrete realization of the collegial spirit (*affectus*); see CDF, "Instruction on the Ecclesial Vocation of the Theologian, *Donum Veritatis*", n. 19, in *AAS*, 82 (1990), p. 1158; English translation in *Origins*, 20 (1990-1991), p. 122; see also F.J. Urrutia, "De exercitio muneris docendi a conferentiis episcoporum", pp. 609, 629.

subject goes beyond our scope. Nevertheless, we feel obliged to recall some of the important elements supporting their authentic teaching authority:

1) Vatican II clearly states that the conference of bishops is an assembly in which the bishops of a certain country or region exercise their pastoral office, which includes the threefold office of sanctifying, teaching and governing.⁵⁵ Likewise, a careful reading of c. 753 would affirm that the episcopal conference has doctrinal authority in its territory.⁵⁶ Therefore, we conclude that episcopal conferences are subjects of the authentic magisterium, i.e., they teach authoritatively as part of their pastoral office.

2) There is general consensus that the episcopal conference is heir of particular councils which appeared in the early times of the Church and played an important role in the development and defense of revealed truth. Furthermore, some authors identify one with the other.⁵⁷ To deny doctrinal authority to episcopal conferences is to ignore the great tradition of the Church as well as the current practice of the Eastern Churches. In fact, episcopal conferences have come to do, *mutatis mutandis*, what particular councils did in the past.⁵⁸

⁵⁵ See *CD*, n. 38. Instead, c. 447 speaks of the assembly of bishops exercising together “certain offices.” This change was made, perhaps, to favor the independence of the diocesan bishop in relation to the episcopal conference, an issue that was strongly debated during Vatican II.

⁵⁶ As we saw above, others interpret c. 753 by saying that individual bishops are those who have doctrinal authority which they exercise together in episcopal conferences.

⁵⁷ See J. Manzanares, “La autoridad doctrinal de las Conferencias episcopales”, pp. 312-313.

⁵⁸ The Code of Canon Law recognized the existence and functions of particular councils; however, in practice, episcopal conferences have increasingly been taking their place. In the last decades, we know

3) "One is constituted a member of the episcopal body in virtue of the sacramental consecration and by the hierarchical communion with the head and members of the college."⁵⁹ Therefore, we can assert that the ordination of a bishop is an incorporation into a special communion within the larger communion of the whole Church.⁶⁰ Likewise, granted that this special communion exists at all times, it can also manifest itself externally in different degrees, ranging from the highest degree when the bishops are assembled in an ecumenical council to lesser degrees whenever they legitimately gather for an ecclesiastical purpose, as for instance, an episcopal conference.⁶¹ In other words, it seems that episcopal conferences are a sort of partial realization of collegiality, although not in the full sense.⁶² Therefore, they also participate in the authoritative teaching office.

4) As a matter of fact, episcopal conferences have issued both disciplinary and doctrinal statements, and are still doing so. Furthermore, many of them have statutes

only about the Second Plenary Council of the Philippines; see Plenary Council of the Philippines, 2^d, National Coordinating Office, "Primer on the Second Plenary Council of the Philippines", in *Boletín eclesiástico de Filipinas*, 65 (1989), pp. 482-515; R.R.G. Macaranas, *Active Lay Participation in the Life and Mission of the Church According to the Second Plenary Council of the Philippines of 1991*, (dissertation), Ottawa, Faculty of Canon Law, Saint Paul University, 1994, xiv-241p.; see also A. Dulles, "Doctrinal Authority of Episcopal Conferences", pp. 215-216.

⁵⁹ LG, n. 22: English translation in A. Flannery (gen. ed.), *Vatican Council II*..., p. 375.

⁶⁰ L. Örsy, "Reflections on the Teaching Authority of the Episcopal Conferences", p. 237.

⁶¹ *Ibid.*, p. 238.

⁶² A. Dulles says about this matter: "Since collegiality includes the power of the episcopal body to teach, it seems to follow at least at first sight, that conferences, as partial gatherings of the College, participate in the [authoritative] teaching office", in A. Dulles, "Doctrinal Authority of Episcopal Conferences", p. 218; see also *Id.*, "The Teaching Authority of Bishops' Conferences", p. 453; M. Faccani, *Collegio e collegialità episcopale nel sinodo 1969*, Bologna, Edizioni Dehoniane, 1991, p. 190.

approved by the Apostolic See, where their doctrinal function is recognized. Others have already established doctrinal committees. The universal law itself entrusted certain tasks to them which obviously presuppose doctrinal authority, as for instance, in matters of education (c. 804 § 1), preaching or intervention in the means of social communication (cc. 772 § 2, 831 § 2), editing national catechisms (c. 775 § 2), and so forth. Given the facts, we cannot easily deny that episcopal conferences have doctrinal authority.

Episcopal conferences enjoy only non-infallible authority; their teachings belong to the ordinary magisterium. The Christian faithful, for their part, owe to them a religious *obsequium* of mind, which implies maturity of conscience and responsibility in receiving those teachings, in order to avoid arbitrary subjectivism;⁶³ it also requires an attitude of dialogue among themselves and with church authorities, as well as an obligation of seeking for the truth concerning God and his Church (c. 748 § 1).⁶⁴

⁶³ In this regard, A. Antón stated: "Los decretos que los obispos emiten en la conferencia episcopal bajo las condiciones requeridas (CD, 38, 4; c. 455) tienen fuerza jurídica. Respecto a las declaraciones doctrinales emanadas a tenor del c. 753 no podemos contentarnos aquí con la mera obligación jurídica de tales decisiones, ya que la realidad teológica es más compleja. La adhesión que se exige de los fieles, no es un acto de mera obediencia, sino un asentimiento reponsable", in A. Antón, *Conferencias episcopales ¿Instancias intermedias?*, pp. 427-428.

⁶⁴ See M.R. Sobanski, "Les canons 753 et 754: problèmes choisis", in *Studia canonica*, 23 (1989), p. 293-295.

2.4.2. Legislative authority of Episcopal Conferences

Regarding the legislative authority of episcopal conferences,⁶⁵ there is a consensus that they enjoy proper executive power, as well as legislative power delegated by law.⁶⁶ Indeed, they can issue general decrees, either legislative or executive ones.⁶⁷ However, in general, it is difficult to determine whether a given general decree is legislative or simply executive in character. The difference between both can be found only in the intrinsic nature of each one: some general decrees may be proper laws, others may be acts of the competent executive authority.⁶⁸ In any case, all of them are decisions binding juridically under the following conditions:⁶⁹ (1) episcopal conferences can promulgate general decrees only in those cases prescribed by universal law, or where there is a special mandate of the Holy See, given either *motu proprio* or at the request of

⁶⁵ Many studies have been done on the legislative power of episcopal conferences, as for instance, C. De Diego-Lora, "Competencias normativas de las conferencias episcopales", in *Ius canonicum*, 24 (1984), pp. 527-570; V. Gómez Iglesias, "Los decretos generales de las conferencias episcopales", in *Ius canonicum*, 26 (1986), pp. 271-285; G. Feliciani, "Il potere normativo delle conferenze episcopali nella comunione ecclesiale", in *Monitor ecclesiasticus*, 116 (1991), pp. 87-93; J.T. Martín De Agar, "Estudio comparado de los decretos generales de las conferencias episcopales", in *Ius canonicum*, 32 (1992), pp. 173-229; J. Otaduy Guerin, "La potestad normativa de la conferencia episcopale (principios informadores del primer decreto de la Conferencia Episcopal Española)", in *Ius canonicum*, 32 (1992), pp. 231-259; P.R. Lagges, *The Legislative Authority of the Conference of Bishops: Its Nature and Scope in the 1983 Code of Canon Law* (dissertation), Ottawa, Faculty of Canon Law, Saint Paul University, 1988, xiv-276p.

⁶⁶ See C. De Diego-Lora, "Competencias normativas de las conferencias episcopales", pp. 553-557; cf. also cc. 135 § 2, 455 § 1.

⁶⁷ See c. 455 § 1. The Pontifical Commission for the Authentic Interpretation of the Code of Canon Law, in a reply of August 1, 1985, stated that the expression "general decrees" of c. 455 § 1 includes general executory decrees of the sort mentioned in cc. 31-33; see *AAS*, 77 (1985), p. 771: English translation in *CLD*, XI, p. 69.

⁶⁸ See C. De Diego-Lora, "Competencias normativas de las conferencias episcopales", p. 547.

the conference; (2) these decrees must be enacted at a plenary meeting, and receive at least two thirds of the votes of those who belong to the conference with a deliberative vote; (3) also required is the review (*recognitio*) of the Holy See; (4) afterwards, they must be promulgated through the channels determined by the same conference.

2.4.3. Pronouncements of Episcopal Conferences

There is no doubt regarding the legislative power of episcopal conferences, although it is not the same as regards their teaching authority which is still a matter of study.⁷⁰ However, the fact is that they issue both normative and doctrinal pronouncements.

Nowadays, the most frequent pronouncements of episcopal conferences are given in the forms of *decrees*, *directories*, *pastoral letters* and *declarations*.⁷¹ The first two are mainly normative pronouncements and bind juridically those to whom they are addressed. They can deal with the matters permitted by the universal law or by a special

⁶⁹ See V. Gómez Iglesias, "Los decretos generales de las conferencias episcopales", pp. 278-279.

⁷⁰ The promulgation of the document on the nature and doctrinal authority of episcopal conferences initiated in 1988 is still pending.

⁷¹ Each conference of bishops uses at its convenience a rich variety of other documents, such as *pastoral exhortations*, *pastoral messages*, *pastoral statements*, *policy statements*, *pastoral plans*, *pastoral reflections*, *pastoral notes*, *common declarations*, *common propositions*, and so forth. All of them are statements of pastors who try to read the signs of the times, give pastoral guidelines, and console their people; in a word, who try to teach the good news of Jesus Christ and to help the people live it, here and now. Thus, the authoritative weight of these statements will be determined in as much as they mirror the word of God and give witness to the faith of the entire Church.

mandate of the Holy See (c. 455 § 1).⁷² With regard to pastoral letters and declarations, they deal with a large number of issues, such as faith and morals, ethics, politics, economics, education, social issues, military questions, and so forth.⁷³ Some of them repeat and interpret what has been received as Church doctrine, others reiterate accepted moral principles; still others make prudential applications of moral principles to the complex situations of the time, or lay down pastoral guidelines. This latter category would require the lowest degree of religious *obsequium* of mind from the faithful, i.e., without imposing an obligation to assent, they should be seriously considered and reflected upon for the proper formation of conscience.⁷⁴

The faithful of a given territory, in order to discern what response to give to the pronouncements of their episcopal conference or particular councils, must consider, in an

⁷² In the specific field of the teaching office of the Church, the universal law allows episcopal conferences to decide on the opportuneness of preaching in a church or oratory (c. 767 § 1), to give general norms on religious education in schools or through means of social communications (c. 804 § 1), to provide norms for those who take part in radio or television programs concerning Catholic doctrine or morals (cc. 772 § 2, 831 § 2), to publish catechisms for their territories (c. 775 § 2), to approve either the publication of sacred Scriptures or the publication of their translation even with the cooperation of separated brethren (c. 825), to draw up a list of censors or to establish a commission of censors for the service of the particular churches (c. 830 § 1), to establish norms regulating the catechumenate (cc. 788 § 3, 851, 1.^o), to promote and issue practical norms for ecumenism (cc. 755 § 2, 844 §§ 4-5). See, for instance, the series of decrees touching on the teaching office of the Church promulgated by the Canadian Conference of Catholic Bishops, in *Studia Canonica*, 19 (1985), pp. 174-177; 22 (1988), pp. 206-209, 218-221, 468-477; see also A. McBride, "The National Catechetical Directory: An Overview", in *Origins*, 8 (1978-1979), pp. 706-708; J.T. Martín De Agar, "Estudio comparado de los decretos generales de las conferencias episcopales", pp. 188-202.

⁷³ See, for instance, Les évêques allemands du Rhin Supérieur, "Divorcés remariés: le respect de la décision prise en conscience", July 10, 1993, in *La Documentation catholique*, 90 (1993), pp. 986-994; Episcopal Conference of Argentina, Letter "The Dirty War: Nothing was Enough to Halt the Horrors", April 27, 1996, in *Origins*, 26 (1996-1997), pp. 1, 3-8; La Conférence Épiscopale du Japon, Déclaration "Les problèmes de l'immigration", April 1993, in *La Documentation catholique*, 90 (1993), pp. 495-496.

environment of faith, the following: (1) determine if the pronouncements are doctrinal or disciplinary in character; (2) regarding doctrinal pronouncements, verify if their content deals with matters of faith and morals or with other matters where the hierarchy enjoys no special competence; (3) verify if their pronouncements are solidly supported by all the members of the conference or not; (4) determine if the subject matter of the content refers to a doctrine or principles accepted in the Church, to controversial matters, to simple reflections, or to pastoral actions.⁷⁵ With these guiding points, the faithful would be able to give a just religious *obsequium* of mind to the magisterium of their bishops.

2.5. Individual Bishops

Individual bishops are the visible source and foundation of unity in their own particular churches. They exercise their pastoral office over the portion of the people of God living in their particular churches with a power which is proper, ordinary and immediate.⁷⁶ The preaching of the gospel, as part of the pastoral office, is their first duty.⁷⁷ Endowed by the authority of Christ, they teach the faith authoritatively to the people entrusted to them, the faith which is destined to inform their thinking and direct

⁷⁴ Cf. A. Dulles, "The Teaching Authority of Bishops' Conferences", pp. 454-455.

⁷⁵ Cf. A. Dulles, "Bishops' Conference Documents: What Doctrinal Authority?", p. 532.

⁷⁶ See *LG*, nn. 23, 27; c. 381 § 1.

⁷⁷ P. Huizing says: "Cette mission pastorale a comme fonction première celle de maintenir et de protéger la communion et l'union vivante de l'Église et des Églises particulières dans la charité et dans la foi. La mission du magistère fait partie de cette mission pastorale, et a précisément pour objet la conservation et la protection de la communion dans la foi", in P. Huizing, "Magistère: pouvoir ou témoignage?", in *Revue de droit canonique*, 25 (1975), p. 202.

their conduct.⁷⁸ They also make authoritative judgements as to what is or is not in conformity with the word of God.⁷⁹ As regards their legislative power, Vatican II stated: “In virtue of this power [to govern their dioceses] bishops have a sacred right and a duty before the Lord of legislating for and of passing judgment on their subjects, as well as of regulating everything that concerns the good order of divine worship and of the apostolate.”⁸⁰

In exercising their teaching office, the bishops are moderators of the ministry of the divine word (cc. 756-772) and supervisors of catechetical formation (cc. 773, 775 § 1, 777, 780); they also are to foster missionary endeavours (c. 782 § 2) and the ecumenical movement (cc. 755 § 2, 383 § 3). They are to provide means for the faithful to receive catholic education (c. 794) and are to be vigilant over schools (cc. 802 § 1, 804, 806 § 2) and catholic universities (cc. 818, 819, 821). They are to be also concerned about the correct use of the means of social communications (c. 822) and writings (c. 823, 831 § 1).

They do not enjoy the charism of infallibility. However, when they teach in communion with the Roman Pontiff and with the College of Bishops, they do it as authentic teachers. In consequence, the faithful entrusted to their care are obliged to

⁷⁸ See *LG*, n. 25.

⁷⁹ See CDF, “Instruction on the Ecclesial Vocation of the Theologian, *Donum veritatis*”, n. 19, in *AAS*, 82 (1990), p. 1158: English translation in *Origins*, 20 (1990-1991), p. 122.

⁸⁰ *LG*, n. 27.

submit to their decision, made in the name of Christ, in matters of faith and morals, and to adhere to it with a ready and respectful allegiance of mind.⁸¹ This response, while not blind submission, is a responsible one. Therefore, besides considering the authority of the bishop received through episcopal ordination,⁸² the faithful should verify the authenticity of the message, i.e., if it is in accord with the faith of the people of God and with the teachings of the Roman Pontiff and the College of Bishops.

In the pastoral governance of the bishops, the diocesan synod has a pre-eminent role. In the synod, universal laws are adapted to particular circumstances, new pastoral methods are proposed, endeavours and initiatives are fostered, and doctrinal errors — if there are any — are corrected. The dispositions and decisions of the synod are promulgated by the bishop in the form of *decrees* and *declarations*.⁸³ However, statutes are not the sole products of a diocesan synod, nor is the synod the only legislative source in a particular Church. The synod may also promote the development of customs, deal with administrative matters or establish diocesan policies which do not have the force of law.⁸⁴

⁸¹ See *LG*, n. 25; c. 753.

⁸² See *LG*, n. 21.

⁸³ See c. 466; Sacred Congregation for Bishops, Directory on the pastoral ministry of bishops, *Ecclesiae imago*, nn. 162-165, in *Enchiridion Vaticanum. Testo ufficiale e versione italiana*, vol. 4, nn. 2205-2210; see also G. Corbellini, *Il sinodo diocesano nel nuovo 'Codex Iuris Canonici'*, (dissertation) Roma, Pontificia Università Lateranense, 1986, p. 159.

⁸⁴ As examples of synods, see Diocese of Toledo, *Second Synod of the Diocese of Toledo. Pastoral Plan for Implementation*, 1990, 56p; Diocese of Corpus Christi, *The second Synod of the Diocese of Corpus Christi (April 13-15, 1988)*, 1989, iv-288p; see also, D.M. Ross, *Diocesan Synods: The*

Among the great variety of other documents used by bishops, as they see fit, we can mention *pastoral letters*,⁸⁵ *directories*,⁸⁶ *pastoral instructions*;⁸⁷ still others are *pastoral guidelines*, *statements*, *(press) communications*, and so forth. Each pronouncement should be received according to its own intrinsic value, i.e., whether it has juridical binding force or refers to a doctrinal statement, or even if it simply offers guidelines for pastoral action. It is important to point out that we are here at the most concrete level of reality, where both the doctrine and the norms of the Church are to be applied, where faith and life must become one. Thus, in fulfilling their teaching mission, the pastors make use of the contingent, of things that change from one place to another. The faithful of the particular Church must be aware of this, in order to give a faithful and responsible reception to their pastors' pronouncements.

3. Documents to which canon 754 applies

The obedience asked for in c. 212 § 1 extends both to teaching and to discipline;

Application of the Law in Three Dioceses in the United States of America, (dissertation), Ottawa, Faculty of Canon Law, Saint Paul University, 1992, xv-265p.

⁸⁵ See, for instance, J. Orchamp, bishop of Angers (France), *Lettre pastorale*, "Couple et famille", January 1993, in *La Documentation catholique*, 90 (1993), pp. 161-165; see also Sacred Congregation for Bishops, *Directory on the pastoral ministry of bishops*, *Ecclesiae imago*, n. 60, in *Enchiridion Vaticanum. Testo ufficiale e versione italiana*, vol. 4, nn. 2034-2035.

⁸⁶ See, for instance, E. Appignanesi, archbishop of Potenza-Muro Lucano Marsico Nuovo, "Direttorio circa il ministro straordinario dell'Eucaristia", January 6, 1994, in *Notitiae*, 31 (1995), pp. 187-193.

⁸⁷ See, for instance, Cardinal C. Oviedo, archbishop of Santiago de Chile, "Cuaresma en tiempos del IX Sinodo Arquidiocesano", February 11, 1995, in *Notitiae*, 31 (1995), pp. 54-64. Bishop D. Thompson (of Charleston, S.C.) promulgated, in a form of Letter, an Instruction for his diocese: "Communion under Both Kinds", April 15, 1996, in *Origins*, 26 (1996-1997), pp. 15-16.

the constitutions and decrees of c. 754 may indeed be counted among those dispositions given by the pastors of the Church to propose doctrine or to proscribe erroneous opinions.⁸⁸

3.1. Documents mentioned in canon 754

Canon 754 clearly speaks of constitutions and decrees issued by the legitimate authority of the Church. How do we distinguish these documents?

3.1.1. Nature of a constitution

The Code of Canon Law uses the word *constitution* in three senses:⁸⁹ (1) as the proper law or the fundamental code of institutes of consecrated life and of societies of apostolic life (c. 587 § 1; cf. c. 732), containing both spiritual and juridical elements; (2) to express the institutional structures of the Church that support and serve the people of God (title Book II, part II); (3) certain documents of the magisterium of the Church (c. 754). Besides this, the Code says nothing more about the nature of a constitution.

⁸⁸ J.H. Provost says: "The obedience specified in c. 212 § 1 relates to the kind of teaching dealt with in canons 750-754 and not to personal opinions or particular theories that are not included in magisterial teaching", in J.A. Coriden - T.J. Green - D.E. Heintschel (eds.), *The Code of Canon Law: A Text and Commentary*, New York, NY, Paulist Press, 1985, p. 145; see also M.R. Sobanski, "Les canons 753 et 754: problèmes choisis", p. 295.

⁸⁹ Cf. L. Ochoa, *Index verborum ac locutionum Codicis iuris canonici*, ed. secunda et completa, Città del Vaticano, Libreria editrice Lateranense, 1984, p. 108.

Our concern is the last usage. But since the Code only mentions it in passing, we must recur to history and the constant use in the Church to find out its nature. *Constitution* is a concept that comes from the Roman law, and today has come to signify the highest decisions of the Roman Pontiff. A constitution is used by the Pope not only to promulgate laws related to matters of faith or morals,⁹⁰ but also to deal with important matters concerning the Church universal or a particular Church, such as the erection or the division of a diocese, although these latter are not personally signed by the Pope.⁹¹ Ecumenical councils have also used *constitutions* to expose the doctrine of the Church; furthermore, the dispositions and decisions of the diocesan synod have been called *constitutions*.⁹² We should not extend the concept unduly.

⁹⁰ L. Chopin, in general, called constitutions the encyclicals by which the Pope gave a direction, a universal teaching, or principles for judgment and behavior; see L. Choupin, *Valeur des décisions doctrinales et disciplinaires du Saint - Siège. Syllabus, Index; Saint Office 21 septembre 1894: Galilée. Congrégations Romaines; L'Inquisition au Moyen Âge*, 3^a. ed. rev. et aug., Paris, Beauchesne, 1928, pp. 52-53.

⁹¹ "Les constitutions doivent être entendues non seulement dans le sens ancien de loi portée par le pape, mais aussi comme une forme de documents pontificaux qui concernent les affaires importantes de l'Église. Il ne s'agit pas dans ce canon d'affirmations pontificales transmettant ou expliquant l'enseignement de l'Église. C'est le c. 752 qui en parle. Il ne s'est pas question non plus dans le c. 754 de l'obéissance religieuse mais du respect des constitutions et des décrets. Il faut les respecter comme on respecte les dispositions du droit", in M.R. Sobanski, "Les canons 753 et 754: problèmes choisis", p. 295; see, also, R. Naz, "Constitution", in *Dictionnaire de droit canonique*, vol. 4, Paris, Librairie Letouzey et Ané, 1949, cols. 428-429; F.G. Morrissey, *Papal and Curial Pronouncements*, pp. 15-17.

⁹² See Sacred Congregation for Bishops, Directory on the pastoral ministry of bishops, *Ecclesiae imago*, February 22, 1973, n. 165, in *Enchiridion Vaticanum. Testo ufficiale e versione italiana*, vol. 4, Bologna, Edizioni Dehoniane, 1980, n 2210.

3.1.2. Nature of a decree

A decree is a document which has also inherited its use and meaning from Roman law. The current Code treats of *general legislative decrees* (cc. 29-30),⁹³ *general executive decrees* (cc. 31-33)⁹⁴ and *particular decrees* (cc. 48-58).⁹⁵ However, in the current language of the Church, *decree* is also a term used to express the decisions taken in councils, whether doctrinal or disciplinary. For instance, we can find expressions such as “the *decrees* of Trent”, or “the *decrees* of Vatican II” (see cc. 338 § 1, 441; cf. cc. 446, 952).⁹⁶ In fact, *decrees* are currently used in legislative, administrative⁹⁷ or judicial matters, by the Roman curia, the bishops, or judges during judicial processes.⁹⁸ Vatican II also used them to lay down general principles (theological and pastoral) in varied

⁹³ A *general legislative decree* is a document by which common prescriptions are issued by a competent legislator for a community capable of receiving law. The legislator might be the Pope for the Church universal, the bishop for his own diocese; or a group of bishops for the portion of the people of God entrusted to them. It can be issued by persons who have proper or delegated legislative power, in accord with the norms of law (cc. 29-30, 135 § 2).

⁹⁴ A *general executive decree* determines more precisely the methods to be observed in applying the law or to urge the observance of laws. Those who possess executive power are able to issue such decrees within the limits of their competency (c. 31). They oblige those who are bound by the laws to which they are attached (c. 32).

⁹⁵ A *particular decree* is an administrative act issued by a competent executive authority in which a decision is given or a provision is made in a particular case in accord with the norms of law (c. 48).

⁹⁶ L. Chopin divided decrees into two kinds: doctrinal or dogmatic decrees, and disciplinary ones. The former dealt with a point of Catholic doctrine, a theoretical question related to faith and morals, or on erroneous opinions to be proscribed. The latter regulated practical matters on discipline, some of them being indirectly related to the doctrine. See L. Choupin, *Valeur des décisions doctrinales et disciplinaires du Saint - Siège*, p. 57.

⁹⁷ See, for instance, CDF, “Decree on the Supervision of Books by the Pastors of the Church, *Ecclesiae pastorum*”, March 19, 1975, in *AAS*, 67 (1975), pp. 281-284; English translation in *CLD*, VIII, pp. 991-996.

⁹⁸ Cf. R. Naz, “Décret”, in *Dictionnaire de droit canonique*, vol 4, cols. 1061-1062; see also F.G. Morrissey, *Papal and Curial Pronouncements*, pp. 24-27.

matters.⁹⁹

Regarding the *decrees* mentioned in c. 754, M.R. Sobanski says that they are to be understood according to cc. 29-33.¹⁰⁰ J.A. Coriden, for his part, refers to them under the general term of “pastoral documents.”¹⁰¹ We must remember, however, that we are in the context of the teaching office of the Church, and therefore the documents in question are to be doctrinal in character; however, they could also cover disciplinary matters related to the deposit of faith.¹⁰² Finally, the canon wishes to stress the importance of the responsibility of the Roman Pontiff and the College of Bishops for the universal Church, without minimizing the bishops’ task in their own dioceses.

3.2. The object of the documents mentioned in canon 754

Canon 754 states that the object of the constitutions and decrees is both to propose doctrine and to proscribe erroneous opinions. In what sense is this statement to be understood?

⁹⁹ Paul VI stated: “To enable bishops to fulfill their office with greater facility and accommodation and to apply more effectively the principles solemnly approved by the sacred council in the Decrees *Christus Dominus* and *Presbyterorum Ordinis* the following norms are laid down”, in Paul VI, Apostolic letter, *motu proprio*, *Ecclesiae sanctae*, 6 August 1966, in *AAS*, 58 (1966), p. 757; English translation in A. Flannery (gen. ed.), *Vatican Council II...*, p. 593.

¹⁰⁰ See M.R. Sobanski, “Les canons 753 et 754: problèmes choisis”, p. 295.

¹⁰¹ “They are pastoral documents by legitimate authorities to reassert accepted doctrines or warn of dangerous errors, and, as such, they deserve a respectful reception”, in J.A. Coriden, T.J. Green, D.E. Heintschel (eds.), *The Code of Canon Law: A Text and Commentary*, p. 549.

¹⁰² Cf. *The Canon Law. Letter and Spirit. A practical Guide to the Code of Canon Law*, p. 419.

3.2.1. To propose doctrine

In formulating the norm, the legislator was aware of the need of presenting the gospel to the world of the present time in a positive way. Thus, “to propose doctrine” of c. 754 is to be understood as to expose, to offer, or to display the good news. But it also means to foster studies,¹⁰³ so that the understanding of the faith may grow and respond to new questions arising from the progress of the sciences or human culture.¹⁰⁴ Indeed, Pope John Paul II stated:

The principal task entrusted to the Council by Pope John XXIII was to guard and to present better the precious deposit of Christian doctrine in order to make it more accessible to the Christian faithful and to all people of good will. For this reason the Council was not first of all to condemn the errors of the time, but above all to strive calmly to show the strength and beauty of the doctrine of the faith.¹⁰⁵

Certainly, the documents of Vatican II, especially its constitutions, are clear examples of proposing doctrine rather than condemning errors. However, while the entire people of God participates in the prophetic office, and theologians have an important role in the searching for a deeper understanding of the revealed truth and in finding suitable ways to present it today, only to the magisterium of the Church was assigned the mission

¹⁰³ J. Hamer, in presenting the Declaration *Mysterium Ecclesiae*, said that the purpose of the declaration was not only to indicate the doctrine to be received and the contrary opinions to avoid, but also, to stimulate theological research. See J. Hamer, “Note sur la déclaration *Mysterium Ecclesiae*”, in *La Documentation catholique*, 70 (1973), p. 671.

¹⁰⁴ Cf. *PB*, art. 49; CDF, “Declaration on Euthanasia”, May 5, 1980, in *AAS*, 72 (1980), pp. 542-543; English translation in *Origins*, 10 (1980-1981), p. 155.

to propose it authentically, that is, to present it with the authority of Christ, under the guidance of the Holy Spirit.¹⁰⁶

3.2.2 To proscribe erroneous opinions

Even though we expect from the magisterium a positive proclamation of the doctrine to be believed, its function would be incomplete were it to ignore the many misinterpretations of the word of God or false opinions against the truth. This is the reverse side of the same coin, the unpleasant side of the magisterium's mission. For, the authentic interpretation of revealed truth also entails pointing out interpretations contrary to it or opinions that can mislead the Christian faithful. So, as the purpose of c. 1324 of the 17/CIC was to provide a means for the defense of the deposit of faith, c. 754 maintains the same purpose, though with a less rigid attitude.

The Apostolic constitution *Pastor Bonus*, in determining the task of the Congregation for the Doctrine of the Faith, sheds some light on this point, as we saw it above.¹⁰⁷ Indeed, at the universal level, this Congregation watches over the integrity of faith and morals. Bishops and episcopal conferences carry out the same mission in their particular sphere. The Decree of the same Congregation, on the supervision of books by

¹⁰⁵ John Paul II, Apostolic constitution *Fidei depositum*, October 11, 1992, in *Catechism of the Catholic Church*, Ottawa, CCCB, 1994, p. 5.

¹⁰⁶ *I.G.*, n. 25.

¹⁰⁷ *PB*, art. 51.

the pastors of the Church, *Ecclesiae pastorum* (March 19, 1975), which rules were later included in the Code (cc. 823-832), stated:

But, in order to preserve and guard the truths of faith and morals in their entirety, the pastors of the Church have the duty and the right to keep watch that the faith and morals of Christians suffer no injury through the written word [or in the use of the means of social communication] and therefore also to insist that works for publication dealing with faith and morals be first submitted for their approval; and to condemn books or other writings which attack sound faith or right morals. This office belongs to the bishops, whether individually or assembled in local councils or episcopal conferences, for the faithful entrusted to their care, and to the highest authority of the Church for the whole people of God.¹⁰⁸

In short, both the supreme authority of the Church, acting by itself or through the congregations, and the bishops in their own sphere, have the duty and the right of guarding the integrity of the faith and good morals. Therefore, when need be, they are compelled to proscribe erroneous opinions, that is, to point out or to make public those books, writings or other means containing opinions which attack sound faith or right morals. This duty of pastors coincides with what cc. 750 and 752 declare at the end, namely, that all the Christian faithful are bound to avoid whatever does not accord with the infallible, or the authentic non-infallible doctrine of the Church.

However, in order to avoid injustice, the magisterium of the Church should proscribe such erroneous opinions only after a careful investigation and having given the

¹⁰⁸ *Communicationes*, 7 (1975), p. 8: English translation in *The Tablet*, 229 (1975), p. 374; see also c. 823.

author the opportunity to explain his or her thoughts. This must be carried out according to the norms of the Church, and above all, with charity.¹⁰⁹ Unfortunately, the practice leaves much to be desired; because there still are cases in which theologians feel treated unfairly and uncharitably by the CDF or their bishops, i.e., little dialogue or opportunity of defense is given to them.¹¹⁰

3.2.3. Matters not covered by canon 754

Our canon clearly states that the object of the constitutions and decrees is to propose doctrine and to proscribe erroneous opinions. Therefore, it does not include those disciplinary documents which are not related at all to the task of guarding, penetrating or proclaiming the revealed truth (c. 747 § 1), as for instance, constitutions of religious institutes or of societies of apostolic life, or judicial decrees in trials, etc. However, it is good to note that these disciplinary documents maintain their own binding force over those to whom they are directed.

¹⁰⁹ See CDF, "Instruction on the Ecclesial Vocation of the Theologian, *Domum veritatis*", n. 26, in *AAS*, 82 (1990), p. 1561; English translation in *Origins*, 20 (1990-1991), p. 123.

¹¹⁰ For instance, — without judging the doctrine involved — on November 20, 1995, the CDF imposed on Fr. T. Balasuriya (from Sri Lanka) a particular formula of a profession of faith to be signed in the presence of witnesses. Such a formula differs greatly from the one published in 1989 for the universal Church, and its use seems more inquisitorial than pastoral. The reference is taken from *prot. n. 18 93 - 01264*, not yet published; cf. also, M. Hebblethwaite, "Keeping the Theology Immaculate", in *The Tablet*, (1996), pp. 606-607. Among other experiences, we can also mention those of C.E. Curran and B. Häring; see C.E. Curran, *Faithful Dissent*, p. 26-47; B. Häring, in B. Häring, *My Witness for the Church*, New York, Paulist Press, 1992, pp. 90-188. At the local level, Fr. R. McBrien also feels that a formal dialogue was denied by the U.S. Bishops' Committee for the Doctrine about the third edition of his book *Catholicism*; See "Exchange of Correspondence on Catholicism", in *Origins*, 25 (1995-1996), pp. 744-748; cf. also, "Review Criticizes New Edition of Father McBrien's *Catholicism*", in *Origins* 25 (1995-1996), pp.

3.2.4. Documents that could be considered under canon 754

Therefore, it would seem that the various types of pronouncements used by the pastors of the Church go beyond those to which c. 754 refers. Indeed, while our canon speaks only of constitutions and decrees whose specific end is to propose doctrine and to proscribe erroneous opinions, types of ecclesiastical pronouncements number more than thirty. In an attempt to cover the documents mentioned in our canon, and in light of our study, we can now distinguish the following categories of documents:

1) Primary category of documents: documents that may *directly* or *indirectly* propose doctrine and proscribe erroneous opinions. The former contain the doctrine of the Church authoritatively exposed, such as the constitutions and decrees of Vatican II; they also may proscribe contrary opinions, such as the constitutions of Vatican I (1870), or the decree *Lamentabili sine exitu* (1907) of the Holy Office. The constitutions and decrees that indirectly propose doctrine or proscribe erroneous opinions, refer to those that accompany the doctrine or protect it from error, or provide suitable means for the people of God to carry out faithfully its teaching office, such as the Apostolic constitution for the publication of the Catechism of the Catholic Church, *Depositum fidei*, October 11, 1992,¹¹¹ or the Decree on the supervision of books by the pastors of the

737, 739-744; National Conference of Catholic Bishops, Committee for the Doctrine, "Narrative: The Staff Review of McBrien's *Catholicism*", in *Origins*, 26 (1996-1997), pp. 137-138.

¹¹¹ *AAS*, 86 (1994), pp. 113-118.

Church, *Ecclesiae pastorum*, March 19, 1975.¹¹²

2) Secondary category of documents: those intended to implement the primary ones or which rely on them. We refer to *motu proprios*, *instructions*, *declarations* and *directories*, such as, Paul VI, *Motu proprio Sacram liturgiam*, January 25, 1964, as part of the implementation of the conciliar constitution *Sacrosanctum concilium*;¹¹³ Pontifical Council for the Instruments of Social Communication, Pastoral instruction *Communio et progressio*, January 29, 1971, for the implementation of the conciliar decree on the means of social communications, *Inter mirifica*;¹¹⁴ CDF, Declaration in defense of catholic doctrine, *Mysterium Ecclesiae*, June 24, 1973, which relies on the Dogmatic constitution *Lumen gentium*;¹¹⁵ Pontifical Council for the Promotion of Christian Unity, Directory on the application of principles and norms on ecumenism, *La recherche de l'unité*, March 25, 1993, which relies on the conciliar decree *Unitatis redintegratio*.¹¹⁶

Other documents do not fall under c. 754, such as encyclical letters, apostolic epistles, decretal letters, pastoral letters, *motu proprios* published after the promulgation of the current Code of Canon Law, and so forth. Some are doctrinal in character and might apply under cc. 750, 752, 753 and 212 § 1; others are disciplinary and might be

¹¹² *Communicationes*, 7 (1975), pp. 8-11.

¹¹³ *AAS*, 56 (1964), pp. 139-144.

¹¹⁴ *AAS*, 63 (1971), pp. 593-656.

¹¹⁵ *AAS*, 65 (1973), pp. 396-408.

¹¹⁶ *AAS*, 85 (1993), pp. 1039-1119.

considered under c. 212 § 1. In other words, although other documents do not fall directly under canon 754, they have their own binding force, according to their character.

Our canon gives more importance to the Roman Pontiff, to the College of Bishops and to the Roman dicasteries, than to lower authorities. This is because the former enjoy power over the universal Church, while the others exercise it over their own particular churches. However, bishops, either individually or gathered in episcopal conferences or particular councils, enjoy more freedom to exercise their pastoral office in the particular circumstances. Likewise, the faithful entrusted to their care can find a wider margin of freedom in observing responsibly the dispositions of their pastors concerning their participation in the teaching office of the Church.

CONCLUSION

This chapter can be seen as a conclusion of our work, in the sense that both sections on the elements given to weigh the nature and authority of ecclesiastical documents and the listing of those specific documents to which canon 754 could apply, rely on the previous chapters. However, we consider it important to make the following remarks:

1. The ecclesiastical documents to which c. 754 applies directly are few. Indeed, the canon clearly speaks of constitutions and decrees enacted to *propose* doctrine and to

proscribe erroneous opinions, and only the authentic magisterium has the power to propose authentically the doctrine of the Church or to judge erroneous opinions. On the other hand, it is important to keep in mind that every ecclesiastical document has its own doctrinal or juridical value and binding force independently of c. 754.

2. Regarding the legitimate authority enacting those documents, our canon mentions especially the Roman Pontiff and the College of Bishops, whose pastoral office extends to the entire Church. Thus, when they propose doctrine to be received or proscribe errors to be avoided, they do so as the highest magisterial instance. Therefore, to judge the doctrinal weight of their pronouncements, we must determine not only their manifested mind and intention, but also the relationship of the contents to divine revelation.

3. The bishops, for their part, individually or gathered in particular councils or episcopal conferences, are authentic instructors and teachers of the faith for the faithful entrusted to their care. They deal with the most concrete issues in their particular churches, which they illumine by the word of God, using a language more adapted to the various cultures. Thus, while they are obliged to maintain communion with the Pope and the College of Bishops, they are also prompted to use accidental means in carrying out their pastoral office. Therefore, in their particular churches, bishops could fulfil the task of proposing doctrine and proscribing erroneous opinions in a less solemn way than that foreseen by c. 754. The faithful, for their part, may adhere with a religious submission of

mind to the authentic magisterium of their bishops, but without the juridical approach of c. 754.

4. Besides, we note a greater acceptance today of the idea that both the meaning and the fruitfulness of ecclesiastical documents rely not so much on their formal authority, as on their intrinsic merits and even on the credibility of their author; this can be seen in the phenomenon of “reception” by theologians and canonists.¹¹⁷

In concluding our study on c. 754, we now intend to draw further important general conclusions and insights, which we hope will be useful for the development of Canon Law and its application in the life of the Church today, especially regarding the teaching office of the Church.

¹¹⁷ See, for instance, A. Antón, *Conferencias episcopales ¿Instancias intermedias?*, p.436; A. Dulles, “Bishops’ conference Documents: What Doctrinal Authority?”, p. 533; L. Örsy, “Reflections on the Teaching Authority of the episcopal conferences”, p. 240.

GENERAL CONCLUSION

The actions of the magisterium of the Church over the past centuries provide the historical context for the first source of our canon, the conclusion of the Dogmatic constitution *Dei filius* (1870). Later on, this passage became c. 1324 of the 17/CIC, then was transformed into the current c. 754. It was a way of acting determined by its time. The Church felt that its foundation, the deposit of faith and the authority of the ecclesiastical magisterium, was threatened by philosophical, political, and theological trends of the period. As a result, the hierarchy reacted by extolling the institutional and juridical dimensions of the Church, thus reinforcing and centralizing ecclesiastical power. This attitude eventually led the ecclesiastical magisterium to perceive itself as the only bearer of the teaching office of the Church, imposing juridically, on the faithful, doctrine to be received or contrary opinions to be avoided, and diminishing the role of theologians and exegetes. *Dei filius* and c. 1324 mirror this juridical approach of the magisterium of the Church.

Vatican II brought about a deeper understanding of the Church. Without denying its institutional aspect, the council rediscovered it as the people of God immersed in time and in the various cultures, made up of women and men with equal dignity, sharing jointly responsibility for the threefold office of teaching, sanctifying, and governing. It also saw it as a people, sustained and guided by the Holy Spirit, called to give witness to God's revelation. Among the members of this people, the bishops exercise the function

of interpreting and teaching authentically the word of God, not placing themselves above it but as its servant.¹

In the light of this context and of the discussion which took place during the process of formulation of c. 754 of the Code of Canon Law, we would like to offer the following general conclusions and reflections:

1. Canon 754 is to be understood in light of its main sources: *Dei filius*, c. 1324 of 17/CIC and the Vatican II perspectives. All these texts had as their purpose to safeguard, not only the object of divine and catholic faith, but also the teachings of the ordinary magisterium. The conclusion of *Dei filius*, presupposing the authority of the Council, enhanced the authority of the Roman congregations, saying that the faithful had to avoid not only any doctrine condemned by *Dei filius*, but also those teachings proscribed or prohibited previously by the Holy See. On the other hand, c. 1324 stated, in general, that the faithful had to avoid, not only a doctrine contrary to the object of divine and catholic faith (c. 1323), but also any one that was contrary to the teachings of the ordinary magisterium. Later, in accord with the spirit of Vatican II, the commission for the revision process softened the tone of the canon and introduced the positive part — “to propose doctrine.”

¹ *DV*, n. 10; *LG*, n. 25.

2. In order to understand c. 754, it is helpful to keep in mind the following presumptions underlying the canon: firstly, among the people of God, the ecclesiastical magisterium has the first responsibility of promoting, preserving, and defending the integrity and unity of faith and morals. Secondly, this magisterium is also the only one endowed with authority to interpret authentically the word of God.² Therefore, it can propose doctrine or judge the falsehood of other teachings. In the third place, since this same magisterium enjoys the power of jurisdiction, it often uses it for the service of the gospel, imposing certain obligations on the faithful relating to the teaching office of the Church.³ We also recognize that the canon, even if it stresses the primacy of the Roman Pontiff and the College of Bishops, decentralized magisterial power by speaking of *legitimate authority*, which includes, besides the Roman congregations, individual bishops, particular councils, and episcopal conferences.

3. The canon retained a juridical approach to the teaching office of the ecclesiastical magisterium. Even though one of the consultants proposed, during the revision process, that no reference be made to internal assent because the legislator cannot rule on internal acts,⁴ c. 754 imposes a mandatory obligation on all the faithful. When it is examined more closely, it seems to overlook the inalienable freedom of conscience of every person. The magisterium can forbid a certain doctrine to be taught if

² *DV*, n. 10.

³ Cf. c. 212 § 1.

⁴ See *Communicationes*, 19 (1987), p. 230.

it causes harm to the word of God or to the community's faith, but it is difficult to see how it can impose positively a teaching to be received, especially if such a teaching is not proposed infallibly; assent is a free response of every member of the faithful assisted by the Holy Spirit.⁵ In this sense, c. 1324 of the 17/CIC was more coherent, for it imposed only the obligation of avoiding erroneous opinions.

4. The positive part contained in the canon could give rise to certain conflicts in understanding the norm. For, while we know that the magisterium of the Church has the responsibility of promoting, preserving, and defending the integrity and unity of faith and morals,⁶ the canon speaks of *proposing* doctrine, which is not the same as *promoting* doctrine. Thus, there are opposite interpretations. For instance, M.R. Sobanski has suggested that the canon does not refer to documents explaining the doctrine of the Church, which is the object of c. 752; rather, it refers both to the constitutions by which the Pope promulgates norms or deals with important affairs of the universal Church, and to the decrees considered in cc. 29-33.⁷ E. Tejero, for his part, defends the contrary, i.e., the canon alludes to specific magisterial acts, by which the magisterium teaches the truth, gives witness to the word of God, and interprets it authoritatively, or rejects erroneous opinions; it does not refer to constitutions of religious institutes, nor to the decrees

⁵ Cf. *DH*, n. 10.

⁶ Cf. *CCEO*, c. 605; this same function is assigned to the CDF: see *PB*, art. 48.

⁷ See M.R. Sobanski, "Les canons 753 et 754: problèmes choisis", in *Studia canonica*, 23 (1989), p. 295.

considered in cc. 29-33.⁸ We think, instead, that when the legislator introduced this positive clause, he had in mind primarily the constitutions and decrees of Vatican II, which are principally doctrinal in character; presumably, he would also have considered the norms which legitimate authority decrees for the proper participation of all the faithful in the teaching office of the Church, or to prevent harm to the deposit of faith and to the good of the ecclesial communion.

5. In short, c. 754 refers to both doctrinal and disciplinary decisions taken by the magisterium of the Church. However, it would seem that it does not encompass all the types of pronouncements that are used today. In the last chapter, we have attempted to identify those specific documents to which the canon may refer. Obviously, more importance is given to the universal magisterium of the Roman Pontiff and the College of Bishops, without neglecting the authority of lower magisterial authorities. But at the end, only an authentic interpretation could say, for sure, to which documents c. 754 applies. Perhaps, though, it is preferable for the time being to leave the matter open.

6. Personally, I would say that c. 754 needed a better formulation. Its present form does not reflect clearly a magisterium committed to the service of the word of God, giving witness to the faith of the people of God. Instead, we see a canon underlying a magisterium with authority to exact from the faithful an internal response, even to

⁸ See A. Marzoa, J. Miras y R. Rodríguez-Ocaña (dirs.), *Comentario exegetico al Código de Derecho Canónico*, Pamplona, EUNSA, 1996, vol. 3, pp. 68-69.

teachings given non-infallibly. Furthermore, what it regulates is already covered, to a certain extent, by cc. 212 § 1, and 750-753 along with the canons on juridical and administrative acts, together with cc. 1364 and 1371, 1°, which, to ensure the defense of the deposit of faith, impose certain penalties on those members of the faithful who fail to observe the norms. As a matter of fact, although the CCEO considered retaining c. 1324 of the 17/CIC, it eventually decided not to include it in the Code. Rather, it now enunciates a broader principle expressing the responsibility of bishops and especially that of the Apostolic See in the promotion, preservation, and defense of the integrity and unity of faith and good morals, even by disapproving, if need be, opinions that are contrary to them or warning about those things that can endanger them (c. 605).

7. Obviously, constitutions, decrees, and other pronouncements of Church authorities have their own binding force (c. 212 § 1). There was no need to repeat the principle. Constitutions and decrees, in the actual practice of the Church, have been used primarily to provide norms for the good of the Church, including a jointly responsible participation in its teaching office.

8. One possibility, for the future, would be to modify c. 754 in the line of c. 605 of the CCEO, stressing the responsibility of pastors to carry out their special role in promoting and safeguarding the integrity of faith and good morals, instead of imposing an obligation of this nature on the faithful. Cc. 750-753 would retain their dimension of theological principles which declare both the authority and the level of the doctrine

taught. In this sense, the magisterium of the Church would be concerned more with witnessing to the word of God as a teacher and instructor of the faith than of being concerned with the reception of its pronouncements, which in turn implies worrying about its authority. At the same time, this would entail respect for the freedom of conscience of the individuals and let the truth impose itself in virtue of its own truth.⁹

We are aware of the complexity of c. 754 and of its close connection with other controversial issues relating to the magisterium. Nevertheless, we have tried to focus our study on the analysis of the canon and its application in the life of the Church today. We hope that our study might serve the word of God and lead the Christian faithful to a more active participation in the teaching office of the Church.

⁹ See *DH*, n. 1.

APPENDIX 1

Stages in the formulating of the conclusion of the Dogmatic constitution, *Dei filius*, of Vatican I. (Original Text)

March 1, 1870	March 14, 1870	April 12, 1870	April 24, 1870
Text proposed by Most Rev. C. Martin to the Commission of the faith	Text discussed in general assembly	Text voted, <i>iuxta modum</i>	Text voted & promulgated
Itaque supremi pastoralis nostri officii debitum exsequentes omnes Christi fideles et maxime, qui praesunt vel docendi munere funguntur, per viscera obtestamur, necnon eiusdem Dei et Salvatoris nostri auctoritate iubemus, ut ad hos errores e sancta ecclesia eliminandos et purissimae fidei lucem pandendam studium et operam conferant.	Itaque supremi pastoralis nostri officii debitum exsequentes omnes Christi fideles et maxime, qui praesunt vel docendi munere funguntur, per viscera lesu Christi obtestamur, nec non eiusdem Dei et Salvatoris nostri auctoritate iubemus, ut ad hos errores e sancta ecclesia eliminandos et purissimae fidei lucem pandendam studium et operam conferant.	Itaque supremi pastoralis nostri officii debitum exsequentes omnes Christi fideles, maxime <i>vero eos</i> , qui praesunt vel docendi munere funguntur, per viscera lesu Christi obtestamur, nec non eiusdem Dei et Salvatoris nostri auctoritate iubemus, ut ad hos errores e sancta ecclesia eliminandos, <i>atque</i> purissimae fidei lucem pandendam studium et operam conferant.	Itaque supremi pastoralis nostri officii debitum exsequentes omnes Christi fideles, maxime vero eos, qui praesunt vel docendi munere funguntur, per viscera lesu Christi obtestamur, nec non eiusdem Dei et Salvatoris nostri auctoritate iubemus, ut ad hos errores a sancta ecclesia <i>arceamus</i> et eliminandos, atque purissimae fidei lucem pandendam studium et operam conferant.
Quoniam vero satis non est, haereticam pravitatem devitare, nisi ii quoque errores diligenter fugiantur, qui ad illam plus minusve accedunt; omnes officii monemus, servandi constitutiones et decreta, quibus pravae eiusmodi opiniones ab hac Sancta Sede prohibitae sunt.	Quoniam vero satis non est, haereticam pravitatem devitare, nisi ii quoque errores diligenter fugiantur, qui ad illam plus minusve accedunt; omnes officii monemus, servandi constitutiones et decreta, quibus pravae eiusmodi opiniones <i>quae isthic diserte non enumerantur</i> , ab hac Sancta Sede proscrip-tae et prohibitae sunt.	Quoniam vero satis non est, haereticam pravitatem devitare, nisi ii quoque errores diligenter fugiantur, qui ad illam plus minusve accedunt; omnes officii monemus, servandi etiam constitutiones et decreta, quibus pravae eiusmodi opiniones quae isthic diserte non enumerantur, ab hac Sancta Sede proscriptae et prohibitae sunt.	Quoniam vero satis non est, haereticam pravitatem devitare, nisi ii quoque errores diligenter fugiantur, qui ad illam plus minusve accedunt; omnes officii monemus, servandi etiam constitutiones et decreta, quibus pravae eiusmodi opiniones quae isthic diserte non enumerantur, ab hac Sancta Sede proscriptae et prohibitae sunt.

APPENDIX 2

Stages in the formulating of canon 754 (Original Text)

1977 Draft c. 3	1980 Draft c. 708	1982 Draft c. 753	The Promulgated Text c. 754
Cum eis quae ab Ecclesia proponuntur tanquam de fide divina et catholica credenda, fidei obsequio adhaerendum sit, tenentur omnes quascumque devitare doctrinas iisdem contrarias, immo et eas quae cum doctrina catholica non congruunt; quare omnes debent etiam constitutiones et decreta servare quae ad proscribendas prohibendasque erroneas opiniones ferant proprius Episcopus, Episcopi regionis vel provinciae ecclesiasticae in Conciliis particularibus aut Episcoporum Conferentiis, speciali vero ratione quae edat Apostolica Sedes.	§1. Eis quae ab Ecclesia proponuntur tanquam de fide divina et catholica credenda, fidei obsequio adhaerendum est; tenentur igitur omnes quascumque devitare doctrinas iisdem contrarias. §2. Religiosum obsequium praestent christifideles doctrinae quam de fide et moribus proponit legitima Ecclesiae auctoritas et devitare curent quae cum eadem non congruunt. §3. Omnes christifideles obligatione tenentur servandi constitutiones et decreta quae ad doctrinam proponendam et erroneas opiniones proscribendas fert legitima Ecclesiae auctoritas, speciali vero ratione quae edat Romanus Pontifex vel Collegium Episcoporum.	Omnes christifideles obligatione tenentur servandi constitutiones et decreta quae ad doctrinam proponendam et erroneas opiniones proscribendas fert legitima Ecclesiae auctoritas, speciali vero ratione quae edat Romanus Pontifex vel Collegium Episcoporum. N.B. The first two paragraphs of the 1980 Draft combined with similar canons taken from the LEF became cc. 750 and 751 of the 1982 Draft.	Omnes christifideles obligatione tenentur servandi constitutiones et decreta quae ad doctrinam proponendam et erroneas opiniones proscribendas fert legitima Ecclesiae auctoritas, speciali vero ratione quae edit Romanus Pontifex vel Collegium Episcoporum.

BIBLIOGRAPHY

1. SOURCES

- Acta Apostolicae Sedis, Commentarium officiale*, Romae, Typis polyglottis Vaticanis, 1909-1929; Città del Vaticano, 1929-.
- Acta et Decreta Sacrosancti Oecumenici Concilii Vaticani, in quatuor prioribus sessionibus*, Romae, ex Typographia Vaticana, 1872, v-359p.
- Acta Sancta Sedis*, Romae, ex Typographia polyglotta, 1865-1908, 41 vols.
- Alberigo, G. et al., *Les conciles oecuméniques*, Paris, Les Éditions du Cerf, 1994, 3 vols.
- Canon Law Digest*, 1934-1991; vols. 1-6: ed. by T. L. Bouscaren - J. I. O'Connor, Milwaukee, The Bruce Publishing Co; vol. 7-10: ed. by J.L. O'Connor, Chicago (and Mundelein), Illinois, Canon Law Digest; vol. 11: ed. by E.G. Pfnausch, Washington, DC, Canon Law Society of America.
- Carlen, C. (ed.), *The Papal Encyclicals*, [Wilmington], McGrath Publishing Co., 1981, 5 vols.
- Catechism of the Catholic Church*, Ottawa, On, CCCB, 1994, 698p.
- Code of Canons of the Eastern Churches*. Latin - English Edition; translation prepared under the auspices of the Canon Law Society of America, Washington , DC, Canon Law Society of America, 1991, xlvii-785p.
- Codex iuris canonici cum notis Petri Card. Gasparri*, Romae, Typis polyglottis Vaticanis, 1916, vii-1013p. (Schema Codicis iuris canonici. Sub secreto Pontificio).
- Codex iuris canonici, Pii X Pontificis Maximi iussu digestus, Benedicti Papae XV auctoritate promulgatus, praefatione, fontium annotatione et indice analytico-alphabetico ab Em.mo Petro Card. Gasparri auctus*, Romae, Typis polyglottis Vaticanis, 1933, xlvii-786p.
- Codex iuris canonici, auctoritate Ioannis Pauli PP. II promulgatus*, Vatican City, Libreria Editrice Vaticana, 1983, xxx-317p.

- Codicis iuris canonici fontes*, cura P. Card. Gasparri (ed.), Romae, Typis polyglottis Vaticanis, 1926-1939, 9 vols.
- Congregation for the Doctrine of the Faith, Instruction, *Donum vitae*, February 22, 1987, in *AAS*, 80 (1988), pp. 70-102: English translation in *Origins*, 16 (1986-1987), pp. 697-711.
- , “Declaration in Defense of Catholic Doctrine, *Mysterium Ecclesiae*”, June 24, 1973, in *AAS*, 65 (1973), pp. 396-408: English translation in *Origins*, 3 (1973-1974), pp. 97-126.
- , “Instruction on the Ecclesial Vocation of the Theologian, *Donum veritatis*”, June 26, 1990, in *AAS*, 82 (1990), pp. 1550-1570: English translation in *Origins*, 20 (1990-1991), pp. 117-126.
- Congregation for Bishops, “Draft Statement on Episcopal Conferences”, in *Origins*, 17 (1987-1988), pp. 731-737.
- Corpus iuris canonici. Editio Lipsiensis secunda post Aemilii Ludovici Richteri, curas ad librorum manu scriptorum et editionis Romae fidem recognovit et adnotatione critica instruxit* Ae. Friedberg, Pars secunda, Lipsiae, ex officina Bernhardi Tauchnitz, 1918, lxxi-1340 cols.
- Denzinger, H., *The Sources of Catholic Dogma*, translated by R. Deferrari from the Thirtieth Edition of *Enchiridion symbolorum*, Saint Louis, MO, B. Herder Book Co., 1957, xxxiv-653p.
- Enchiridion Vaticanum. Testo ufficiale e versione italiana*, Bologna, Edizioni Dehoniane, 1962-1980, 11 vols., 2 suppl.
- “Les évêques allemands et l’après-concile”, in *La Documentation catholique*, 63 (1966), cols. 2049-2053.
- Flannery, A. (gen. ed.), *Vatican Council II: The Conciliar and Post Conciliar Documents*, new rev. ed., Northport, New York, Costello Publishing Company, 1992, xxiv-1036p. (Vatican Collection, vol. 1).
- Guerrero F. (dir.), *El Magisterio Pontificio contemporáneo. Colección de encíclicas y documentos desde León XIII a Juan Pablo II*, vol. I: *Sagrada Escritura. Dogma. Moral. Sagrada liturgia. Espiritualidad*, Madrid, Editorial Católica, 1991, xx-1012p. (BAC maior, 38).

- International Theological Commission, *Theses on the Relationship between the Ecclesiastical Magisterium and Theology*, June 6, 1976, and A Commentary by O. Semmelroth, Washington, DC, Publications Office United States Catholic Conference, 1977, 18p.
- John Paul II, Allocution, "La collaboration entre théologiens et magistère", October 5, 1985, in *La Documentation catholique*, 82 (1985), pp. 1104-1105.
- , Allocution, "Relating Truth and Freedom", October 15, 1988, in *Origins*, 18 (1988-1989), pp. 347-348.
- , Address to the Congregation for the Doctrine of the Faith, "How Authority is Conceived", November 24, 1995, in *Origins*, 25 (1995-1996), pp. 572-574.
- National Conference of Catholic Bishops, *A Manual for Bishops: Rights and Responsibilities of diocesan Bishops on the Revised code of Canon Law*, rev. ed., Washington, DC, National Conference of Catholic Bishops, 1992, 84p.
- Nolan, H.J. (ed.), *Pastoral Letters of the United States Catholic Bishops*, Washington, DC, National Conference of Catholic Bishops, 1983-1988, 5 vols.
- Paul VI, "Le radio message de Noël", December 25, 1965, in *La Documentation catholique*, 63 (1966), cols. 151-156.
- , "Allocution to the Participants of the International Congress on the Theology of Vatican II", October 1, 1966, in *The Pope Speaks*, 11 (1966), pp. 348-355.
- , Allocution, "L'autorité dans l'Église est service", October 9, 1968, in *La Documentation catholique*, 65 (1968), cols. 1831-1834.
- , Allocution, "L'actualité du premier Concile du Vatican", December 10, 1969, in *La Documentation catholique*, 67 (1970), pp. 11-13.
- , Allocution, "L'obéissance libératrice", January 2, 1970, in *La Documentation catholique*, 67 (1970), pp. 153-155.
- , "Allocution à la Commission Théologique", October 6, 1969, in *La Documentation catholique*, 66 (1969), pp. 908-909.
- Pii IX Pontificis Maximi, *Acta. Pars prima*, [Romae], ex Typographia Bonarum Artium habita facultate, [1854-1878], 7 vols.

- Pius X, *Motu proprio Sacrorum antistitum*, 1 December 1910, in *AAS*, 2 (1910), pp. 655-680: English translation in *American Catholic Review*, 35 (1910), pp. 712-731.
- Pius XII, Allocution, "*Si diligis. El magisterio eclesiástico*", May 31, 1954, in *Doctrina Pontificia V: Documentos jurídicos*, ed. preparada por J.L. Gutiérrez García, Madrid, Editorial Católica, 1960, (BAC, 194), pp. 440-450.
- Pontifical Commission for the Revision of the Code of Canon Law, *Draft of the Canons of Book Three: The Church's Teaching Mission*, Rome, The Vatican Polyglot Press, 1977 (translation in English under the auspices of the Canon Law Society of America by P. White), 31p.
- Pontificia Commissio Codici Iuris Canonici Orientalis Recognoscendo, *Nuntia*, 1975-1990, 31 vols.
- Pontificia Commissio Codici Iuris Canonici Recognoscendo, *Communicationes*, vols. 1-16, 1969-1983; Pontificia Commissio ad Codicem Iuris Canonici Authentice Interpretandum, vols. 17-22, 1984-1988; Pontificium Consilium de Legum Textibus Interpretandis, vols. 23-, 1989-
- , *Schema Legis Ecclesiae fundamentalis. Textus emendatus cum relatione de ipso schemate deque emendationibus receptis*, Romae, Typis polyglottis Vaticanis, 1971, 159p.
- , *Lex Ecclesiae fundamentalis seu Ecclesiae Catholicae universae lex canonica fundamentalis*, Romae, Pontificia Commissio Codici Iuris Canonici Recognoscendo, 24 Aprilis 1980, 54f.
- , *Schema canonum libri III: De Ecclesiae munere docendi*, Romae, Typis polyglottis Vaticanis, 1977, 39p.
- , *Relatio complectens synthesim animadversionum ab Em.mis atque Exc.mis Patribus Commissionibus ad novissimum schema Codicis iuris canonici exhibitarum, cum responsionibus a Secretaria et Consultoribus datis. (Patribus Commissionibus stricte reservata)*, in Civitate Vaticana, Typis polyglottis Vaticanis, 1981, 358p.
- , *Codex iuris canonici: Schema Patribus Commissionis reservatum*, Città del Vaticano, Libreria Editrice Vaticana, 1980, xxiii-382p.
- , *Codex iuris canonici: Schema novissimum iuxta placita Patrum Commissionis*

emendatum atque Summo Pontifici praesentatum, in Civitate Vaticana, Typis polyglottis Vaticanis, 1982, xviii-308p.

Pontificia Commissio Codici Iuris Canonici Authentice Interpretando, *Codex iuris canonici auctoritate Iohannis Pauli PP. II promulgatus, fontium annotatione et indice analytico-alphabetico auctus*, Città del Vaticano, Libreria Editrice Vaticana, 1989, xxxii-669p.

Pontificium Consilium De Legum Textibus Interpretandis, *Acta et documenta Pontificiae Commissionis Codici iuris canonici recognoscendo. Congregatio plenaria. Diebus 20-29 octobris 1981 habita*, Città del Vaticano, Typis polyglottis Vaticanis, 1991, ix-636p.

——, *Codex Canonum Ecclesiarum Orientalium. Auctoritate Ioannis Pauli PP. II promulgatus. Fontium annotatione auctus*, [Città del Vaticano], Libreria Editrice Vaticana, 1995, xxx-617p.

“Réponse de la Conférence épiscopale française à la lettre circulaire de la Congrégation pour la Doctrine de la foi”, in *La Documentation catholique*, 64 (1967), cols. 327-338.

“Réponse des évêques hollandais au questionnaire du cardinal Ottaviani”, in *La Documentation catholique*, 65 (1968), cols. 1096-1112.

Sacra Congregatio pro Episcopis, *Directorium ‘Ecclesiae imago’, de pastoralis ministerio episcoporum*, 22 februarii 1973, Typis polyglottis Vaticanis, 1973, 254p.

Sacrorum conciliorum nova et amplissima collectio, curantibus L. Petit - J.B. Martin, vols. 50-53: *Sacrosancti Oecumenici Concilii Vaticani. Pars secunda. Acta synodalia*, Arnhem (Pays - Bas) & Leipzig, Société nouvelle d’édition de la collection Mansi (A. Welter), 1924.

U.S.Catholic Conference, “The Teaching Ministry of the Diocesan Bishop: A Pastoral Reflection”, November 14, 1991, in *Origins*, 21 (1991-1992), pp. 473-492.

2. LITERATURE

2.1. Books

- Abbo, J.A. - J.D. Hannan, *The Sacred Canons. A Concise Presentation of the Current Disciplinary Norms of the Church*, rev. ed., St. Louis, Mo., B. Herder Book Co., [1957], 2 vols.
- Alberigo, G. et al., *Legge e Vangelo. Discussione su una legge fondamentale per la Chiesa*, Brescia, Paideia editrice, 1972, 712p.
- (ed.), *La ecclesiologia del Vaticano II: Dinamismi e prospettive*, Bologna, Edizioni Dehoniane, 1981 (Nuovi saggi teologici, 18), 324p.
- Alonso Morán, S. - M. Cabreros de Anta, *Comentarios al código de derecho canónico con el texto legal latino y castellano*, vol. III, Madrid, Editorial Católica, 1964, xxx-705p. (BAC, 234).
- Antón, A., *Conferencias episcopales ¿Instancias intermedias? El estado teológico de la cuestión*, Salamanca, Ediciones Sígueme, 1989, 491p.
- , *El misterio de la Iglesia. Evolución histórica de las ideas eclesiológicas*, Madrid, Editorial Católica, 1987, 2 vols. (BAC maior, 26, 30).
- Augustine, P. Ch., *A Commentary on the New Code of Canon Law*, St. Louis, Mo., B. Herder Book Co., 1931, 8 vols.
- AUZA, B. C., *The Non-Infallible magisterium and Theological Dissent: A Study on the Contemporary Phenomenon of Theological Dissent from the Second Vatican Council to the Present, from the Perspectives of the Theology of the Magisterium about Itself and of the Theories of Theological Dissent of Some Contemporary Theologians*, Romae, Pontificia Studiorum Universitas a S. Thoma Aq. in Urbe, 1990, xxxiii-608p.
- Blat, A., *Commentarium textus codicis iuris canonici*, Romae, Institutum Pontificium Internationale 'Angelicum,' 1921-1938, 6 vols.
- Blyskal, L. M., *The Ordinary Ecclesiastical Magisterium from the Antepreparatory Documents of Vatican Council to Canon 752 and 753 of the 1983 Code*, Ann Arbor, MI, U.M.I., 1987, viii-428p. (Canon Law Studies, 523).

- Bonnet, P.A. - C. Gullo (eds.), *La Curia Romana nella Costituzione apostolica "Pastor bonus"*, Città del Vaticano, Libreria editrice Vaticana, 1990, xii-571p. (Studi giuridici, 21).
- Bouscaren, T.L. - A.C. Ellis - F.N. Korth, *Canon Law. A Text and Commentary*, 4th rev. ed., Milwaukee, The Bruce Publishing Co., [1966], xvi-1011p.
- Butler, D. C., *The Vatican Council 1869-1870, based on Bishop Ullathorne's letters*, London, Collins and Harvill Press, [1962], 510p.
- Campana, E., *Il Concilio Vaticano*, Lugano - Bellinzona, Stabilimenti d'Arti Grafiche Grassi & Co., 1926, 2 vols., xvi-931p.
- The Canon Law. Letter and Spirit. A Practical Guide to the Code of Canon Law*, by the Canon Law Society of Great Britain and Ireland in Association with the Canadian Canon Law Society, Great Britain, Geoffrey Chapman, 1995, xxv-1060p.
- The Canon Law Society of Great Britain and Ireland, *Report on the Schema Canonum Libri III 'De Ecclesiae munere docendi'*, [London, The CLSGBI, 1978], 7p.
- Cenalmor Palanca, D., *La ley fundamental de la Iglesia. Historia y análisis de un proyecto legislativo*, Pamplona, Ediciones Universidad de Navarra SA (=EUNSA), 1991, 526p.
- Chiappetta, L., *Dizionario del nuovo Codice di diritto canonico. Prontuario teorico-prattico*, edit. 2nd., Napoli, Dehoniane, 1986, xxii-1363p.
- Choupin, L., *Valeur des décisions doctrinales et disciplinaires du Saint - Siège. Syllabus, Index; Saint Office 21 septembre 1894: Galilée. Congrégations Romaines; L'Inquisition au Moyen Âge*, 3^a. ed. rev. et aug., Paris, Beauchesne, 1928, x-631p.
- Cocchi, G., *Commentarium in codicem iuris canonici. Ad usum scholarum*, Taurinorum Augustae, Marietti, 1932-1942, 8 vols.
- Coccopalmerio F., P. A. Bonnet, N. Pavoni, *Perché un codice nella Chiesa*, Bologna, Edizioni Dehoniane, 1984, 173p. (Il Codice del Vaticano II, 1).
- Code of Canon Law Annotated*, Latin-English edition of the *Code of Canon Law* and English-language translation of the 5th Spanish-language edition of the

- commentary prepared under the responsibility of the Instituto Martín de Azpilcueta, ed. by E. Caparros, M. Thériault, J. Thorn, Montreal, Wilson & Lafleur Limitée, 1993, 1631p.
- Código de derecho canónico*, edición bilingüe comentada, dir. por L. de Echeverría, 7ª ed. rev., Madrid, Editorial Católica, 1986 (BAC, 442), lii-943p.
- Código de derecho canónico y legislación complementaria. Texto latino y versión Castellana con jurisprudencia y comentarios*, 9ª ed. revisada, ampliada y actualizada, por L. Miguélez Domínguez, S. Alonso Morán y M. Cabreros de Anta, Madrid, Editorial Católica, 1974, xliii-1212p. (BAC, 7).
- Collantes, J., *La cara oculta del Vaticano I. La actualidad de un concilio olvidado*, Madrid, [Editorial Católica], 1970, 280p. (BAC Ediciones de bolsillo, 18).
- Consejo Episcopal Latinoamericano, *Río de Janeiro, Medellín, Puebla, Santo Domingo: Conferencias Generales del Episcopado Latinoamericano*, Santa Fe de Bogotá, CELAM, 1994, 823p.
- Corbellini, G., *Il sinodo diocesano nel nuovo 'Codex Iuris Canonici'*, (dissertation), Roma, Pontificia Università Lateranense, 1986, xiv-274p.
- Coriden, J.A. - T.J. Green - D.E. Heintschel (eds.), *The Code of Canon Law: A Text and Commentary*, New York, NY, Paulist Press, 1985, xxvi-1152p.
- Coronata, M.C.A., *Compendium iuris canonici. Ad usum scholarum*, Taurini, Marietti, 1937-1938, 2 vols.
- Curran, C.E., *Faithful Dissent*, Kansas City, MO, Sheed and Ward, 1986, 287p.
- , R.E. Hunt and the "Subject Professors" with J.F. Hunt and T.R. Connelly, *Dissent in and for the Church. Theologians and "Humanae vitae"*, New York, Sheed and Ward, 1969, xli-237p.
- , R.A. McCormick (eds.), *Readings in Moral Theology*, vol. 6: *Dissent in the Church*, New York, NY, Paulist Press, 1988, viii-541p.
- Il diritto nell mistero della Chiesa, vol. II: Il popolo di Dio. Stati e funzione di insegnare (Libri II e III del Codice)*, a cura del Gruppo Italiano Docenti di Diritto Canonico, Roma, Pontificia Università Lateranense, 1990, 701p. (Quaderni di Apollinaris, 9).

- Le droit et les institutions de l'Église catholique latine de la fin du XVIIIe siècle à 1978*, Paris, Éditions Cujas, 1981, 1982, 1984, 3 vols. (Histoire du droit et des institutions de l'Église en Occident, 16, 17, 18).
- D'Ostilio, F., *La storia del nuovo Codice di diritto canonico. Revisione, promulgazione, presentazione*, Città del Vaticano, Libreria editrice Vaticana, 1983, 143p. (Studi giuridici, 6).
- Errázuriz, C.J., *Il 'munus docendi Ecclesiae': diritti e doveri dei fedeli*, Milano, Giuffrè, 1991, 270p.
- Faccani, M., *Collegio e collegialità episcopale nel sinodo 1969*, Bologna, Edizioni Dehoniane, 1991, 205p.
- Fliche, A. - V. Martín (dirs.), *Historia de la Iglesia. De los orígenes a nuestros días*, vol. 24: *Pío IX y su época*, (by R. Aubert), Valencia, EDICEP, [1974], 734p.
- Ford, J.C., G. Grisez, J. Boyle, J. Finnis, W.E. May, *The Teaching of "Humanae vitae." A Defense. Is this Teaching Infallible? Are Its Norms Defensible?*, San Francisco, Ignatius Press, 1988, 219p.
- Fürst, C.G., *Canones Synopse. Zum Codex Iuris Canonici und Codex Canonum Ecclesiarum Orientalium*, Freiburg, Herder, 1992, viii-214p.
- Gaillardetz, R.R., *Witnesses to the Faith: Community, Infallibility and the Ordinary Magisterium of Bishops*, New York, NY, Paulist Press, 1992, vi-238p.
- Gran Enciclopedia Rialp*, Madrid, Ediciones Rialp, S.A., 1979, 25 vols.
- Green, P. J., *Conferences of Bishops and Exercise of the Munus Docendi of the Church*, Rome, Gregorian University, 1987, 2 vols.
- Grote, H., *Was verlautbart Rom wie? Eine Dokumentunde die Praxis*, Göttingen, Vandenhoeck & Ruprecht, 1995, 168p. (Bensheimer Hefte, 76).
- Grupo Italiano Docenti di Diritto Canonico (a cura), *La funzione di insegnare della Chiesa (XIX Incontro di Studio Passo della Mendola - Trento, 29 giugno - 3 luglio 1992)*, Milano, Edizioni Glossa Srl., 1994, 151p. (Quaderni della Mendola, 1).
- Häring, B., *My Witness for the Church*, New York, Paulist Press, 1992, iv-236p.

- Heft, J., *John XXII and Papal Teaching Authority*, Lewiston, Mellen Press, 1986, xxviii-280p. (Texts and studies in religion, 27).
- "*Humanae vitae*": 20 anni dopo. *Atti del II Congresso Internazionale di Teologia Morale*, (Roma, 9-12 Novembre 1988), Milano, Edizioni Ares, 1989, 808p.
- Kaufman, P., *Why You can Disagree and Remain a Faithful Catholic*, Bloomington, IN, Meyer Stone Books, 1989, xvi-174p.
- Kothuis, H.J., *The Response of the Christian Faithful to the Non-infallible Magisterium. A Canonical Investigation from the Times of Pius IX until the Revised Code of Canon Law*, Roma, Pontificia Università Gregoriana, 1988, xx-420p. (P.U.G., 761).
- Lagges, P.R., *The Legislative Authority of the Conference of Bishops: Its Nature and Scope in the 1983 Code of Canon Law* (dissertation), Ottawa, Faculty of Canon Law, Saint Paul University, 1988, xiv-276p.
- Legrand, H., J. Manzanares, A. García y García (eds.), *Naturaleza y futuro de las Conferencias episcopales*, Salamanca, Departamento de publicaciones de la Universidad Pontificia, 1988, 505p. (Actas del coloquio internacional de Salamanca, 3-8 Enero, 1988).
- Loisy, A., *L'Évangile et l'Église*, troisième édition, Bellevue, Seine-et-Oise, chez l'auteur, 1904, xxxiv-279p.
- Lucien, B., *Gregoire XVI, Pie IX et Vatican II: études sur la liberté religieuse dans la doctrine catholique*, Tours, Éditions Forts dans la foi, 1990, 350p.
- Manual de derecho canónico*, ed. por Instituto Martín de Azpilcueta, Pamplona, EUNSA, 1988, 803p.
- Marzoa, A. J. Miras y R. Rodríguez-Ocaña (dirs.), *Comentario exegético al Código de Derecho Canónico*, Pamplona, EUNSA, 1996, 6 vols.
- Mattai, G., *Magistero e teologia: alle radici di un dissenso*, Palermo, Edizioni Augustinus, 1989, 109p. (Cristianismo, 7).
- Meester, A. De, *Iuris canonici et iuris canonico-civilis compendium*, nova editio, Brugis, Desclée de Brouwer et Si., 1921-1928, 4 vols.
- Morisey, F.G., *Papal and Curial Pronouncements: Their Canonical Significance in*

- Light of the 1983 Code of Canon Law*, 2nd ed. revised and updated by M. Thériault, Ottawa, Faculty of Canon Law, Saint Paul University, 1995, 46p.
- Münsterischer kommentar zum Codex iuris canonici*, Band 3 (cann. 747-1310), unter besonderer Berücksichtigung der Rechtslage in Deutschland, Österreich und der Schweiz; K. Lüdicke et al. (eds.), Essen, Ludgerus Verlag, 1985-.
- Nau, P., *Une source doctrinale: les encycliques. Essai sur l'autorité de leur enseignement*, Paris, Éditions du Cèdre, 1952, 87p.
- Naud, A., *Le magistère incertain*, Montréal, Fides, 1987, 270p. (Héritage et projet, 39).
- , *Devant la nouvelle profession de foi et le serment de fidélité*, Montréal, Fides, 1989, 55p.
- Naz, R. (dir.), *Traité de droit canonique*, nouvelle édition, Paris, Letouzey et Ané éditeurs, [1955], 4 vols.
- (dir.), *Dictionnaire de droit canonique*, Paris, Librairie Letouzey et Ané, 1935-1965, 7 vols.
- Nedungatt, G., *A Companion to the Eastern Code. For A New Translation of Codex 'Canonum Ecclesiarum Orientalium'*, Roma, Pontificio Istituto Orientale, 1994, 368p. (Kanonika, 5).
- New Catholic Encyclopedia* [prepared by an editorial staff at the Catholic University of America, Washington, D.C.], New York, McGraw - Hill Book Co., [1967-].
- Neuner, J. et al. (eds.), *The Christian Faith in the Doctrinal Documents of the Catholic Church*, New York, NY, Alba House, 1982, xxxv-740p.
- Ochoa, X., *Index verborum ac locutionum Codicis iuris canonici*, ed. secunda et completa, Città del Vaticano, Libreria editrice Lateranense, 1984, xv-592p.
- Olivieri, S., *Il Popolo di Dio. Studi e commenti intorno al secondo capitolo della costituzione dogmatica Lumen gentium*, Firenze, Vallecchi editori Firenze, [1968], 226p. (Estratto dell'opera collettiva *La Chiesa del Vaticano II* dir. By G. Baraúna).
- Örsy, L., *The Church. Learning and Teaching*, Wilmington, Delaware, Michael Glazier Inc., 1987, 172p.

- Örsy, L., *The Profession of Faith and the Oath of Fidelity. A Theological and Canonical Analysis*, Wilmington, Delaware, Michael Glazier, 1990, 71p.
- Penaskovic, R. (ed.), *Theology and Authority. Maintaining a Tradition of Tension*, Peabody, MA, Hendrickson Publishers, 1987, xxiii-130p.
- Philips, G., *L'Église et son mystère au IIe Concile du Vatican. Histoire, texte et commentaire de la constitution "Lumen gentium"*, Paris, Desclée, 1967-1968, 2 vols.
- El proyecto de ley fundamental de la Iglesia. Texto y análisis crítico*, Pamplona, EUNSA, 1971, 226 p. (Cuadernos de la colección canónica, 13)
- Puthesseril, G., *The Legislative Authority of the Episcopal Conference in the New Code of Canon Law. Extracts from the Doctoral Dissertation in Canon Law*, Rome, Pontifical Urbanian University, Faculty of Canon Law, 1986, 76p.
- Ratzinger J., *Le nouveau peuple de Dieu*, Paris, Aubier Montaigne, 1971, 191p.
- , V. Messori, *Rapporto sulla fede*, Cinisello Balsamo (Milano), Edizioni Paoline, 1985, 218p.
- Reese, T.J. (ed.), *Episcopal Conferences. Historical, Canonical and Theological Studies*, Washington, DC, Georgetown University Press, [1989], xii-296p.
- Regatillo, E., *Institutiones iuris canonici*, Santander, Sal terrae, 1941-1942, 2 vols.
- Rivella, M., *Autorità dei dottori e magistero gerarchico nella canonistica postridentina (1563-1730)*, Roma, Pubblicazione del Pontificio Seminario Lombardo in Roma, 1993, ix-145 p. (Dissertatio, Series romana, 7).
- Rohlf, S.P., *The Notion of Public Dissent in the Thought of Charles Curran and the Response of the Holy See*, Rome, Pontificia Studiorum Universitas a S. Thoma Aq. in Urbe, 1988, vi-317p.
- Ross, D.M., *Diocesan Synods: The Application of the Law in Three Dioceses in the United States*, (dissertation), Ottawa, Faculty of Canon Law, Saint Paul University, xv-265p.
- Rynne, X., *John Paul's Extraordinary Synod. A Collegial Achievement*, Wilmington, Delaware, Michael Glazier, 1986, xi-132p.

- Sacramentum Mundi. An Encyclopedia of Theology*, London, Burns & Oates, 1968, 6 vols.
- Sipos, St., *Enchiridion iuris canonici. Ad usum scholarum et privatorum*, 6a. ed., Romae, Orbis catholicus, 1954, x-913p.
- Sullivan, F.A., *Magisterium. Teaching Authority in the Catholic Church*, Dublin, Gill and Macmillan, 1983, 234p.
- Task Force Critiques of the Initial Schemata for the Revision of the Code of Canon Law*, Washington, CLSA [1978], 7p.
- The Teaching of the Second Vatican Council*, (introd. by G. Baum), Westminster, Maryland, The Newman Press, 1966, xi-676p.
- Thils, G., *La profession de foi et le serment de fidélité*, Louvain-la-Neuve, Publications de la faculté de théologie, 1989, 55p.
- Urru, A.G., *La funzione di insegnare della Chiesa. Un breve commento al libro III del Codice di Diritto Canonico*, Rome, Edizioni Vivere, 1989, 137p.
- Urteaga, J.M. (ed.), *La misión docente de la Iglesia. XI Jornadas de la Asociación Española de Canonistas*, Madrid, 3-5 abril 1991, Universidad Pontificia de Salamanca, 1992, 274p.
- Vacant, J.-M.-A., *Études théologiques sur les constitutions du Concile du Vatican d'après les actes du concile*, Paris-Lyon, Del homme et Brigue, 1895, 2 vols.
- , *Le magistère ordinaire de l'Église et ses organes*, Paris-Lyon, Del homme et Brigue - Libraires Éditeurs, 1887, [2] 116 p.
- Vermeersch, A. - I. Creusen, *Epitome iuris canonici, cum commentariis ad scholas et ad usum privatum*, Mechliniae - Romae, H. Dessain, 1949-1956, 3 vols.
- Vorgrimler, H. (ed.), *Commentary on the Documents of Vatican II*, New York, NY, Herder and Herder, 1967-1969, 5 vols.
- Wernz, F.X. - P. Vidal, *Ius canonicum*, t. IV, vol. II, Romae, apud Aedes Universitatis Gregorianae, 1935, vi-358p.

2.2. Articles

- Alberigo, G., "The Authority of the Church in the Documents of Vatican I and Vatican II", in *Journal of Ecumenical Studies*, 19 (1982), no. 2, pp. 119-145.
- , "Du bâton à la miséricorde. Le magistère catholique de 1830-1980", in *Lumière et vie*, 35 (1980), no. 180, pp. 17-36.
- Alemany, J.J., "Magisterio y teología. Bibliografía de revistas 1971-1981", in *Estudios eclesiásticos*, 57 (1982), pp. 329-348.
- Alesandro, J.A., "The Revision of the Code of Canon Law: A Background Study", in *Studia canonica*, 24 (1990), pp. 91-146.
- Antón, A., "Ejercen las conferencias episcopales un *munus magisterii*?", in *Gregorianum*, 70 (1989), pp. 439-494.
- , "El *munus magisterii* de las conferencias episcopales. Horizonte teológico y criterios de valorización", in *Gregorianum*, 70 (1989), pp. 741-778.
- , "Santo Domingo: IV Conferencia General del Episcopado Latinoamericano. Su status teológico y el valor magisterial de su documento conclusivo", in *Gregorianum*, 73 (1992), pp. 437-467.
- Araujo, R.J., "The Teaching Authority of the Church and American Society. A Voice in the Wilderness", in *Catholic Lawyer*, 34 (1991), pp. 143-155.
- Arzube, J., "Criteria for Dissent in the Church", in *Origins*, 7 (1977-1978), pp. 748-750.
- "L'autorité doctrinale de l'instruction *Donum vitae*", in *La Documentation catholique*, 86 (1989), pp. 114-116.
- Aubert, R., "Church History as an Indispensable Key to Interpreting the Decisions of the Magisterium", in *Concilium*, 6 (1970), no. 7, pp. 97-107.
- Betti, U., "L'ossequio al magistero pontificio *non ex cathedra* nel n. 25 della *Lumen gentium*", in *Antoniano*, 62 (1987), pp. 423-461.
- , "Professione di fede e giuramento di fedeltà. Considerazioni dottrinali", in *Notitiae*, 25 (1989), pp. 321-325.

- Blyskal L. M., "Obsequium: a Case Study", in *The Jurist*, 48 (1988), pp. 559-589.
- , "The Challenge of Church Teaching. How Do I Respond?", in *Review for Religious*, 48 (1989), pp. 48-64.
- Boff, L., "Conception du magistère et attitude juridique. À propos de l'Instruction sur la vocation ecclésiale du théologien catholique romain", in *Praxis juridique et religion*, 7 (1990), pp. 81-109.
- , "Is the Distinction between *Ecclesia docens* and *Ecclesiaicens* Justified?", in *Concilium*, 148 (1981), pp. 47-51.
- Boyle, J.P., "The Ordinary Magisterium: Towards a History of the Concept" in *The Heythrop Journal*, 20 (1979), pp. 380-398; 21 (1980), pp. 14-29.
- , "Church Teaching Authority in the 1983 Code", in *The Jurist*, 45 (1985), pp. 136-170.
- Butler, B.C., "Infallible: Authenticum: Assensus: Obsequium. Christian Teaching Authority and the Christian Response", in *Doctrine and Life*, 31 (1981), pp. 77-89.
- Calvez, J.L., "Les documents pontificaux, comment s'y retrouver?", in *Croire aujourd'hui*, 162 (1987), pp. 205-213.
- , "Les documents pontificaux, dans quelle attitude les aborder", in *Croire aujourd'hui*, 162 (1987), pp. 283-290.
- , "Les documents pontificaux, comment les lire?", in *Croire aujourd'hui*, 162 (1987), pp. 337-345.
- Caprile, G., "Responsabilità del vescovo in materia dottrinale", in *La Civiltà cattolica*, 124 (1973), III, pp. 397-403.
- Castillo Lara, R., "Le Livre III du CIC de 1983. Histoire et principes", in *L'Année canonique*, 31 (1988), pp. 17-54.
- Caudron, A., "Magistère ordinaire et infallibilité pontificale d'après la constitution *Dei filius*", in *Ephemerides theologiae lovanienses*, 36 (1960), pp. 393-431.
- Cipriani, S., "Magistero e teologia: un difficile ma ineludibile rapporto", in *Asprenas*, 37 (1990), pp. 41-58.

- Composta, D., "Studio teologico-giuridico della potestà di magistero", in *Divinitas*, 19 (1975), pp. 35-60, 159-189.
- , "Il munus docendi nel nuovo Codice di diritto canonico", in *Palestra del clero*, 63 (1984), pp. 91-105.
- Congar, Y., "Pour une histoire sémantique du terme *magisterium*", in *Revue des sciences philosophiques et théologiques*, 60 (1976), pp. 95-97.
- , "Histoire du mot *magisterium*", in *Concilium*, 117 (1976), pp. 129-141.
- , "Bref historique des formes du *magistère* et de ses relations avec les docteurs", in *Revue des sciences philosophiques et théologiques*, 60 (1976), pp. 99-112.
- , "Le droit au désaccord", in *L'Année canonique*, 25 (1981), pp. 277-286.
- Connolly, M.C., "*De munere docendi*: Some Orientations", in *Proceedings of the CLSA*, 44 (1982), pp. 219-232.
- Coriden, J., "Inflating the Oath: the Rule Maker Breaks the Rules", in *Canadian Canon Law Society Newsletter*, 15 (1989), pp. 65-66.
- Cowdria, D.M., "Religious Liberty, Religious Dissent and the Catholic Tradition", in *The Heythrop Journal*, 32 (1991), pp. 26-61.
- Crane, P., "Assent and Dissent", in *Christian Order*, 24 (1983), pp. 281-289.
- Crowley, L.J., "The Teaching Power and Mission of the Church", in *Studia canonica*, 9 (1975), pp. 215-234.
- Curran, C. E., "Public Dissent in the Church", in *Origins*, 16 (1986-1987), pp. 178-184.
- , "Authority and Dissent in the Church", in *Origins*, 16 (1986-1987), pp. 375-376.
- Daly, G., "Which Magisterium is Authentic?", in *Concilium*, 148 (1981), pp. 52-55.
- , "The Dissent of Theology: The Modernist Crisis", in *Concilium*, 158 (1982), pp. 53-57.
- Damizia, G., "La funzione di insegnare nella Chiesa", in *Apollinaris*, 56 (1983), pp. 601-631.

- De Diego-Lora, C., "Procedimiento para el examen y juicio de las doctrinas", in *Ius canonicum*, 14 (1974), no. 28, pp. 149-202.
- , "Competencias normativas de las conferencias episcopales", in *Ius canonicum*, 24 (1984), pp. 527-570.
- De Paolis, V., "La funzione di insegnamento nel Codice di diritto canonico", in *Seminarium*, 41 (1989), pp. 446-462.
- Descamps, A.L., "Théologie et magistère", in *Ephemerides theologiae lovanienses*, 52 (1976), pp. 82-133.
- Doré, J., "L'institution du magistère", in *Revue des sciences religieuses*, 7 (1983), pp.
- Dubay, T., "No Future in Dissent", in *Christian Order*, 24 (1983), pp. 293-303.
- Dulles, A., "The Teaching Authority of Bishops' Conferences", in *America*, 148 (1983), pp. 453-455.
- , "Bishops' Conference Documents: What Doctrinal Authority?", in *Origins*, 14 (1984-1985), pp. 528-534.
- , "The Mandate to Teach", in *America*, 158 (1988), pp. 293-295.
- Duquoc, C., "Magistère et historicité", in *Lumière et vie*, 35 (1986), no. 180, pp. 83-94.
- , "An Active Role for the People of God in Defining the Church's Faith", in *Concilium*, 180 (1985), pp. 73-81.
- Errázuriz, C.J., "La dimensione giuridica del munus docendi nella Chiesa", in *Ius Ecclesiae*, 1 (1989), pp. 177-193.
- "Exchange of Correspondence on *Catholicism*", in *Origins*, 25 (1995-1996), pp. 744-748.
- Fagiolo, V., "Il *munus docendi*: I canoni introduttivi del III Libro del Codex e la dottrina conciliare sul magistero autoritativo della Chiesa", in *Monitor ecclesiasticus*, 112 (1987), pp. 19-42.
- Famerée, J., "La fonction du magistère ecclésial en morale", in *Nouvelle revue théologique*, 107 (1985), pp. 722-739.
- Feliciani, G., "Il potere normativo delle conferenze episcopali nella comunione

- ecclesiale", in *Monitor ecclesiasticus*, 116 (1991), pp. 87-93.
- Fenton, J.C., "The Doctrinal Authority of Papal Encyclicals", in *The American Ecclesiastical Review*, 121 (1949), pp. 136-150, 210-220.
- Fernández, D., "Asunción y magisterio. Repercusión de la definición dogmática para la teología", in *Ephemerides mariologicae*, 35 (1985), pp. 81-108.
- Fox, J., "Fontes and Analytical Index to Code", in *Canon Law Society Newsletter*, 77 (1989), pp. 14-18.
- Franco, R., "Teología y magisterio: dos modelos de relación", in *Estudios eclesiásticos*, 59 (1984), pp. 3-25.
- Fuentes, J.A., "Sujeción del fiel en las nuevas fórmulas de fe y del juramento de fidelidad", in *Ius canonicum*, 30 (1990), pp. 517- 545.
- Gagnebet, M.R., "La autoridad de la *Humanae vitae*", in *Ecclesia*, 14 (1968), pp. 1355-1361.
- Galot, J., "La profession de foi et le serment de fidélité", in *Esprit et vie*, 99 (1989), pp. 694-698.
- Gantin, B., "An Update on the Bishops' Conferences Study", in *Origins*, 20 (1990-1991), pp. 355-356.
- García-Murguía, J. R., "Magisterio y teología desde el Vaticano II a nuestros días. Actuaciones y documentos significativos con especial atención al contexto español", in *Estudios eclesiásticos*, 57 (1982), pp. 271-306.
- Ghirlanda, G., "De episcoporum conferentia deque exercitio potestatis magisterii", in *Periodica*, 76 (1987), pp. 573-603.
- Gómez Heras, J., "Foi et autorité ecclésiastique au Concile Vatican I", in *Concilium*, 117 (1976), pp. 79-87.
- Gómez Iglesias, V., "Los decretos generales de las conferencias episcopales", in *Ius canonicum*, 26 (1986), pp. 271-285.
- Greenstock, D.L., "Thomism and the New Theology", in *The Thomist*, 13 (1950), pp. 567-596.

- Grisez, G., "Charity and Dissenting Theologians", in *Homiletic and Pastoral Review*, 80 (1979-1980), no. 2, pp. 11-21.
- Gula, R.M., "The Right to Private and Public Dissent from Specific Pronouncements of the Ordinary Magisterium", in *Église et théologie*, 9 (1978), pp. 319-343.
- Hamer, J., "Note sur la déclaration *Mysterium Ecclesiae*", in *La Documentation catholique*, 70 (1973), p. 671.
- Häring, H., "The Rights and Limits of Dissent", in *Concilium*, 158 (1982), pp. 95-107.
- Hoffmann, J., "Théologie, magistère et opinion publique. Le discours de Döllinger au Congrès des Savants Catholiques de 1863", in *Recherches de science religieuse*, 71 (1983), pp. 245-258.
- Huizing, P., "Magistère: pouvoir ou témoignage?", in *Revue de droit canonique*, 25 (1975), pp. 199-206.
- , K. WALF, "What Does the *Right to Dissent* Mean in the Church?", in *Concilium*, 158 (1982), pp. 3-9.
- Illanes, J.L., "La vocación eclesial del teólogo", in *Scripta theologica*, 22 (1990), pp. 865-880.
- Iturrioz, J., "Nueva Teología. Su actitud histórica, filosófica, teológica", in *Razón y fe*, 141 (1950), pp. 43-67.
- Janssens, L., "The Non-Infallible Magisterium and Theologians", in *Louvain Studies*, 14 (1989), pp. 195-259.
- Keenan, J.F., "Compelling Assent: Magisterium, Conscience and Oaths", in *Irish Theological Quarterly*, 57 (1991), pp. 209-227.
- Kelly, K.T., "Obedience and Dissent: Serving the Truth", in *The Tablet*, 240 (1986), pp. 647-649.
- Labandeira, E., "Clasificación de las normas escritas canónicas", in *Ius canonicum*, 29 (1989), pp. 679-793.
- Lynch, J., "The Changing Role of the Bishop: A Historical Survey", in *The Jurist*, 39 (1979), pp. 289-312.

- Lynch, J., "Power in the Church: An Historico-Critical Survey", in *Concilium*, 197 (1988), pp. 13-22.
- Mahony, R., "The Magisterium and Theological Dissent", in *Origins*, 16 (1986-1987), pp. 372-375.
- Malone, R., "Magisterium and Dissent", in *Euntes docete*, 39 (1986), pp. 503-521.
- , "Episcopal Conferences: What Does the Future Hold?", in *Origins*, 19 (1989-1990), pp. 369, 371-375.
- Manzanares, J., "The Teaching Authority of Episcopal Conferences", in *The Jurist*, 48 (1988), pp. 234-263.
- Marín De Agar, J.T., "Estudio comparado de los decretos generales de las conferencias episcopales", in *Ius canonicum*, 32 (1992), pp. 173-299.
- Marty, F., "La responsabilité de l'Évêque en matière doctrinale. Conférence de presse du cardinal Marty", in *La Documentation catholique*, 70 (1973), pp. 427-429.
- Mattai, G., "Magistero e teologia. Alle radici di un dissenso", in *Asprenas*, 37 (1990), pp. 27-40.
- McBride, A., "The National Catechetical Directory: An Overview", in *Origins*, 8 (1978-1979), pp. 706-708.
- McBrien, R., "Theologians under Fire", in *The Tablet*, 240 (1986), pp. 675-677.
- Metz, R., "The Influence of Vatican I on the Legal Status of an Ecumenical Council in the Code of Canon Law of 1917", in *Concilium*, 167 (1983), no. 7, pp. 95-99.
- Montan, A., "Il Libro III: La funzione di insegnare della Chiesa", in *La Scuola cattolica*, 112 (1984), pp. 252-278.
- Mucci, G., "Le Conferenze episcopali e l'autorità di magistero," in *La Civiltà cattolica*, 138 (1987), I, pp. 321-337.
- Murillo, L., "La encíclica *Pascendi dominici gregis* sobre el modernismo", in *Razón y fe*, 19 (1907), pp. 445-458; 20 (1908), pp. 24-39.
- National Conference of Catholic Bishops, "Response to Vatican Working Paper on Bishops Conferences", in *Origins*, 18 (1988-1989), pp. 397, 399-402.

- National Conference of Catholic Bishops, Committee for the Doctrine, "Narrative: The Staff Review of McBrien's *Catholicism*", in *Origins*, 26 (1996-1997), pp. 137-138.
- Naud, A., "Le magistère contesté des conférences épiscopales", in *Science et esprit*, 41 (1989), pp. 93-114.
- Nedungatt, G., "Magistero ecclesiastico nei due codici", in *Apollinaris*, 65 (1992), pp. 313-328.
- Olsen, G.W., "Les théologiens et le magistère", in *Communio-Paris*, 5 (1980), no. 5, pp. 71-80.
- Örsy, L.M., "Reflections on the Text of a Canon", in *America*, 154 (1986), pp. 396-399.
- , "Episcopal Conferences. Their Theological Standing and Their Doctrinal Authority", in *America*, 155 (1986), pp. 282-285.
- , "Magisterium. Assent and Dissent", in *Theological Studies*, 48 (1987), pp. 473-497.
- , "Magisterium and Theologians: A Vatican Document", in *America*, 163 (1991), pp. 30-32.
- Otaduy Guerin, J., "La potestad normativa de la conferencia episcopal. (Principios informadores del primer decreto de la Conferencia Episcopal Española)", in *Ius canonicum*, 32 (1992), pp. 231-259.
- Pagé, R., "Le document sur la profession de foi et le serment de fidélité", in *Studia canonica*, 24 (1990), pp. 51-69.
- Palacio, C., "Da autoridade na Igreja. Formas históricas e ecclesiologias subjacentes", in *Perspectiva teologica*, 19 (1987), pp. 151-179.
- Parvis, P., "Guardian Angels and Carrotburgers. Two Views of the Role of the Magisterium", in *New Blackfriars*, 71 (1990), pp. 368-376.
- Pettinato, S., "Il giuramento promissorio nel codice di diritto canonico", in *Il Diritto ecclesiastico*, 106 (1995), pp. 185-207.
- Piacentini, E., "L'infalibilità papale nella canonizzazione dei santi", in *Monitor ecclesiasticus*, 117 (1992), 91-132.

- Pilarczyk, D., "Dissent in the Church", in *Origins*, 16 (1986), pp. 175-178.
- Potvin, T.R., "Guidelines for a Working Relationship Between the Pastoral Magisterium and the Theologians in the Church", in *Studia canonica*, 15 (1981), pp. 13-43.
- Provost, J. H., "The Catholic Church and Dissent", in *Concilium*, 158 (1982), pp. 13-18.
- , "Canon 752 and the Assent of Faith", in *The Jurist*, 46 (1986), pp. 658-660.
- Quinn, J., "Norms for Church Dissent", in *Origins*, 4 (1974-1975), pp. 319-320.
- , "Considering the Papacy", in *Origins*, 26 (1996-1997), pp. 119-127; cf. pp. 127-128.
- Rahner, K., "On Non-Infallible Pronouncement", in *New Blackfriars*, 51 (1970), pp. 502-510.
- Ramos, F.P., "El magisterio universal y la exégesis en el último siglo", in *Estudios eclesiásticos*, 57 (1982), pp. 307-327.
- Ratzinger, J., "The Church and the Theologian", in *Origins*, 15 (1985-1986), pp. 761-770.
- "Review Criticizes New Edition of Father McBrien's *Catholicism*", in *Origins* 25 (1995-1996), pp. 737, 739-744.
- Ribas, J.M., "La jerarquía de fuentes en el ordenamiento canónico", in *Ius canonicum*, 13 (1973), no. 26, pp. 287-327.
- Ruggieri, G., "Magistère ordinaire. La lettre *Tuas libenter* de Pie IX du 21 décembre 1863", in *Recherches de science religieuse*, 71 (1983), pp. 259-267.
- Sanchís Quevedo, A., "Función crítica del magisterio de la Iglesia en materias sociales", in *Escritos del vedat*, 2 (1972), pp. 221-255.
- Scheffczyk, L., "*Sensus fidelium*. La force de la communauté", in *Communio - Paris*, 13 (1988), no. 3, pp. 84-100.
- Schick, L., "La fonction d'enseignement de l'Église dans le Code de droit canonique", in *Nouvelle revue théologique*, 108 (1986), pp. 374-387.

- Schinella, I., "Il magistero autentico. Genesi semantica e significato teologico di *autentico*", in *La Scuola cattolica*, 118 (1990), pp. 253-263.
- Schühller, B., "Apuntes sobre las manifestaciones auténticas del magisterio eclesiástico", in *Selecciones de teología*, 7 (1968), pp. 221-229.
- Sesboüé, B., "La notion de magistère dans l'histoire de l'Église et de la théologie", in *L'Année canonique*, 31 (1988), pp. 55-94.
- Sobanski, M.R., "Les canons 753 et 754: problèmes choisis", in *Studia canonica*, 23 (1989), pp. 285-298.
- Stern, J., "Le magistère et les théologiens", in *Seminarium*, 41 (1989), pp. 383-398.
- Suenens, L.J., "Obeissance et fidélité", in *Seminarium*, 19 (1967), pp. 625-630.
- Sullivan, F.A., "The Response Due to the Non-Definitive Exercise of the Magisterium (c. 752)", in *Studia canonica*, 23 (1989), pp. 267-283.
- , "Some Observations on the New Formula for the Profession of Faith", in *Gregorianum*, 70 (1989), pp. 549-558.
- , "The Theologian's Ecclesial Vocation and the 1990 CDF Instruction", in *Theological Studies*, 52 (1991), pp. 51-68.
- Thévenot, X., "Magistère et discernement moral", in *Etudes*, 362 (1985), pp. 231-244.
- Thils, G., "La nouvelle *Profession de foi* et *Lumen gentium* 25. À propos de l'assentiment demandé", in *Revue théologique de Louvain*, 20 (1989), pp. 336-343.
- Unciti, M. De, "El magisterio de la Iglesia. Por qué es tan débil su acogida?", in *Sal terrae*, 79 (1991), pp. 421-432.
- Untener, K., "What a Prophet Does and Does not Do", in *Origins*, 21 (1991-1992), pp. 36-40.
- Urrutia, F.J., "De magisterio ecclesiastico. Observationes quaedam ad propositam reformationem Partis IV, Libri III CIC", in *Periodica*, 68 (1979), pp. 327-367.
- , "Bibliographia de Libro III del CIC", in *Periodica*, 76 (1987), pp. 525-572.
- , "De exercitio muneris docendi a conferentiis episcoporum. Impugnatio sententiae

- praecedentis", in *Periodica*, 76 (1987), pp. 605-636.
- Urrutia, F.J., "Le réponse aux textes du magistère pontifical non infallible", in *L'Année canonique*, 31 (1988), pp. 95-115.
- , "Iusiurandum fidelitatis", in *Periodica*, 80 (1991), pp. 559-578.
- , "Quandonam habeatur approbatio in forma specifica", in *Periodica*, 80 (1991), pp. 3-17.
- Vela Sánchez, L., "La función docente de la Iglesia. (El libro III del nuevo código)", in *Estudios eclesiásticos*, 58 (1983), pp. 217-226.
- Viana, A., "La potestad de los dicasterios de la Curia Romana", in *Ius canonicum*, 30 (1990), pp. 83-114.
- Vieban, A., "Who are the Modernists of the Encyclical?", in *The Ecclesiastical Review*, 38 (1908), pp. 489-508.
- Vorglimler, H., "From *sensus fidei* to *consensus fidelium*", in *Concilium*, 180 (1985), no. 4, pp. 3-11.
- Weber, J.-J., "Du bon usage des documents pontificaux. La crise moderniste et la situation présente de l'Église", in *La Documentation catholique*, 68 (1971), pp. 341-344.
- Weigel, J., "Current Theology. Gleanings from the Commentaries on *Humani generis*", in *Theological studies*, 12 (1951), pp. 520-549.
- , "The Historical Background of the Encyclical *Humani generis*", in *Theological studies*, 12 (1951), pp. 208-230.
- Zahn, G.C., "The Limits of Legitimate Authority", in *The Month*, 234 (1973), pp. 84-88.

BIOGRAPHICAL NOTE

Mario Medina Balam was born in Abalá, Yucatán, in Mexico, on January 19, 1963. He studied Philosophy at *San Ildefonso y Nuestra Señora del Rosario* Seminary, in Yucatán. In 1986, he obtained his bachelor degree in theology at the Pontifical University of Mexico, in Mexico City. He was ordained to the priesthood for the Archdiocese of Yucatán on June 17, 1987. He obtained his Licentiate degree in Canon Law at the Institute of Canon Law of the Pontifical University of Mexico. He returned to his Archdiocese to serve as associate pastor for three years. Since 1993 he has been a professor of Canon Law at the Pontifical University of Mexico.