

**THE RESPONSE (28 OCTOBER 1995)
OF THE CONGREGATION
FOR THE DOCTRINE OF THE FAITH
TO THE DUBIUM CONCERNING
THE APOSTOLIC LETTER
ORDINATIO SACERDOTALIS (22 MAY 1994):
AUTHORITY AND SIGNIFICANCE**

Introduction

The Apostolic Letter, *Ordo Sacerdotalis*, 22 May 1994, concludes with a teaching that is both fundamental and highly significant for the Church.

Ut igitur omne dubium auferatur circa rem magni momenti, quae ad ipsam Ecclesiae divinam constitutionem pertinet, virtute ministerii Nostri confirmandi fratres (cf. Lc. 22,32), declaramus Ecclesiam facultatem nullatenus habere ordinationem sacerdotalem mulieribus conferendi, hancque sententiam ab omnibus Ecclesiae fidelibus esse definitive tenendam¹.

Notwithstanding the decisive language used in the document which made the definitive nature of the teaching very clear, discussion continued on the theological grounds of the doctrine, on the possible future ordination of women and on the actual juridical sig-

¹ *Ordo Sacerdotalis*, dated 22 May 1994, was published in *L'Osservatore Romano*, 30-31 May 1994. The latin text can be found in AAS 86 (1994) 545-548 and *Apollinaris* 67 (1994) 9-12.

nificance of the Apostolic Letter itself². In order therefore to resolve any doubts that still remained, the Congregation for the Doctrine of the Faith published a «*Responsum ad dubium circa doctrinam in Epist. Ap. "Ordinatio Sacerdotalis" traditam*» on the 28 October 1995. The *Responsum* makes two essential points: i) the doctrine that escludes the ordination of women to the priesthood belongs to the deposit of faith («ut pertinens ad fidei depositum intelligenda sit»); ii) that this doctrine has been infallibly proposed by the ordinary and universal magisterium («ab ordinario et universali magisterio infallibiliter proposita sit»). Therefore this doctrine demands a definitive assent on the part of the faithful («Haec enim doctrina assensum definitivum exigit»)³.

Despite this further clarification by the Congregation for the Doctrine of the Faith, a series of negative reactions and criticisms continued to appear. These included specific criticism of the basic doctrinal teaching as well as perplexity concerning both the juridical and theological value of the *Responsum*. Specific concern and preoccupation was especially centred on the infal-

² In general, see A. ANTÓN, «*Ordinatio Sacerdotalis*: Algunas reflexiones de "gnoseología teológica"», *Gregorianum* 75 (1994) 723-742; P. HÜNERMANN, «Schwerwiegende Bedenken: Eine Analyse des Apostolischen Schreibens "Ordinatio Sacerdotalis"», *Herder Korrespondenz* 48 (1994) 406-410; I. RAMING, «A Definitive No to Women's Ordination?», *Theology Digest* 42 (1995) 43-46; P.L. REYNOLDS, «Scholastic Theology and the case against Women's Ordination», *The Heythrop Journal* 36 (1995) 249-285; F.A. SULLIVAN, «New Claims for the Pope», *The Tablet*, 18 June 1994, 767-769; P. SURLIS, «The Ordination of Women», *The Furrow* 47 (1996) 42-46.

³ The *Responsum*, dated the 28 October 1995, was published in *L'Osservatore Romano*, 19 November 1995 with both the latin original and an italian translation.

libile nature of the teaching in *Ordinatio Sacerdotalis* as underlined and explicitly stated in the *Responsum*⁴.

In this paper I would like to consider the *Responsum* and the various problems and questions connected with it. Practically this involves a consideration of what we mean by the Infallible Magisterium. Clearly this cannot be a thorough analysis of the concept and the implications of how the Church understands its infallible teaching charism, and therefore it will be necessary to establish certain parameters to this particular study.

The theological-dogmatic foundations of the doctrine declared in *Ordinatio Sacerdotalis* will not be analysed, namely its basis in Sacred Scripture and Tradition. These have been succinctly presented in *Ordinatio Sacerdotalis* and other papal documents, namely, *Inter insigniores*⁵, and *Mulieris Dignitatem*⁶, as well as the post synodal Apostolic Exhortation, *Christifideles laici*⁷ and the *Catechism of the Catholic Church*⁸.

⁴ For a general survey of criticisms, see M. MATE, «*Ordinatio Sacerdotalis*. Una recensione del dibattito successivo alla sentenza della Lettera Apostolica», *Il Regno*, 15 febbraio 1996, 79-82. See also, R.R. GAILLARDETZ, «Infallibility and the Ordination of Women», *Louvain Studies* 21 (1996) 3-24; L. ORSY, «The Congregation's "Response": Its Authority and Meaning», *America*, 9 December 1995, 4-9; F.A. SULLIVAN, «La Strada della Tradizione», *Il Regno*, 1 maggio 1996, 312-313.

⁵ CONGREGATIO PRO DOCTRINA FIDEI, *Declaratio Inter insigniores*, circa quaestionem admissionis mulierum ad sacerdotium ministeriale, 15 October 1976, AAS 69 (1977) 98-116.

⁶ IOANNES PAULUS II, *Epistula Apostolica Mulieris dignitatem*, 15 August 1988, AAS 80 (1988) 1653-1729.

⁷ IOANNES PAULUS II, *Adhortatio Apostolica Christifideles laici*, 30 December 1988, AAS 81 (1989) 393-521.

⁸ *Catechism of the Catholic Church*, Libreria Editrice Vaticana, Roma 1994, n. 1577: «The Church recognizes herself to be bound by this choice made by the Lord himself. For this reason the ordination of women is not possible».

Rather I would like to consider the Infallible Magisterium and the type of assent, from a juridical point of view, that is due to this type of Magisterium. In this way I believe we can better understand the qualification of infallibility attributed to the doctrine which we find expressly declared in the *Responsum* and which was already implicitly expressed in *Ordinatio Sacerdotalis*⁹.

Specifically I would like to consider the material treated in c. 749 and *Lumen Gentium*, n.25, that is Infallible Magisterium. In other words I do not wish to consider non Infallible Authentic (Authoritative) Magisterium concerning faith and morals, namely the material treated in c. 752 and to which one must give a «religiosum [...] intellectus et voluntatis obsequium». Clearly, even on a reading of the canons, there is a difference between these two types of authoritative teaching and it remains important to keep them separate for the sake of this study though they remain intimately linked in the life of the teaching office of the Church.

To meet this scope I intend to divide the paper into three sections:

I. Infallibility according to c.749.

II. *Ordinatio Sacerdotalis* and the *Responsum*: a specific application of 749 §2 (2).

III. The Response that is due to this doctrine: «assensus definitivum».

⁹ For a convenient overview of various canonical questions, see N. LÜDECKE, «Also doch ein Dogma? Fragen zum Verbindlichkeitsanspruch der Lehre über die Unmöglichkeit der Priesterweihe für Frauen aus kanonistischer Perspektive», *Trierer Theologische Zeitschrift* 105 (1996) 161-211.

I. Infallibility according to c. 749¹⁰

Following c. 749 we find two subjects of infallibility in the Church.

i) Paragraph §1 speaks of the Supreme Pontiff who «doctrinam de fide vel de moribus tenendam definitivo actu proclamat»¹¹. Clearly the conditions for the exercise of this infallibility, which are expressed in the canon, must be met. Namely, that the Supreme Pontiff must act in virtue of his office as shepherd and teacher of all Christians, that he acts by virtue of his supreme apostolic authority, and that he must intend to define a certain teaching as definitive on a question of faith and morals¹².

ii) Paragraph §2 points to the other subject of Infallible Magisterium in the Church, the College of Bi-

¹⁰ The bibliography on Infallible Magisterium in the light of Vatican II is very extensive but for fundamental surveys, see P. CHIRICO, *Infallibility: The Crossroads of Doctrine*, Wilmington 1983; G. PHILIPS, *La Chiesa e il suo Mistero: Storia, Testo e commento della «Lumen gentium»*, Roma 1968; U. BETTI, *La Costituzione dommatica «Pastor aeternus» del Concilio Vaticano I*, Roma 1961; ID., *La Dottrina sull'Episcopato nel Capitolo III della Costituzione dommatica «Lumen gentium»*, Roma 1968. For a convenient overview of canonical commentry on the Teaching Office of the Church and of c. 749 see A. URRU, *La Funzione di Insegnare della Chiesa*, Roma 1988.

¹¹ C. 749 §1: «Infallibilitate in magisterio, vi muneris sui gaudet Summus Pontifex quando ut supremus omnium christifidelium Pastor et Doctor, cuius est fratres suos in fide confirmare, doctrinam de fide vel de moribus tenendam definitive actu proclamat».

¹² The proximate source of the canon is *Lumen Gentium*, n.25 while its remote source is the Dogmatic Constitution, *Pastor Aeternus*, ch. 4 of Vatican I. For an excellent presentation of the Papacy and its teaching prerogatives and ministry, see J.M. MILLER, *The Shepherd and the Rock. Origins, Development and Mission of the Papacy*, Huntingdon, Indiana 1995, in particular pp.188-211.

shops. The College can exercise this infallibility in two diverse ways.

a) When they are assembled in an Ecumenical Council «pro universa Ecclesia doctrinam de fide vel de moribus definitive tenendam declarant». In this they act as «fidei et morum doctores et iudices»¹³.

b) Or when the Bishops are dispersed throughout the world, «in unam sententiam tamquam definitive tenendam conveniunt». In the exercise of this infallible magisterium they are, along with the Pope, «authenticæ res fidei vel morum docentes». In addition they must maintain communion amongst themselves and with the successor of Peter¹⁴.

The response due to this precise type of infallible magisterium is also relatively clear. Following the text of c. 750, «Fide divina et catholica» is to be given to such infallible teaching, namely all that is contained in the word of God, written or handed down, that is in the one deposit of faith entrusted to the Church and which also has been proposed as divinely revealed («divinitus revelata»). This infallible magisterium can be proposed by the Church's solemn magisterium or by its ordinary and universal magisterium¹⁵.

¹³ C. 749 §2: «Infallibilitate in magisterio pollet quoque Collegium Episcoporum quando magisterium exercent Episcopi in Concilio Oecumenico coadunati cum, ut fidei et morum doctores et iudices, pro universa Ecclesia doctrinam de fide vel de moribus definitive tenendam declarant».

¹⁴ The second part of c. 749 §2 reads: «aut quando per orbem dispersi, communionis nexum inter se et cum Petri successore servantes, una cum eodem Romano Pontifice authenticæ res fidei vel morum docentes, in unam sententiam tamquam definitive tenendam conveniunt». When this paper cites c. 749 §2 (2) it refers specifically to this section of the canon.

¹⁵ C. 750: «Fide divina et catholica ea omnia credenda sunt quæ verbo Dei scripto vel tradito, uno scilicet fidei deposito Ec-

Canon 752, which is devoted to the Church's authentic but non infallible magisterium suggests a response of «Fidei assensus» to infallible magisterium, in contrast to «religiosum [...] intellectus et voluntatis obsequium» which is precisely to be given to the non infallible authentic magisterium¹⁶.

In other words, «fidei assensus» or «Fide divina et catholica» is to be given to a quite precise infallible teaching: «Ea omnia credenda sunt quae verbo Dei scripto vel tradito, uno scilicet fidei deposito Ecclesiae commisso [...] et insimul ut *divinitus revelata* proponuntur, sive ab Ecclesiae magisterio sollemni, sive ab eius magisterio ordinario et universali» (c.750). The type of infallible magisterium that requires a «fidei assensus» belongs to the one deposit of faith which has also been proposed as divinely revealed by the competent teaching authority. This can be exercised by the solemn magisterium or by the ordinary and universal magisterium. These teachings are the Dogmas of Faith which require nothing less than «fidei assensus».

Given this brief description taken from the canons on infallible magisterium we can now turn to *Ordinatio Sacerdotalis* and the *Responsum*. In fact, as we have already seen, the response to the doctrine by which the Church does not have the faculty to confer priestly ordination on women, while pertaining to the deposit of

clesiae commisso, continentur, et insimul ut divinitus revelata proponuntur, sive ab Ecclesiae magisterio sollemni, sive ab eius magisterio ordinario et universali».

¹⁶ A reading of c. 752 makes this distinction clear: «Non quidem fidei assensus, religiosum tamen intellectus et voluntatis obsequium praestandum est doctrinae, quam sive Summus Pontifex sive Collegium Episcoporum de fide vel de moribus enuntiant, cum magisterium authenticum exercent, etsi definitivo actu eandem proclamare non intendunt».

faith, does not specifically require a «fidei assensus» but, according to the *Responsum*, rather an «assensum definitivum»: «Haec enim doctrina assensum definitivum exigit [...]».

There is an obvious question that needs to be resolved: What is the difference between «fidei assensus» and «assensum definitivum»? Is there any precise reasoning as to why this term was chosen?

In order to answer these questions it is important to understand the documents under consideration in the light of various distinctions to be found in the concept of infallible magisterium, which in the confusion after Vatican II have tended to be forgotten or infrequently considered.

II. *Ordo Sacerdotalis* and the *Responsum*: A specific application of c. 749 §2 (2)

1. Distinctions in Infallible Magisterium

As indicated, a number of scholars, amongst whom canonists, hold that the doctrine taught in *Ordo Sacerdotalis* is not infallible, despite the specific language used in the document and the later *Responsum* of the Congregation for the Doctrine of the Faith. There are clearly many reasons for this type of negative judgement: concern about the rights of women in the Church; a misunderstanding and suspicion of the role of the Congregation for the Doctrine of the Faith and the Roman Curia in general; a perceived lack of consultation on this matter within the Church. On the other hand one basis for such a negative reaction possibly lies in a certain confusion and at times a deliberate misunderstanding of the concept of infallibility and its exercise by the magisterium. In the Church today there

is a debilitating attitude which has tended to blur our understanding of the magisterium, the consequence of which is either an inadequate or mistaken appreciation of and the assent due to the doctrines proposed by the authentic magisterium. There is a common view which generally holds that Church doctrine which has not been infallibly defined by a solemn act of the Pope, normally referred to as an «ex cathedra» pronouncement, is in fact subject to any interpretation and requires a simple *obsequium*¹⁷. Such an attitude or even theological position forgets that the magisterium, when it teaches with a definitive act and in an ordinary and universal way, can determine by itself an infallible doctrine without any further need of a solemn act that defines it as infallible¹⁸. We have already seen this possibility clearly expressed in c. 750 which talks explicitly of the ordinary universal magisterium.

In other words, a proclamation «ex cathedra» is not the only means to define a doctrine as infallible. Canons 749 §2 (2), 750 and *Lumen Gentium*, n.25 expressly indicate that alongside solemn or extraordinary definitions — The Pope as Pastor and Doctor of the Church, or the College of Bishops in an Ecumenical Council — there exists in the Church an ordinary and universal magisterium which by definition is not solemn or extraordinary but which under certain precise conditions can and does teach infallibly.

Therefore, the simple fact that *Ordinatio Sacerdotalis* has not been defined «ex cathedra» does not mean

¹⁷ Problems of this kind were already alerted to in 1966 by the then Sacred Congregation for the Doctrine of the Faith in its letter *Cum Oecumenicum*, 24 July 1966, AAS 58 (1966) 659-661.

¹⁸ In general, see R. FISICHELLA, «Sulle donne prete non è una questione di tempo», *Palestra del Clero* 74 (1995) 749-751.

that it is automatically not infallible. Such a position and attitude would restrict the charism of infallibility only to those solemn or extraordinary moments, in fact rather rare in the Church. The history of the Church, and in particular the clear teaching of Vatican II as expressed in *Lumen Gentium*, n.25, illustrates that such a view does not correspond to a correct understanding of the Church and its teaching office¹⁹. There is the possibility that a doctrine can be taught infallibly without its having been defined solemnly. This type of ordinary and universal magisterium which under certain conditions can teach infallibly is exactly the subject of c.749 §2 (2).

2. *Ordinary and Universal Magisterium*²⁰

We notice a reference to the ordinary and universal magisterium for the first time in the documents of the Holy See in the letter *Tuas Libenter* of Pius IX written

¹⁹ The relevant part of *Lumen Gentium*, n. 25 reads: «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 haerendum». This text finds its sources in the Dogmatic Constitution, *Dei Filius*, 3, of Vatican I. See DS 1792 (3011). See also c. 1323 §1 of the 1917 Code and the Declaration of the Sacred Congregation for the Doctrine of the Faith, *Mysterium Ecclesiae*, 24 June 1973, AAS 65 (1973) 396-408. Numbers 2-5 treat specifically of infallibility.

²⁰ For the ordinary universal magisterium, in general see J.P. BOYLE, «The Ordinary Magisterium: Towards a History of the Concept (I)», *The Heythrop Journal* 20 (1979) 380-98; ID., «The Ordinary Magisterium: Towards a History of the Concept (II)», *The Heythrop Journal* 21 (1980) 14-29; R. R. GAILLARDT, Wit-

to Gregor von Scherr, archbishop of Munich in 1863²¹. The I Vatican Council echoed this declaration of Pius IX with a conciliar definition when it stated in its Dogmatic Constitution *Dei Filius*, in chapter 3, *De fide*: «Porro fide divina et catholica ea omnia credenda sunt, quae in verbo Dei scripto vel tradito continentur et ab Ecclesia sive solemnii iudicio sive ordinario et universali magisterio tamquam divinitus revalata credenda proponuntur»²². This remains the basic source for c. 750 on the type of assent to be given to such truths.

Clearly there was much discussion after Vatican I as to what was specifically meant by the Church's ordinary universal magisterium especially in the context of its infallible teaching charism²³. Thus, it is no surprise to find a further development of this teaching, its content and

nesses to the Faith: Community, Infallibility, and the Ordinary Magisterium of Bishops, New York 1992; F. A. SULLIVAN, «On the Infallibility of the Episcopal College in the Ordinary Exercise of its Teaching Office», in E. DHANIS and A. SCHÖNMETZER (eds.), *Acta Congressus Internationalis de Theologia Concilii Vaticani II*, Vatican City 1968, 189-195.

²¹ *Tuas Libenter*, 21 December 1863. For relevant text see DS 2879: «Namque etiamsi ageretur de illa subiectione, quae fidei divinae actu est praestanda, limitanda tamen non esset ad ea, quae expressis oecumenicorum Conciliorum aut Romanorum Pontificum huiusque Sedis decretis definita sunt, sed ad ea quoque extendenda, quae ordinario totius Ecclesiae per orbem dispersae magisterio tamquam divinitus revelata traduntur ideoque universali et constanti consensu a catholicis theologis ad fidem pertinere retinentur». For the background to this Letter, see G. RUGGERI, «"Magistere Ordinaire." La Lettre "Tuas Libenter" de Pie IX du 21 decembre 1863», *Recherche de Science Religieuse* 71 (1983) 259-267.

²² See DS 3011.

²³ For its further use, see c. 1323 §1 of the 1917 Code; Pius XI, *Mortalium Animos* (DS 3683) and Pius XII, *Munificentissimus Deus*, AAS 42 (1950) 757.

its application, in Vatican II, specifically *Lumen Gentium*, n.25, which in turn is the source for c. 749²⁴.

While Vatican II did not specifically define the infallibility that pertains to the ordinary and universal magisterium, it did nonetheless determine the conditions for its exercise. These conditions, found in *Lumen Gentium*, n.25, have been taken up by c. 749 §2 (2).

i) «Licet singuli praesules infallibilitatis praerogativa non polleant, quando tamen, etiam per orbem dispersi». The principle is quite clear, namely that the College of Bishops can teach infallibly not only when assembled in an Ecumenical Council, but also when dispersed throughout the world. Given that principle, how is it that the College can teach «per orbem dispersi»?

— «sed communionis nexum inter se et cum successore Petri servantes». Here we see in effect the bond of hierarchical communion which is the absolute requirement and essential condition for belonging to the College of Bishops and exercising teaching authority as part of this college. This hierarchical communion is explained at length in *Lumen Gentium*, n.22, specifically the link between the College and its Head, the Supreme Pontiff.

— «authentice res fidei et morum docentes». Here we are not concerned with what the bishops might hold as a private opinion, but rather as authoritative Doctors or Teachers endowed with the authority of Christ to preach to the people entrusted to their care the faith to believe and to apply in the practice of their life²⁵.

²⁴ See above note 18. For a synopsis of the text of *Lumen Gentium*, see F. GIL HELLIN, *Lumen Gentium*, Stato Città del Vaticano 1995.

²⁵ *Lumen Gentium*, n. 25: «Doctores authentici seu auctoritate Christi praediti, qui populo sibi commisso fidem credendam et moribus applicandam praedicant [...]»

ii) The object of this collegial act is explicit: «in unam sententiam tamquam definitive tenendam conveniunt»: The idea of «conveniunt» gives a collegial character to the teaching of the bishops dispersed throughout the world. In other words, the bishops must have reached an accord — «conveniunt» — by means of the exercise of their function as judges and doctors of faith and morals. Further, they must be in accord on a sentence «tamquam definitive tenendam».

3. *The Juridical Problem*

The basic juridical and indeed theological problem is rather clear: How can one demonstrate that all the College of Bishops authoritatively teach a doctrine «tamquam definitive tenendam», namely that they agree on this object of infallibility? In other words, that they «conveniunt» on a doctrine which has never been defined solemnly by the Supreme Pontiff or which has never been the object of a Conciliar declaration.

Specifically, following the criteria of both *Lumen Gentium*, n.25 and c. 749 §2 (2) how can we know, and in what way can we know, that the bishops dispersed throughout the world «conveniunt» on a doctrine to be held definitively as infallible? Are there any structures or precise juridical situations which would give us the certainty that the bishops have so taught? Are there in fact any juridical mechanisms that permit us to know this²⁶?

²⁶ P. CHIRICO, *Infallibility: The Crossroads of Doctrine* (cf. nt. 10), has made a similar point from a theological perspective, p. 245: «It is this implicit nature of the universal teaching of the Church as it appears in the teachings of the scattered bishops that has made the theological attempts to call any given teaching of the Church *de fide* by the ordinary and universal magisterium of the

In attempting to answer these questions we necessarily have to take into account the principles of *Lumen Gentium*, n.25 which have been translated into juridical language in c. 749 §2 (2), but at a certain level a practical juridical problem remains. That this is not a new problem is evidenced by the discussions of the consultors to the *Lex Ecclesiae Fundamental*, where canon 749 §2 (2) was first placed in 1971 as canon 56 §2²⁷. In March 1975 a phrase was added to the basic text which spoke of an authentic declaration of the Roman Pontiff which in a sense would guarantee that the ordinary and universal magisterium of the bishops dispersed throughout the world had taught a specific doctrine infallibly. The phrase ran: «quo quidem ultimo in casu de Episcoporum in docendo consensione, authentica Romani Pontificis declaratione constare potest». There was much discussion by the Consultors on the significance and import of this phrase²⁸.

This addition to the canon on the exercise of the teaching authority of the ordinary and universal magisterium finally found its way into the 1982 Schema which was presented to the Pontiff on the 22 April 1982. The relevant portion of c. 749 §2 (2) then read: «[...] aut quando per orbem dispersi [...] in unam sententiam tamquam definitive tenendam conveniunt; quo quidem ultimo in casu de Episcoporum in docendo consensione, authentica Romani Pontificis declaratione

bishops such a hazardous venture. We simply do not have the techniques to uncover the universal intentionality that exists in an implicit way in the multifaceted teachings of the bishops in the various parts of the world and over the many centuries of the Church's life».

²⁷ See *Communicationes* 9 (1977) 107-109.

²⁸ *Communicationes* 9 (1977) 107.

constare debet»²⁹. Rather interestingly this final phrase requiring an authentic declaration by the Roman Pontiff was omitted from the 1983 Code.

In fact the 1982 Schema had placed two conditions on the exercise of this type of infallible teaching by the bishops dispersed throughout the world, instead of the single and general condition now found in the Code and indeed in *Lumen Gentium*, n.25. In other words, to the determinative condition that they «in unam sententiam tamquam definitive tenendam conveniunt», there was added an extrinsic condition which became equally determinative, namely an authentic declaration by the Roman Pontiff that would attest to the effective existence of the consent of the bishops on a doctrine to be held as definitive.

An indication as to why this extrinsic condition was omitted is given by Padre Umberto Betti, O.F.M. who was one of the experts who helped the Pontiff in his personal examination of the 1982 Schema in preparation for the promulgation of the 1983 Code. He comments:

Apart from the intention of exalting to the full the role of the Bishop of Rome also in his ordinary and universal magisterium, that addition was completely out of place. Given in fact that a doctrine taught by all the bishops scattered throughout the world is covered by infallibility, evidently it must agree with the teaching of the Pope who is the head of the bishops. A specific declaration on this however is not required. An eventual papal declaration could, at the most, give complete certainty that a doctrine is really taught concordantly and that it then involves the obligation of faith as found in c. 750. But it does not generate the infallibility of

²⁹ See PONTIFICIA COMMISSIO CODICI IURIS CANONICI RECOGNOSCENDO, *Codex Iuris Canonici: Schema Novissimum*, Ex Civitate Vaticana, 25 martii 1982.

the doctrine; this instead is intrinsic to the doctrine itself in so far as all the bishops teach it «to be held as definitive»³⁰.

This particular explanation by Padre Betti offers us an important insight into the potential practical application of c. 749 §2 (2) which in turn will help resolve the specific juridical problem. While a declaration is not essentially required and does not generate the infallibility of the doctrine, there may be times in which the head of the college is aware of the need to declare unambiguously that a doctrine is truly taught by the bishops dispersed throughout the world in their exercise of the ordinary and universal magisterium. Given this, alongside the text of *Lumen Gentium*, n.25 and c. 749 §2 (2), it is clearly important to take into account the statements and the declarations of the head of the college in order to determine whether we can know whether the bishops dispersed throughout the world have reached accord on a doctrine to be held as definitive.

Clearly care must be taken in analysing the documents of the magisterium but I should like to offer some considerations which have a direct bearing both

³⁰ «A parte l'intenzione di esaltare al massimo il ruolo del Vescovo di Roma anche nel magistero ordinario e universale, quell'aggiunta era di tutto fuori posto. Perché, infatti, una dottrina insegnata da tutti i vescovi sparsi nel mondo sia coperta dall'infallibilità, evidentemente dev'essere concorde con l'insegnamento del Papa che è il capo dei vescovi. Non si richiede però una specifica dichiarazione al riguardo. Una eventuale dichiarazione papale potrebbe, tutt'al più, dare tutta la certezza che una dottrina è davvero concordemente insegnata, e che quindi importa l'obbligo di fede, di cui nel can.750. Ma essa non genera l'infalibilità della dottrina; la quale, invece, è intrinseca alla dottrina stessa in quanto tutti i vescovi la insegnano "da ritenersi come definitiva". U. BETTI, «In margine al nuovo Codice di Diritto Canonico», *Antonianum* 58 (1983) 644.

on the exercise of the ordinary and universal magisterium in general and on the teaching of *Ordo Sacerdotalis* in particular.

A. In his recent Encyclical, *Evangelium Vitae* John Paul II seems to have declared a «sententiam definitive tenendam» on three moral teachings of the ordinary and universal magisterium³¹. These teachings condemn direct and willful killing of an innocent person (n. 57), direct abortion (n. 62) and euthanasia (n. 65). An analysis of the precise language used seems to support the view that here we have an example of a declaration on the type of accord required by the bishops when they teach as «morum docentes» concerning a doctrinal sentence(s) to be definitively held. In fact the Roman Pontiff underlines the constancy of the teaching and the communion that exists between the bishops and the head of the College. Rather pointedly the final sentence to each condemnation is couched in the language of *Lumen Gentium*, n.25, specifically underlining the teaching of the ordinary and universal magisterium³².

³¹ See F.A. SULLIVAN, «The Doctrinal Weight of *Evangelium Vitae*», *Theological Studies* 56 (1995) 560-565.

³² Thus n. 57 reads: «Pertanto, con l'autorità che Cristo ha conferito a Pietro e ai suoi Successori, in comunione con i Vescovi della Chiesa cattolica, confermo che l'uccisione diretta e volontaria di un essere umano innocente è sempre gravemente immorale. Tale dottrina, fondata in quella legge non scritta che ogni uomo, alla luce della ragione, trova nel proprio cuore (cfr. Rm 2,14-15), è riaffermata dalla Sacra Scrittura, trasmessa dalla Tradizione della Chiesa e insegnata dal Magistero ordinario e universale».

N. 62: «Pertanto, con l'autorità che Cristo ha conferito a Pietro e ai suoi Successori, in comunione con i Vescovi — che a varie riprese hanno condannato l'aborto e che nella consultazione precedentemente citata, pur dispersi per il mondo, hanno unanimemente consentito circa questa dottrina — dichiaro che

It seems to me, that taking into account *Lumen Gentium*, n.25 and the language adopted in the Encyclical, we have a clear example of this type of infallible teaching of the ordinary and universal magisterium. The College of Bishops as «authentice res fidei et morum doctores in unam sententiam tamquam definitive tenendam conveniunt». This infallible teaching has been declared by its head in the Encyclical.

Practically we have a structure which permits us to be sure that this teaching of the universal and ordinary magisterium is infallible. The precise juridical means is in fact an Encyclical. In other words, the Head of the College has chosen this means, an Encyclical, to declare a doctrinal sentence on morals, a sentence on which the College converges and is in accord and that this sentence is infallible in the sense of *Lumen Gentium*, n.25 and also of c. 749 §2 (2). To a certain extent this is what was suggested by Padre U. Betti, namely that the Head of the College can declare a teaching that was already part of the teaching of the ordinary and universal magisterium.

The Pope, as Head of the College has exercised this right in the Encyclical, *Evangelium Vitae*. It seems to me clear that here we have an example of the application of

l'aborto diretto, cioè voluto come fine o come mezzo, costituisce sempre un disordine morale grave, in quanto uccisione deliberata di un essere umano innocente. Tale dottrina è fondata sulla legge naturale e sulla Parola di Dio scritta, è trasmessa dalla Tradizione della Chiesa ed insegnata dal Magistero ordinario e universale».

N. 65: «Fatte queste distinzioni, in conformità con il Magistero dei miei Predecessori e in comunione con i Vescovi della Chiesa cattolica, confermo che l'eutanasia è una grave violazione della Legge di Dio, in quanto uccisione deliberata moralmente inaccettabile di una persona umana. Tale dottrina è fondata sulla legge naturale e sulla Parola di Dio scritta, è trasmessa dalla Tradizione della Chiesa ed insegnata dal Magistero ordinario e universale».

c. 749 §2 (2) and the method adopted is precisely a declaration by the Pope in an Encyclical — a declaration of the convergence or accord of the College on a sentence that is to be held as definitive and is infallible. In fact we have three sentences to be held definitively even if all are concerned with the fundamental question of life³³.

B. The method of the Encyclical can not be the exclusive method or juridical structure that the Head of the College might adopt to assure the faithful that a doctrine has been taught infallibly in the sense of c. 749 §2 (2). Clearly other means can be used.

Another juridical structure or method could be an authoritative declaration by the Head of the College in another type of document. An example of this, in my opinion, is the Apostolic Letter, *Ordinatio Sacerdotalis* and the further clarification contained in the *Responsum*.

Both these documents indicate that this teaching is part of the ordinary and universal magisterium of the Church. The language used is clearly part of this type of teaching: Sententiam; Definitive tenendam; fidei depositum. The doctrine belongs to the «fidei depositum» even though on a reading of the texts it is not technically «divinitus revelata».

It is important to underline that the definitive and infallible character of this teaching of the Church was not born specifically with the Apostolic Letter *Ordinatio Sacerdotalis* and even less so with the *Responsum*. Rather, the Head of the College has confirmed, rather «declared», this doctrine which has already been lived

³³ For some of the penal implications, see V. DE PAOLIS, «La protección penal del derecho a la vida», in *Pontificia Academia para la vida. Commentario Interdisciplinar a la «Evangelium Vitae»*, Biblioteca de Autores Cristianos, Madrid 1996, 501-520.

in the tradition of the Church and centred on the convergence of the College on the same doctrine. He has done this through an authoritative declaration in the form of an Apostolic Letter which has been reconfirmed and specifically explained in the *Responsum*. In other words the definitive character of the teaching derives specifically from the truth itself of the doctrine because it is founded on the Word of God which has been held and constantly applied in the tradition of the Church³⁴.

The Apostolic Letter *Ordinatio Sacerdotalis* is an authoritative means or a juridical structure by which the Head of the College has authoritatively and authentically declared a doctrinal sentence on which the bishops dispersed throughout the world actually converge. It seems, in juridical language, to be a precise application of c. 749 §2 (2) and we can thus be sure that this particular doctrine is infallible. It needs to be once again underlined that this is not the only means in which this canon can be determined by the Head of the College.

If there is doubt as to whether a doctrine is proposed infallibly by the ordinary and universal magis-

³⁴ The Commentary which accompanied the *Responsum* makes this very clear: «Infatti, come spiega la Risposta, questo carattere definitivo deriva dalla verità della stessa dottrina perché, fondata nella Parola di Dio scritta e costantemente tenuta ed applicata nella Tradizione della Chiesa, è stata proposta infallibilmente dal Magistero ordinario universale. Perciò la Risposta precisa che questa dottrina appartiene al deposito della fede della Chiesa. Va quindi sottolineato che il carattere definitivo ed infallibile di questo insegnamento della Chiesa non è nato dalla lettera *Ordinatio Sacerdotalis*. In essa, come spiega anche la Risposta della Congregazione per la Dottrina della Fede, il Romano Pontefice, tenuto conto delle circostanze attuali, ha confermato la stessa dottrina mediante una formale dichiarazione, enunciando di nuovo "quod semper, quod ubique et quod ab omnibus tenendum est, utpote ad fidei depositum pertinens"». *L'Osservatore Romano*, 19 novembre 1995.

terium of the Church in the sense of c. 749 §2 (2), then the Head of the College could declare this to be the case. In this sense he would make explicit that which the ordinary and universal magisterium had always taught. Here we are not talking of the creation of a new doctrine but rather the confirmation of the self-same doctrine. Cardinal Ratzinger in his presentation of the Apostolic Letter has underlined this specific point³⁵. In the commentary that accompanied the *Responsum* we find again this important distinction, namely that an act of the ordinary pontifical magisterium, in itself not infallible, attests the infallible character of the teaching of a doctrine already in possession of the Church³⁶.

If there were still doubts or perplexity as to the dogmatic value of *Ordinatio Sacerdotalis*, the *Responsum* has now made clear and unambiguous the teaching and the doctrine proposed, namely its infallibility and the consequent type of assent that it requires.

Perhaps there is some confusion on the act itself of the Pope in the Apostolic Letter. On the basis of *Lumen Gentium*, n.25 and c. 749 §2 (2) the Pope cannot simply on the basis of his ordinary magisterium promulgate a doctrine to be held infallibly. *Lumen Gentium*, n.25 does not explicitly refer to the fact that the ordinary papal magisterium can propose a teaching as infallible to be held definitively.

³⁵ «Al riguardo si deve rispondere che il papa non propone nessuna formula dogmatica, ma conferma una certezza, che nella Chiesa è stata costantemente vissuta e affermata». *L'Osservatore Romano*, 8 giugno 1994.

³⁶ «In questo caso, un atto del Magistero ordinario pontificio, in se stesso per sé non infallibile, attesta il carattere infallibile dell'insegnamento di una dottrina già in possesso della Chiesa». *L'Osservatore Romano*, 19 novembre 1995.

But it needs to again be emphasised that the Pope did not explicitly do this in the Apostolic Letter. Rather, in the exercise of his ordinary and authentic magisterium he declared a doctrine, already part of the deposit of faith, as definitive and therefore irreformable. The act of the Pope was not technically «definitory», nor solemn («ex cathedra»), but rather authoritatively declarative³⁷. The *Responsum* has now removed any doubts on this matter, it has not created a new doctrine or proposed a new teaching.

If we need further confirmation of this way of understanding not only *Ordinatio Sacerdotalis* but also other definitive and infallible teaching, we can turn to the words of the Pope to the Congregation for the Doctrine of the Faith, 24 November 1995 in which he remarks: «In the encyclicals *Veritatis Splendor* and *Evangelium Vitae* as well as in the apostolic letter *Ordinatio Sacerdotalis*, I wished once again to set forth the constant doctrine of the church's faith with an act confirming truths which are clearly witnessed to by Scripture, the apostolic tradition and the unanimous teaching of the pastors. These declarations, by virtue of the authority handed down to the successor of Peter to "confirm the brethren" (Lk. 22:32), thus express the common certitude present in the life and teaching of the church³⁸.

³⁷ See comment of Cardinal Ratzinger which accompanied *Ordinatio Sacerdotalis*: «Nel linguaggio tecnico si dovrebbe dire: si tratta di un atto del Magistero autentico ordinario del Sommo Pontefice, di un atto quindi non definitorio né solenne "ex cathedra", anche se l'oggetto di questo atto è la dichiarazione di una dottrina insegnata come definitiva e quindi non riformabile». *L'Osservatore Romano*, 8 giugno 1994.

³⁸ «Nelle Encicliche *Veritatis Splendor* ed *Evangelium Vitae*, così come nella Lettera Apostolica *Ordinatio Sacerdotalis*, ho voluto riproporre la dottrina costante della fede della Chiesa, con un

III. The Response that is due to this doctrine: «*assensum definitivum*»

In the same discourse to the Congregation for the Doctrine of the Faith, the Pontiff also underlined the various and diverse grades of authoritative teaching. He remarked: «That this authority includes various degrees of teaching has been clearly stated in two recent documents of the Congregation for the Doctrine of the Faith: the *professio fidei* and the Instruction *Donum Veritatis*. This hierarchy of degrees should not be considered an impediment, but a stimulus to theology»³⁹.

Given this, the *Responsum* has specified the type of assent that is to be given to the doctrinal teaching contained in *Ordinatio Sacerdotalis*. In this it is necessary to recognise a distinction that one finds in the *Responsum* which is possibly the cause of a certain confusion and which at the same time is of some importance in helping us to understand the specific doctrinal teaching on the non admission of women to the ministerial priesthood.

As we have already noticed, the response to those things contained in the Word of God, written or handed

atto di conferma di verità chiaramente attestate dalla Scrittura, dalla Tradizione apostolica e dall'insegnamento unanime dei Pastori. Tali dichiarazioni, in virtù dell'autorità trasmessa al Successore di Pietro di "confermare i fratelli" (Lc. 22,32), esprimono quindi la comune certezza presente nella vita e nell'insegnamento della Chiesa». *L'Osservatore Romano*, 24 novembre 1995.

³⁹ «Che l'autorità includa gradi diversi di insegnamento è detto chiaramente nei due recenti documenti della Congregazione per la Dottrina della Fede: la *Professio Fidei* e l'Istruzione *Donum Veritatis*. Questa gerarchia di gradi dovrebbe essere considerata non un impedimento, ma uno stimolo per la teologia». *L'Osservatore Romano*, 24 novembre 1995.

down, that is in the unique deposit of faith entrusted to the Church and which has also been proposed as divinely revealed, is «fidei assensus» (c. 750). On the other hand the Congregation for the Doctrine of the Faith in its *Responsum* has called for a response of «assensus definitivum» to the doctrine contained in *Ordiatio Sacerdotalis*. Why?

This particular question can be considered at various levels, but to understand this relatively precise formulation of a response to infallible doctrine contained in the deposit of faith as proposed by the ordinary and universal magisterium but which has not been «divinitus revelata», it is necessary to take cognizance of those documents mentioned by the Pontiff in his address of 24 November 1995 to the Congregation of the Doctrine of the Faith, namely, the *Professio Fidei* and the Instruction *Donum Veritatis*.

Professio Fidei (1989)⁴⁰

At the conclusion of the Profession of Faith we find three paragraphs which have the scope of better distinguishing various types of truth and the respective assent due to them. Given that we are concerned with understanding the type of assent asked for by the *Responsum* it is worth repeating these paragraphs.

Paragraph one reads: «Firma fide quoque credo ea omnia quae in verbo Dei scripto vel tradito continentur et ab Ecclesia sive solemni iudicio sive ordinario et

⁴⁰ CONGREGATIO PRO DOCTRINA FIDEI, *I fedeli chiamati*, «Professio fidei et iusiurandum fidelitatis in suscipiendo officio nomine Ecclesiae exercendo», AAS 81 (1989) 104-106. See also CONGREGATIO PRO DOCTRINA FIDEI, «Rescriptum professionis fidei et iuris iurandi fidelitatis formulas contingens», AAS 81 (1989) 1169.

universali Magisterio tamquam divinitus revelata credenda proponuntur». To this type of teaching it is clear, both from *Lumen Gentium*, n.25 as well as the current code legislation, that «Fidei assensus» is demanded and required. This type of assent finds another slight modification in c. 750 which calls for «Fide divina et catholica», but it is clear that these slightly different phrases express the same type of assent to be given to these truths.

Paragraph three reads: «Insuper religioso voluntatis et intellectus obsequio doctrinis adhaereo quas sive Romanus Pontifex sive Collegium episcoporum enuntiant cum Magisterium authenticum exercent etsi non definitivo actu easdem proclamare intendunt». This type of truth obviously requires an assent of «religioso voluntatis et intellectus obsequio», namely that which is also found in c. 752, «obsequium religiosum».

Paragraph two reads: «Firmiter etiam amplector ac retineo omnia et singula quae circa doctrinam de fide vel moribus ab eadem definitive proponuntur».

While paragraphs one and three have a clear application to and link with cc. 750 and 752 the second paragraph poses a certain difficulty in determining its direct and clear application in the present Code. At first sight it does appear somewhat difficult to determine exactly to which type of doctrine this second paragraph refers and also to establish what might be the difference between the first and second paragraph in terms of authentic infallible teaching, though a careful reading of *Lumen Gentium*, n.25 and c. 749 §2 (2) do indicate what in general the second paragraph has in mind.

To help us understand more clearly this second paragraph we need to turn to the other document, *Donum Veritatis*.

Donum Veritatis (24 May 1990)⁴¹

This Instruction also devotes itself in part to questions concerning specific types of magisterium. It presents four types of teaching of the magisterium and also points to the response due to these four types of teaching.

i) The first type of teaching is a definition of a doctrine as part of divine revelation, a doctrine of faith divinely revealed: «Cum magisterium ecclesiae sententiam infallibilem pronuntiat, sollemniter declarando doctrinam contineri in revelatione, adhaesio requiritur, quae dicitur assensus fidei theologalis. Hic assensus ad doctrinam magisterii ordinarii et universalis extenditur, cum doctrina fidei proponitur tamquam divinitus revelata credenda»⁴². Even if this document has adopted the term «assensus fidei theologalis» for the type of assent required to this type of teaching, it is obvious that it is the same required by both the first paragraph of the *Professio Fidei* as well as c. 750, namely «Fidei assensus».

ii) The second type of teaching concerns those definitive declarations of truths concerning faith and morals which are necessarily connected with revelation, even though they do not technically enter into the category of truths divinely revealed: «Cum idem proponit definitive veritates respicientes fidem et mores, quae etiam si non pertinent proprie ad revelationem, stricte et intime ei conectuntur, ipsae firmiter amplectendae et retinendae sunt»⁴³.

⁴¹ CONGREGATIO PRO DOCTRINA FIDEI, *Instructio Donum Veritatis*, de ecclesiali theologi vocatione, 24 May 1990, AAS 82 (1990) 1550-1570.

⁴² N. 23,1. See also n. 15.

⁴³ N. 23,2. See also n. 16 which specifically explains the distinction: «Munus divinae revelationis depositum sancte custodiendi et fideliter exponendi suapte natura secumfert magisterium de-

This type of teaching corresponds to the second paragraph of the *Professio Fidei*, «firmiter etiam amplector et retineo [...]». At least following *Donum Veritatis* we can assert that these truths must be «firmiter amplectendae et retinendae», as in fact the second paragraph of the *Professio Fidei* states⁴⁴.

In fact with the *Responsum* of the Congregation for the Doctrine of the Faith to the *Dubbium* concerning the teaching contained in and the response due to *Ordinatio Sacerdotalis*, we now have a more precise expression of the type of response due to this type of teaching. This response is «assensum definitivum», that is to those truths to which the second part of *Donum Veritatis* refer, as well as to those truths determined by the second paragraph of the *Professio Fidei*. To both, following the *Responsum*, we must give «assensum definitivum», namely to a truth which belongs to the deposit of faith but which has not been technically divinely revealed.

finitive proponere posse sententias quae, etiam si non continentur in veritatibus fidei, ipsis tamen intime conectuntur, adeo ut indoles definitiva talium affirmationum a revelatione ipsa tandem derivet». Such teachings involve in a particular way moral questions, such that it is a doctrine of faith that moral norms can be infallibly taught by the magisterium: «Doctrina fidei est has leges morales infallibiliter a magisterio doceri posse»(n. 16).

⁴⁴ The other two types of teaching referred to in *Donum Veritatis* should be mentioned. i) Authentic declarations which provide a more profound understanding of revelation, recall the conformity of a doctrine with the truth of faith, or reveal ideas that are incompatible with these truths of faith (nn. 17, 23,3). To these we are to give «religiosum tamen intellectus et voluntatis obsequium», which corresponds to c. 752 as well as the third paragraph of the *Professio Fidei*. ii) Finally *Donum Veritatis* refers to other interventions of the Magisterium (n. 24) which call for a «voluntas sinceri obsequii» and to which corresponds c. 753.

Given these distinctions, I believe it is clear that, to the infallible doctrine, declared in the Apostolic Letter, *Ordinatio Sacerdotalis* on the non admission of women to the ministerial priesthood, we must give an «assen-sum definitivum» and not a «fidei assensus». This follows logically from what was taught in *Lumen Gentium* n.25, c. 749 §2 (2), the *Professio Fidei* as well as *Donum Veritatis*.

It can be justly asked as to what is the difference between these two types of teaching. Why has this distinction been underlined in the *Responsum* of the Congregation for the Doctrine of the Faith?

I believe that the difference between the two types of response called for can be traced to the classic distinction between the *primary* object of infallible magisterium, namely those truths found in the deposit of faith and which have been divinely revealed; and the *secondary* object of the infallible magisterium, in so far as infallibility concerning faith and morals «extends to all those elements of doctrine, including morals, without which the saving truths of the faith cannot be preserved, explained, or observed»⁴⁵. Namely, truths which have not been divinely revealed but which have a necessary connection with revelation.

There are two ways in which a truth can refer the infallible magisterium. Either *directly* in so far as it is formally contained in the gospel message «divinitus revelata», or indirectly insofar as it is something that is not in itself technically divinely revealed but is necessary for the defence and the explanation of the gospel evangelical truth.

⁴⁵ *Catechism of the Catholic Church*, n. 2035.

The Primary Object

The matter of faith and of christian practice which has been formally revealed constitutes that which is called the «deposit of faith revealed for our salvation» (*Dei Verbum*, n.11). Thus, all that which has been revealed for our salvation, either explicitly or implicitly, written or handed down, constitutes the primary object of the teaching of the (infallible) magisterium. To a certain extent one can say that only that which is part of the primary object of this magisterium can be defined as a Dogma of Faith. A Dogma of Faith is a proposition which has been proclaimed definitively as being part of the normative faith of the Church, and which is to be believed on the authority of God who has revealed it. Only those truths which in themselves have been revealed can be proposed in this way as the faith to be believed by the Church. Obviously to these truths one must give «Fidei Assensus»⁴⁶.

The Secondary Object

Other truths which in themselves have not been formally divinely revealed but which nevertheless are intimately connected to the faith or christian practice and which in this broader sense are contained in the deposit of faith, constitute the secondary object of the infallible magisterium. The secondary object of the magisterium involves what can be seen as an extension of the revealed deposit «which must be religiously guarded and faithfully expounded» (*Lumen Gentium*, n. 25 and c. 747). In other words the object of the infallibility of the Church extends to all those things, and only to

⁴⁶ In general see, J.M. MILLER, *The Shepherd and the Rock* (cf. nt. 12), 198-199 and F.A. SULLIVAN, *Magisterium. Teaching Authority in the Catholic Church*, Mahwah, N.J. 1983, 119-123.

those, which pertain directly to the revealed deposit or which are required in order that this same deposit may be safeguarded and faithfully expounded⁴⁷. Indeed, though not formally defining it, Vatican II taught that the object of infallibility includes truths necessary to safeguard the deposit of revelation even if they are not formally revealed, a position both confirmed in and clarified by the declaration, *Mysterium Ecclesiae*⁴⁸. This same concept can be found also in *Donum Veritatis*, n.16⁴⁹.

It should be underlined that we can have a doctrine that has been taught by the ordinary universal magisterium to which one must give a «Fidei Assensus» because it has been technically and formally divinely revealed and proposed as such. That is, it is part of the primary object of infallibility. This, on an analysis of the *Responsum* of the Congregation for the Doctrine of the Faith, and specifically the type of response that is called for to the doctrine declared in *Ordinatio Sacerdotalis*, is not the case with this specific doctrine. Here the type of response called for is «assensus definitivum».

⁴⁷ The explanation of the Theological Commission of Vatican II underlines this concept: «Obiectum infallibilitatis Ecclesiae, ita explicatae, eandem habet extensionem ac depositum revelatum; ideoque extenditur ad ea omnia, et ad ea tantum, quae vel directe ad ipsum depositum revelatum spectant, vel quae ad idem depositum sancte custodiendum et fideliter exponendum requiruntur». See *Acta Synodalia Conc. Vat. II*, III/8, 89.

⁴⁸ SACRA CONGREGATIO PRO DOCTRINA FIDEI, *Declaratio Mysterium Ecclesiae* circa catholicam doctrinam de Ecclesia contra nonnullos errores hodiernos tuendam, 24 June 1973, AAS 65 (1973) 396-408. See n. 3: «Secundum autem catholicam doctrinam, infallibilitatis Magisterii Ecclesiae non solum ad fidei depositum se extendit, sed etiam ad ea, sine quibus hoc depositum rite nequit custodiri et exponi».

⁴⁹ See above note 43.

It appears therefore that the teaching declared in *Ordinatio Sacerdotalis* is infallible in the grade of secondary object of infallible magisterium. If this is true we can better understand what we find in the *Responsum*, namely that we have a doctrine which is infallible, which belongs to the deposit of faith — though not technically to the deposit of faith divinely revealed — and to which, given these particular qualifications, we give not a «Fidei assensus» but rather «Assensum definitivum».

The commentary that accompanied the *Responsum* is helpful in underlining this difference and pointing to the type of response required. «Before this precise act of the Magisterium of the Roman Pontiff [...] all the faithful are held to give their assent to the doctrine enunciated in it [*Ordinatio Sacerdotalis*]. It is to this point that the Congregation for the Doctrine of the Faith, with the approval of the Pope, has given an official response on the nature of this assent. One is dealing with a definitive assent, that is to say, irrevocable, to a doctrine proposed infallibly by the Church»⁵⁰.

The response to this type of infallible teaching helps to explain and more clearly define the second paragraph of the *Professio Fidei*. In other words, juridically speaking, when we are before a doctrine that one must «Firmiter etiam amplector ac retineo [...]», the type of response that must be given is not technically a «Fidei assensus» but rather «assensum defini-

⁵⁰ «Davanti a questo preciso atto magisteriale del Romano Pontefice [...] tutti i fedeli sono tenuti a dare il loro assenso alla dottrina in esso enunciata. Ed è a questo proposito che la Congregazione per la Dottrina della Fede, con l'approvazione del Papa, ha dato una risposta ufficiale sulla natura di questo assenso. Si tratta di un assenso definitivo vale a dire, irrevocabile, a una dottrina proposta infallibilmente dalla Chiesa». *L'Osservatore Romano*, 19 novembre 1995.

tivum», as indeed the *Responsum* makes clear, at least for *Ordinatio Sacerdotalis*. In other words an example of this type or grade of infallible doctrine which has been definitively proposed is that contained in *Ordinatio Sacerdotalis* and reaffirmed in the *Responsum*. Specifically, *Ordinatio Sacerdotalis* is an infallible doctrine which juridically is a «sententiam [...] definitive tenendam».

Conclusion

It seems clear from what has been said above that the doctrine that the Church does not have the faculty to admit women to the ministerial priesthood is infallible which necessarily includes irrevocability. The juridical guarantee of this infallibility is found precisely on the basis of c. 749 §2 (2). While it is not a common occurrence to apply practically and specifically the determination found in c. 749 §2 (2) and *Lumen Gentium* n.25, it necessarily belongs to the Head of the College to interpret and to apply this doctrine concerning infallible magisterium exercised by the College of Bishops while dispersed throughout the world. It seems that the Head of the College has decided to adopt two means to declare a doctrine based on the juridical formulation of c. 749 §2 (2), namely a doctrine that already exists in the Church as part of the deposit of faith. Specifically, he seems to have used the juridical form of an Encyclical and more recently an Apostolic Letter. It is possible that in the future other methods might be used or indeed a sole method might be adopted to make it abundantly clear that the type of infallible teaching we are talking about is that based on the exercise of this ordinary and universal magisterium of the bishops dispersed throughout the world.

One specific question that needs briefly to be addressed concerns the problem of dissent from the teaching contained in *Ordinatio Sacerdotalis*, especially given the precise clarification of such teaching as presented in the *Responsum*. Does someone who formally dissents from such teaching, i.e. denies that the Church does not have the faculty of ordaining women to the ministerial priesthood, fall into heresy?

Canon 751 is clear that heresy is the obstinate denial, after baptism, of a truth which must be believed with divine and Catholic faith⁵¹. Given the general distinctions already mentioned in the course of this paper, based especially on the *Professio Fidei* and *Donum Veritatis*, and the distinction underlined in the *Responsum*, namely that what is demanded is «Assensum definitivum» and not «Fide divina et catholica» (c. 750), it would seem that someone dissenting from the specific teaching of *Ordinatio Sacerdotalis* does not fall into technical heresy. Rather, the person who dissents from this teaching remains in grave error such that they would be subject to those penalties mentioned in c. 1371, 1° and 2°⁵².

Certainly a number of areas remain that require further analysis and consideration. For example, in the area of ecumenism there have been and continue to be difficulties over this teaching and the Pope referred to

⁵¹ «Dicitur haeresis, pertinax, post receptum baptismum, alicuius veritatis fide divina et catholica credendae denegatio [...]»

⁵² C. 1371: «Iusta poena puniatur:

1° qui, praeter casum de quo in can. 1364 §1, doctrinam a Romano Pontifice vel a Concilio Oecumenico damnatam docet vel doctrinam, de qua in can. 752, pertinaciter respuit, et ab Apostolica Sede vel ab Ordinario admonitus non retractat;

2° qui aliter Sedi Apostolicae, Ordinario vel Superiori legitime praecipienti vel prohibenti non obtemperat, et post monitum in inobedientia persistit».

these in the Apostolic Letter⁵³. On the other hand the Magisterium has a serious obligation to safeguard the truths that have been revealed or as c. 747 puts it «veritatem revelatam sancte custodiret, intimius perscrutaretur, fideliter annuntiaret atque exponeret», notwithstanding the consequences.

There continues to be criticism of the teaching by those who regard it as a denial of women's rights, though both *Ordinatio Sacerdotalis* and subsequent Papal interventions have demonstrated that such was in no way the scope of the infallible teaching⁵⁴.

It does strike one that possibly in the future it would be a useful and a highly positive action to have a clear and unambiguous use of a precise terminology for this type of infallible teaching and the response that is due to it. A possible example of what I mean can be found in n. 88 of the Catechism of the Catholic Church where it states: «The Church's Magisterium exercises the authority it holds from Christ to the fullest extent when it defines dogmas, that is, when it proposes truths contained in divine Revelation or having a necessary connection with them, in a form obliging the Christian people to an irrevocable adherence of faith».

It does appear that from what has been said above there is the possibility for confusion here, if by «irrevo-

⁵³ A specific example lies in the decision of the Church of England to ordain women to the ministerial priesthood. See D. McCLEAN, «Il sacerdozio femminile due anni dopo. Le conseguenze giuridiche e politiche dell'ordinazione delle donne nella Chiesa d'Inghilterra», *Quaderni di Diritto e Politica Ecclesiastica* (1995) 115-129.

⁵⁴ For a useful survey of Papal Teaching on the role of women in the Church, see G.P. DI NICOLA, «Una riflessione sul Magistero del Papa per la promozione della donna», *L'Osservatore Romano*, 7 marzo 1996.

cable adherence of faith» we mean «Fidei assensus» which is also to be given to truths having a necessary connection with Divine Revelation. Fidei assensus is not technically to be given to those truths which are necessarily connected to a dogma contained in Divine Revelation but which have not been formally divinely revealed. Rather, one must give an «assensum definitivum», which in fact underlines the quality that they are necessarily connected to the dogma of Divine Revelation.

Given this, there is nonetheless a sense in which these distinctions and grades of infallible magisterium do have a relevance for the Church as they enable a clearer understanding of the whole mystery of divine revelation as well as enabling the Church to better safeguard, defend and understand more profoundly these selfsame mysteries. The Pope has pointed out that this hierarchy of grades must be considered not an impediment but rather a stimulus to theological enquiry⁵⁵.

True, more study is required to better establish what exactly is the difference between the first and the second type of responses that follow on from the first two types of definitive teaching indicated in the *Professio Fidei*. In other words what is the exact difference between an infallible doctrine to which one gives «Fidei assensus» and one to which is given «assensum definitivum»? I have suggested that a basic difference lies in the classical distinction between primary and secondary objects of infallibility, but there is some truth in the proposition that all things contained in the deposit of faith, either «divinitus revelata» or not, are based in the final analysis on revelation to which a

⁵⁵ See Discourse to the CDF, *L'Osservatore Romano*, 24 November 1995: «Questa gerarchia di gradi dovrebbe essere considerata non un impedimento, ma uno stimolo per la teologia».

genuine act of faith must be given. Further research is required on this issue.

In addition there still does remain a certain apprehension on the part of some in determining exactly and precisely how one can be sure that the bishops dispersed throughout the world converge on a doctrine to be taught definitively. True, the Head of the College can and has adopted a certain means for clarifying this, but it can be asked what specific role have the bishops in this process⁵⁶.

Scholars have suggested that official documents identify three ways of ascertaining that a doctrine is infallibly taught by the ordinary and universal magisterium. Namely, that the bishops confirm the doctrine definitively when consulted, that the universal and constant consensus of Catholic theologians accepts the teaching and that the Catholic faithful throughout the world adhere to it⁵⁷. Such criteria, which obviously have value cannot be regarded as definitive or exhaustive and the most important criterion seems to have been overlooked, namely the action of the Head of the College without whom it has no sense.

Central to an understanding of this doctrine of the bishops dispersed throughout the world is the role of the Pope as Head of this particularly unique College in its exercise of the ordinary and universal magisterium. The Council has made it clear that the College can never act without the Pope nor against the Pope⁵⁸. In this sense it is

⁵⁶ See for example R.R. GAILLARDETZ, «Infallibility and the Ordination of Women» (cf. nt. 4), 19 ff.

⁵⁷ See F.A. SULLIVAN, «Guideposts from Catholic Tradition», *America*, 9 December 1995, 5-6.

⁵⁸ See *Lumen Gentium*, n. 22: «Collegium autem seu corpus Episcoporum auctoritatem non habet, nisi simul cum Pontifice Romano, successore Petri, ut capite eius intellegatur, huiusque in-

a particular College unlike any other College and possibly the concept of a body («*corpus episcoporum*») is more apt as a means to understanding the specific quality of the College, and its teaching authority. In other words, as a body can never act without its head — in fact in such a situation it is dead or non functionable — so the «*corpus episcoporum*» can likewise never act without its Head and then only in relationship to its Head.

Further, there are situations within the Church in which truths are universally present in the College and the Church either in an explicit way, namely they are grasped and affirmed even prior to an authoritative declaration, or in an implicit way, namely they are not necessarily articulated explicitly though they are real and grasped by the living faith of the Church and the living teaching of the College.

When the Pope acts as Head of the College in the exercise of his ordinary magisterium he officially articulates a truth that already exists in the faith of the Church and in the teaching of the College. He is moved by the Spirit and in this discerns and then articulates a doctrine which either explicitly or implicitly is already present in the Church and is taught as such by the College. Clearly he will have contact with the bishops in the College, and such contact can take place at

tegre manente potestate Primatus in omnes sive Pastores sive fideles». Further we read: «*Ordo autem Episcoporum, qui collegio Apostolorum in magisterio et regimine pastoralis succedit, immo in quo corpus apostolicum continuo perseverat, una cum Capite suo Romano Pontifice, et numquam sine hoc Capite [...]*» And further: «*Eadem potestas collegialis una cum Papa exerceri potest ab Episcopis in orbe terrarum degentibus, dummodo Caput Collegii eos ad actionem collegialem vocet, vel saltem Episcoporum dispersorum unitam actionem approbet vel libere recipiat, ita ut verus actus collegialis efficiatur*».

a general council, or through specific enquiries, via bishops' conferences, apostolic delegates, synods, or visits to Rome by the bishops themselves.

The doctrinal and juridical requirement for this exercise is not that the Pope must poll the bishops of the world to obtain their explicit agreement before he teaches, nor is it required that he obtain their express agreement after he declares an infallible teaching. Rather in a deliberate discernment of the faith of the Church the Pope will declare this faith. In this process he is under no obligation to specify that he has done all this. Rather it is enough that he affirms in a clear way that this teaching is part of the infallible teaching that pertains to the ordinary and universal magisterium. An example of that intention would be his statement that a given doctrine must be held definitively as indeed is the case in *Ordinatio Sacerdotalis*.

It is true that there may be a certain difficulty in appealing to the teaching of the ordinary and universal magisterium where the dogmatic status of the particular teaching is not commonly accepted by all within the Church. On the other hand, there may be moments of controversy in which there is a real need for a definitive and authentic clarification of Church teaching that in fact the ordinary and universal magisterium has constantly taught. Clearly it is the role of the Head of the College to do exactly this at such moments. The Pope has a particular responsibility to confirm his bretheren in the episcopate especially when theological disputes and confusion within the Church may have obscured the true faith⁵⁹.

⁵⁹ See the Encyclical, *Ut Unum Sint*, 94b: «Egli ha il dovere di avvertire, mettere in guardia, dichiarare a volte inconciliabile con l'unità di fede questa o quella opinione che si diffonde. Quando le circostanze lo esigono, egli parla a nome di tutti i Pastori in comunione con lui».

In the exercise of the ordinary and universal magisterium we are speaking of a convergence on a sentence by bishops when they teach exactly as Doctors of the Faith. It is not the personal opinion of the bishop, but rather his action as a Doctor of the Faith and Teacher, which means a heavy responsibility on the part of the bishop to understand what is the Faith of the Church. This can occur especially in his understanding of what the College teaches, specifically by reference to and unity with both the other bishops and specifically the Head of the College. The Head of the College, in certain critical moments in the history of the Church must act positively and decisively «virtute ministeri Nostri confirmandi fratres (Lk. 22,32)». He has done this in a particular way in the Apostolic Letter *Ordinatio Sacerdotalis*.

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