

Noninfallible Magisterium, Religious Assent and Theological Dissent

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In the present study we attempt to present the meaning and import of *Lumen Gentium*, n. 25A on the noninfallible magisterium, the religious assent of the will and the intellect and the possibility and legitimacy of theological dissent from it. The conciliar text reads:

Bishops who teach in communion with the Roman Pontiff are to be revered by all as witnesses of divine and Catholic truth; the faithful, for their part, are obliged to submit to their bishops' decision, made in the name of Christ, in matters of faith and morals, and to adhere to it with a ready and respectful allegiance of mind. This religious assent of the will and the intellect must be given, in a special way, to the authentic teaching authority of the Roman Pontiff, even when he does not speak *ex cathedra* in such wise, indeed, that his supreme teaching authority be acknowledged with respect, and 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 in which the doctrine is proposed, or by the manner in which the doctrine is formulated.¹

¹SOCVII, *Constitutiones, Decreta, Declarationes*, (Vatican: Typis Polyglottis Vaticanis, 19966), vol. 1, p. 124: "Episcopi in communione cum Romano Pontifice docentes ab omnibus tamquam divinae et catholicae veritatis testes venerandi sunt; fideles autem in sui Episcopi sententiam de fide et moribus nomine Christi prolatam concurrere, eique religioso animi obsequio adhaerere debent. Hoc vero religiosum voluntatis et intellectus obsequium singulari ratione praestandum est Romani pontificis authentico magisterio etiam cum non ex cathedra loquitur; ita nempe ut magisterium eius supremum reverenter agnoscatur, et sententiis ab eo prolatiis sincere adhaereatur, iuxta mentem et voluntatem manifestatam ipsius, quae se prodit praecipue sive indole documentorum, sive ex frequenti propositione eiusdem doctrinae, sive ex dicendi ratione."

This brief text is overloaded. It tries to cover all the theories and problems relative to the doctrine of the noninfallible magisterium and the response due to it. Yet it does not enter into particular problems that may arise out of the teaching. Thus, in interpreting and applying it to concrete problems, various distinctions and possibilities have to be kept in mind, as what the intention of the text is.

For the specific purposes of this study, we divide the text into three general parts, namely, (1) the nature of the noninfallible magisterium, (2) the nature of the assent due to it, and (3) the possibility of withholding such an assent. However, before going into an analysis of this brief conciliar text, it would be useful to situate it within the whole of *Lumen Gentium* n. 25. This number has four paragraphs, namely:

25A. The first paragraph deals with the teaching office of the bishops.² Without declaring that the office of teaching is absolutely the principal one, it immediately begins by stating that, "among the principal duties of bishops the preaching of the Gospel stands out." This is a clear return to the biblical primacy of place preaching the Gospel has.³ The office of teaching falls within this kerygmatic function of the Gospel proclamation which, in fact, is the origin of the existence and growth of the Church. This primacy of place is even clearer with the teaching that only bishops exclusively are "authentic teachers," that is, only they "teach with the authority of Christ." It is with this "authentic teaching" they propose to the faithful that they are able to inform their thinking and guide their conduct.⁴ In other words, Christian morality is founded on faith revealed and not on reason without, however, contradicting the latter nor being limited by it.

The paragraph proceeds with the various levels of response due to the magisterium of the bishops. In the general level, as long as bishops teach in communion with the Roman Pontiff, they are to be revered by all as "witnesses of divine and Catholic faith." In the specific level, the faithful under the authority of a certain bishop are held in strict obedience to his decisions "in

²*Ibidem*: "Inter praecipua Episcoporum munera eminet praedicatio Evangelii. Episcopi enim sunt fidei praecones, qui novos discipulos ad Christum adducunt, et doctores authentici seu auctoritate Christi praediti, qui populo sibi commissio fidem credendam et moribus applicandam praedicant, et sub lumine Sancti Spiritus illustrent, ex thesauro Revelationis nova et vetera proferentes (cf. Mt.13,52), eam fructificare faciunt erroresque gregi suo impendentes vigilanter arcent (cf. 2 Tm. 4,1-4). Episcopi in communione cum Romano Pontifice docentes ab omnibus tamquam divinae et catholicae veritatis testes venerandi sunt; fideles autem in sui Episcopi sententiam de fide et moribus nomine Christi prolatam concurrere, eique religioso animi obsequio adhaerere debent. Hoc vero religiosum voluntatis et intellectus obsequium singulari ratione praestandum est Romani Pontificis authentico magisterio etiam cum non ex cathedra loquitur; ita nempe ut magisterium eius supremum reverenter agnoscatur, et sententiis ab eo prolati sincere adhaereatur, iuxta mentem et voluntatem manifestatam ipsius, quae se prodit praecipue sive indole documentorum, sive ex frequenti propositione eiusdem doctrinae, sive ex dicendi ratione."

³Cfr. Acts 6,2-4; 1 Cor 1,17; 9,16.

⁴Cf. S. RYAN, "The Hierarchical Structure of the Church," in *The Church, A Theological and Pastoral Commentary on the Lumen Gentium*, p.204; G. PHILIPS, *L'Eglise et son mystère au deuxième Concile du Vatican*, 2 vols., Paris: Desclée, 1967, p. 321.

matters of faith and morals." This response comes specified as a "religious assent of the soul" which is further explained as a "religious assent of the will and intellect." Moreover, this assent must be given "in a special way" to the authentic magisterium of the pope even when he does not speak *ex cathedra*.

25B. The second paragraph deals with the infallibility of the bishops.⁵ The fact of the infallibility of the bishops united together under certain circumstances is incontestible. However, to exercise this charism of infallibility, it is not necessary that they are physically united, provided that certain conditions are fulfilled: the hierarchical communion, a matter of faith and morals, official and manifested concurrence on one doctrine as "to be definitively held." Consequently, these teachings are infallible and irreformable. On the part of the faithful, therefore, it is demanded an "assent of faith."

25C. The third paragraph is a very dense paragraph which touches on a great number of problems, dealing at the same time with the object, extension, conditions of infallibility and the gift of papal infallibility.⁶ The doctrine says that the object of infallibility are those which "pertains to matters of faith and morals." It extends as far as the conservation and exposition of the deposit of faith entrusted to the Church extends. The Roman Pontiff "enjoys this infallibility in virtue of his office, when, as supreme pastor and teacher of all the faithful...he proclaims in an absolute decision a doctrine pertaining to faith and morals."⁷

25D. The fourth paragraph talks about the absolute necessity of having the definition of the infallible magisterium, be it of the pope *ex cathedra* or of the pope together with the bishops, to be in accordance with revelation be it in

⁵SOCVII, *Constitutiones, Decreta, Declarationes*, vol. I, p. 125: "Licet singuli praesules infallibilitatis praerogativa non polleant, quando tamen, etiam per orbem dispersi, sed communionis nexum inter se et cum Successore Petri servantes, authentice res fidei et morum docentes in unam sententiam tamquam definitive tenendam conveniunt, doctrinam Christi infallibiliter enuntiant. Quod adhuc manifestius habetur quando, in Concilio Oecumenico coadunati, pro universa Ecclesia fidei et morum doctores et iudices sunt, quorum definitionibus fidei obsequio est adhaerendum."

⁶This is a Vatican I teaching. The Council taught explicitly that this infallibility of the bishops dispersed throughout the world, in the exercise of their ordinary and universal magisterium, is a revealed truth. Cf. *Dei Filius*, n.3. (Denz. 3011)

⁷SOCVII, *Constitutiones, Decreta, Declarationes*, vol. I, pp. 125- 126: "Haec autem infallibilitas, qua Divinus Redemptor Ecclesiam suam in definienda doctrina de fide vel moribus instructam esse voluit, tantum patet quantum divinae Revelationis patet depositum, sancte custodiendum et fideliter exponendum. Qua quidem infallibilitate Romanus Pontifex, Collegii Episcoporum Caput, vi muneris sui gaudet, quando, ut supremus omnium christifidelium pastor et doctor, qui fratres suos in fide confirmat (cf. Lc. 22,32), doctrinam de fide vel moribus definitivo actu proclamat. Quare definitiones eius ex sese, et non ex consensu Ecclesiae, irreformabiles merito dicuntur, quippe quae sub assistentia Spiritus Sancti, ipsi in beato Petro promissa, prolatae sint, ideoque nulla indigeant aliorum approbatione, nec ullam ad aliud iudicium appellationem patiantur. Tunc enim Romanus Pontifex non ut persona privata sententiam profert, sed ut universalis Ecclesiae magister supremus, in quo charisma infallibilitatis ipsius Ecclesiae singulariter inest, doctrinam fidei catholicae exponit vel tuetur. Infallibilitas Ecclesiae promissa in corpore Episcoporum quoque inest, quando supremum magisterium cum Petri Successore exercet. Istis autem definitionibus assensus Ecclesiae numquam deesse potest propter actionem eiusdem Spiritus Sancti, qua universus Christi grex in unitate fidei servatur et proficit."

the Scriptures or as part of the divine Tradition.⁸ In order to further show with clarity the perfect concordance of the pope and the rest of the bishops with the entire Church, they are required to apply themselves with zeal in the work of investigations and to avail themselves with the theological and biblical expertise before declaring something to be definitively held.⁹

1. The Meaning of Noninfallible Magisterium in *Lumen Gentium* n. 25A

1.1. The identical nature of the papal magisterium *non ex cathedra* and the magisterium of the individual bishops.

The transfer of the text on the papal noninfallible magisterium¹⁰ from its location immediately after his infallible magisterium to the place immediately following the magisterium of the individual bishops has this immediate and significant doctrinal impact: the Council teaching identifies the nature of the papal noninfallible magisterium with that of the individual bishops. Indeed, this was the explicit intention of the transfer.¹¹ In this respect, conciliar teaching on the "merely authentic magisterium" of the pope and the bishops represents a "progress in the conciliar doctrine."¹² Putting the papal noninfallible magisterium in this context, one notices a gradual intensification of the assent required to the whole noninfallible magisterium without a change of the nature of the assent. The sentence immediately preceding it states that all the bishops in hierarchical communion with the pope are to be respected as "witnesses of divine and catholic faith." Then, it proceeds to the assent given to one's proper bishop to whose decision one "must adhere with a religious assent of spirit." Thirdly, it deals with the assent due to the magisterium of the pope even when he does not speak *ex cathedra*.

Thus, "*this* religious submission of the will and intellect" makes reference to the two prior forms of assent given to the individual bishops in communion with the pope and to one's proper bishop respectively. This identification of the nature of the noninfallible magisterium of both the individual bishops and that of the pope consequently results in the identification of the nature of the religious assent given to the individual bishops in communion with the pope, to one's proper bishop and to the papal noninfallible magisterium.

⁸SOCVII, *Constitutiones, Decreta, Declarationes*, vol. I, p.126: "Cum autem..."

⁹Cf. *Acta Synodalia*, I: 4, p. 624.

¹⁰The conciliar text does not use the term "noninfallible" to qualify this papal magisterium. Instead, it uses the qualification "non ex-cathedra." Since the latter is used in the conciliar text in contrast to the papal magisterium "ex cathedra," the Council had in mind "non ex cathedra" to mean "noninfallible." This intention is manifested explicitly in *Acta Synodalia*, III: I, 250 G, and *Acta Synodalia*, III: I, 252 N c. This study employs the term "noninfallible" unless it cites a text verbatim.

¹¹Cf. *Schema Constitutionis De Ecclesia*, 1964, p. 96.

¹²J. SALAVERRI, "Potestad del Magisterio" in Casimiro M. González (ed), *Concilio Vaticano II. Comentarios a la Constitución sobre la Iglesia* (Madrid, B.A.C. 1966) p. 518.

1.2. No guarantee of the charism of infallibility

In this particular exercise of the authentic magisterium, neither the individual bishops nor the pope enjoy the charism of infallibility. Thus, there is no absolute guarantee of freedom from any form of error on its part. This is an essential corollary to this identification, since the bishops themselves, taken individually, do not enjoy the privilege of infallibility. Indeed, this is another deliberate effect of the transfer of the said text.¹³ Further, it had the scope of considering separately and distinctively first the noninfallible pontifical magisterium and then the infallible magisterium. Finally, how the text is worded makes it even clearer that this papal magisterium is noninfallible.¹⁴

Thus, in its teaching on the papal magisterium *non ex cathedra*, the Second Vatican Council repeated only the teaching of the First Vatican Council on the matter, namely, that only the papal magisterium *ex cathedra* should be considered as infallible magisterium.¹⁵ Whether or not a papal infallible magisterium *non ex cathedra* exists, Vatican II did not treat it. This does not, however, mean that "there are no infallible and irreformable teachings" outside the exercise of the infallible magisterium *ex cathedra*.

1.3. This noninfallible magisterium is "authentic"

The Latin term *authenticum* has received a variety of translations in modern languages. In English alone, it is translated by various authors as "authentic, authoritative, official, hierarchical, ecclesiastical." Sullivan, Dulles, Komonchak and some others hold that "authentic" is misleading. Sullivan thinks that "authoritative" is the best English rendition of the Latin term *authenticum* for several reasons. First, the use of the term "authentic" in modern English is certainly taken to mean "genuine." Its meaning as "authoritative" is obsolete. To mean that only bishops can give, for instance, a "genuine interpretation of the Word of God" would be absurd, and the Council Fathers could not have anything in mind to the effect. Second, basing himself on the conciliar texts where the term is employed, it is clear that "authenticum" means "authoritative."¹⁶ Specifically in its context in *Lumen Gentium* n. 25, he suggests that "authoritative" is a more opportune translation than "authentic,"

¹³Cf. *Acta Synodalia*, II: I, p. 250.

¹⁴The definition of the infallible magisterium is given in LG n.25C, giving and defining both the active subjects. Another important note in this respect is, in contrast to the papal magisterium *non ex cathedra*, in speaking of his noninfallible magisterium, the Council did not use the term *ex cathedra* in reference to his infallible magisterium. Instead, it uses the expression *definitivo actu proclamat*, which is synonymous of *quando ex cathedra loquitur*. Cf. *Acta Synodalia*, III: 1,252 ne.

¹⁵Pastor Aeternus, chap.4 (Denz. 3074). The parallel text of Vatican II is expressed in LG n. 25C.

¹⁶Cfr. F. SULLIVAN, *Magisterium*, p. 26. Thus, in *Lumen Gentium* 25a, where bishops are described as *doctores authentici* the source of their authority is also named: they are "teachers endowed with the authority of Christ."

"since the immediately following phrase tells us what in this context it means: 'endowed with the authority of Christ'.¹⁷ This "authoritativeness" of their being teachers is derived from the fact they are "endowed with the authority of Christ" and which authority to teach is received by virtue of their inheriting from the apostles the mandate to teach in the name of Christ."¹⁸ Likewise, Komonchak translates "authenticus" as "authoritative" for the same reason.¹⁹

Dulles, after considering "pastoral, authentic, ecclesiastical and hierarchical" as possible translation of the Latin term, opts for "ecclesiastical" or "hierarchical" as more satisfactory. He forwards two reasons why "authentic" is a bad designation for the magisterium of the pope and the bishops. First, "authenticum" in the technical use means "authoritative in a formal or juridical sense." Second, "authentic" in English means "genuine." Hence, "to speak of the official magisterium as 'authentic' is misleading since it suggests that any other magisterium is spurious – a suggestion not conveyed by the Latin." The terms "ecclesiastical" and "hierarchical" are more satisfactory because the former "successfully indicates the power of this magisterium to commit the Church institutionally" and the latter "indicates that this magisterium is vested in, or derived from, the pope and the episcopal college."²⁰ In the end, however, he prefers the term "hierarchical" because it contrasts better with the "theological magisterium." Curran also translates it as "authoritative" even while making reference to CIC can. 752, the American translation of which, is "authentic" magisterium (*magisterium authenticum*).

Malone employs both "authentic" and "authoritative" quite indiscriminately, although he has a clear preference for the latter especially in qualifying the teaching office itself of the bishop. The office of teaching has top priority because, in the Church, "the bishops are the only ones who teach with the authority of Christ" and so "the bishop's teaching is authoritative," which means "he speaks in the name of Christ." Then, he uses the term "authentic" to qualify the teaching of the bishop to mean that "when he speaks in the name of Christ, he appeals to the faithful's religious assent that is motivated by their sense of faith."²¹

Betti, on the other hand, prefers *autentico* over *autoritativo*. But he considers "authoritative" or "official" acceptable as long as it is clarified further. That the "authentic" magisterium is "authoritative" must be applied to the magisterium only when we consider at the same time its twofold rapport. It should not be only seen "as an exercise of authority by legitimate pastors to the

¹⁷*Ibid.*, pp. 53-54.

¹⁸L.G. n. 20.

¹⁹Cf. J. KOMONCHAK, 'Humanae Vitae' and its Reception: Ecclesiological Reflections, *TS* 39 (1978) 221-257.

²⁰A. DULLES, *A Church to Believe in. Discipleship and the Dynamics of Freedom*, New York: Crossroad, 1982, p. 119.

²¹R. MALONE, *Magisterium and Dissent*, *Euntes Docete* 39 (1986) 103-105.

faithful, without also an internal relation with the truth of the doctrine taught." Thus, the bishops are "authentic teachers because they are "teachers endowed with the authority of Christ" to "preach the faith to the people assigned to them," and the pope as having "supreme teaching authority" in the universal Church.²²

In other words, their being "authentic teachers" has two fonts, namely, the authority vested on them by Christ and the matters of faith and morals derived from revelation which they propose to the faithful. Bishops teach in the name of Christ in virtue of their episcopal consecration and apostolic succession. More precisely, the teaching office of the bishops derives from the episcopal consecration. But to exercise it authentically, they must be in hierarchical communion with the Head and the members of the episcopal college.²³ This further point of precision is necessary in view of the religious assent demanded by the noninfallible magisterium on the part of the faithful. The authenticity of their mission is derived from the fact that they are "doctors" instituted to continue the mission given to the Apostles."²⁴ Consequently, to fulfill this mission, they are also endowed with the means necessary, namely, "authority [power] and the assistance of the Spirit [charism]." Thus, "they teach with authority and can use juridical measures." Their being "authentic teachers," necessarily includes the use of the means to be able to wield the authority of Christ.²⁵

When "authentic" is coupled with "magisterium," another difficulty arises, namely, the extension of the term "authentic magisterium." We believe that the conciliar text should share part of the blame. With the manner it is used in the text, it would seem that "authentic magisterium" is synonymous with "noninfallible magisterium." It is with this apparent confusion of its use that Sesboué holds that the concept of "authentic magisterium" as found in the conciliar text is a new one.²⁶ Basing his argument on the fact that the term is used in n. 25A in reference both to the bishops and the Roman Pontiff in the context of their noninfallible magisterium, he believes that "one preferred this new category to designate the noninfallible interventions of the pope" to the previous category of "ordinary magisterium."²⁷

In the same limited attribution of meaning to the term, Schuller equates "authentic magisterium" with "fallible teaching authority" of the magisterium.

²²U. BETTI, "L'ossequio al magistero pontificio 'non ex cathedra' nel n. 25 della *Lumen Gentium*," in *Antonianum* 26 (1982) 450.

²³L.G. n. 21.

²⁴K. RAHNER, "The Teaching Office of the Church in the Present-day Crisis of Authority," in *Theolns* 12 (New York: Seabury, 1974), pp. 16-17.

²⁵Y. CONGAR, "Magisterium, Theologians. The Faithful and the Faith," *Doctrine and Life* 31 (1981) 557.

²⁶B. SESBOUE, "La Notion de magistère dans l'histoire de l'Eglise et de la théologie," *L'Année Canonique* 31 (1988) 90.

²⁷*Ibid.*, pp. 89-90.

He distinguishes the "two forms of magisterium as found in traditional theology: the infallible and the merely authentic."²⁸ Then, he goes on to say that "the magisterium in its merely authentic teaching is *not infallible*. In its authentic judgments and decisions, it can occasionally err."²⁹ Most evidently, then, he absolutely differentiates the infallible magisterium from "authentic" magisterium, the latter meaning the "fallible magisterium." Thus, to a certain extent and in a certain sense, he agrees with Sesbotié that what the Council meant by "authentic magisterium" was the noninfallible magisterium.

Malone, in trying to contrast the "absolute and definitive judgment" of the Pope with his noninfallible declarations, also seems to limit the "authentic magisterium" (or, as he prefers, "authoritative") in any "declaration without reaching the level of a definition."³⁰ Salaverri makes an explicit distinction between the "simply authentic magisterium" to mean the "noninfallible magisterium" and the "infallible magisterium."³¹ Thus, his use of the term "merely authentic" is equivalent to the "noninfallible magisterium." The noninfallible magisterium is "merely authentic" while the other exercise of the magisterium is "authentic" plus "infallible."³²

Congar and Urrutia, however, use the term to mean the whole teaching authority which derives itself from the authority of Christ. Congar laments the absence of the consideration of "the religious nature and supernatural character both of the truth in question and the authority of the hierarchical ministry." So as not to oversimplify one's approach to the role of the authority of the magisterium, one must see the magisterium "as part of the general sacramental structure of the Church, in its reality as 'mystery' and as Body of Christ, quickened by the Holy Spirit." It is in this context that we have to see the pastors as "authentic teachers, that is, wielding the authority of Christ."³³ Thus, "authentic magisterium" refers to that fundamental part of the Church through which the pastors teach "in the name of Christ."

Urrutia explicitly takes "authentic magisterium" to mean the totality of the "official function of the ecclesiastical hierarchy." He says:

It must be kept in mind, above all, that, if all the People of God partakes in the *mission* of teaching entrusted by the Lord to the whole Church, I will speak here of the only *function of the authentic magisterium*, that is to say,

²⁸B. SCHULLER, "Remarks on the Authentic Teaching of the Magisterium of the Church," in *Readings in Moral Theology, n.3. Morality and the Magisterium*, eds. C. Curran and R. McCormick (New York: Paulist Press, 1982), p. 15.

²⁹*Ibid.*, p. 17.

³⁰R. MALONE, "Magisterium and Dissent," p. 505.

³¹Cf. J. SALAVERRI, *Potestad del Magisterio*, p. 514.

³²Cf. M. NICOLAU & J. SALAVERRI, *Sacrae Theologiae Summa*, vol. I (Matriti: B.A.C., 1962), pp. 655, 659 and 704.

³³Y. CONGAR, "Magisterium. Theologians," pp. 556-557.

of the function of teaching proper to the ecclesiastical hierarchy in virtue of the specific mission received from the Lord Jesus, and exercised in his name.³⁴

He likewise uses the term "authentic" in the phrase "noninfallible authentic magisterium," thereby making it clear that he does not equate "authentic magisterium" with the "ordinary and universal magisterium" but rather with the whole function of teaching of the hierarchy received from the Lord. Urrutia's use of the term "authentic magisterium" would be equivalent to the term "ecclesiastical magisterium" used by the International Theological Commission in its official documents and oftentimes by Paul VI.

Looking into the magisterial usage of the term, the meaning Urrutia, Congar and Betti give it seems to be the proper one. Vatican II, for instance in *Lumen Gentium* n. 25 and in the other passages where the term is used, implies the meaning the above-mentioned theologians attribute to the term. The Council uses the term "authentic teachers" in reference to the bishops. Particularly, it uses the term "authentic teaching authority of the Roman Pontiff" without making any distinction whatsoever between noninfallible and infallible magisterium. Moreover, Paul VI uses the term "authentic magisterium" in contrast with the teaching authority of the theologians. In his speech before the International Theological Commission on October 11, 1973 and in many other instances, he uses the term "authentic magisterium" to mean the "office of pastors, above all that of the Vicar of Christ on earth, whose origin is divine" in contrast to the "authentic technical magisterium" of the theologians.³⁵

1.4. The twofold foundation of "authentic teaching": its internal relation to the truth proclaimed and the authority of the authentic magisterium

That the teaching proposed by the authentic magisterium does not depend so much on rational evidence but in its internal relation with the truth proposed in the name of Christ is a necessary consequence of the meaning of "authentic" as used in the text. That the teaching is "authentic" means that, "speaking in the name of Christ, it is necessary to appeal to an assent depending on faith." That something proposed is based primarily on its rational evidence or solely measured by the degree of such evidence belongs to the realm of a scientific authority. In differentiating the "authentic teaching" of the pastors and the "scientific teaching" of the theologians, Congar states:

³⁴F. URRUTIA, "La réponse aux textes du magistère pontifical non infallible," *L'Année Canonique* 31 (1988), p. 95.

³⁵Allocutio: Ad membra Commissionis Theologicae Internationalis quintum plenarium Coetum habentibus, *Postremam dum*, die 11 m. octobris a. 1973, AAS 65 (1973) 557-558.

Christ was both Logos and Pastor. Following him, bishops have the double role of teachers of the people of God and its rulers: they are 'superintendents.' That is why... they teach with authority and can use juridical measures. And this is what is meant by the term 'authentic teaching,' which distinguishes it from the teaching of the theologians in so far as this latter is personal, and depends on scientific competence. Bishops are... authentic teachers, that is wielding the authority of Christ. This may well seem excessive and abuses there have been. But one must consider the way in which this duty has been and is in fact being carried out.³⁶

Precisely that a "religious assent of the soul" or a "religious assent of the will and the intellect" is required because the faithful are to accept the teaching and be guided by it for reasons of faith, not for scientific motives or reasons that their pastor may adduce. It is not the function of the authentic magisterium to demonstrate the evidence of its assertion; rather it has the interpretative function of the truth which comes from God for the fulfillment of which function He precisely instituted it. In other words, the ecclesiastical magisterium is at the same time authoritative and authentic because of its "internal relation with the truth of the doctrine taught in the name of Christ." Consequently, it "has all the credentials to be primarily called 'authentic,' as it is used in the theological language."³⁷

However, this does not in any way mean that the noninfallible magisterium can pronounce teachings without exhausting first all reasonable means. One important component of the authentic magisterium should be the conviction that nobody approaches the truth better than the one who knows that there is always room for research to go on. The promised aid of the Holy Spirit does not excuse pope or bishops from using all appropriate and available means for investigating and interpreting Christ's revelation. This is explicitly taught by the Council when, although located within the context of the infallible magisterium, it says that "the Roman Pontiff and the bishops, by reason of their office... apply themselves with zeal to the work of inquiring every suitable means" so that the teaching may be formulated most aptly and be acceptable as much as possible to the men of today. Paul VI himself affirms that the necessity of employing all available expertise is a "supremely important, intrinsic and necessary duty of the ecclesiastical magisterium."³⁸ Thus, while ultimate certainty can only be of the Holy Spirit, the magisterium and the Church as a whole have to do their share of striving for the truth. Such "authentic teaching" is not something newly revealed, for the revelation in Christ is the absolute and final revelation. Rather, it is our search for the "permanently new

³⁶Y. CONGAR, "Magisterium, Theologians," p.557.

³⁷U. BETTI, *L'Ossequio al magistero pontificio non ex cathedra*, p. 451.

³⁸Allocutio: Membris Commissionis Theologicae Internationalis, primum plenarium coetum habentus, *Gratia Domini*, die 6 m. octobris a. 1969, AAS 61 (1969) 715.

historical and abiding actuality of Christian revelation, of the event of Christ, even where 'development of dogma' occurs..."³⁹

In this postconciliar period, it is evident that the magisterium itself has taken major steps to avail itself as much as possible of the best existing theological, biblical and pastoral expertise, specifically by putting itself abreast with the various streams of thought from all over the world. The creation of the International Theological Commission and the recruitment of experts from all over the world, for instance, are concrete examples to this effect.

In the end, we have to say that the ultimate verdict of a juridical nature on how these means are to be applied lies in the magisterium itself, for "the living magisterium is the proximate and universal norm of truth" in the Church.⁴⁰ All these indicate that the magisterium is aware of its responsibility to do its share of the work and not simply leave everything to the Holy Spirit.

1.5. Two points of precision

In spite of their identical nature, the noninfallible magisterium of the individual bishops and that of the pope are not equal in all respects. First, from the angle of the extension of their respective magisterium, the papal noninfallible magisterium is exercised by the pastor of the universal Church who has supreme teaching authority over it. Such magisterium is universal in terms of intended audience and the range of the message. Further, although it shares the nature of the noninfallible magisterium of the individual bishops in its lack of the guarantee of infallibility, it is also distinguished from the latter by "its intensity, given the fact that he is head of the universal Church."⁴¹ Second, and as a corollary to the first, the noninfallible magisterium of the pope has "priority of assent" over the magisterium of the individual bishops. Thus, this religious submission of the will and the intellect "must be given in a special way." Moreover, from all the bishops themselves is demanded the "submission of the will and the intellect" to the papal noninfallible magisterium. Their teachings would have to conform with that of the pope. In other words, the noninfallible teaching of the pope deserves a more intense assent because, "coming from the supreme teacher of the Church, it offers more evident guarantees of conformity with divine Revelation, of which he is the prime custodian."⁴²

³⁹K. RAHNER, "The Dogmatic Constitution on the Church," in *Commentary on the Document of Vatican II*, vol I, ed. H. Vorgrimler. London: Burns and Oates, 1967-1969, p. 213.

⁴⁰PAULUS PP. VI, Allocutio: Ad sodales Congregationis Sanctissimi Redemptoris, qui Romam convenerunt, ut Generali religiosae sua communitatis consilio interessent, *Praesentia vestra*, die 22 m. septembris a. 1967, AAS 59 (1969) 960-963.

⁴¹U. BETTI, *L'Ossequio al magistero pontificio 'non ex cathedra'*, p. 451.

⁴²Id., *La doctrina sull'episcopato*, p. 414.

2. The Religious Assent of the Will and the Intellect

2.1. The difficulty of rendering the conciliar term *obsequium* in modern languages

Obsequium has become a key word to describe the response of the faithful to the noninfallible teaching of the Church. The problem mainly lies in this term and, obviously enough, this is the key toward understanding how much not only the will but also the intellect should engage and commit themselves to a noninfallible teaching. How should we render this Latin term in any of the modern languages which seems there is a dearth of sufficient vocabulary. The various nuances and implications in the translations in the modern languages and its diverse shades of obligatoriness make the problem more tangible. In the English language alone, there are at least eight translations of *obsequium* presently in use, certainly with diverse nuances of meaning.

The text itself seems to be the source of these diverse renditions. The text explicitly uses the term thrice in reference to the response due to one's proper bishop, to the noninfallible magisterium of the pope, and then to the infallible magisterium. With respect to the noninfallible magisterium alone, the conciliar text already implies three degrees of *obsequium*. First, there is the *obsequium* due to the teaching of the individual bishops in hierarchical communion with the Holy See; second, the *obsequium* due to the decision of one's proper bishop; third, the *obsequium* due to the papal noninfallible magisterium. In each of the three degrees, especially that which is due to the papal noninfallible magisterium, there are also implied various sub-degrees of *obsequium*, depending on how much authority that particular magisterium intends his teaching to be binding. Such difficulty only reflects the intrinsic uneasiness that it brings into the teaching on the assent of the faithful to a noninfallible teaching.

To begin with, Orsy believes that a discussion on what precisely the Council Fathers meant by the term is based on a wrong assumption, namely, that the Council indeed meant it in a specific and precise way. It is impossible to translate the term once and for all. He thinks that the Council Fathers did not intend to give it a precise meaning. Rather, he theorizes that the Fathers saw *obsequium religiosum voluntatis et intellectus* as a "seminal locution," meaning to say, "a term which contains the truth but without circumscribing it with precision; it needs to be developed further." Thus, for him, *obsequium* can be "respect" or "submission" depending on the "progress the Church has made in clarifying its own beliefs." However, in a more recent article, he thinks that "loyalty" is the most proximate translation of the term.⁴³

⁴³L. ORSY, *The Church: Learning and Teaching* (Dublin, Dominican Publications, 1987), pp. 82-86; IDEM, "Magisterium: Assent and Dissent," *TS* 48 (1987) 487-490. Cf. "The new Profession of Faith and the Oath of Fidelity," *Doctrine and Life* 39 (1989) p. 509, where he also holds that *obsequium* is an attitude rather than a concrete response to a concrete teaching.

Butler, continuing to hold on the opinion he had during the Council, finds "submission" a very strong English translation of *obsequium*.⁴⁴ He believes that, with the different ways *obsequium* is used in the conciliar text, different degrees of *obsequium* are called for in proportion to its object. Thus, *obsequium* as a response to the noninfallible magisterium, even papal, cannot be translated as "submission," for how can we translate the *obsequium* to the infallible magisterium? For him, *obsequium* is no more than "due respect." Then, he translates *obsequium voluntatis et intellectus* as "theoretical and practical respect."⁴⁵ He also disagrees with Philips' rendition of *obsequium intellectus* as *assentiment intellectuel* for the same reason.

Sullivan disagrees with the reasoning of Butler. He finds "submission" as the correct and faithful rendition of what the conciliar expression intended to mean by the term. He forwards three reasons to support his position. First, etymologically, *obsequium*, from *obsequi*, which means "to follow," "to yield to," means "compliance, yielding consent, obedience, allegiance," and not mere "respect." Second, to say "respect of the will and the intellect" does not make good sense in relation to the obligation that the faithful have toward the noninfallible magisterium. "Submission of the will and intellect" does. Third, while it is true that *obsequium* is taken in the conciliar text thrice in diverse contexts, they can be understood to mean "degrees of submission."⁴⁶ Further, he translates the latin very *adhaerere*, which is also used thrice together with *obsequium*, as "assent" given to a noninfallible teaching. He further qualifies it as a "morally certain assent," since "moral certitude" excludes the prudent fear of being in error, but not the recognition of the possibility that one might be in error."⁴⁷

Urrutia, while acknowledging the difficulty, believes that the Council Fathers had a specific meaning in mind, namely, *obsequium* can only be translated as "submission." Thus, of all the renditions of the term *obsequium* in modern languages, he prefers the strongest translation, such as the French "soumission" or the British translation "submission" over lighter ones, as the American "respect" or Butler's "due respect."⁴⁸ Like Urrutia, Betti takes the term "submission" as the nearest translation in modern languages of the Latin term *obsequium*. But he immediately qualifies that strong connotation to avoid confusing it with the *obsequium fidei* (assent of faith). This "submission" is not a "forced choice" but "an affirmation of liberty which, in order to be a christian liberty, makes one choose to do what a Christian has to do: liberty as duty."

⁴⁴C. BUTLER, "Infallible: Authenticum: Obsequium. Christian Teaching Authority and the Christian's Response," *Doctrine and Life* 31 (1981) 77-89.

⁴⁵*Ibid.*, p. 86.

⁴⁶F. SULLIVAN, *Magisterium*, p. 159.

⁴⁷*Ibid.*, p. 161.

⁴⁸F. URRUTIA, "La réponse aux textes du magistère pontifical non-infallible," pp. 97-99 and 104.

Thus, "submission" here has a "connotation of sincere option" through which one chooses to accept the teaching because it comes from the supreme authentic teaching authority.⁴⁹ This is what Urrutia calls the "religious motive," a motive which is not based on reason but on authority.

Betti holds that the use of the term "submission" to describe the "assent of the will and the intellect" has its particular weight and was given particular emphasis by the Council Fathers, in spite of the fact that some Council Fathers wanted it changed. But while the intention of the Fathers was clear, it would seem that no better word other than *obsequium* can render it. Thus, on the one hand, it was certainly not the intention of the Fathers to understand *obsequium* as simply "respect," for such a term does not imply a true assent. On the other hand, the Council certainly did not mean by it the proper assent due to an infallible and irreformable teaching; thus, it cannot be absolutely translated as "submission."⁵⁰

Finally, Msgr. Colombo seems to prefer "obedience" over "submission" in translating *obsequium*⁵¹, although one can notice a probably indiscriminate use of two other terms, namely, "assent" and "submission." He says that "a correct attitude of assent and obedience" is given in proportion" to the degree of authority and the obligation involved in the various forms in which the teaching authority is exercised."⁵² His phrase "different degrees of obedience" is like Sullivan's different degrees of submission." Whatever translation one uses, however, what is necessarily to be admitted is the various degrees of *obsequium* the conciliar text intends to teach.

In the end, this study employs the term "assent" for a number of reasons. First, it is the term frequently used by the official documents of the Holy See, especially those of the Popes. Second, it is in line with the use and reasoning of the "approved authors" on the matter. Third, it is perhaps the least contested term among theologians. Finally, it contrasts best with the term "dissent."

2.2. The meaning of the religious assent of the will and the intellect

How much should the will and the intellect engage themselves in a manner that we can qualify it as "religious assent of the will and the intellect?" How much should the will adhere and the intellect submit itself to the teaching presented as noninfallible? What did the Council really intend to say by "religious assent of the will and the intellect" as the response of the faithful to

⁴⁹U. BETTI, *L'Ossequio al magistero pontificio 'non ex cathedra'*, pp. 453-454.

⁵⁰*Ibid.*, p. 453.

⁵¹C. COLOMBO, "Obedience to the ordinary magisterium," in *Obedience and the Church*, eds. K. Rahner, M. Labourdette, et al. (Washington: Corpus Books, 1968), pp. 75-92.

⁵²*Ibid.*, p. 83.

the noninfallible magisterium? This has caused a river of ink to flow and there seems to be no end in sight as yet.

For Orsy, it is practically impossible to know what was in the mind of the Fathers when they voted for it. We do not have a direct access nor have any way of knowing the "instinct of faith of the majority who voted for it." Thus, going back to the drafting of the text, important as it is, it would not help much. Such a historical approach only expresses, perhaps to a high degree, the "mind of the committee" preparing it and not really the "mind of the Council." In other words, the intention of the Council is indecipherable. Basing his interpretation of the "religious assent of the will and the intellect" on his theory on *obsequium* as a "seminal locution," he holds that what the Fathers understood by "religious assent of the will and intellect" was some sort of a "broad and intuitive approach to a mystery that leaves plenty of room for future insights and discoveries." In that particular instance, it was some sort of "an instinct of faith of the majority who recognized in the expression a genuine expression of Christian tradition, to be reflected on and defined with greater precision by generations to come." Thus, what the Fathers saw in the expression was a mere "seminal concept" in the "mind of the committee" or in the "mind of the relator."⁵³

Rahner also believes that the expression is inadequate to express what the Fathers meant by it. He wants another expression without, however, giving any. He argues that the expression "religious submission of the mind and will" is an inadequate portrayal of the appropriate theological response.⁵⁴

However, for Urrutia, also basing himself on his interpretation of *obsequium* as definitely meaning "submission," the Council Fathers did have something precise and definite in their minds. "Submission of the intellect" should mean "acceptance of the doctrine proposed noninfallibly" and "submission of will," "adherence" to the same. He says:

Acceptance, adhesion, assent, attachment to the doctrine expressed. One has, therefore, to be in agreement with the doctrine, to make it one's own. That is the meaning of the 'submission of the intellect' in response to the noninfallible magisterium. Any other explanation of our response to the noninfallible authentic magisterium, as respect or reverence, but which would not entail the acceptance of the doctrine, would not be coherent with the teaching of LG 25.⁵⁵

Betti says that, in trying to render an interpretation faithful to the conciliar intention, we have to acknowledge the fact that this assent is so

⁵³L. ORSY, *Magisterium: Assent and Dissent*, pp. 429-439.

⁵⁴K. RAHNER, *Magisterium and Theology*, trans. E. Quinn, in *Theolns*, XVIII (London: Darton, Longman and Todd, 1983), pp. 54-73.

⁵⁵F. URRUTIA, *La réponse...*, p. 99.

difficult to locate. It is somewhere in-between "respect" and the "assent of faith." However, we can further clarify the meaning of this assent by excluding two extremes, namely, a minimalist and a maximalist interpretation. A minimalist interpretation assumes the text to teach that the noninfallible magisterium "could be effectively mistaken" and that an "attitude of methodic doubt" is an intelligent immediate response to a noninfallible teaching. An interpretation of *obsequium* which puts emphasis on the possibility and legitimacy of dissent to the point of considering it a *locus theologicus* is flagrantly in contrast with the meaning of the conciliar text. The text implies that a noninfallible teaching is only potentially, but not necessarily, fallible and reformable. This possibility of being noninfallible brings with it the greater possibility that such is not, in fact, mistaken.

Thus, the inherent limitation of the noninfallible magisterium cannot be considered as a rule in giving one's assent or dissent. Rather, it has to be considered as a mere possibility that, at the end of considering all possibilities of reception, one may withhold his assent. The noninfallible magisterium "should remain a critical instance even for those who in practice have refused it."⁶⁶ Consequently, this "submission of the will and the intellect" should not be watered down into a mere "respect" or "due respect" and then let one dispute it publicly as long as he does it with such "respect." As we have seen, the theological commission and the majority of the Council Fathers refused to yield to the requests of some of the Fathers to omit the internal obligation due to the noninfallible magisterium or that its preceptive force be mitigated. The minimal limit that one can go so that his response may still be a "submission of the will and the intellect" is a "respectful silence."⁶⁷ However, Betti adds interestingly that if one disagrees with a noninfallible teaching, by reason of his public office (as a bishop or a somebody who is charged with a teaching ministry), he cannot be silent. Rather, even though he might not be personally convinced of the teaching, he has to "publicly manifest his sincere adherence" to it, "denouncing his personal viewpoints with a religious spirit."⁶⁸

The other extreme that must be avoided is the maximalist interpretation of the conciliar teaching, an interpretation which would practically identify the religious assent of the will and the intellect with the assent of faith due to an infallible teaching. The necessity of avoiding this interpretation was already clear in the evolution of the conciliar text. The distinction between the religious assent of the will and intellect and the assent of divine faith was deemed to be unequivocal and clear, as some Fathers demanded. Moreover, the requests of five French Fathers for the reinsertion of the passage from *Humani Generis* was rejected. They suggested that if a doctrine was repeatedly put forward in

⁶⁶U. BETTI, *L'Ossequio...*, p. 457

⁶⁷U. BETTI, *La dottrina sull'episcopato del Concilio Vaticano II*. Roma: Spicilegium Pontificii Athenaei Antoniani 25, 1984, p. 415.

⁶⁸*Ibidem*.

the same terms by the ordinary magisterium of the pope, a true assent of faith should be required even without a manifest definition of its infallibility.⁵⁹

An expression of this exaggeration is a claim that a doctrine taught noninfallibly by the magisterium is actually infallible. Consequently, to it must be given an assent of divine faith. For instance, Ford, Kelly and Grisez are convinced that the teaching of *Humanae Vitae* on contraception is infallible "because it meets the conditions" of an infallible exercise of the ordinary magisterium. Even more recently, there were some claims to this effect which stirred not a few persons. These claims are made notwithstanding the fact that Paul VI never made any explicit intention at a solemn definition⁶⁰ and Lambruschini's announcement that it was not meant to be an infallible teaching.⁶¹ Further, an interpretation of *obsequium voluntatis et intellectus* as nothing else other than "adherence" or "submission" seems to merely render lip service to the possibility of dissent which, as we will see later, is contemplated by the conciliar text itself. As Colombo says:

The disposition of serene confidence in the teaching of the magisterium should express itself in a correct attitude of assent and obedience, proportioned to the degree of authority and the obligation involved in the various forms in which the teaching authority is exercised.⁶²

It must be noted that, although no explicit explanation was forwarded as to why the quotation from *Humani Generis* about the prohibition of free theological discussion was removed, it can be surmised that at least one of the intentions of the theological commission and the Council Fathers was to distinguish more clearly one's response to the noninfallible magisterium from the assent of faith. Such prohibition would have implied that the pronouncement of the noninfallible magisterium has to be accepted as definitive at least for the moment until this magisterium will teach the same doctrine in another way. It is important to note that this type of teaching is, to a large extent, conditioned by historical circumstances and hence, must not be necessarily assumed to have eternal value.⁶³

Thus, what the Council Fathers meant is that the required response for a noninfallible teaching is the "conditional religious assent" of the will and the intellect given to a teaching which is "morally certain," and not the absolute

⁵⁹They were bishops Pierre de la Chanonie, Marcel Lefebvre, Auguste Grimmault, Xavier Morilleau and Jean Prou (Abbot of the Benedictine Congregation in France. For their joint statement, Cf. *Acta Synodalia*, II: 1, pp. 318 ff.

⁶⁰On the contrary, the Pope makes it clear that the teaching is not meant to be a definitive declaration. (Cf. *Humanae Vitae*, n. 28 and footnote.)

⁶¹Cf. *L'Oss Rom.*, 29-30 Luglio 1968, p. 4.

⁶²C. COLOMBO, "Obedience to the ordinary magisterium," in VV.AA., *Obedience in the Church*, eds. K. Rahner & Labourdette (Washington: Corpus Books, 1968), p. 82.

⁶³Cf. K. RAHNER, "Theology and the Magisterium: Self-Appraisals," in *Readings in Moral Theology*, n. 6. *Dissent in the Church*, ed. C. Curran and R. McCormick (Mahwah: Paulist Press, 1988) pp. 35-41.

assent of faith given to a teaching "absolutely" or "metaphysically certain." If the pope "wants a submission of this type, he would have recourse to a definition properly said."⁶⁴ On the other hand, it evidently means something stronger than mere "respect."

2.3. The motive for the assent of the will and the intellect is religious.

While *obsequium* is the key word on how much the will and the intellect should engage and commit themselves to a noninfallible teaching, the word "religious" indicates the motive for such an engagement. What is the foundation of this motive? The faithful, in accepting a noninfallible teaching, may have different motivations. The intellect gives or does not give its adhesion under several motives. For instance, it may be based on one's conviction of the reasonableness of the teaching, on the strength of the evidence presented by the doctrine itself, or on the competence of the authority proposing it. Now, Urrutia holds that this "submission of the intellect and the will" to the noninfallible teaching is based on the competence of the noninfallible magisterium. But he immediately adds that this competence, within the question of the teaching of the noninfallible magisterium and which becomes the motive of one's adherence, is not a scientific competence but a religious one. The bishops and the pope teach in virtue of the mission they receive from Christ. In other words, "it is the competence of an 'authentic magisterium.'"⁶⁵ It is in this sense why the religious assent of the will and the intellect is always to be interpreted as "submission of the will and the intellect."

Salaverri, considering that the "teachings of the magisterium are divine in their institution, in their object and in their guarantee of truth," holds that the Church "can demand with full right the assent of the faithful to its authentic teachings." Thus:

The motive for the required assent is not precisely intellectual recognition of the reasons that the doctrine proposes, but the same authority of the teaching and the guarantee of its truth, both received from God through apostolic succession.⁶⁶

The central objection to this is that it would do violence to the conscience of the person who is not convinced of the truth of the teaching. Betti believes that such an objection arises from a merely partial understanding of the authority of the magisterium which only distorts the proper understanding of its nature. The key to a proper understanding is the term "authentic magisterium", which we have analyzed above. Precisely because it is an exercise of the authentic magisterium, which should be seen in its "internal relation with

⁶⁴G. PHILIPS, *L'Eglise et son mystère*, p. 323.

⁶⁵F. URRUTIA, *La réponse...*, p. 101.

⁶⁶J. SALAVERRI, *Potestad del Magisterio*, pp. 516-517.

the doctrine taught" and its being a teacher "endowed with the authority of Christ" to preach the faith, that we submit to it. By the fact that it is called a "religious assent," we are talking, therefore, of "supernatural motives."⁶⁷ Without recognizing this assurance of a divinely instituted authentic authority, the noninfallible teaching would be reduced to a simple "disciplinary provision" and would be emptied of any character as an act of true and proper magisterium.⁶⁸

Therefore, this adherence to the noninfallible magisterium is not founded on motivations of purely rational order, but it is derived from the acknowledgement of the divine institution of this magisterial function. As we have just mentioned, Paul VI argued for acceptance of the teaching of *Humanae Vitae* on this ground.⁶⁹ Thus, the motive for one's adherence cannot and should not depend on a critical scientific theological examination of the noninfallible doctrine proposed, but on the competence of the authentic magisterium teaching it. The ordinary magisterium of the bishops and the pope is a supernatural function. It is not founded on the scientific and natural competence of men, but on a permanent presence in it of a particular supernatural charism. If one bases his adherence on the reasons adduced in the proposed doctrine, his adherence would be a result of his personal conviction, just as in any other field. One would be giving the authentic magisterium the same importance than one gives a scientist or a professor. Urrutia declares:

The insistence on personal competence, in the sense of the responsibility in research, in the role of the theologian or in other similar considerations, by no means can justify some conclusions in contradiction to the necessity of accepting the doctrine as proposed by the magisterium.⁷⁰

In the same manner, Philips says:

The authority of a theologian, no matter how brilliant he might be, cannot substitute that of the pope or of the bishop, which is of another nature. The theologian in question may enjoy prestige and well-deserved credits, he can compel respect by the profoundness of his researches and the value of his arguments. But he does not possess any power, capable of imposing his teaching upon some subordinates. The function of the theologians and that of the bishops, although they may be related, are not of values in the same order..⁷¹

The religious motive which qualifies our adherence to the teaching puts us in a terrain beyond the criterion of scientific evidences; yet, evidently, without contradicting human reason. It places us in the level of faith. Thus, it is a question of the same attitude of spirit that we have for the infallible mag-

⁶⁷U. BETTI, *La dottrina sull'episcopato*, p. 413.

⁶⁸Id., *L'Ossequio al magistero*, p. 453.

⁶⁹*Humanae Vitae*, n. 28.

⁷⁰F. URRUTIA, *La réponse...*, p. 103.

⁷¹G. PHILIPS, *L'Eglise et son mystère*, p. 324.

isterium, though without losing sight of the necessary element that the response to the latter is an adherence through an unconditional assent of faith.

2.4. The form and degree of the assent should correspond to the binding authority of the teaching

The text on the noninfallible magisterium demands three degrees of assent, namely, to the individual bishops in hierarchical communion with the Holy See, to the decision of one's proper bishop and to the noninfallible teachings of the pope. In turn, these degrees of authority demand a "current attitude of assent and obedience." But such assent should also be "proportional to the degree of authority" of the magisterium involved and in how much binding authority a particular noninfallible magisterium commits itself. The intensity of one's religious assent given to any bishop is not the same as the intensity of religious assent to one's proper bishop, much less the same as the intensity of one's religious assent given to the papal noninfallible magisterium.⁷² With respect to the diversity of binding authority the pope might intend in the various forms of his teaching, christian wisdom and prudence enter in to determine the gravity of the obligation.⁷³ The conciliar text indicates the ways through which we can discern the "will and intention" of the pope. In this regard, Philips says:

But one may say where can we find the criteria permitting *us* to establish that degree of authority the Pope wants to attribute to a given document? His intention will be manifested with sufficient clarity, be it through the text itself, be it through the circumstances which surround and explain it. The style of the document can also furnish some indications. This brings us to the conclusion that the literary genre is also not without importance in this domaine. A recommendation made in passing or a pious exhortation addressed to a group of pilgrims does not have the same import as a formal declaration, above all if the latter is made and repeated with insistence.⁷⁴

This is a necessary precision. It is, therefore, evident that not all the teachings of the noninfallible magisterium deserve equal degree of assent. The pope certainly does not give equal value to everything he says and does. Malone holds that if the pope "limits himself to an *authoritative* declaration without reaching the level of definitive judgment, we are bound to *assent with docility*." However, if the pope only "offers a prudential judgment, we are to pay *careful attention*."⁷⁵ Moreover, because "the form and degree of inner assent should correspond to the way in which the doctrine presented is meant to be binding," these guidelines expressed in the conciliar text are explicitly mentioned as a guide for us to know the intention of the teacher.⁷⁶

⁷²Cf. C. COLOMBO, *Obedience to the ordinary magisterium*, pp.83-88.

⁷³J. LEFEBVRE, "Obedience to the Pope," in *Obedience in the Church*, by K. Rahner, M. Labourdette et al (Washington: Corpus Books, 1968), pp. 50-51.

⁷⁴G. PHILIPS, *L'Eglise et son mystère*, p. 323.

⁷⁵R. MALONE, *Magisterium and Dissent*, p. 505.

⁷⁶Cf. K. RAHNER, *The Constitution of the Church*, pp. 209-210.

2.5. The extension of the religious assent of the will and the intellect in terms of the subject of authority

Does this assent extend to the teachings and declarations issued by the auxiliary organs of the pope? Again, we have to keep in mind that the draft presented by the theological commission to the Council Fathers during the First Session contained a passage on the auxiliary organs of the authentic magisterium and the response due to them. Be that as it may, the question is very relevant especially with respect to the Congregation for the Doctrine of the Faith, to which Congregation we limit ourselves by reason of its nature and competence, namely, matters of faith and morals.

Although the Congregation acts "in the name of the pope and by his authority," not all of its acts are "acts of the pope." According to the Apostolic *Pastor Bonus*, acts of the dicasteries which are of major importance must be approved by the pope.⁷⁷ However, according to commonly accepted distinction of the approbation of the pope into "common form" and "specific form," not all those receiving papal approbation are considered "acts of the pope" in a strict sense. Only those acts which have received the specific approbation of the pope are considered "acts of the pope" himself.

The common solution to the problem of determining the extension of the religious assent of the will and the intellect is the use of this distinction. Le Guillou holds that, although the "Congregation for the Doctrine of Faith has a special role in the area of doctrine because it belongs to its nature," its acts must be expressly approved by the pope. If not, it remains to be an act of the Congregation.⁷⁸ In other words, to those acts of the Congregation which have received the specific approbation of the pope is due the religious assent of the will and the intellect. However, as regards those acts which have only received a common form of papal approbation, there is the question of whether or not they should be considered acts of the noninfallible magisterium contemplated in the conciliar text. Urrutia says:

"... the documents of the congregation [approved in forma communi] represent a rather provisional taking of position not demanding an adhesion of certitude. They demand serious consideration based on the reasons advanced, and they are ascertained by the magisterial authority of the congregation, and nothing more. In other words, it would be a question of a certain intermediary value between the authentic magisterium of the pope, demanding adhesion, abstractions made through intrinsic reasons, and the personal judgment of reason."⁷⁹

⁷⁷Cf. *Pastor Bonus*, n. 18.

⁷⁸P. LE GUILLOU, "Présentation des propositions [*L'Unité de la foi et pluralisme théologique*] de la Commission Internationale de Théologie," *DocCath* 70 (1973), 460-461.

⁷⁹URRUTIA, *La réponse aux textes de magistère pontifical non-infallible*, p. 114.

But such theory runs counter with the ultimate reason of our assent to the noninfallible magisterium and it is against the fact that the members of the Congregation are, after all, bishops who exercise the same kind of noninfallible magisterium with that of the pope. Thus, as to the documents approved *in forma specifica*, it seems possible to say that, like the documents of the pope himself, they can also demand an adherence of certitude for the religious motive of the mission received from the Lord. The religious motive," which is the fundamental of our submission to the noninfallible magisterium of the pope, can be extended in the same manner to the Congregation itself because it "acts authentically" and, further, "in the manner and with the authority of the pope." Thus, the "intrinsic reasons" advanced in its teaching still takes a secondary importance with respect to the religious motive.

The degree of religious assent due to the documents approved by the pope in common form seems to be more difficult to determine.⁸⁰ It is clear that these cardinal and bishop-members of the Congregation exercise their noninfallible magisterium to which the text clearly demands the same kind of religious assent. However, religious assent is not of the same intensity as the assent due to the noninfallible magisterium of the pope himself. On the other hand, they are not merely cardinals and bishops; moreover, they also receive from the pope the charge of office which brings with it the power to exercise their mission of authentic magisterium in this more specific manner. Therefore, the Congregation "receives the power of magisterium inasmuch as it is an instrument of the pope called to a role of close collaboration with him."⁸¹ Hence, the office of teaching received through episcopal consecration is even now juridically better defined by virtue of the added mission received from the Supreme Pastor.

The statement of Hamer attached to the declaration of the Congregation, *Mysterium Ecclesiae*⁸², clarifies further the extension of the religious assent. He defines a "declaration" of the Congregation for the Doctrine of the Faith in the following words:

The term 'declaration' indicates that the document does not teach new doctrines: but it recalls and summarizes the catholic doctrine already defined

⁸⁰The "approved authors," to whom the doctrinal commission referred us on the question of dissent, are unanimous in the use of this distinction. However, the distinction does not in any way enlighten us here; its application is totally different. The distinction has nothing to do with the degrees of religious assent. It has rather to do with two of the three types of assent, namely the *assensus fidei ecclesiasticae* and the *assensus religiosus* (the highest degree of assent being the *assensus fidei divinae*). If the fact is approved in specific form, it can be infallible; if it is approved in common form, it cannot be infallible. Consequently, it demands an *assensus fidei ecclesiasticae* and *assensus religiosus*, respectively, the latter being the same *assensus religiosus* one gives to the ordinary magisterium of the pope.

⁸¹*Pastor Bonus*, n. 7.

⁸²CONGREGATIO PRO DOCTRINA FIDEI, Declaratio: Circa Catholicam Doctrinam de Ecclesia contra nonnullos errores hodiernos tuendam, *Mysterium ecclesiae*, die 24 m. iunii a. 1973, AAS 65 (1973), 396-408.

or taught in some preceding documents of the magisterium of the Church; it gives the correct interpretation of it and indicates its limits and import.⁸³

It is, therefore, a question of "a document of the Congregation for the Doctrine of the faith" and, by its nature, "pertains to the universal magisterium" because this Congregation is the organ "nearest to the Supreme Magisterium of the Church, having received from it the specific mandate to conserve in the whole catholic world the doctrine concerning faith and morals." What is decisive is that, "although it [the declaration] is not a specific act of the pope, the document reflects his thought, for it was explicitly approved by him." Consequently, it is the will of the Pope that everything that it contained be kept "for it is he who ordered its publication."⁸⁴

In reality, however, difficulties are explained by the content of the teaching of the Congregation. If it is only a question of "recalling" or "repeating" a papal teaching, or of applying it to some circumstances or to new cases, then it is not anymore a question of doctrine, but of jurisdictional discipline. On the other hand, if it is a question of a new doctrine, the question acquires that particular difficulty we have just stated. To summarize, it is commonly accepted that the distinction between the common and specific forms of papal approbation is at the basis of the distinction of whether or not the acts of the Congregation demand the religious assent prescribed by the conciliar text.

The problem lies in a document which receives only the common form of papal approbation. There seems to be a hesitant theological taking of position in this respect. Urrutia leans towards the position that such a document may not have the authority to exact such a religious assent, although "I am afraid that the Holy See does not partake of my view."⁸⁵ He thinks that a document of such type is "a tentative taking of position" on the part of Congregation.

We are inclined to disagree with Urrutia's position. We think that a solution to the problem of determining the extension of the religious assent of the will and the intellect in terms of the subject exercising authority does not lie so much in the distinction of the two types of papal approbation; it rather lies on the grades of intensity of the religious assent that the conciliar text demands and clearly distinguishes. In other words, the basis for the extension of the religious assent in terms of the subject exercising authority can be found in the very conciliar teaching itself. Thus, to the question of whether or not a document of the Congregation approved by the pope only in the common form has the authority to exact that religious assent prescribed by the conciliar text, we believe it does for two apparent reasons. First, the religious motive which is necessarily at the foundation of every assent due to the noninfallible magis-

⁸³J. HAMER, "Note sur la déclaration *Mysterium Ecclesiae*," *DocCath* 70 (1973), p. 670.

⁸⁴*Ibid.*

⁸⁵F. URRUTIA, *La réponse...*, p. 114.

terium is the same motive why an act of the closest collaborator of the pope in the area of faith and morals can exact the same assent. Indeed, the motive for religious assent is identical in all degrees of the noninfallible magisterium, be that of a bishop of a small and remote diocese or that of the pope. Thus, since the members of the Congregation are bishops, their teaching deserves the same religious assent.⁸⁶ Second, the above point is further strengthened by the added specific mission of teaching entrusted to them by the supreme authentic teacher. Thus, we believe that there is no sufficient reason to the contrary why such a religious assent should not be extended to all the acts of the Congregation pertaining to matters of faith and morals. Evidently, it is not the religious assent which is given to the pope "in a special way" if the teaching is merely approved in common form.

Since there is no question that an act of the Congregation approved by the pope in a specific manner demands religious assent of the will and the intellect, our question is: Does a document of the Congregation approved by the pope in a specific form demand "in a special way" this religious assent as it is demanded by the conciliar text for the papal noninfallible magisterium? We have not encountered a single one who has entered into a discussion of this point. But we believe it may exact such a type of assent. It is here that the distinction between specific and common forms of papal approbation is useful. By definition, an act of an auxiliary organ approved in a specific manner by the pope becomes an act of the pope himself. The emanating organ loses all power to alter, change or abrogate such an act, for it has become as if it were made by the pope himself. Thus, we think that such a specific act has the authority to demand "in a special way" that religious assent of the will and the intellect that must be given to the magisterium of the pope also when he does not speak *ex cathedra*. But whether or not that religious assent given "in a special way" to an act of the Congregation approved in a specific manner by the pope has the same intensity or not as that religious assent given "in a special way" to a noninfallible teaching emanating from the pope himself is another question.

3. *Lumen Gentium* 25A: The Question of the Possibility and Legitimacy of Dissent

As we have already seen, the consideration on the possibility and legitimacy of theological dissent never made its way into the promulgated text. Nevertheless, the text on the noninfallible magisterium evolved from an explicit prohibition of free theological discussion to a prohibition of public theological discussion to a total silence on the whole question of dissent.

There has been no explicit reason for this particular change. However, going back to the three "modes" of suggested emendations before the text was

⁸⁶*Pastor Bonus*, art. 3,3: "Congregationes autem membra proprie dicta sunt Cardinales et Episcopi."

finally voted, we can attempt to read the intention of the Council Fathers behind the text. At this particular point of the study, the most relevant "mode" is the one which Bishop Cleary of Nanking and two other Fathers sent to the theological commission, namely, what if a scholar or a learned faithful, for serious reasons, cannot give his internal assent to a noninfallible teaching? Would a withholding of assent be permitted in such a situation? If yes, would "respectful silence" be enough while withholding his assent? In its response, the theological commission refers us back to the "approved authors."

3.1. The Approved Authors on the Noninfallible Magisterium and Dissent.⁸⁷

3.1.1. The nature of the noninfallible magisterium

The doctrine of the approved authors on the noninfallible magisterium is essentially the same as the conciliar doctrine. However, we have to be careful

⁸⁷In our study of the 'approved authors,' we use the following manuals and related works (in chronological order): D. PALMIERI, *Tractatus de Ecclesia Christi. Sectio Ia. De Ecclesia seu de Romano Pontifice*. (Romae, 1872); IDEM, *Tractatus de Romano Pontifice cum prolegomeno de Ecclesia*. (Romae, 1877); J. DE GROOT, *Summa Apologetica de Ecclesia Catholica ad mentem S. Thomae Aquinatis*. (Ratisbonae: G.J. Manz, 1892); I.B. Card. FRANZELIN, *Tractatus de Divina Traditione et Scriptura. Editio Quarta* (Romae, Typographia Polyglotta, 1896); G. WILMERS, *De Christi Ecclesia. Liber Sex* (Ratisbonae: Typis Friderici Pustet, 1897); A. STRAUB, *De Ecclesia Christi*, Tomus I (Viennae: Oeniponte, 1912); C. PESCH, *Compendium Theologiae Dogmaticae* (Friburg: Herder, 1913); L. CHOUPIN, *Valeurs des décisions doctrinales et disciplinaires du Saint-Siège. Deuxième Edition* (Paris; Beauchesne, 1913); C. PESCH, *Praelectiones Dogmaticae, I: Institutiones Propaedeuticae ad Sacram Theologiam*. (Friburg 1915); P. MAROTO, *Institutiones Iuris Canonici*, Tomus I (Romae, 1919); J.M. HERVE, *Manuale Theologiae Dogmaticae. I. De Vera Religione, De Ecclesia Christi, De Fontibus Revelationis* (Parisiis, 1925); H. DIECKMANN, *De Ecclesia. Tractatus Historico-Dogmatici*, Tomus II (Friburg, 1925); R. SCHULTES, *De Ecclesiae Catholicae Praelectiones Apologeticae*, ed. P. Lethielleux (Parisiis, 1931); L. LERCHER, *Institutiones Theologiae Dogmaticae*, Tomus I. ed. F. Schlagenhauer. Editio tertia (Lipsae: Oeniponte, 1939); J. SALAVERRI, *De Ecclesia Christi* (Matriti; B.A.C., 1955); IDEM, *Valor de las encíclicas a la luz de la "Humani Generis"*, in *Semana Española de Teología*, 17-22 sept. 1951 (Madrid, 1952), pp. 155-294; IDEM, *La Potestad de magisterio eclesiástico y asentimiento que le es debido*, in *XIV Semana Española de Teología*, 13-18 sept. 1954 (Madrid, 1955), pp. 75-114; M. NICOLAU and J. SALAVERRI, *Sacrae Theologiae Summa*, Tomus I. Editio Quinta (Matriti: B.A.C., 1962); F. SULLIVAN, *De Ecclesia. I. Quaestiones Theologiae Fundamentalibus*. (Romae: Gregoriana, 1963). An important note: In this section, only the names of the authors are cited in the footnotes, except in the cases of Salaverri and Palmieri who have more than one work. In our study of the 'approved authors,' we use the following manuals and related works (in chronological order): D. PALMIERI, *Tractatus de Ecclesia Christi. Sectio Ia. De Ecclesia seu de Romano Pontifice*. (Romae, 1872); IDEM, *Tractatus de Romano Pontifice cum prolegomeno de Ecclesia*. (Romae, 1877); J. DE GROOT, *Summa Apologetica de Ecclesia Catholica ad mentem S. Thomae Aquinatis*. (Ratisbonae: G.J. Manz, 1892); I.B. Card. FRANZELIN, *Tractatus de Divina Traditione et Scriptura. Editio Quarta* (Romae, Typographia Polyglotta, 1896); G. WILMERS, *De Christi Ecclesia. Liber Sex* (Ratisbonae: Typis Friderici Pustet, 1897); A. STRAUB, *De Ecclesia Christi*, Tomus I (Viennae: Oeniponte, 1912); C. PESCH, *Compendium Theologiae Dogmaticae* (Friburg: Herder, 1913); L. CHOUPIN, *Valeurs des décisions doctrinales et disciplinaires du Saint-Siège. Deuxième Edition* (Paris; Beauchesne, 1913); C. PESCH, *Praelectiones Dogmaticae, I: Institutiones Propaedeuticae ad Sacram Theologiam*. (Friburg 1915); P. MAROTO, *Institutiones Iuris Canonici*, Tomus I (Romae, 1919); J.M. HERVE, *Manuale Theologiae Dogmaticae. I. De Vera Religione, De Ecclesia Christi, De Fontibus Revelationis* (Parisiis, 1925); H. DIECKMANN, *De*

on this point. The majority of the authors use the term "ordinary magisterium" or "ordinary and universal magisterium" instead of the term "noninfallible magisterium." The complicating point is that the ordinary magisterium of the pope can be sometimes infallible. Further, the central forms of teaching being considered by these authors are the encyclicals as "the highest expression of the papal ordinary magisterium" and the acts of the papal auxiliary organs, especially that of the Holy Office, approved by the pope in specific form, which may contain infallible teachings even without the pope expressly pronouncing himself.⁸⁸ Thus, in trying to determine the binding authority of a teaching of the ordinary papal magisterium of an act of a Congregation approved specifically by the pope, the response due to it and the possibility of withholding one's assent, they enter first into discussions of whether or not it is infallible. In discussing the authority of the encyclical, as a representative expression of the ordinary and universal magisterium, opinions differ.

Two opposing positions can be had, namely, that the encyclical can be a vehicle for the infallible exercise of the magisterium and that the encyclical cannot but be noninfallible, unless it is expressly declared so. Choupin and Franzelin, and the majority of the authors, hold the latter position. While it is true that, as one of the requirements of an infallible teaching, the pope has to teach as the pastor and the doctor of the universal Church, it is not enough. Equally decisive is that he is infallible only when he speaks *ex cathedra*, that is, when he solemnly declares something to be held definitively. Thus, if the pope intends to define a doctrine through an encyclical, it must be expressedly done so.⁸⁹ Of course, this is only and yet an absolutely necessary external condition for an infallible declaration.⁹⁰

It is safe to say, however, that "in principle, they are not infallible."⁹¹ Moreover, given the scope of this study yet without denying that a teaching of the ordinary and universal magisterium can indeed contain infallible truths already previously defined, we would have to suppose that here we are dealing with the "noninfallible ordinary magisterium." The approved authors hold that, even though the ordinary magisterium is not infallible in itself, such is

Ecclesia. Tractatus Historico-Dogmatici, Tomus II (Friburg, 1925); R. SCHULTES, *De Ecclesiae Catholica Praelectiones Apologeticae*, ed. P. Lethielleux (Parisiis, 1931); L. LERCHER, *Institutiones Theologiae Dogmaticae*, Tomus I. ed. F. Schlagenhauer. Editio tertia (Lipsae: Oeniponte, 1939); J. SALAVERRI, *De Ecclesia Christi* (Matriti: B.A.C., 1955); IDEM, *Valor de las encíclicas a la luz de la "Humani Generis"*, in *Semana Española de Teología*, 17-22 sept. 1951 (Madrid, 1952), pp. 155-294; IDEM, *La Potestad del magisterio eclesiástico y asentimiento que le es debido*, in *XIV Semana Española de Teología*, 13-18 sept. 1954 (Madrid, 1955), pp. 75-114; M. NICOLAU and J. SALAVERRI, *Sacrae Theologiae Summa*, Tomus I. Editio Quinta (Matriti: B.A.C., 1962); F. SULLIVAN, *De Ecclesia. I. Quaestiones Theologiae Fundamentalibus*. (Romae: Gregoriana, 1963). An important note: In this section, only the names of the authors are cited in the footnotes, except in the cases of Salaverri and Palmieri who have more than one work.

⁸⁸Cf. J. SALAVERRI, *Valor de las encíclicas*, pp. 264-273.

⁸⁹Cf. CHOUPIN, pp. 29-30.

⁹⁰Cf. HERVE, pp. 424-425.

⁹¹STRAUB, p. 341.

"authoritative" inasmuch as the pope, by virtue of his office as universal supreme pastor and teacher, has been given the authority to teach in the name of Christ.⁹² This authentic character is also true of the magisterium of the bishops.⁹³ Thus, he is an "authentic teacher" when he proposes the doctrine of the Church "not by reason of singular learning"⁹⁴ but by reason of the authority given him to teach authoritatively.

3.1.2. The nature of the noninfallible teaching

Now, what is the nature of this teaching of the noninfallible magisterium? In this respect, the authors are divided. One group⁹⁵ holds that the noninfallible magisterium does not impose a doctrine as "true or false", or as "certain or erroneous" but only proposes one as "secure or not secure" or as "safe or unsafe". After explaining the assent due to the doctrinal decrees of the then Holy Office, Choupin says:

By like doctrinal decisions, the Holy See wants to provide for the *security* of the doctrine, prevent the dangers of perversion of the faith, rather than to pronounce *directly* a judgment on the truth or the *absolute falsity* of the proposition itself. Further,... *security* supposes that the contrary will not happen; but, absolutely speaking, it is not impossible. Under this rapport, there is a great difference between an *ex cathedra definition* and a noninfallible doctrinal decision.⁹⁶

Moreover, he clarifies what he means by a "doctrinal decision" of the supreme magisterial authority without the guarantee of the charism of infallibility. By this "doctrinal decision" is meant that, "given the circumstances" and the "state of knowledge," it is "prudent and sure to regard this proposition as true" and as "conforming to the Holy Scripture, etc." Or conversely, it is prudent to regard this proposition as erroneous, temerarious and contrary to the Sacred Scripture, etc.⁹⁷

Franzelin insists on the distinction between "infallible truth" and "secure doctrine." The former is a proposition of the infallible magisterium and the latter that of the "authority of doctrinal providence." The "secure doctrine" are propositions of the ordinary exercise of the magisterium which does not have the intention to define any truth, but teaches "only when it is necessary and opportune."⁹⁸ Thus, in magisterial pronouncements which are authoritative but

⁹²PALMIERI, *Tractatus de Romano Pontifice*, p. 632.

⁹³HERVE, pp. 436-437.

⁹⁴SULLIVAN, p. 347.

⁹⁵Among the authors included in our investigations, to this group belong Franzelin, Choupin, Hervé and Dieckmann.

⁹⁶CHOUPIN, p. 84.

⁹⁷*Ibid.*, p. 81.

⁹⁸FRANZELIN, p. 118-119.

not infallible, we find not indeed infallible truth, but "infallible security." He further says:

In my opinion, judgments of this kind, even though they fall short of a definition *ex cathedra*, can be construed as calling for *obedience*, which includes an *acceptance by the mind*. Not that we are required to believe that the teaching is *infallibly* true or false; rather, we are to hold that the doctrine contained in such a judgment is safe. Our minds should therefore accept it, and reject the contrary, not because we perceive that it is a matter of divine faith (i.e. because God revealed it or because the Church teaches it infallibly), but because we acknowledge a sacred authority which undoubtedly has the task of ensuring that teaching remains healthy and unharmed.⁹⁹

Like Franzelin, but using another terminology, Dieckmann makes a distinction between "speculative truth infallibly defined" and "doctrines which secure the truth being defined." While the former considers the doctrine itself as "true or false," the latter is a sort of a "condition" to keep "the rule of faith" secure. From this springs an obligation binding for all so that certain dangers to the faith are avoided and a secure and safe way is opened. It is, therefore, a "question of secure or safe doctrine," without, certainly, contradicting the faith. Applying this distinction to the doctrinal decrees of the Congregation of the Holy Office, he holds that these acts belong to that type of doctrines which secure the truths infallibly defined, while they themselves are not necessarily "true or false," certain or erroneous."¹⁰⁰

Thus, although the teaching at a given specific set of circumstances might be the best, most prudent and surest, the noninfallible magisterium does not have any intention to impose it as *the* truth or condemn something as *the* error. However, these doctrines are necessary because, given a particular set of circumstances, they become a condition to avoid dangers to the faith and provide safety for the faithful. Thus, they are issued not to declare a truth, but only insofar as it is "opportune and necessary to make the faith secure," as Franzelin holds.¹⁰¹ Conversely, a certain noninfallible teaching, given a certain set of circumstances different from the one at the time of its formulation, can become "unsure" and "unsafe" though may not be necessarily wrong.¹⁰² However, it must be noted that this does not mean that the noninfallible magisterium does not deserve a religious, internal assent. In fact, as can be seen below, there is a unanimity in this respect among all the authors.

The other group¹⁰³ holds that, although a noninfallible teaching does not have a metaphysical or absolute certainty, the object of assent is not some mere

⁹⁹*Ibid.*, pp. 121-122.

¹⁰⁰DIECKMANN, p. 122.

¹⁰¹FRANZELIN, p. 119.

¹⁰²DIECKMANN, p. 122.

¹⁰³To this group belongs Salaverri, de Groot, Lercher, Schultes, Straub, Maroto, Palmieri, Pesch and Nicolau.

safeguard; it is rather the truth itself of the assertion and as the magisterium directly proposes it, namely, as "true or false," as "certain or erroneous." Salaverri says:

. . . the Magisterium of the Popes does not limit itself to propose in its encyclicals the doctrines as sure or not sure, but that it can propose them and in fact has proposed them frequently, as true or false, as certain or erroneous, as included in the deposit of faith or as necessary for the defense of the divine deposit, as dogmas of divine or catholic faith or as theological doctrines taught by the universal Church.¹⁰⁴

More precisely, Nicolau and Salaverri distinguish two types of doctrinal decrees according to their finality, namely direct and indirect doctrinal decrees.¹⁰⁵ With the former, the teaching proposed is "true or false;" while, with the latter, the teaching proposed is "safe or unsafe," "sure or unsure." Thus, Salaverri accepts that there are noninfallible teachings which are simply "sure or unsure," or "safe or unsafe."¹⁰⁶ He explicitly gives encyclical letters as examples of directly doctrinal decrees, and therefore, as "true or false."¹⁰⁷ Hence, the primary end of a teaching directly doctrinal is to declare something as "true or false" or as "certain or erroneous," while a teaching indirectly doctrinal serves to safeguard and protect a doctrine declared as "true" and to condemn and avoid a doctrine judged as "false."

Thus, while for the first group the conditionality of the assent depends on this conditionality of the noninfallible teaching in general, for the latter group, the inherent limit of one's assent to a directly doctrinal noninfallible teaching is not found in the relative uncertainty of the doctrine proposed because it is proposed as true and condemns something else as false; it would rather ultimately redound to the absence of metaphysical certainty or the absence of the guarantee of the charism of infallibility.¹⁰⁸ In the end, although the possibility of withholding one's assent is pushed to the verge of impossibility, it is still possible if only for the fact that the magisterium does not use its power to the highest degree, namely, infallibly.

3.1.3. The response due to the noninfallible magisterium

In the evolution of the conciliar text toward its final formulation, one of the "modes" asked for a clear distinction of the religious assent of the will and the intellect from the assent of faith. The doctrinal commission responded that, for such, we have to consult the approved authors.¹⁰⁹ In the manuals, the

¹⁰⁴J. SALAVERRI, *Valor de las encíclicas...*, p. 288.

¹⁰⁵NICOLAU and SALAVERRI, p. 705.

¹⁰⁶J. SALAVERRI, *Sacrae Theologiae Summa*, p. 726.

¹⁰⁷*ibid.*, p. 720.

¹⁰⁸Cf. PALMIERI, *Tractatus de Romano Pontifice*, pp. 632-633.

¹⁰⁹Cf. *Acta Synodalia*, III: 8, p. 88.

"internal religious assent" due to the noninfallible magisterium is clearly distinguished from the assent of faith that is due to the infallible magisterium. To the noninfallible is demanded an "internal religious assent"¹¹⁰ by which "what is contained in the decree is affirmed to be true" or by which what is contained in the decree is affirmed to be "prudent, wise and sure." External conformity, mere silence or mental silence or mere respect is not sufficient, for it is a question of a "grave obligation." It is an "assent of the mind" and an "act of the intellectual judgment." It is religious because it is founded on the authority received from Christ. Thus, the noninfallible magisterium demands such an assent even when the reasons are not in themselves convincing. For the magisterium of the Church is "magisterium of witness" rather than a magisterium which teaches through the demonstration of the reasons behind its teaching in a way that sciences do.¹¹¹

While the assent of faith due to the infallible magisterium is based on "the unfailing authority of God," the religious assent is based on the authority of the magisterium itself while faith is absolutely certain, the religious assent is not. All the authors speak of it as "morally certain," that is, it does not exclude the possibility of error but only its present likelihood. The teaching is certain, but a certainty that is "relative," not metaphysical nor absolute. However, this "moral certitude" is "habitually sufficient to found the *right* of superiors and the *obligation* of interiors in the domestic society and in the civil society." In the same manner, "it is sufficient to found the *right of the ecclesiastical authority* and the *obligation* of the faithful."¹¹²

While the assent of divine faith is an acceptance of an infallible teaching without any condition or qualification, the internal religious assent is "conditional."¹¹³ This conditional character of the assent does not mean that it is not firm, interior and certain. It means that, once the "Church decides otherwise," or once the Church changes the teaching, the assent to the previous teaching yields in favor of the assent to the new proposition. In other words, the religious assent is by nature conditional in proportion to the nature of the noninfallibility and nonirreformability of the proposition to which it is given.

¹¹⁰It is called "internal assent" because it is "an adhesion of the mind to the doctrinal decree of the Church." Cf. SCHULTES, p. 606; NICOLAU and SALAVERRI, p. 707; PALMIERI, *Tractatus de Romano Pontifice*, p. 632; STRAUB, p. 342; DE GROOT, p. 571; SULLIVAN, p. 347; MAROTO, p. 417; CHOUPIN, pp. 53 and 82-87; HERVE, p. 466; PESCH, p. 239.

¹¹¹Some of the authors make a distinction between a *magisterium mere docens seu scientificum*, to which assent is given because of the reasons the teacher offers, and a *magisterium auctoritativum* to which an assent is given because of the authority of the teacher. Cf. NICOLAU and SULLIVAN, p. 654.

¹¹²CHOUPIN, pp. 90-91.

¹¹³Cf. NICOLAU and SALAVERRI, p. 710; HERVE, p. 466; MAROTO, p. 418; SCHULTES, pp. 610-612; SALAVERRI, *Sacrae Theologiae Summa*, p. 722; CHOUPIN, pp. 82ff; WILMERS, pp. 449-451; STRAUB, pp. 346-347; DIECKMANN, p. 116.

3.1.4. The possibility of error on the part of the non-infallible magisterium

The magisterium of the Church enjoys a "special divine protection, not only in its rare acts" such as when it defines a doctrine solemnly, "but also in the acts of the ordinary and daily magisterium." This daily and ordinary magisterium does mean only that of the pope, but it also includes the ordinary magisterium of the bishops and the congregations of the Roman Curia.¹¹⁴

What is the extent of this divine assistance in the ordinary magisterium is difficult to define accurately. One thing, however, can already be excluded, namely, this divine assistance does not preserve the noninfallible magisterium from all errors; otherwise, all acts would be infallible. In this respect, Lercher says that if the Roman Pontiff uses his authority but not to its highest degree, "we must not say that the Holy Spirit will never permit him to issue an erroneous decree."¹¹⁵ Dieckmann holds that this assistance of the Holy Spirit in the ordinary magisterium is "rather a universal one." Here enters the necessity of preparing and issuing a noninfallible teaching "with the necessary diligence, caution and scholarship" for, in such a manner, "the Holy Spirit will preserve the organs of the authoritative magisterium from the error."¹¹⁶

However, although the magisterium may err, "the Holy Spirit will never permit it to happen that by such a decree the whole Church would be led into error."¹¹⁷ Sullivan holds that such an erroneous teaching would never become the "constant and traditional teaching of the Holy See."¹¹⁸ That erroneous doctrine would be corrected before the whole Church is drawn into error. In such a case, "the divine assistance would be enough to assure that the error would be corrected" before the Church shall have been induced into accepting it.¹¹⁹

How can this error be detected and consequently corrected? Most of the manuals demurred at confronting this question. While all recognize the possibility of error on the part of the magisterium in spite of the assistance of the Holy Spirit, and while all recognize that the Holy Spirit cannot possibly lead the whole Church into error because of an error on the part of the noninfallible magisterium, we do not find a common solution on how such an error can be detected and corrected. Who can correct the error? And in what way? Lercher seems to give us a more or less explicit answer:

¹¹⁴DIECKMANN, p. 117.

¹¹⁵LERCHER, p. 297.

¹¹⁶DIECKMANN, pp. 117-118.

¹¹⁷LERCHER, p. 297.

¹¹⁸SULLIVAN, p. 345.

¹¹⁹*ibid.*, p. 350.

Certainly, the Holy Spirit will never permit it to happen that by such a decree the Church would be led into error. The way in which the error would be excluded more probably consists in the assistance of the Holy Spirit given to the head of the Church, by which such an erroneous decree would be prevented. However, it is not unthinkable that the error *on the part of the Church* should be excluded by the Holy Spirit in this way: that the subjects recognize the decree to be erroneous and cease to give their assent to it.¹²⁰

In other words, the Holy Spirit may prevent the Church from being led into error either by enlightening the magisterium itself so that it may recognize its error, or that the Holy Spirit may move the faithful not to accept such an erroneous teaching. In brief, Lercher considers dissent by the faithful as one concrete way of correcting an error and thereby preventing the whole Church from accepting it. One final note that we have to make is that, although the authors speak of the possibility of error on the part of the noninfallible magisterium, they are extremely skeptical that such a situation will ever arise. Lercher holds that the magisterium cannot commit "dangerous errors." Certain historical cases may prove "both the exception that we have allowed for and that metaphysically certain assent is not required."¹²¹

3.1.5. The possibility and legitimacy of dissent

Thus, from the possibility of error on the part of the noninfallible magisterium to a certain conditionality of the response, dissent is possible, legitimate under certain conditions and may in fact be a way of correcting an error on the part of the magisterium. All except a pair of authors consider the possibility and legitimacy of dissent under certain conditions. Nicolau and Salaverri think that a "respectful silence" is not even a sufficient response. The only element that can occasion the withdrawal of an assent to a proposition is when the decreeing authority or an authority higher than it decrees otherwise. Thus, the withdrawal of assent is occasioned not by the doubts and grave reasons one may have; rather, it is occasioned by an act of the magisterium decreeing otherwise.

3.1.5.1. The conditions for a legitimate dissent

Maroto and de Groot hold that in "extraordinary cases, learned Catholics" can dissent from the teaching if they judge that "grave reasons against the doctrinal decree" exist.¹²² For Lercher, since the presumption of truth is always on the side of the magisterium, dissent is only possible "when a grave suspicion

¹²⁰LERCHER, p. 297.

¹²¹*Ibid.*, p. 298.

¹²²MAROTO, p. 418.

should arise that the presumption is not verified.”¹²³ So it is with Herve when he says that, while “moral certitude” is sufficient to oblige the faithful, such, however, is not the case when “evidently it rests upon an erroneous decree.”¹²⁴

Sullivan holds that one should not withhold his assent “unless the Church decides otherwise” or “unless the contrary should become evident.”¹²⁵ For Pesch, that this assent is “conditional” means that it is given to the teaching “unless the decision is thereafter known to be erroneous.” Thus, “if solid and sufficient motives appear, the assent can be prudently suspended.”¹²⁶ This conditional assent is true to all acts of the noninfallible magisterium, be it of the pope, of the congregations or of the individual bishops in their dioceses. In this area, “intellectual obedience” is understood in a much wider sense than it is in the field of divine faith and infallible certitude.

Straub holds that, if by chance the teaching authority “should appear to be false, the subjects may refuse the assent” and “if a truly grave reason” exists to doubt the truth of the teaching, the “assent is suspended” until when a careful or accurate investigation has been made.¹²⁷ Speaking of the doctrinal acts of the congregations, he holds that it is “licit to dissent and to doubt,” or “to suspend assent” and “to regard the opposite opinion as probable” if the degree should appear to someone “to be certainly false or to be opposed to so solid reasons that their force cannot be shattered even by the weight of the sacred authority.”¹²⁸ Palmieri says that religious assent is owed when there is nothing which could prudently persuade one to suspend his assent. He says:

The assent is morally certain; therefore, should motives appear, whether they be true or false *but from inculpable error*, motives which persuade one of a different view, then in those circumstances the will would not be acting imprudently in suspending assent.¹²⁹

Schultes contemplates a long process before one could suspend his assent. He notes that the teaching emanates from “true experts of theology,” as the members of the congregations are. What should, then, one do in case of doubt or conviction to the contrary? In case of difficulties in the field of knowledge, “it is not licit to immediately suspend nor deny the assent, but new and more accurate scientific investigations” should be pursued.¹³⁰ What a scholar, for instance, should do is not to suspend his assent once he has doubts, but to consult the emanating authority so that the proper intention of the teaching may be clarified and further investigations may be made. For, in such a case,

¹²³ LERCHER, p. 297.

¹²⁴ HERVE, p. 466.

¹²⁵ SULLIVAN, p. 348.

¹²⁶ PESCH, p. 239.

¹²⁷ STRAUB, p. 343.

¹²⁸ *Ibid.*, p. 347.

¹²⁹ PALMIERI, *Tractatus de Romano Pontifice*, p. 633.

the one who has doubts stands against a "twofold authority: the ecclesiastical magisterial authority and the authority of reason itself." And, in case of conflict between the two, the "ecclesiastical magisterium prevails," for the "magisterial authority is of the supernatural and divine order" while "the authority of reason is of the natural and personal order." Consequently, one's "theological judgment is subordinate to the ecclesiastical authority."¹³¹

However, like Straub, he agrees that it is licit or dissent, or to suspend one's assent, or to doubt, or to regard the contrary to the proposed teaching as true, if serious doubts and grave reasons do exist that even a respect and consideration of the noninfallible magisterium of the pope cannot outweigh. One must, however, be aware that he is going against an authority that he should not violate in the first place.

Likewise, Choupin contemplates a long process before one can rightly suspend his assent. Like Schultes, he holds that "in case of simple difficulty, of doubt, the presumption is always in favor of the authority." Consequently, when, for instance the Sacred Congregation for the Doctrine of Faith declares a proposition, "we have to say and believe interiorly, not precisely as *absolutely* true or false" because it is not a question of "irreformable judgment;" rather, our interior assent is given to a proposition that is "sure or unsure" in which it is imprudent not to believe and that we cannot be secure if we refuse it.

However, "if in exceptional cases we have serious reasons to doubt" that such a proposition is erroneous, "we can search by ourselves the truth or falsity of this doctrine." If, by chance "we find solid reasons" to justify our serious doubt, "we can present them to the competent authority humbly and respectfully." This does not, however, mean that, at this stage, we suspend our judgment. Putting our judgment side by side with that of the authority, "we will prefer the decision" of the latter and our assent should still be "interior and sincere" but without being "firm and certain," for the fear of error is not totally excluded.¹³²

In the end, Choupin does not want to discuss the question of a faithful who "thinks he has the evidence of the reproved truth or the falsity of a proposition judged to be true" for it is clear that such is too inclined to an "act of independence" and "to illusion." If ever the case might be such, the assent could take the form of "silent respect."¹³³ In brief, Choupin holds that if does exist, one may investigate the reasons for it. If one thinks that he has the reasons to rectify or make better the proposition, he should approach respectfully, humbly and privately the authority from whom the proposition ema-

¹³⁰SCHULTES, p. 611.

¹³¹*Ibid.*, p. 612. "Non obstantibus rationibus, etiamsi gravibus, theologus tuto, i.e., rationabiliter, honeste et secundum regulas scientiae suae decretis Congregationum adhaeret..."

¹³²Cf. CHOUPIN, pp. 88-89.

¹³³*Ibid.*, p. 90.

nated. If the latter does not make any changes, and that one thinks honestly that he really has the evidence to the contrary, his assent may be reduced to a "respectful silence."

However, although these authors hold the possibility and legitimacy of dissent under certain conditions, they think that such is very unlikely to happen. This is so because the magisterium can hardly be erroneous. Withholding one's assent or holding the contrary of the doctrine proposed seems to be considered almost as a sort of mere theoretical possibility. Moreover, the authors insist that the presumption of truth lies with the teaching of the noninfallible magisterium. Thus, the internal religious assent should always be the first response of the Catholic to such a teaching until one discovers the error. Such assent may not be suspended rashly, casually, out of pride, out of "excessive love of one's own opinions," or out of "overconfidence in one's own genius."¹³⁴

3.1.5.2. Who can dissent?

In this respect, the approved authors are divided. Some hold that only a theologian or a learned catholic can do so. Morato and de Groot explicitly hold that only "learned catholics" may withhold their assent as long as they are ready to submit themselves ultimately to the judgment of the magisterium. Further, Straub, Schultes and Choupin, without explicitly saying it, seem to think that only "learned catholics" or even only theologians can find themselves in such a difficulty. The reason is that the bases for one's capacity to find solid and serious reason is one's ability and skills to dissect the proposed teaching. Thus, they hold that, when one finds himself in a state of doubt, he has to undertake "diligent investigations" or "search for the intrinsic reasons of the truth or falsity" of the doctrine concerned. Further, Straub holds that, while observing silence, one can "modestly propose his difficulty to the sacred tribunal or to make a recourse to the highest tribunal or to an infallible judgment," in cases of doubts. Choupin says that one, after he shall have carried out his investigations and shall have been convinced that he has found solid reasons to sustain his doubts, can humbly and respectfully present them to the competent authority who shall weigh them.¹³⁵

It would seem surprising that nowhere is it said by the approved authors that dissent "is a question of the primacy of conscience." By the fact that they insist on "solid, grave, serious and sufficient" grounds or reasons for dissent, we can safely say that one can only have such reasons if he is "learned" or has the necessary skills to found his dissenting position on such solid grounds and to think that he can possibly correct the teaching of the magisterium.

¹³⁴Cf. STRAUB, p. 347; LERCHER, p. 298.

¹³⁵Cf. MAROTO, pp. 417-418; DE GROOT, p. 574; STRAUB, p. 347; DIECKMANN, p. 116; SCHULTES, pp. 611-612; HOUPIN, pp. 88-89.

On the other hand, Lercher seems to imply that any believer can dissent. Indeed, it may be possible that a great majority may have to dissent to keep the whole Church from erring, as they would be inspired by the Holy Spirit not to give their internal assent to an erroneous teaching.¹³⁶ Sullivan holds that divine assistance is sufficient to assure us that the Church would not be led into error or that such an erroneous teaching ever become a constant teaching of the Holy See; yet, he does not specify how concretely an error can be detected and consequently corrected. In what way will divine assistance do that is not said.¹³⁷ However, in another part, he admits the possibility of dissent. Thus, we may be allowed to make an inference that, for Sullivan, it is not impossible that the divine assistance may concretize itself in terms of withholding assent by a great number of faithful.

But, in a postconciliar work, while commenting on the position of Lercher, Sullivan changes his position in that he does not seem to attribute such assistance to the Holy Spirit but rather to that "supernatural sense of the faith." He says:

... Lercher does not restrict the possibility of same dissent to the learned, but speaks simply of the 'subjects' withholding their assent to doctrine which they recognize to be erroneous, and being led to do this by the Holy Spirit! Perhaps in such a case one should attribute their dissent to the 'supernatural sense of the faith' by which the faithful are inclined in an almost instinctive way toward what is consonant with their faith, and away from what does not resonate with it.¹³⁸

Thus, there is no common position on the matter among the approved authors. One notable factor is that this difference of position springs from the difference of foundation for dissent. On the one hand, for those who hold that only theologians or learned Catholics can dissent, the basis for such are the skills necessary to be able to question and doubt a work of experts like those of the decrees of the Holy See. The subjective doubt is based on one's capacity to reason out with the proposition. On the other hand, for those who hold, albeit implicitly except Lercher, that anyone of the faithful – indeed, many of them together – can dissent, the basis for such is divine assistance and the purpose is to save the Church from falling into error. Rather than a result of reasoning, it would rather be a work of the Holy Spirit.

3.1.6. The question of public dissent

Entertaining the possibility and legitimacy of dissent under certain circumstances, the authors speak of "respectful silence." Thus, it is the common

¹³⁶Cf. LERCHER, p. 297.

¹³⁷Cf. SULLIVAN, p. 350.

¹³⁸F. SULLIVAN, *Magisterium*, pp. 167-168. This is a postconciliar position which, on this particular theme of divine assistance, seems to differ from his preconciliar position.

and explicit teaching of these authors that one should and can only dissent "privately, in reverence" to the sacred authority which proposes it.¹³⁹ It seems, however, that there is a need to define what is "private" and what is "public" according to the minds of these authors. It would seem that to continue the investigations and to propose one's conclusions which might be contrary to the teaching of the magisterium is considered "private dissent" by the authors. This statement, however, is only implicit, as we have explained above. If one is asked "to observe silence" and yet the can "modestly propose his difficulties to the sacred tribunal or to make a recourse to the highest tribunal and to an infallible judgment," if one is allowed "to continue his investigations" as long as he "submits himself ultimately to the judgment of the magisterium," there is no sufficient reason to the contrary that this form of dissent is considered "private."

Thus, "private dissent" means not only "respectful silence" in the sense that nothing should be written or spoken; it also means that the dissenter can present "privately" his reasons for dissenting to the magisterium. This further implies responsibility on the part of the emanating authority to listen to such legitimate requests. As Straub clearly says, "in reverence to the sacred authority," especially that of the pope, one "may not be allowed to contradict" this sacred authority *publicly*.¹⁴⁰

Therefore, "public dissent" in the approved authors means "contradicting the magisterium in public" which takes the form of teaching publicly something against the proposed teaching or of defending the doctrine condemned by the same teaching or publicly freely discussing and questioning the teaching. One cannot "externally, publicly, through some discussions or malevolent conversations with respect to the authority, criticize the decisions taken, under the pretext of preparing for its change or modification."¹⁴¹ Such would be a lack of obedience due to the legitimate authority.

Moreover, it is most significant to note that "public dissent" is not totally impossible. Straub himself continues that public dissent becomes licit when the "sacred authority itself permits it in light of a greater question which is not yet defined."¹⁴² In the same manner, Palmieri says that a public expression of dissent can be had "if the pope should allow it," for the reason that "either so that the truth might shine out more clearly or in order to complete the stage of investigation before a solemn definition."¹⁴³ In brief, the magisterium itself decides whether its proposed teaching is open or not to public and free discussions. In this respect, it is safe to say that some "approved authors" were

¹³⁹Cf. MAROTO, p. 417; DE GROOT, p. 346; SCHULTES, p. 612; STRAUB, p. 347.

¹⁴⁰STRAUB, p. 347.

¹⁴¹CHOUPIN, p. 91.

¹⁴²STRAUB, p. 347.

¹⁴³PALMIERI, *Tractatus de Romano Pontifice*, p. 632.

more inclined to a possibility of public dissent than Pius XII in *Humani Generis*.

What might be considered "the public form of private dissent" taught by the approved authors can be summarized in two fundamental points, namely, first, that the results of the research and discussions are to be proposed as hypotheses, be submitted to the judgment of the authority and to accept the latter's judgment; and, second, that they may be kept in a restricted ambience which has produced them and which can evaluate them. In view of the encyclical *Humani Generis*, it would have seemed at the time of the Council that this common theological doctrine on dissent was suppressed through the expressed will of Pius XII that if the Supreme Pontiffs purposely pass judgment on a matter hitherto controverted, it is obvious that matter cannot be any longer considered a question open to a free discussion among theologians.

3.2. *Lumen Gentium* n. 25A and Dissent.

3.2.1. Dissent is possible

Now, it is to be said that the conciliar text, indeed, contemplates the problem of theological dissent and considers it to be possible and legitimate under certain conditions. Both because the noninfallible teaching is not founded on any incontrovertible reason it advances nor is it protected by the charism of infallibility, the submission of the will and the intellect due to it "has an inherent limitation."¹⁴⁴ Thus, on the one hand, the conciliar text does not certainly have the intention of putting this "submission of the will and intellect" on the level of the unconditional assent of faith due to the infallible magisterium, as some Fathers feared. On the other hand, the conciliar text does not say or does it lead us to understand that one's response to it is a matter of respect and thus, dissent "would have a free-for-all legitimacy."¹⁴⁵

3.2.2. Who can dissent?

Who can doubt and withhold his religious assent? Who can dissent from a nonfallible teaching? The conciliar text is again silent on the matter. Since the doctrinal commission refers us back to the approved authors, we are faced with a certain difficulty: the approved authors do not share one position, as we have seen above. We could entertain two possible answers to the question. First, the "mode" asked if a scholar or a learned person (*eruditus*) can possibly withhold his internal assent to a noninfallible teaching in cases where serious doubts exist. With this, we can suppose that the theological commission had this very specific question in mind when it made its response. Thus, we can surmise that

¹⁴⁴U. BETTI, *L'Ossequio al magistero pontificio 'non ex cathedra'*, p. 456.

¹⁴⁵*Ibidem*; G. PHILIPS, *L'Eglise et son mystère*, pp. 322-333; R. MALONE, *Magisterium and Dissent*, pp. 505-506 and 516.

the conciliar text intends that only a theologian or a learned catholic can dissent against the noninfallible magisterium. Second, since the theological commission refers us back to the approved authors without any further clarification, it would seem that anybody who has serious doubts can dissent.

What complicates the problem is that the theologians who were directly involved in the drafting of the conciliar text seem to keep us guessing. Philips and Betti explicitly hold that only a "competent Christian" or a "theologian" can dissent against a noninfallible teaching. Philips uses the term "competent Christian;" thus, reminding us of the position of Maroto, Straub, Schultes, Palmieri, Hervé and de Groot. By the term "competent Christian," Philips means that not just any Catholic can dissent. Such a competent Christian who "may have serious motives to prefer a divergent manner of thinking over the official directives" of the magisterium, or who "may have founded reasons to leave the question in doubt" may "not be forced to an interior assent." That Philips makes reference only to a learned Christian is re-enforced by the immediately following statement, namely, that nobody should "prevent him from continuing his investigations" as long as "he avoids to hurl, through resentment or intellectual pride, discredit on the declarations of the magisterium."¹⁴⁶ Hence, he is a Christian who is capable of doing research and, obviously, who has at his disposal the means necessary to accomplish it. Besides, in justifying the prohibition of public dissent, Philips says that such is prohibited because, if made public, the dissenting position could enter into the public forum of "persons incompetent" to pass judgment on it. Thus, competence is the basis for one's capacity to dissent.

Betti, on his part, says:

Notwithstanding everything though, it may happen that the theological discussion does not induce the Pope to modify his teaching *non ex cathedra*, and that *a theologian or another competent person*, due to motivations seriously founded, may feel in conscience that he should withhold the assent of the will and the intellect in relation to it [the teaching], and to assume, therefore, a position not only of nonconcordance, but of a serious dissent."¹⁴⁷

Thus, with this interpretation by Philips and Betti, two scholars who were directly involved in the formulation of the conciliar text, we may be inclined to believe that the Council Fathers intended that only a competent or learned catholic can exercise dissent.

However, Colombo, the theologian who wrote the proposed conciliar text from the very start and who was directly incharged of it during its final revision, explicitly says that "the faithful" may withhold their assent. He says:

¹⁴⁶G. PHILIPS, *L'Eglise et son mystère*, p. 323.

¹⁴⁷U. BETTI, *L'Ossequio al magistero*, p. 460.

... as we are all aware, the individual bishops even when invested with due authority as teachers and guides of a given community are not infallible interpreters either of divine truth or of the teaching of the Church. Therefore, when proportionately serious motives exist for considering their authoritative teaching as unfounded or even erroneous, the faithful may withhold their assent, while seeking the conclusive truth through the means at their disposal.¹⁴⁸

His successive statements re-enforce his position that any believer who has serious grounds can withhold his assent. If ever one is in serious doubt, he should "first of all consult the teaching of the entire episcopal body and of the authentic magisterium for the universal Church, namely the Roman Pontiff and the organs of the Holy See." Then, he "should consult those competent in the separate fields, the theologians."¹⁴⁹

Thus, we find ourselves with two divergent interpretations even by the experts themselves who were directly involved in the formulation of the conciliar text. A possible approach to the real intention of the conciliar teaching might be to look into the dynamics of one's having solid and serious grounds to withhold or withdraw his assent. How can one arrive at these reasons? Is it one's capacity and skills to dissect a noninfallible teaching? If it is, then only the faithful who are trained in the ecclesiastical sciences can arrive at solid and serious reasons for dissent, as Philip and Betti imply. But are there not other ways to arrive at these solid and serious reasons? In the end, one cannot totally rule out the position of Lercher or that of Colombo. How can this happen in the concrete is another question.

3.2.3. The conditions for a legitimate dissent; yes to further theological investigations but no to public dissent

While affirming the possibility and legitimacy of dissent, the conciliar text clearly allows further theological investigations even though the noninfallible magisterium might have already pronounced itself about a certain matter hitherto controverted. Moreover, in referring us back to the approved authors twice, it becomes clearer that the Council did not have intentions of stopping theological investigations. The scientific research "should not be reduced to inaction" and the "authorities would be badly inspired if they would neglect or would oppose to provide propitiously the indispensable information and clarifications" for further researches.¹⁵⁰ Thus, it is even a duty on the part of the authorities to encourage further research to that the teaching might arrive at a better and more mature formulation. In this way, any "explosive situation" can be avoided. Far from being halted, Colombo says that theology is not even "obliged to begin from the teaching of the non-infallible magisterium as though

¹⁴⁸C. COLOMBO, *Obedience to the ordinary magisterium*, p. 85.

¹⁴⁹*Ibid.*, pp. 85-86.

¹⁵⁰G. PHILIPS, *L'Eglise et son mystère*, pp. 323-324.

it were a certain and definitive datum." The theologian or the researcher can "call such a teaching into question, making use of methodical doubt as in any other scientific discussion." He further says:

... it [theology] is not obliged to reach conclusions always and necessarily in conformity with the expressed tradition of the ordinary magisterium. It may possibly find in this some inadequacies or perhaps even some erroneous interpretation of divine truth. In this case, which does not occur everyday, theology would have the duty and the right not merely to withhold the religious assent of the believer but also to propose the reasons which lead it to doubt the truth of the general teaching, in order to help the Church and particularly its teachers to reach an exact knowledge of the truth.¹⁵¹

However, this freedom does not mean that the theological investigations can be done in the same manner as if the magisterium had never passed its judgment on the matter. In other words, the noninfallible teaching on the matter further imposes upon the theologian to take further caution in his research, in reverence to the teaching authority and to its teaching. As the approved authors say, the researcher at this point is confronted both with the "authority of the ecclesiastical magisterium" and the "authority of reason." The dissenter has to be aware that he has duty to religious obedience to his authority. Moreover, unless really grave reasons exist, the ecclesiastical magisterium has priority over one's reason. In other words, besides the fact that the magisterium finds certainty of the reasons advanced through long and serious studies and consultations with experts, it even finds greater certainty of its teaching in the "assistance of the Holy Spirit" which is promised to it even for its infallible teaching.¹⁵² Colombo says:

... it cannot be denied that in this ordinary exercise of its teaching authority the Holy See has the special assistance of the Holy Spirit. This does not render it infallible, but it makes it wise, prudent and enlightened in its guidance of the whole Christian community towards the fullness of truth. It is the charism proper to the authentic and universal ordinary magisterium of the Roman pontiff [sic] which justifies the particular religious obedience we owe to its teaching.¹⁵³

Thus, a "proud and despising attitude with respect to the magisterium" is not a sign of loyalty; rather, only in an honest and prudent way can withholding of assent be reconciled with our loyalty and respect for the magisterium. Considering dissent to be a possible immediate response to a noninfallible teaching would be a submission of "sincerity and desire for the truth to an unjust and sometimes fatal pressure." No matter how brilliant a theologian might be, his "authority cannot take the place the authority of the pope or of the bishop which is of another nature." Whatever a seriously and honestly doubting person does, that is, whether he does diligent research or keeps a

¹⁵¹C. COLOMBO, *Obedience to the ordinary magisterium*, p. 90.

¹⁵²R. MALONE, *Magisterium and Dissent*, p. 515.

¹⁵³C. COLOMBO, *Obedience to the ordinary magisterium*, pp. 87-88.

"respectful silence," the primary condition for a legitimate dissent is that the dissenter must observe tremendous prudence "to prevent a public debate where the judgment might be passed by a tribunal of incompetent persons."¹⁵⁴

The necessity of the virtue of prudence in the avoidance of a public forum should not be viewed as something merely advantageous for the magisterium itself. Colombo, speaking of the assent to one's proper bishop, says:

The bishop is ... owed not only the general supernatural reverence and assent which must be given to all successors of the apostles, but also the more particular and binding assent of *supernatural religious obedience in doctrinal matters*... For this reasons the religious obedience to the teaching of one's bishop has two distinct aspects: the obligations not to take a public stand against his teaching, in order to avoid scandalizing the faithful and damaging their faith; the obligation to consider his teaching as a morally certain interpretation of the Christian and Catholic faith and to offer practical assent to it, both mentally and in action, until such time as proportionately serious motives arise for doubting its truth.¹⁵⁵

Moreover, this refusal of one's assent and this possible opposition to the teaching of the proper bishop should not be considered as "ordinary such as would authorize us to regard the doctrinal authority of the local bishop as practically non-existent." Such possibility of dissent "certainly does not justify public opposition with its consequent damage to the faith of the community."¹⁵⁶ Thus, while it is true that public dissent could in itself be a sign of disrespect and disregard for authority, even more dangerously, it can cause harm to the other believers who may not have the skills necessary to understand the usual intricacies that form the foundations of ecclesiastical pronouncements. Consequently, it would only result in conflicts of conscience.

Finally, this avoidance of public dissent should be motivated by charity toward the community of the faithful which has "the right to tranquil possession of the truths necessary for Christian life."¹⁵⁷ It is deplorable and diametrically opposed to the conciliar teaching that dissent should be "practiced and preached as a duty in the Church and for the Church" under the pretext of trying "to elevate the maturity of the faithful and to liberate them from occasions of sin, demonstrating to them that the teaching of the Pope is mistaken," according to which "it might be a pity" not to abandon such a mistaken teaching and follow the opposing one. An inherent limitation on the part of the noninfallible magisterium, coupled with some successive clarifications in its teaching involving abandonment of sometimes inadequate positions which had previously been maintained and even the errors into which the magisterium has sometimes fallen, should not cause us to forget its supernatural foundation and its indispensable function as the normally sure, necessary and unifying guide of the entire community of the faithful. □

¹⁵⁴G. PHILIPS, *L'Eglise et son mystère*, p. 324.

¹⁵⁵C. COLOMBO, *Obedience to the ordinary magisterium*, pp. 84-85.

¹⁵⁶*Ibid.*, p. 86.

¹⁵⁷*Ibid. em.*