

Engaging Magisterial Activism Today

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Catholic teaching insists on the necessity of the apostolic office of the pope and bishops and their legitimate responsibility to preserve the unity of the church and defend the integrity of the apostolic faith. Yet one can affirm the legitimacy of this apostolic office while respectfully challenging its current historical configuration and specific manner of exercise. One of the pressing challenges facing the church today lies in the dramatic expansion of the exercise of ecclesiastical teaching authority, a pattern we might describe simply as *magisterial activism*. This magisterial activism is manifested in the proliferation of normative church pronouncements and any number of disciplinary measures emanating from institutional church structures at every level. In this essay I seek a deeper understanding of the some of the attitudes and presuppositions that have encouraged this pattern, and propose how Catholic theologians might craft an adequate response by calling attention to three theological concerns. However, it might first be helpful to provide a very brief historical excursus into the modern development of the magisterium.

I. A Brief Excursus on the Modern History of the Magisterium in the Roman Catholic Church

Catholics who have become accustomed to reading about the formal investigations of theologians by the Vatican or regional episcopal conferences might be forgiven for not realizing how unusual this modern practice is.¹ In the Middle Ages, the primary arbiter of theological disputes were the theology faculties of the great medieval universities such as those in Paris, Bologna, Oxford, and Louvain. The

¹ The following historical survey draws on material previously published in my introduction to *When the Magisterium Intervenes: The Magisterium and Theologians in Today's Church*, ed. Richard R. Gaillardetz (Collegeville, MN: Liturgical Press, 2012), vii–xvii.

term *magister* referred to various forms of participation in the teaching authority of the church. Thomas Aquinas famously distinguished between a *magisterium cathedrae pastoralis* (a pastoral teaching office generally exercised by the bishops) and a *magisterium cathedrae magistralis* (a teaching authority exercised by a master of theology, a scholar).² For centuries the pope and bishops played a relatively peripheral role in the authoritative resolution of doctrinal disputes; when they did intervene, their mode of intervention was striking. Consider the sixteenth- and seventeenth-century *de auxiliis* (“regarding the divine helps”) controversy between the Jesuits and the Dominicans regarding the relationship between divine grace and human freedom. The papacy inserted itself into the controversy only after the two religious orders had begun accusing each other of heresy. Papal investigations were begun under Pope Clement VIII (1592–1605) but only came to their conclusion two papacies later, under Pope Paul V (1605–21). The papal investigation included the conduct of seventeen debates between representatives of the principal theological schools. Paul V finally resolved the matter by way of a decree that prohibited either side from condemning the views of the other, with the pope reminding each side of the need for humility when delving into the holy mystery of God. Such a circumscribed doctrinal teaching role for the papacy would soon be snuffed out by the threatening winds of modernity and supplanted by a far more active and expansive one.

It is in the early nineteenth century that the term *magisterium* acquired its modern meaning as a reference, first, to the distinctive doctrinal authority of the pope and bishops, and then to the church hierarchy itself. Although the term *magisterium* applies to the teaching authority of pope and bishops, the rise of Ultramontanism in the nineteenth century meant that, in the practical order, the papal magisterium largely eclipsed the normative teaching authority of individual bishops. The papal encyclical

² Thomas Aquinas, *Quaestiones Quodlibetales*, ed. Raimundo Spiazzi (Turin: Marietti, 1956), III, q.4, a. 1. Yves Congar contributed two classic studies of the history of the term “magisterium”: “A Semantic History of the Term ‘Magisterium’” and “A Brief History of the Forms of the Magisterium and its Relations with Scholars.” Both are anthologized in *Readings in Moral Theology, No. 3: The Magisterium and Morality*, eds. Charles E. Curran and Richard A. McCormick (New York: Paulist, 1982), 297–313, 314–31.

itself was a relatively modern development, first employed in the eighteenth century by Pope Benedict XIV (1740–58). However, his encyclicals were generally rather brief and either disciplinary or exhortatory in character. In the nineteenth century Popes Gregory XVI (1831–46) and Pius IX (1846–78) made use of the encyclical, often addressing doctrinal matters, but these too were generally short in length. When they condemned erroneous views there was no intention of stimulating new theological insight.³

With such noteworthy encyclicals as *Aeterni patris*, *Providentissimus Deus*, *Satis cognitum* and *Rerum novarum*, Pope Leo XIII (1878–1903) instigated a significant shift in the teaching role of the pope.⁴ With Leo popes begin to offer, as part of their teaching ministry, extended theological treatments, proposed as normative and issued in formal magisterial documents. Pius X (1903–14) would follow Leo's precedent with his condemnation of modernism in *Pascendi*, and both Pius XI (1922–39) and Pius XII (1939–58) would issue substantial encyclicals during their successive pontificates. Over the course of little more than a century from Pope Gregory XVI to Pope Pius XII, the papacy would be transformed from the doctrinal court of final appeal to the supreme teacher and doctrinal watchdog of the church.

With the expansion of the papal magisterium came the progressive restriction of the responsibilities of theologians. Pope Pius XII, in his 1950 encyclical *Humani generis*, acknowledged a carefully circumscribed freedom of inquiry for theologians, but insisted that even in the exercise of the ordinary papal magisterium (which does not engage the charism of infallibility) "if the Supreme Pontiffs in their official documents purposely pass judgment on a matter up to that time under dispute, it is obvious that

³ Klaus Schatz, *Papal Primacy: From Its Origins to the Present*, trans. John A. Otto and Linda M. Maloney (Collegeville, MN: Liturgical Press, 1996), 167–68.

⁴ Texts of these and of the other encyclicals, other official Vatican documents, and the documents of the Second Vatican Council can be found on the Vatican's website (<http://www.vatican.va>) under either the papal author, the curial office issuing the document, or in the Vatican website's resource library (<http://www.vatican.va/archive/index.htm>).

that matter, according to the mind and will of the Pontiffs, cannot be any longer considered a question open to discussion among theologians” (§20). Theologians were expected to submit their work to the authoritative scrutiny and potential censorship by the magisterium. “Dissent,” understood as the rejection or even questioning of any authoritative teaching of the magisterium, was viewed with suspicion as an attack on the authority of the magisterium itself.

Of course this restriction was not absolute. The dogmatic manuals acknowledged the legitimacy of limited speculative discussion that was critical of certain doctrinal formulations.⁵ If theologians discovered a significant difficulty with a doctrinal formulation, they were to bring the difficulty to the attention of the hierarchy in private and to refrain from any public speech or writing that was contrary to received church teaching.

The Second Vatican Council offered a potentially new framework for understanding the relationship between the pope and bishops, on the one hand, and between pope/bishops and theologians on the other. A “trickle-down” theory of divine revelation, conceived as a collection of propositional truths transmitted exclusively to the bishops, was largely replaced by a theology of revelation that began with the Trinitarian self-communication of God in the person of Jesus Christ by the power of the Holy Spirit. Although the bishops would remain the authoritative guardians of that revelation by virtue of their apostolic office (*Dei verbum* 10), the Word of God was given to the whole church as each of the baptized was offered a supernatural instinct for the faith (*sensus fidei*) that allowed each to recognize God’s Word, to penetrate its meaning more deeply and to apply it more profoundly in their lives (*Lumen gentium* 12; *Dei verbum* 8). Regarding the relationship between the magisterium and theologians, perhaps the most important contribution of the council was what it chose not to say. The text of the preliminary schema *De Ecclesia* substantially repeated the position of *Humani generis* quoted above that

⁵ For a helpful survey of the manuals on this question, see Joseph Komonchak, “Ordinary Papal Magisterium and Religious Assent,” in *The Magisterium and Morality*, 67–90, at 70–78.

once the pope had pronounced on a topic it was no longer subject for free debate.⁶ This schema was largely rejected in the first session of the council and in the second schema, composed between the first and second sessions, that passage was notably absent. In spite of subsequent objections to the deletion, the final version of *Lumen Gentium* did not contain the restriction against free debate.⁷

Perhaps more illuminating for our topic than the documents of the council was the conduct of the council itself. Jared Wicks suggests that the council “constituted a unique case of cooperation between the theologians, who serve by research and explanation, and the Church’s episcopal and papal magisterium.”⁸ Theologians and bishops collaborated at numerous points in the process of moving from preliminary drafts to final promulgation of the sixteen documents. Both individual bishops and regional episcopal groupings would often seek out theological experts like Yves Congar, Gérard Philips, Karl Rahner, Joseph Ratzinger, Jean Daniélou, Piet Smulders, and others, asking for theological background, position papers and often even unofficial draft texts. Wicks writes elsewhere that “one can see here a well-functioning epistemological duality between (1) the consultative thought of the theologian-experts, that is, their perceptions and concepts drawn from the doctrinal sources, with their provisional judgments, and (2) the decisive judgments by the council members, who discerned, evaluated, adopted, or rejected the experts’ proposals, and so became the responsible authors of Vatican II’s teaching and decrees.”⁹ This kind of substantive bishop-theologian cooperation, so vital to the success of the council, raised hopes for a new framework for considering the theologian-magisterium relationship.

The first decades immediately after the council held promise for just such a framework. Only a few years removed from the council, Pope Paul VI (1963–78) would create the International Theological

⁶ *Schemata Constitutionum et Decretorum de quibus disceptabitur in Concilii sessionibus: Series Secunda, Vol. II, De Ecclesia et de B. Maria Virgine* (Vatican City: Typis Polyglottis Vaticanis, 1962), 48–9.

⁷ Komonchak, “Ordinary Papal Magisterium,” 69.

⁸ Jared Wicks, “Vatican II on Revelation—From Behind the Scenes,” *Theological Studies* 71 (2010): 637–50, at 650.

⁹ Jared Wicks, *Doing Theology* (New York: Paulist, 2009), 222–23.

Commission (ITC) as a way of formalizing a more constructive relationship between the magisterium and the theological community. Unfortunately, this commission was placed under the presidency of the prefect for the Congregation for the Doctrine of the Faith (CDF), and over the course of the first decades of its existence curial pressure gradually led to the exclusion from its membership of voices that were critical of certain church pronouncements. One prominent theologian on the commission, Karl Rahner, would eventually resign in protest. Any hopes for the establishment of a new magisterium-theologian relationship were dashed by the widespread theological criticism that greeted Pope Paul VI's final encyclical, *Humanae vitae*.

Although there is much in the ambitious pontificate of John Paul II (1978–2005) that can be seen as a legitimate development of the vision of Vatican II,¹⁰ when it concerns the exercise of formal magisterial authority, it is difficult not to see that long pontificate as an attempt to return to the attitude of Pope Pius XII that the pope was effectively the chief theologian of the church. In spite of his rhetoric, which often celebrated the legitimate freedom of inquiry to be enjoyed by theologians,¹¹ the policies of the pontificate of John Paul II largely sustained Pius XII's suspicion of legitimate theological autonomy. It is the pontificate of John Paul II that offers us the "Profession of Faith and Oath of Fidelity" (1989), the CDF's "Instruction on the Ecclesial Vocation of the Theologian" (*Donum veritatis*, 1990) and the Apostolic Letter *Ad Tuendam Fidem* (1998), all of which were oriented toward limiting the theologian's freedom to assess critically even church teachings that had not been proposed infallibly. The early years of the current pontificate of Benedict XVI (2005–) have given no sign of any departure from these policies.

¹⁰ See, for example, the bold vision of papal primacy in ecumenical context set forth in his encyclical *Ut unum sint* (1995).

¹¹ See the Apostolic Constitution *Ex corde ecclesiae* (1990), §29.

As Bradford Hinze has recently documented,¹² the last decade has seen a further expansion of this ambitious program of doctrinal policing throughout the global church. Here in the United States we have witnessed magisterial action, taking various forms, against such distinguished theologians as Roger Haight, Michael Lawler, Todd Salzman, Peter Phan, and Elizabeth Johnson.

II. Reflections on the Pattern of Magisterial Activism in the Church Today

For many, this protracted campaign of magisterial activism can lead to an attitude of discouragement and complaint. Indeed, as Hinze has reminded us, there is ample reason for Catholics to embrace a spirituality of lament.¹³ Yet lament must move us toward constructive action, and such action depends on a deeper understanding of some of the attitudes and presuppositions that ground this pattern of magisterial activism.

A. CONFRONTATIONAL ATTITUDE TOWARD THE MODERN WORLD

The magisterial activism we are witnessing today is fueled, in part, by the perception held by the pope, many bishops, and conservative Catholic commentators that our contemporary culture has become toxic and hostile to the Christian faith. Consider the recent controversy over the Department of Health and Human Services' ruling on contraceptive mandates. What many across the ideological spectrum agreed was an unfortunate misstep by the Obama administration appeared to have been diffused by a significant modification by the administration. But then the USCCB leadership indicated that the proposed compromise was also unacceptable.¹⁴ Once again, not unlike the controversy surrounding the passage of the 2010 Affordable Care Act, a disturbing number of bishops issued public statements filled with the kind of the rhetorical excess so common in today's hyper-partisan culture

¹² Bradford Hinze, "A Decade of Disciplining Theologians," in *When the Magisterium Intervenes*, 3–39 (this essay is a revision of an earlier version that appeared in *Horizons* 37 (Spring 2010): 92–126).

¹³ Bradford E. Hinze, "Ecclesial Impasse: What Can We Learn from Our Laments?" *Theological Studies* 72 (2011): 470–95.

¹⁴ See the public statement (February 10, 2012) by the United States Conference of Catholic Bishops (USCCB), <http://www.usccb.org/news/2012/12-026.cfm>.

wars. In the past year we have seen a protracted campaign on the part of American Catholic bishops to rally the faithful in a battle for religious liberty that is the envy of those faithful Catholic activists working for immigration reform and the alleviation of poverty. In a homily offered on April 14, 2012, Bishop Daniel Jenky compared President Obama's alleged attacks on religious liberty to Otto von Bismarck's *Kulturkampf* in the nineteenth century and then cited both Stalin and Hitler as other world leaders who manipulated churches and severely limited them in the exercise of their mission. He contended that Obama was moving in a similar direction and that Catholics must see our current situation as a war in which no "believing Catholic may remain neutral."¹⁵ This confrontational tone is even heard in the Vatican. In a recent address to American bishops in Rome for their *ad limina* visit the pope said this:

In the light of these considerations, it is imperative that the entire Catholic community in the United States come to realize the grave threats to the Church's public moral witness presented by a radical secularism which finds increasing expression in the political and cultural spheres.¹⁶

Once the church's posture toward the world is presented in the language of "battles" and "wars," a program of magisterial activism becomes inevitable as church leaders feel compelled to "rally the troops" while drawing a series of ecclesiastical "lines in the sand."

B. PREOCCUPATION WITH THE POSTMODERN FRAGILITY OF RELIGIOUS IDENTITY

Many bishops are reacting to the growing fragility of religious identity that is one of the principal characteristics of the postmodern age. New generations of Christians are far less likely to inherit a coherent religious identity *in toto* from their parents. The reasons are many. With high divorce rates and growing numbers of single parent families, many children are raised in families with any number of

¹⁵ Quoted from "Bishops are Picking a Fight This Election Year," <http://www.cathnewsusa.com/2012/05/bishops-are-picking-a-fight-this-election-year>.

¹⁶ "Address of His Holiness Benedict XVI to the Bishops of the United States of America on their 'ad limina' visit" (January 19, 2012), http://www.vatican.va/holy_father/benedict_xvi/speeches/2012/january/documents/hf_ben-xvi_spe_20120119_bishops-usa_en.html.

serial caregivers. This familial instability makes it less likely that children will be raised in families with two stable caregivers who will consistently model the beliefs and practices of a given religious tradition from infancy to adulthood. The causes of a more fragile sense of religious identity, however, go far beyond familial instability to include many other cultural forces and trends.

Charles Taylor has made the case that while secularity ought not be viewed as the enemy, it has created a situation in which religious belief will appear less as a given and more as one framework among many for giving meaning to one's life.¹⁷ David Lyon writes of the postmodern "deregulation of religion" in which accepted religious authorities that once guided believers in the interpretation and appropriation of religious beliefs and values have been devalued. Everyone sees themselves as "religious seekers" authorized to make their own decisions regarding which religious texts, teachings and practices have value and which do not.¹⁸ Vincent Miller has noted the temptation in a consumer society to treat religious beliefs, symbols, and practices as free-floating religious items that are wrenched from the thick communal frameworks that traditionally gave them meaning. The result is a form of commodified religion.¹⁹ Miller sees many Catholics today engaging the Catholic faith according to the "interpretive habits" of the consumer.

This is all by way of saying that the pope and bishops are right to be concerned about the pastoral consequences of this postmodern reality. The pastoral concerns they raise regarding the challenges of handing on the faith to a new generation of young Catholics are ones that many parents, religious educators and theologians share. However, if many will agree with the pope and bishops regarding the

¹⁷ Charles Taylor, *A Secular Age* (**Error! Main Document Only**. Cambridge, MA: Belknap Press/Harvard University Press, 2007).

¹⁸ David Lyon, *Jesus in Disneyland: Religion in Postmodern Times* (Malden, MA: Blackwell, 2000), 34.

¹⁹ Vincent J. Miller, *Consuming Religion: Christian Faith and Practice in a Consumer Culture* (New York: Continuum, 2004); idem, "When Mediating Structures Change: The Magisterium, the Media and the Culture Wars," in *When the Magisterium Intervenes*, 154–74.

unique challenges we face today in handing on the faith, we are less likely to agree with the more aggressive pastoral responses they have adopted.

Heavy-handed and intrusive exercises of coercive ecclesiastical power (e.g., silencing or denouncing theologians, blacklisting doctrinally suspect speakers, chastising “disobedient” individuals and organizations, policing every forum devoted to ecclesial conversation) are informed, it would appear, by the assumption that religious identity needs to be asserted coercively and in a contrastive key. A developed Catholic identity, it is imagined, would be one defined over against . . . what? In a way it doesn’t matter. In some contexts it is identified over against a pernicious secularism, political liberalism or even, it would seem, the Democratic Party. In other contexts, such as with the translation of liturgical texts, Catholic identity is asserted in contradistinction to Protestantism.²⁰

This troubling conception of religious identity imagines that fidelity to our great tradition can be preserved solely through appeal to the rather untraditional binary of orthodoxy and dissent. Within this binary framework, orthodoxy denotes a narrowly conceived articulation of the tradition that admits of no theological diversity, no constructive disagreement, no respectful criticism, no real open questions. Church doctrine achieves a troubling form within this framework. Juan Luis Segundo describes a “digital” conception of doctrine in which our doctrinal tradition is purged of its imaginative and transformative character and rendered strictly informational.²¹ Not surprisingly, within the orthodoxy-dissent binary, dissent names everything that stands outside this univocal, “orthodox” rendering of the tradition.

²⁰ See the statement by the Vatican’s Congregation for Divine Worship and the Discipline of the Sacraments regarding principles for liturgical translation, *Liturgiam Authenticam*, 40: “great caution is to be taken to avoid a wording or style that the Catholic faithful would confuse with the manner of speech of non-Catholic ecclesial communities or of other religions. . . .” (http://www.vatican.va/roman_curia/congregations/ccdds/documents/rc_con_ccdds_doc_20010507_liturgiam-authenticam_en.html). This principle is clearly in evidence in the recent English translation of the Roman Missal.

²¹ Juan Luis Segundo, *The Liberation of Dogma: Faith, Revelation and Dogmatic Teaching Authority*, trans. Philip Berryman (Maryknoll, NY: Orbis, 1992), 108.

Miller makes a provocative suggestion:

“Identity” may turn out to be a bad thing. The task of projecting an identity is as different from fidelity to tradition as today’s wedge issue politics is from building a broad political coalition. . . . “Identity,” for all the integrity evoked by its rhetorical use, is a very limited cultural practice. Far from preserving the complex orthodoxy and orthopraxis of a tradition, it shears off what does not serve its limited needs. The complex hermeneutics and casuistry of living traditions with responsibility for putting their beliefs into practice do not fit well in this new identity-focused culture. Nuance, complexity, and the demanding task of holding multiple beliefs and commitments in tension do not fulfill the cultural work of identity. Thus, it is not surprising that identity watchdog groups such as the Cardinal Newman Society seldom address a broad range of issues in their evaluations of orthodoxy.²²

Miller’s analysis raises important questions regarding magisterial activism’s prospects for pastoral success.

C. FEAR REGARDING THE ABILITY TO “POLICE” THEOLOGICAL CONVERSATION

What we are witnessing in the church today is the preoccupation of too many bishops with a rigorous policing of orthodoxy. It is a preoccupation motivated mostly by fear and, in particular, by a fear of losing control over the theological conversation of the church. Unfortunately, as the adage goes, “fear makes a poor counselor.”

Here in the United States and in many other parts of the global church, the bishops now exercise their doctrinal teaching office in a new pastoral context characterized by a more educated laity and broad accessibility to theological debate. From one perspective, of course, this is one of the most precious fruits of Vatican II’s insistence on the laity’s right to theological education. This broader access to theological education has been accompanied by a dramatic expansion of religious print and internet media that have significantly extended access to theological and ecclesiastical developments. But for

²² Miller, “When Mediating Structures Change,” 164–5.

those bishops who perceive the responsibilities of their apostolic office as a “policing action,” this new situation is seen as a threat. In 1940 perhaps a few hundred theologians would have been aware of a controversial theological position published on the pages of *Theological Studies*. Today, that article could appear in summary form in the religion section of *Newsweek* or the local newspaper. The debate itself could be discussed, not just on the pages of a few academic journals but in theology classrooms, parish adult education programs and on a wide-range of internet blogs. Ironically, in this new cultural context, the attempt to police theological discourse is, ironically, more likely to draw additional attention to controverted theological positions rather than to shield the faithful from theological debate.

This preoccupation with policing theological conversation has led to an unprecedented proliferation of normative magisterial judgments emanating from multiple sources: the papacy, curial dicasteries, episcopal conference committees on doctrine, etc. It has also led to a kind of “rapid-response” mentality that would make a government agency like FEMA proud! In 2011 several theological societies complained about the procedures employed by the USCCB Committee on Doctrine in the Elizabeth Johnson case (which I will consider further below). In particular, they objected to the committee’s unwillingness to engage Prof. Johnson in private dialogue before issuing a public criticism of her work. The doctrine committee apparently feared that a private, drawn out dialogue would be too time-consuming and unwieldy. Given the ready accessibility of ordinary Catholics to the work of theologians today, there is a perceived need for a much faster and more streamlined process allowing them to respond more quickly to perceived threats to the faith. Yet this rapid-response mentality goes against an important intuition in the Catholic tradition that, as Newman once noted, truth “is the daughter of

time.”²³ It is difficult to imagine what place there is for the development of doctrine within this rapid-response regime.

The desire to protect the integrity of the tradition which presumably has motivated the bishops and curia to issue so many magisterial pronouncements today, is being systematically undermined by a cultural phenomenon shrewdly limned in a recent essay by Anthony Godzieba. He has argued persuasively that the difficulties created by the proliferation of magisterial pronouncements are exacerbated in an internet age subject to the forces of “digital immediacy.” Instant access to any and all magisterial documents through ecclesiastical and unofficial websites, blogs, and list-servs allows these magisterial statements to be detached from any “thick” process of communal interpretation and reception. In such a situation the traditional criteria for discerning the authority of magisterial statements are overwhelmed by the flood of ecclesial representations in a “digital storm.”²⁴

Outside the world of academic theology, many ordinary Catholics experience the current magisterial activism as a form of ecclesiastical paternalism that fails to take seriously what it means to teach an adult church. Virtually every magisterial document that is issued in judgment of a theologian’s work expresses fears about “confusing the faithful.” This paternalism becomes even more pronounced at the parish level where a new and younger generation of priests is rejecting the post-conciliar model of the priest as servant leader in favor of the model of the priest as “spiritual father.” The principal task of the priest in their view is to instruct and admonish. However well-meaning, the paternalism inherent in this model of authority affords no place for a genuine listening to or learning from the people they are supposed to serve. Neither is there much room for entertaining respectful criticism, largely because, in this pastoral framework, criticism is equivalent to disobedience and disobedience cannot be tolerated.

²³ John Henry Newman, *An Essay on the Development of Christian Doctrine*, 6th ed. (Notre Dame, IN: University of Notre Dame Press, 1989), 47.

²⁴ See Anthony Godzieba, “*Quaestio Disputata: The Magisterium in an Age of Digital Reproduction*,” *When the Magisterium Intervenes*, 140–53.

D. CERTITUDE OVER UNDERSTANDING

Many bishops still perceive church structures and church teaching from within an interpretive horizon famously described by Bernard Lonergan as “classical consciousness.” Within this framework historical change is largely accidental in character and divine truth is seen as unchanging, objective, largely propositional in form and ahistorical. On matters of doctrine “classicists” are preoccupied with consistency, clarity and certitude, often at the expense of achieving genuine historical understanding.²⁵

In a lecture given in Toledo, Ohio in 1967, John Courtney Murray drew on Lonergan’s distinction in his analysis of the birth control question. Murray noted that whereas the majority report of the birth control commission, which recommended a revision in the church’s teaching, reflected a more historically situated and cautious apprehension of truth, the minority report, which rejected revision on the grounds that it would undermine the church’s teaching authority, reflected the classicist preoccupation with certitude.²⁶ This preoccupation continues in the attitudes of bishops today in ways in which I am not sure even they are fully aware. Rather than guiding the community of faith in the quest for genuine religious understanding and meaning, they see themselves as guardians and purveyors of timeless certitudes. Nicholas Lash puts it well:

The craft or process we call “teaching” is the art of helping people to understand. They have to do this for themselves, and it is a dangerous, exhilarating, fragile, never finished process...this achievement we call “understanding,” which each of us has to do for ourself, is done in us by God...If “teaching” were a mere matter of declaration or instruction, of telling people what is the case, or what they ought to do, then indeed

²⁵ See Bernard Lonergan, “The Transition from a Classicist Worldview to Historical Mindedness” and “The Dehellenization of Dogma,” in *A Second Collection: Papers*, ed. William F.J. Ryan and Bernard J. Tyrrell (Toronto: University of Toronto Press, 1996), 1–9, 11–2.

²⁶ “The Toledo Talk,” in *Bridging the Sacred and the Secular: Selected Writings of John Courtney Murray*, ed. J. Leon Hooper (Washington, DC: Georgetown University Press, 1994), 334–41. Notes from this lecture can also be accessed from the Woodstock Theological Center Library on-line (<http://woodstock.georgetown.edu/library/Murray/1967g.htm>).

spreading knowledge would be as easy as spreading butter. But this is not the traditional Christian understanding of what “teaching” involves.²⁷

III. Responding to Magisterial Activism

Most Catholic theologians acknowledge and respect the role of the pope and bishops as authoritative leaders; it is a role that they believe has a vital place, even in its flawed expressions, in the life of the church. What theologians today must pursue is not a repudiation of the magisterium but a program of respectful yet critical engagement with the various exercises of the pope’s and bishops’ doctrinal teaching authority. This engagement, if it is to be legitimate and faithful to the Catholic tradition, will embrace fundamental teachings of the Second Vatican Council regarding the authoritative role of the magisterium (*Dei verbum* 10; *Lumen gentium* 25) in the preservation of the apostolic faith. But it will also presume the council’s teaching that all baptized Christians participate in the development of tradition (DV 8) and that all possess a supernatural instinct for the faith (*sensus fidei*) that allows them to hear God’s Word, penetrate its meaning, and apply it in their lives (*Lumen gentium* 12). This critical engagement, if it is to have a healthy role in the life of the church, requires the virtue of charity and the determination to impute the best of intentions on those with whom one disagrees, including the bishops. It also demands what Margaret Farley has referred to as the “grace of self-doubt.”²⁸ This grace calls upon theologians to engage the teaching office of the bishops with the humility of one who recognizes that none of us (including the bishops themselves!) has a monopoly on the truth. With that in mind, let me propose three areas in which theologians must draw from the resources of our own theological heritage to challenge the distortions and dysfunctions all too evident in the current program of magisterial activism.

²⁷ Nicholas Lash, “Authors, Authority, and Authorization” in *Authority in the Roman Catholic Church: Theory and Practice*, ed. Bernard Hoose (Burlington, VT: Ashgate Publishers, 2002), 65.

²⁸ Margaret Farley, “Ethics, Ecclesiology and the Grace of Self-Doubt,” in *A Call to Fidelity: On the Moral Theology of Charles E. Curran*, edited by James J. Walter, Timothy E. O’Connell and Thomas A. Shannon (Washington DC: Georgetown University Press, 2002), 55–76.

A. THE NEED TO HONOR THE LIMITS IN MAGISTERIAL TEACHING AUTHORITY

In the face of the current pattern of magisterial activism we must call attention to the inherent limits in the exercise of church teaching authority affirmed in the tradition and challenge any and all instances when those limits are not being properly observed.

One of the features of the First Vatican Council's debate on papal infallibility was the council's careful attention to the limits of infallible papal teaching. *Pastor Aeternus* explicitly articulated some of these limits, such as the insistence that popes do not teach "new doctrine" but only that which has been received in the tradition or that such teaching must be concerned with *fides et mores*. But the council also assumed further limits that they did not deem it necessary to place in the text itself. Bishop Vincent Ferrer Gasser, in his *relatio* at Vatican I, offered a number of further limits that were presumed in the council's teaching.²⁹ Several decades ago Patrick Granfield explored the many limits to papal authority that have been preserved in the Catholic tradition.³⁰

In his classic work on ecclesial reform, Yves Congar warned in particular of the danger of the magisterium failing to recognize when it had entered into the realm of the contingent realities, citing as but one example, the Galileo affair.³¹ In a recent essay, Charles Taylor has called our attention once again to the dangers of failing to recognize the contingent elements embedded in certain issues addressed by church teaching.³² He offers the example of Pope Paul VI's teaching on birth regulation and John Paul II's re-framing of that teaching within his much discussed "theology of the body." One could extend this concern further to recent magisterial teaching on the intrinsic evil of homosexual acts.

²⁹ Joannes Mansi, *Sacrorum conciliorum nova, et amplissima collectio*, (Paris: H. Welter, 1901-27), 52, 1213D. An English translation of Gasser's *relatio* can be found in *The Gift of Infallibility: The Official Relatio on Infallibility of Bishop Vincent Ferrer Gasser at Vatican Council I*, trans. James T. O'Connor (2nd updated edition, San Francisco: Ignatius Press, 2008).

³⁰ Patrick Granfield, *The Limits of the Papacy* (New York: Crossroad, 1987).

³¹ Yves Congar, *Vrai et fausse réforme dans l'Église*, rev. ed. (Paris: Cerf, 1968), 164; *True and False Reform in the Church*, trans. Paul Philibert (Collegeville, MN: Liturgical Press, 2011), 154.

³² Charles Taylor, "Magisterial Authority," in *The Crisis of Authority in Catholic Modernity*, edited by Michael Lacey and Francis Oakley (New York: Oxford, 2011), 259–69.

Catholic theologians must be willing to press church leaders to consider whether they have taken sufficient account of our largely contingent and rapidly evolving understanding of human sexuality.

This failure to attend to the proper limits of doctrinal teaching authority is also evident when bishops engage in public debate and make binding judgments on public policy. In spring 2010 the United States Catholic bishops declared their opposition to the Obama administration's "Affordable Care Act," expressing concern that a set of complex legislative provisions did not provide sufficient protection against the federal funding of abortions. The bishops certainly had a right to offer their view on the issue and Catholics were obligated to attend carefully to their position. The problem here lay not with the bishops' judgment on the merits of this legislation but with their failure to properly modulate their judgment and recognize that they had left the realm of church doctrine and entered the realm of complex prudential judgments about which faithful Catholics could freely disagree. Let us consider this further.

One of the most overlooked contributions of the Second Vatican Council lies in what we might call a confident humility in the articulation of the church's mission in the world. The church must boldly preach the good news of Jesus Christ and the in-breaking of God's reign, even as it admits openly that it does not possess clear answers to every pressing human question.

The Church guards the heritage of God's word and draws from it moral and religious principles without always having at hand the solution to particular problems. As such she desires to add the light of revealed truth to [humankind's] store of experience, so that the path which humanity has taken in recent times will not be a dark one (*Gaudium et spes* 33).

Here was a vision of the church cooperating with all humankind to confront the most pressing challenges of the age. The council bishops were surprisingly realistic about the complexity of this task and recognized in that "often enough the Christian view of things will itself suggest some specific

solution in certain circumstances. Yet it happens rather frequently, and legitimately so, that with equal sincerity some of the faithful will disagree with others on a given matter” (GS 43). The council demonstrated a sophisticated grasp of both the necessity and the complexity of Christian participation in the public realm.

In the 1980s, in response to the U.S. bishops’ groundbreaking pastoral letters on peace and the economy, critics (including then-Cardinal Ratzinger) contended that by wading into complex public policy disputes the US bishops risked compromising their authority on more properly “doctrinal” concerns. In my own view that danger was exaggerated: as long as the bishops acknowledged that their authority with respect to public policy was not as great as their authority in matters more strictly pertaining to faith and morals and that Catholics were allowed to disagree at the level of public policy, those episcopal pronouncements could play a helpful role in the formation of consciences. At that time, the U.S. bishops had a firm grasp of a more graduated conception of their authority. In both *The Challenge of Peace* and *Economic Justice for All* the bishops readily acknowledged a distinction between their proclamation of moral doctrine and their more prudential judgments about which Catholics might respectfully disagree.³³

It is simply not the case that the pope and bishops either teach with an authority that demands unconditional and unquestioning assent or they teach with no authority at all. Rather, theirs is a graduated exercise of authority. It is greatest where it is exercised in preservation of revealed moral teaching. As their teaching moves toward concrete judgments about public policy their claim to authority, though legitimate, is diminished.

A further example of transgressing the limits of doctrinal authority concerns doctrinal judgments of the work of theologians. In November 2011, the International Theological Commission (ITC) issued the

³³ National Conference of Catholic Bishops, *Challenge of Peace* (Washington, DC: USCC, 1983, para. 10; National Conference of Catholic Bishops, *Economic Justice for All* (Washington, DC: USCC, 1986, para. 135.

statement “Theology Today,” a document that addresses, among other things, the proper relationship between theologians and the magisterium.³⁴ There is much to commend in this document, including its extended reflection on the need for both theologians and the magisterium to attend carefully to the *sensus fidelium* (§§33–36). In the section that considers the relationship between theologians and the magisterium the ITC reiterates the council’s teaching that both theologians and the magisterium “stand under the primacy of the Word of God, and never above it” (§38). The document calls for “mutually respectful collaboration” between the magisterium and theologians and even grants to theologians “a certain ‘magisterium’” of their own (§39) which, however differs in kind from the magisterium of the bishops. The ITC insists that it falls to the magisterium of the bishops alone to offer an “authentic interpretation of the faith” (§39). There are few Catholic theologians who would dispute this. The key issue, however, concerns the nature and scope of this “authentic interpretation.” If conceived too broadly, the charge of the magisterium of bishops to offer an “authentic interpretation of the faith” can easily turn the pope and bishops into the official theologians of the church whose theological arguments, by claiming authoritative status, would trump all other such judgments. Such an expansive view renders theologians unnecessary save as a labor force employed by the magisterium to further its own preferred theological trajectories and schools of thought. This expansive view of the role of the magisterium risks obscuring an important point made by the ITC earlier, in its document, namely that “the sheer richness of...revelation is too great to be grasped by any one theology, and in fact gives rise to multiple theologies as it is received in diverse ways by human beings” (§5).

I would argue that the distinctive charge given to the magisterium of bishops to offer an “authentic interpretation of the faith” must be interpreted narrowly as a judgment concerned strictly with a particular theological position or trajectory’s congruence with the fundamental doctrine of the church.

³⁴ International Theological Commission, “Theology Today: Perspectives, Principles and Criteria,” http://www.vatican.va/roman_curia/congregations/cfaith/cti_documents/rc_cti_doc_20111129_tologia-oggi_en.html.

This narrow reading of the scope of the bishop's doctrinal teaching office recognizes that the bishops must, on occasion, pronounce judgments on theological works. It insists, however, that these judgments ought to be strictly limited to the identification of doctrinal error.

A dangerously expansive reading of the obligation of the magisterium to offer an "authentic interpretation of the faith" is all too evident in a number of recent doctrinal notifications addressed to the works of important contemporary theologians. A careful reading of these notifications finds in them condemnations that are often little more than subjective judgments of a theological approach or school of thought rather than a discovery of doctrinal error, properly speaking. One might consider CDF notifications regarding the work of both Jon Sobrino³⁵ and Jacques Dupuis³⁶ in which the Congregation of the Doctrine of the Faith essentially faulted the work of these eminent theologians, not for clear doctrinal error but for a failure to give sufficient emphasis to certain doctrinal teachings. Consider the following statement from the CDF's final notification on Dupuis' work:

The Members of the Congregation recognized the author's attempt to remain within the limits of orthodoxy in his study of questions hitherto largely unexplored. At the same time, while noting the author's willingness to provide the necessary clarifications, as evident in his *Responses*, as well as his desire to remain faithful to the doctrine of the Church and the teaching of the Magisterium, they found that his book contained notable ambiguities and difficulties on important doctrinal points, which could lead a reader to erroneous or harmful opinions.³⁷

One is tempted to point out that such a vague warning could easily be put in front of the Bible as well! It is one thing to identify theological ambiguities or to criticize misplaced emphases and quite another to

³⁵ Congregation for the Doctrine of the Faith, "Notification on the works of Father Jon Sobrino, SJ: *Jesucristo liberador. Lectura histórico-teológica de Jesús de Nazaret* (Madrid, 1991) and *La fe en Jesucristo. Ensayo desde las víctimas* (San Salvador, 1999)" (October 13, 2006), http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_20061126_notification-sobrino_en.html.

³⁶ Congregation for the Doctrine of the Faith, "Notification on the book *Toward a Christian Theology of Religious Pluralism* (Orbis Books: Maryknoll, New York 1997) by Father Jacques Dupuis, S.J." (January 24, 2001), http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_20010124_dupuis_en.html.

³⁷ *Ibid.*, preface.

claim the clear contravention of doctrine. It is the province of the theological community to engage in the former task and that of the bishops to engage in the latter.

Consider, finally, the recent condemnation of Elizabeth Johnson's book *Quest for the Living God* by the U.S. bishops' Committee on Doctrine.³⁸ Two of the issues raised by the committee concern Johnson's claims regarding the limits of our knowledge of God and the traditional claim that God is incapable of suffering. These two issues have long been a topic of lively theological debate and it is certainly possible for respected theologians to challenge Johnson's views. Therein lies the problem. The questions the committee raised were theologically tenable but they pertained, I believe, to the realm of free theological debate. As such, the bishops' concerns ought more properly to have been advanced in theological journals and at academic conferences than in the court of doctrinal judgment.

B. THE AUTHORITATIVE STATUS OF PARTICULAR DOCTRINAL TEACHINGS

Catholic theologians will need to call attention to gradations in the authoritative status of church teachings. One of the positive features of the Neoscholastic manual tradition was its exacting specification of distinct categories of church teaching, referred to as theological notes. Theological notes were formal judgments by theologians or the magisterium on the precise relationship of a doctrinal formulation to divine revelation. When a note took a negative form it was considered a "censure." Their purpose was to safeguard the faith and prevent confusion regarding the authoritative status of various theological propositions. One might find the following notes attached to particular teachings in any of a number of seminary manuals in use immediately before Vatican II:³⁹

fides divina—that which is immediately revealed by God;

³⁸ Cf. the complete dossier in *When the Magisterium Intervenes*, 183–275.

³⁹ A typical example can be found in Ludwig Ott, *Fundamentals of Catholic Dogma*, 4th ed., trans. Patrick Lynch, ed. James Bastible (St. Louis: B. Herder, 1960), 9–10. See also Joseph Salaverri *Sacrae theologiae summa*, vol. 1, 781–96. For an in-depth treatment of the role of theological notes and censures see Sixtus Cartechini, *De valore notarum theologiarum et de criteriis ad eas dignoscendas* (Rome: Gregorian University Press, 1951).

fides divina et catholica—that which is immediately revealed by God and is infallibly proposed as such by the magisterium of the Church;
sententia fidei proxima—that which is generally taught as belonging to divine revelation but which has not been solemnly defined as such;
sententia ad fidem pertinens or *theologice certa*—that which is taught as connected to divine revelation (“theologically certain”);
sententia communis— that which belongs to the field of free opinion but which is generally accepted by theologians as true.

Other notes proposed the degree of certitude connected with particular theological opinions, e.g., opinions that are probable (*sententia probabilis*), more probable (*probabilior*) and well founded (*bene fundata*). This system generally presupposed a propositional view of revelation and was often unwarranted in its confidence regarding a teaching's relationship to divine revelation.⁴⁰ Yet, as the late Cardinal Avery Dulles once noted, this system had the singular merit of recognizing “that not all conclusions were equally certain.”⁴¹

I mention the theological notes tradition because in the magisterial activism of our present time it is precisely these taxonomical distinctions that are being overlooked or abused. Too often we find claims to official doctrinal positions without properly qualifying their authoritative status. One of the worst culprits is the *Catechism of the Catholic Church* which only rarely distinguishes between central dogmatic teaching and those church teachings that have been taught with significantly lessened authority and which, in fact, may not be immune from error. This is not altogether surprising when one recalls that the genesis for the catechism was largely reactive. It was at the 1985 Extraordinary Synod of Bishops that calls for a universal catechism were first made, in large part, as a remedy for the doctrinal confusion that was thought to reign in the post-conciliar church. This flattening out of important distinctions in doctrinal authority has been expanded dramatically by the practice of the USCCB subcommittee on the catechism which has promulgated an extensive set of exhaustive doctrine checklists to be implemented in the production of catechetical texts.

⁴⁰ See Harold Ernst, “The Theological Notes and the Interpretation of Doctrine,” *Theological Studies* 63 (2002): 813–2.

⁴¹ Avery Dulles, *The Craft of Theology: From Symbol to System* (New York: Crossroad, 1995), 43.

A critical engagement with the contemporary exercise of doctrinal teaching authority must also attend to a kind of doctrinal inflation. For example, over the last few decades we have encountered a variety of curial pronouncements that have attributed definitive status to such teachings as the prohibition of the ordination of women,⁴² the declaration that Anglican orders are null and void,⁴³ and the assertion that only priests and bishops are the proper ministers of the anointing of the sick.⁴⁴ This tendency reflects both the priority given to certitude over understanding that was mentioned earlier and the determination to ratchet up the authoritative status of certain controverted teachings as part of a pragmatic program to squelch debate.

C. DUE DILIGENCE IN MAGISTERIAL TEACHING

Finally, Catholic theology must challenge a crucial element in the pattern of magisterial activism: a crude, baroque “mechanics of grace” regarding claims to the assistance of the Holy Spirit promised to bishops in virtue of their office.⁴⁵ It is Catholic teaching that the bishops are aided by an assistance of the Holy Spirit in the exercise of their office. This divine assistance, however, must be interpreted in light of the Thomistic maxim that grace brings nature to its perfection. In that light we can legitimately speak of the need for a set of “natural” skills proper to the task of doctrinal judgment. Just as the theologian must first possess the proper intellectual aptitude and academic training necessary to fulfill her theological vocation, this too should apply, *mutatis mutandis*, to the office of the bishop. But where then does the assistance of the Holy Spirit come into play? As Thomas O’Meara has observed, when we

⁴² *Responsum ad dubium*, *Origins* 25 (November 30, 1995): 401.

⁴³ Cardinal Joseph Ratzinger and Archbishop Tarcisio Bertone, “Commentary on Profession of Faith’s Concluding Paragraphs,” *Origins* 28 (July 16, 1998): 116–19.

⁴⁴ Congregation for the Doctrine of the Faith, “Note on the Minister of the Sacrament of the Anointing of the Sick” (February 11, 2005), http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_20050211_unzione-infermi_en.html: “This doctrine is *definitive tenenda*. Neither deacons nor lay persons may exercise the said ministry, and any action in this regard constitutes a simulation of the Sacrament.”

⁴⁵ Thomas F. O’Meara, “Divine Grace and Human Nature as Sources for the Universal Magisterium of Bishops,” *Theological Studies* 64 (2003): 683–706, at 688–89.

do encounter references to the assistance of the Holy Spirit, particularly in ecclesiastical documents, it often betrays Baroque theology's preoccupations with "actual graces."⁴⁶ O'Meara calls for the recovery of a theology of grace that is more attentive to St. Thomas' concern to preserve legitimate human freedom.

As Richard McCormick once pointed out, the divine assistance promised the church is only effective when conjoined with the proper engagement of basic human processes.⁴⁷ Here we might speak of the need for "due diligence" on the part of the bishops. The term "due diligence" comes from the legal profession and refers to the obligation to do proper and thorough investigation before entering into a binding contract of some kind. Using this phrase in an ecclesiastical context, I mean by it the obligations of the pope and bishops to engage in requisite prayer, consultation, dialogue and study before exercising their teaching responsibilities. McCormick divided the relevant human processes into two categories: evidence gathering and evidence assessing. *Evidence gathering* refers to the manifold ways in which the human person inquires after the truth through study, consultation and investigation. With respect to the exercise of the teaching authority of the bishops, this would involve a study of the church's tradition (giving primacy of place to the testimony of Scripture), a consultation of scholars and theologians (representing diverse schools of thought and theological/historical perspectives), a consideration of the insights of pertinent related fields (e.g., the contributions of the social sciences, genetics), and an attempt to discern the *sensus fidelium*, the sense of the faithful in and through whom the Spirit speaks. Insufficient attention to this evidence-gathering can hamper the activity of the Spirit in bringing forth wisdom and insight.

⁴⁶ Ibid.

⁴⁷ See Richard A. McCormick, *Notes on Moral Theology: 1965 through 1980* (Lanham, MD: University Press of America, 1981), 261-6.

Evidence assessing involves the proper consideration and assessment of the “evidence” gathered. Here again recourse to a diversity of theological scholarship will be important, but so will patient reflection and authentic conversation in contexts where the free exchange of views is clearly welcomed.

The emphases on evidence gathering and assessing are not preludes to the assistance of the Spirit; they are not mere “natural” processes necessary before the work of the Spirit could “kick in.” Rather, the Spirit is operative in and through these human processes. An authentic theology of the assistance of the Spirit precludes seeing the authoritative teaching of the church as isolated ecclesial acts engaged by autonomous authority figures. Popes and bishops do not receive supernaturally infused knowledge at ordination. Consultative activities, dialogue, and deliberation ought to be constitutive elements of their teaching ministry; these are the ordinary human means by which the Spirit brings the church to truth. For this reason, when bishops engage in true consultation—with fellow bishops, theologians and the faithful—they are not merely engaging in prudent gestures and they are certainly not, as some might suggest, compromising their own teaching authority. Consultation and conversation are integral to the teaching process, and must be acknowledged as one of the privileged instruments of the Spirit. When Catholics see no evidence of genuine, open-minded inquiry, the entertainment of diverse insights and scholarly perspectives, and a willingness to listen to opposing viewpoints, they may legitimately question whether the promised assistance of the Holy Spirit has been truly effective in the bishops’ exercise of authority.

Again it is not difficult to provide contemporary examples in which due diligence in the processes of evidence gathering and evidence assessing was lacking. Consider the two cases already mentioned regarding the bishops’ opposition to the Affordable Care Act of 2010 and their current opposition to the proposed accommodations regarding mandates for contraceptive insurance coverage. In both instances

there are solid reasons for questioning whether the bishops ever bothered to consult respected theologians and legal scholars who might have offered a different analysis of the moral issues involved.

We are undergoing a very difficult period in the life of the church. It is a time not without its contradictions. Here in the US we can still see many signs of vitality in vibrant parishes and an educated laity selflessly dedicating themselves to the life and mission of the church. In Africa, Asia and elsewhere we find evidence of local churches and their leaders acting with new energies and determination. New voices are regularly being brought into theological conversation, bringing with them fresh and often penetrating insights. Many of us have had the good fortune to collaborate with bishops who still exhibit an authentic pastoral spirit and openness to dialogue. Yet the quiet work of these exemplary bishops seems more and more eclipsed by other exercises of ecclesiastical authority that are too little influenced by the authentic and liberating authority of Christ and too much bound by fear and the need for control. During the fiftieth anniversary of Vatican II, these contradictions are felt with a particular sadness.

The path forward is not clear. Many theologians remain eager to work constructively with those in episcopal office, recognizing that the tensions that will arise from time to time between bishops and theologians can be productive. Theologians must be willing to accept criticism and even correction with humility. We are not ourselves immune from the temptations to arrogance. But the engagement between bishop and theologian must not come at the cost of a theologian's integrity. For integrity may demand that we speak out respectfully yet forcefully where we see troubling abuses in the exercise of authority. In these times, this is what fidelity to tradition looks like.