

RECENT THEOLOGICAL OBSERVATIONS ON MAGISTERIAL DOCUMENTS AND PUBLIC DISSENT

FRANCIS A. SULLIVAN, S.J.

[Editor's Note: In this note, the author raises questions about some opinions expressed by the Secretary of the Congregation for the Doctrine of the Faith in a recently published article in which, among other issues, he discusses the doctrinal weight to be attributed to a papal declaration that a particular doctrine had been taught infallibly by the ordinary universal magisterium.]

L'OSSERVATORE ROMANO for December 20, 1996, carried a long article by Archbishop Tarcisio Bertone, S.D.B., Secretary of the Congregation for the Doctrine of the Faith (CDF), with the title: "A proposito della recezione dei Documenti del Magistero e del dissenso pubblico."¹ A translation of this article has been published in the weekly edition in English of *L'Osservatore Romano* for January 29, 1997, under the heading: "Theological Observations by Archbishop Bertone."² While Archbishop Bertone is second in charge of the CDF under the Prefect, Cardinal Ratzinger, his article cannot be described as an official document issued by the congregation. On the other hand, when the Secretary of the CDF publishes "theological observations" concerning the doctrinal weight of recent documents of the Roman magisterium, one can hardly ignore the likelihood that his views represent an understanding of the matter that is shared by the Cardinal Prefect and other members of the CDF. If this is the case, it would not be surprising if official documents emanating from Rome in the future were to give magisterial authority to opinions expressed in this article by Archbishop Bertone. Hence, his article deserves a careful reading. In this Note, I focus on what he says about the doctrinal weight of a papal statement affirming that a particular doctrine had been taught infallibly by the ordinary universal magisterium.

It is well known that such an affirmation has been made by the CDF in its *Responsum ad dubium* concerning the doctrine that the Church

FRANCIS A. SULLIVAN, S.J., is professor emeritus at the Pontifical Gregorian University and adjunct professor at Boston College. His most recent book on ecclesiology is *Creative Fidelity: Weighing and Interpreting Documents of the Magisterium* (Paulist, 1996).

¹ *L'Osservatore Romano* (December 20, 1996) 1, col. 5-6; 5, col. 4-6.

² *L'Osservatore Romano* [English ed.] (January 29, 1997) 6-7.

has no authority to ordain women to the priesthood.³ To my knowledge, this is the first time that the Roman magisterium has ever declared that a specific doctrine was taught infallibly by the ordinary universal magisterium. When Pope Pius IX insisted that Catholic theologians must give their assent of faith not only to defined dogmas, but also to doctrines that are “handed on by the ordinary magisterium of the whole Church dispersed throughout the world as divinely revealed,” he did not name any specific doctrine as falling in that category.⁴ Nor did the First Vatican Council do so, when it declared that the assent of “divine and Catholic faith” must be given to doctrines which are proposed by the Church “by its ordinary and universal magisterium as divinely revealed and to be believed as such.”⁵ Vatican II spelled out the conditions under which the teaching of the ordinary universal magisterium would be infallible, but it did not specify which doctrines had been so taught.⁶

Private theologians have not been so reticent. When they wrote manuals for the use of students, they usually assigned a “theological note” to each of their theses. While the note *de fide definita* was attached to “defined dogma,” the note *de fide* without *definita* could mean that, in the judgment of the manualist, the doctrine was taught as of faith by the ordinary universal magisterium. More recently, some Catholic theologians have claimed that the wrongfulness of the use of artificial means of contraception has been taught infallibly by the ordinary universal magisterium.⁷ William E. May extended such a claim to the “core of Catholic moral teaching,” when he wrote: “Vatican II definitely teaches that the magisterium does teach infallibly on questions of morality when specific conditions are met, and I submit that these conditions have been met with respect to the core of Catholic moral teaching concerning the inviolability of innocent human life, the evil of adultery and fornication and similar issues.”⁸

Catholic moral teaching concerning the inviolability of innocent human life received its most authoritative statement thus far in the encyclical *Evangelium vitae*, when Pope John Paul II said: “Therefore, by the authority which Christ conferred upon Peter and his Successors, and in communion with the Bishops of the Catholic Church, *I confirm that the direct and voluntary killing of an innocent human being is*

³ *Acta apostolicae sedis* 87 (1995) 1114; *Origins* 25 (November 30, 1995) 401–3.

⁴ *Tuas libenter*, December 21, 1863; text in H. Denzinger and A. Schönmetzer, *Enchiridion Symbolorum . . .*, 34th ed. (Freiburg: Herder, 1967) no. 2879 (hereafter cited as DS).

⁵ DS no. 3011.

⁶ *Lumen gentium* no. 25.

⁷ Germain Grisez, Joseph Boyle, John Finnis, and William E. May, “Every Marital Act Ought to be Open to New Life,: Towards a Clearer Understanding,” *The Thomist* 52 (1988) 365–426, at 417.

⁸ “Catholic Moral Teaching and the Limits of Dissent,” in *Vatican Authority and American Catholic Dissent*, ed. William W. May (New York: Crossroad, 1987) 87–102, at 92–93.

always gravely immoral. This doctrine, based upon that unwritten law which man, in the light of reason, finds in his own heart (cf. Rom 2:14–15), is reaffirmed by Sacred Scripture, transmitted by the Tradition of the Church and taught by the ordinary and universal Magisterium.⁹ In that same encyclical, Pope John Paul declared that the Church's doctrines on abortion and euthanasia were likewise "transmitted by the Tradition of the Church and taught by the ordinary and universal Magisterium."¹⁰ This formula was followed each time by a reference to the section of *Lumen gentium* no. 25 which explains the conditions under which the teaching of the ordinary universal magisterium is infallible. However, the encyclical does not say that these doctrines were taught infallibly, nor did Cardinal Ratzinger, in his press conference concerning it, say that Catholics must now regard these three moral doctrines as having been taught infallibly by the ordinary universal magisterium.¹¹

I repeat, then, that to my knowledge the *Responsum ad dubium* issued by the CDF in 1995 is the first official document of the Roman magisterium that has ever declared that a specific doctrine was taught infallibly by the ordinary universal magisterium. While Pope John Paul II approved the publication of the *Responsum* and, as Cardinal Ratzinger has said, "actually wanted this text,"¹² it is still a statement of the CDF and not a papal declaration.

With this as background, we come to the recent article by Archbishop Bertone. Reaffirming the judgment expressed by the CDF in its *Responsum*, he describes the doctrine of *Ordinatio sacerdotalis* as "definitive and unconditionally binding." He then adds: "The same criterion must also be applied to other doctrines regarding universal moral norms: the killing of an innocent human being is always gravely immoral; abortion is always gravely immoral; adultery or slander is always evil, etc. These doctrines, although not yet declared by a *solemn judgment*, nevertheless belong to the Church's faith and are infallibly proposed by the ordinary, universal Magisterium."¹³ As we have seen, when Pope John Paul said in *Evangelium vitae* that the Church's doctrine on the killing of an innocent human being was taught by the ordinary universal magisterium, he did not say "infallibly." Archbishop Bertone not only describes that doctrine as infallible, but declares the Church's doctrine on adultery, slander, and presumably other moral doctrines (indicated by "etc.") to be infallibly taught as well. Furthermore, it would seem that in his opinion, what Pope John Paul II has said in *Veritatis splendor* and *Evangelium vitae* is equivalent to a

⁹ *Evangelium vitae*, English ed. (Vatican City: Vatican Press, 1995) no. 57, 100–102; *Origins* 24 (April 6, 1995) 709.

¹⁰ *Ibid.* nos. 62, 65 (pp. 112, 119); *Origins* 24 (April 6, 1995) 711–12.

¹¹ *Origins* 24 (April 13, 1995) 734.

¹² He is reported to have said this during a Vatican press conference held on January 24, 1997; see *The Tablet* [London] 251 (February 1, 1997) 152.

¹³ *L'Osservatore Romano* [English ed.] (January 29, 1997) 7, col. 1.

papal declaration affirming that the Church's doctrine on these moral issues has indeed been infallibly taught by the ordinary universal magisterium. Here is Bertone's statement that leads me to this conclusion. "It must be stressed then that in the encyclicals *Veritatis splendor* and *Evangelium vitae* and in the apostolic letter *Ordinatio sacerdotalis*, the Roman Pontiff intended, though not in a solemn way, to confirm and reaffirm doctrines which belong to the ordinary, universal teaching of the Magisterium, and which therefore are to be held in a definitive and irrevocable way."¹⁴

Since the faithful are obliged to hold in an irrevocable way only doctrine that has been infallibly taught, I conclude that, in Bertone's opinion, in all three of those letters Pope John Paul intended to declare that certain doctrines had been taught infallibly by the ordinary universal magisterium. The Pope's approval of the *Responsum* of the CDF makes it clear that this was in fact his intention in *Ordinatio sacerdotalis*. If this was his intention in *Evangelium vitae* with regard to the doctrines on murder, abortion, and euthanasia, one must admit that he did not make this as clear as Bertone evidently holds it to be. And as far as *Veritatis splendor* is concerned, one can only ask which of its doctrines Bertone thinks the Pope intended to confirm and reaffirm as belonging to the ordinary, universal teaching of the magisterium, and as therefore to be held in a definitive and irrevocable way.

The fact is that none of these documents contains an explicit papal declaration that a specific doctrine has been taught infallibly by the ordinary universal magisterium. However, since Archbishop Bertone is convinced that they do, he goes on to discuss the doctrinal weight that ought to be ascribed to such a papal declaration. At this point I think it best to quote the pertinent section of his article, before offering my comment on it.

The ordinary papal Magisterium can teach a doctrine as *definitive* because it has been constantly maintained and held by Tradition and transmitted by the ordinary universal Magisterium. This latter exercise of the charism of infallibility does not take the form of a papal act of definition, but pertains to the ordinary, universal Magisterium which the Pope again sets forth with his formal pronouncement of *confirmation and reaffirmation* (generally in an encyclical or apostolic letter). If we were to hold that the Pope must necessarily make an *ex cathedra* definition whenever he intends to declare a doctrine as definitive because it belongs to the deposit of faith, it would imply an underestimation of the ordinary, universal Magisterium, and infallibility would be limited to the solemn definitions of the Pope or a Council, in a way that differs from the teaching of Vatican I and Vatican II, which attribute an infallible character to the teachings of the ordinary, universal Magisterium.

The particular nature of a teaching of the papal Magisterium that is meant merely to confirm or repropose a certitude of faith already lived consciously by the Church or affirmed by the universal teaching of the entire Episcopate can be seen not in the teaching of the doctrine *per se*, but in the fact that the Roman

¹⁴ Ibid. 6, col. 2.

Pontiff formally declares that this doctrine already belongs to the faith of the Church and is infallibly taught by the ordinary universal Magisterium as divinely revealed or to be held in a definitive way.

In the light of these considerations, it seems a pseudo-problem to wonder whether this papal act of *confirming* a teaching of the ordinary, universal Magisterium is infallible or not. In fact, although it is not *per se* a *dogmatic definition* (like the Trinitarian dogma of Nicaea, the Christological dogma of Chalcedon or the Marian dogmas), a papal pronouncement of *confirmation* enjoys the same infallibility as the teaching of the ordinary, universal Magisterium, which includes the Pope not as a mere Bishop but as the Head of the Episcopal College.¹⁵

Here is my comment on what Archbishop Bertone has said here. If it were already evident that the Catholic bishops throughout the world were in agreement in proposing a particular doctrine as definitively to be held, no doubt the papal teaching of the same doctrine would participate in the infallibility of such an exercise of the ordinary universal magisterium. However, if it were not otherwise evident that there was such a consensus of the whole episcopal college, would a papal declaration suffice to establish that fact, and would such a papal declaration, though not an *ex cathedra* definition, be an infallible act of papal magisterium?

If I understand him correctly, Archbishop Bertone would answer both of those questions in the affirmative. However, in my opinion there are good reasons to answer them in the negative.

Canon law states that no doctrine is understood as infallibly defined unless this fact is clearly established (*nisi id manifeste constiterit*). Although canon 749.3 speaks only of doctrine that is infallibly defined, the same requirement would hold for the claim that a doctrine had been infallibly taught by the ordinary universal magisterium, since the consequences for the faithful are the same in either case.¹⁶

The question whether a doctrine has been infallibly taught is not a matter of doctrine, but a matter of fact, which has to be “manifestly established.” What must be “manifestly established,” when the claim is made that a doctrine has been taught infallibly by the ordinary universal magisterium, is that not only the pope, but the whole body of Catholic bishops as well, are proposing the same doctrine as one which the faithful are obliged to hold in a definitive way. I do not see how it could be said that a papal declaration, of itself, without further evidence, would suffice to establish this fact.

Archbishop Bertone insists that while such a papal declaration would not have the character of a papal definition *ex cathedra* and hence would be an act of ordinary papal magisterium, it would “enjoy

¹⁵ *Ibid.* 6, col. 3.

¹⁶ I have explained the grounds of this assertion in a previous note, “The ‘Secondary Object’ of Infallibility,” *TS* 54 (1993) 536–50, at 549–50.

the same infallibility as the teaching of the ordinary, universal Magisterium." It is important here to distinguish two quite different acts of papal teaching authority. One is had when the pope teaches a point of doctrine about which it is clear and certain that not only the pope, but all the bishops as well, are teaching the same doctrine as definitively to be held. In this case, the papal teaching shares the infallibility of the ordinary universal magisterium.

The other case is when, in teaching a point of doctrine as definitively to be held, the pope *declares* that this doctrine is infallibly taught by the ordinary universal magisterium. Here the pope is saying: "Not only do I teach this doctrine as definitively to be held, but all the other Catholic bishops do so as well." I do not see how such a declaration, which would be an act of *ordinary* papal magisterium concerning a question of *fact*, can be said to meet the conditions laid down by Vatican I for an exercise of papal infallibility.

Another questionable point in Bertone's article is the way he describes the object or matter about which the Church can teach with infallibility. He says, "In order to speak of the infallible ordinary and universal magisterium, it is necessary that the consent between the Bishops have for its object a teaching proposed as formally revealed or as certainly true and undoubted, such that it calls for the full and undeniable assent of the faithful."¹⁷ Here the phrase "or as certainly true and undoubted" is clearly intended to describe the secondary object of infallibility, i.e. matter that is not in itself revealed but can still be taught with infallibility. However, for this it is not enough that a doctrine be "certainly true and undoubted"; it must also be a matter of faith or morals, and be so closely connected with revelation that the Church needs to be able to speak definitively about it in order to be able to defend or explain some revealed truth. Bertone's phrase would enormously expand the object of infallible teaching.

A third point in Bertone's article which deserves critical comment is an assertion he makes regarding the consensus of the whole episcopate that is required to meet the conditions laid down for infallible teaching of the ordinary universal magisterium. He says, "It is also worth noting that the agreement of the universal Episcopate in communion with the Successor of Peter about the doctrinal and binding character of an assertion or an ecclesial practice in ages past is not annulled or diminished by dissent that may occur in a later era."¹⁸

It seems to me that this statement does not sufficiently attend to the possibility, which has actually been verified on a number of issues, that a doctrine on which there was a consensus in the past, no longer enjoys such a consensus. In other words, what was at first a dissenting opinion, has sometimes become the more common, and even the official, doctrine. One obvious example is the consensus that existed until the

¹⁷ *L'Osservatore Romano* [English ed.] 7, col. 1.

¹⁸ *Ibid.* 6-7.

15th century about the absolute necessity of explicit Christian faith for salvation. In the light of the discoveries made in the 15th and 16th centuries about vast populations that had had no possibility of coming to Christian faith before the missionaries arrived, theologians began to reconsider the question, and the Church gradually came around to what is now the teaching of Vatican II on the possibility of salvation for those who, without fault on their part, lack Christian faith.

Hence it can happen, and it has happened, that what was at first dissent from common teaching, has subsequently been accepted as the doctrine of the Church. One could name several other issues, such as the Church's judgment on the morality of owning and using human persons as slaves, on the taking of interest on loans, on religious liberty, and on non-Christian religions, where what was at first a dissenting opinion has become the doctrine of the Church. An interesting example of this can be found even in the encyclical *Evangelium vitae*. It would not be difficult to show that for many centuries popes and bishops, following the teaching of Pope Innocent III that "the punishment of original sin is the lack of the vision of God,"¹⁹ were agreed in teaching that infants who died without baptism would not enjoy the beatific vision. Even as recently as 1954, William A. Van Roo published a scholarly article, demonstrating the strength of the *sensus ecclesiae* on this question.²⁰ And yet, in *Evangelium vitae*, addressing himself to women who have had an abortion, Pope John Paul II says, "The Father of mercies is ready to give you his forgiveness and his peace in the sacrament of reconciliation. You will come to understand that nothing is definitively lost, and you will also be able to ask forgiveness from your child, who is now living in the Lord."²¹

The history of Catholic doctrine suggests the need of great caution in claiming that something has been taught infallibly by the ordinary universal magisterium, if there is reason to judge that a position on which there was a consensus in the past no longer enjoys such a consensus. In such a case, it would be wise to put off any peremptory declaration until it becomes clear whether a question has been raised that obliges the Church to look at an old problem in a new light and perhaps come up with a better answer to it.

¹⁹ Letter *Maiores ecclesiae causas* of the year 1201; DS no. 780.

²⁰ "Infants Dying without Baptism: A Survey of Recent Literature and Determination of the State of the Question," *Gregorianum* 35 (1954) 406–73.

²¹ *Evangelium vitae* no. 99; *Origins* 24 (April 6, 1995) 723. One could also compare what is said in the *Roman Catechism* issued by St. Pius V in 1566 (II.ii.35), with what is said in the *Catechism of the Catholic Church* issued by John Paul II in 1992 (no. 1261).