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## STABILITY AND DEVELOPMENT IN CANON LAW AND THE CASE OF "DEFINITIVE" TEACHING

*Ladislav Orsy, S.J.\**

The beginning of knowledge is wonder, wonder provoked by a puzzle whose pieces do not seem to fit together. We do have such an on-going puzzle in canon law; it is the *prima facie* conflict between the demand of stability and the imperative of development.

Stability is an essential quality of any good legal system because a community's laws are an expression of its identity, and there is no identity without permanency. Many times we hear in the United States that we are a country held together by our laws. Although the statement cannot be the full truth, it is obvious that if our laws ever lost their stability, the nation's identity would be imperiled. In a religious community where the source of its identity is in the common memory of a divine revelation, the demand for stability is even stronger. Fidelity to the "Word of God" becomes the principal virtue.

Yet, any good legal system must be open and receptive to developments. No community, secular or religious, can be frozen in time and live; absolute stillness means death. In a political community, the internal energies of the citizenry and the pressing forces of history have their unrelenting impact on the laws and demand changes. Similar forces operate in a religious community: the "gathering" of the believers, *ecclesia*, is never a static monument; it is a living body animated by internal resources and responding to external influences. The eschatological destiny of the members (their expectation of eternal life) does not protect them from the vicissitudes of history.

Thus, the demand for stability and the imperative of development are vital forces in any living community; they operate in nations

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Judge John T. Noonan, Jr. has done monumental service to the Christian community through his work on the development of doctrine and law. May this small Essay be a sign of the great esteem in which he is held by theologians and canon lawyers.

and churches. The question, therefore, is not how the one could be eliminated and the other kept. Nor could it be which of the two should prevail. Both are needed. Our inquiry can be only about their respective roles and a desirable balance between the two that protects the group's identity and leaves enough space for the imperative of growth and expansion.

I wish to pursue this inquiry on two levels, the abstract and the concrete. On the abstract level, I will be searching for principles: how to build a good balance between stability and development and how to recognize an authentic development—a modest inquiry. I do not expect to discover the “best rules” that could serve as magic measures in all cases. Rather, I wish to search for some orientation and a working method that can prove helpful in handling real-life situations. On the concrete level, I shall examine a recent case of legislation about “definitive teaching” and make an attempt to assess its impact on the freedom of research.

## I. GENERAL PRINCIPLES

Concepts are the building blocks for principles. My first task, therefore, will be to account for my use of some foundational terms in this inquiry: canon law, stability, and development.

### A. *Foundational Concepts*

*Canon law* in this Essay means norms created by the ecclesiastical legislator, hence of human origin. Admittedly, the official *Code of Canon Law* also includes norms of divine origin: baptism is necessary for becoming a Christian, the Church has the power to forgive sins, the evangelical message must be proclaimed to all nations, and so forth.<sup>1</sup> Such divine ordinances, however, are not the subject matter of my inquiry.

I focus on the so-called “ecclesiastical laws”—a conventional expression to designate human laws in the Church. What are they? Let us begin our inquiry with Aquinas's definition of human law: *an ordinance of reason—by the one in charge of the community—for the sake of the common good—promulgated*.<sup>2</sup> These spare words cover a wealth of ideas. Positively, they state that *the purpose of the law* is the common good, *the maker of the law* is someone who holds his power in trust and has been

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1 CODE OF CANON LAW (1999) (reprinting the Latin text of the original 1983 CODEX IURIS CANONICI with some later official corrections and additions); see also JOHN P. BIEL ET AL., NEW COMMENTARY ON THE CODE OF CANON LAW (2000).

2 See THOMAS AQUINAS, SUMMA THEOLOGIAE pt. I-II, qq. 90–97. See in particular, *id.* pt. I-II, q. 95.

mandated to take care of the community, *the content of the law* is a command measured by reason, and *the birth of the law* is in a public act through which due information is given to the community.<sup>3</sup> It follows, negatively, that a norm which is not for the good of the social body is not law, a command that is in contravention of the sacred duty of taking care of the people has no binding force, an ordinance that reason cannot approve of is invalid, and a duty ill-defined is as good as non-existent. In sum, from the realm of the law, Aquinas excludes self-serving politics, tyranny, irrationality, and prosecutions that can catch a person unaware. He knows what the rule of law is about, and he knows it in the thirteenth century!

We have now a "generic" definition of human law. Canon law is one of its "species": it is human law in the Church. Aquinas's text needs to be completed with due regard for the religious nature of the community.<sup>4</sup>

Canon law, therefore, is *an ordinance conceived and articulated by reason and faith—enacted by an authority sacramentally established—for the sake of creating a favorable environment in the community for the reception of God's gifts—promulgated.*

Positively, *the purpose of the canon law* is the creation of a favorable environment for the people to receive God's gifts, or the creation of a favorable environment for God to distribute his gifts (we should not forget that human beings have the capacity to put obstacles even to God's gracious actions);<sup>5</sup> *the makers of the law* are persons sacramen-

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3 Aquinas does not include the act of "reception" in the full definition of law. It could be argued that the act of promulgation by the legislator is the first movement in an operation that is essentially communication, but no communication can exist without reception. Reception itself can be purely nominal or substantial. Through a nominal reception the community takes notice of the promulgation of the law but otherwise ignores it. Substantial reception exists when the subjects embrace the law for the sake of the values supported by the law. Only through such substantial acceptance can the law become a vital force in the community and be instrumental in shaping the life and operations of the group. If the subjects do not embrace the values that the law intends to support, the words of the law remain precisely that, words, or *flatus vocis* (best translated as "empty sound" or "noisy wind").

4 According to Aquinas, the various "species" of law are eternal law in the mind of God, divine law revealed to human persons, natural law discovered by reason, and human law conceived and enacted by human persons in charge of community. See AQUINAS, *supra* note 2, at pt. I-II, q. 91. For a detailed commentary on Aquinas's texts on law, see THOMAS AQUINAS, *THE TREATISE ON LAW* (R.J. Henle ed., 1993).

5 This definition is inspired by the purpose of canon law, which is, as I say above, "the creation of a favorable environment *for the people* to receive God's gifts, or the creation of a favorable environment *for God* to distribute his gifts . . ." Admittedly, it is not the usual way of defining canon law. The authors of the manuals prefer to take their clue from the "essence" of civil law: the law's purpose is to create order. So

tally entrusted and empowered to guide and serve the community; *the content of the law* is measured by human rationality and intelligence of faith; and *the binding force of the law* is created through the act of promulgation.

Negatively, this definition excludes from the life of the Church any ordinance that harms the personal dignity of a believer and blocks the development of his or her intelligence and freedom; it denies the legislator any power that is not of evangelical service; it bars any rule that contradicts reason or faith; and it rejects any criminal procedure based on obscure or ambivalent concepts. In sum, in canon law there is no place for any formalism, any lording it over the community, anything irrational or irreligious, or any prosecution without fair warning about the crime.

The other concepts are *stability* and *development*. The two differ essentially as standing differs from running. Existentially, however, they are not autonomous qualities in splendid isolation or in continuous conflict but dynamic forces working together for the good of the whole. They contribute jointly to the well-being of the whole body: the one gives it permanency in identity, the other brings it growth and expansion. Their interaction keeps the body in good balance. A conceptual understanding of the two forces may be necessary, but not enough. To grasp what they are, we must watch them in their dynamic interaction.

Stability in the world of the laws creates a sense of security in the subjects. Legal developments offer them opportunity to use their potentials increasingly.

Catholic believers see the Church as well-grounded in stability: Christ is its founder, his Spirit is its life-giver. No one can take away the memory of the evangelical message and no one can strangle the forces of divine energy. The same believers, however, often perceive development as problematic: "How can we know," they ask, "true progress from deceptive change? How can we differentiate healthy growth from sickly decline?"

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much is, of course, true; the Church needs order. But the Church needs a specific order in which God and his people are free to exchange gifts . . . Such an understanding of "ecclesiastical law" takes its clue from theology. To have the correct understanding of canon law is of no small matter: differing perceptions are bound to have differing consequences. Here is an example: a twisted mind could justify the inquisition by invoking the need for order, but no sane Christian could ever claim that the inquisition created a climate for the reception of God's gifts or created a peaceful environment for God to distribute his gifts. Definitions matter: abstract principles have concrete consequences.

A seasoned answer is available: it comes from Cardinal John Henry Newman. In his *Essay on the Development of Christian Doctrine*, published in its final form in 1878, he proposed a theory that is as valid today as it was in his days.<sup>6</sup> His interest was primarily in explaining the development of doctrine in the Christian church, but most of what he said is applicable to the development of canon law.

He proposed seven positive criteria for recognizing genuine developments and as many negative marks for identifying destructive changes. For brevity's sake, I pull them together and summarize them under three headings.

The positive signs are the following: First, a healthy development respects the foundations of the institution—its identity remains intact, and the leading principles of its existence and operations are not destroyed. Second, true development shows a harmonious progress from the old to the new—it is the fruit of historical continuity, the roots of the new are in the old, and the once hidden potentials of the old are revealed in the new. Third, the new has a vigor of life—it is filled with energy, and it brings life to its surroundings.

These signs speak even more clearly if we contrast them with their opposites, the signs of decline: First, a false development destabilizes the foundations of an institution—it has a corrosive impact on the community's identity, and it undermines the original principles of its activities. Second, in the transition from the old to the new there is a radical break—the new does not grow out of the old, and the image of the old cannot be found in the new. Third, the new shows no vigor of life, it exhibits decay—it weakens the institution, and it leads to stagnation, alienation, and loss of quality of life.

Now we have some workable criteria by which to judge what is, or what is not, an authentic development in the realm of doctrine and in the realm of law. Before we go any further, however, we need to understand the basic difference between the "Church teaching" and the "Church acting." While the Church is protected in its judgments about the articles of faith, in matters of practical prudence it can fall short of the highest standard.

### B. *Prudence in the Church*

The Catholic belief is that in matters of doctrine the universal Church is endowed with the charism of fidelity to God's revelation,

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6 The book had many editions and reprints; for an edition with extensive critical apparatus, see JOHN HENRY NEWMAN, *AN ESSAY ON THE DEVELOPMENT OF CHRISTIAN DOCTRINE* (Charles Harold ed., Longmans, Green & Co. 1949) (1878). In particular, see chapter 5, *Genuine Developments Contrasted with Corruptions*, *id.* at 155–91.

commonly explained as infallibility.<sup>7</sup> This charism is granted to the whole Church, but the final judge of the authenticity of the revealed message is the college of bishops presided over by the Pope, or the Pope acting (defining) alone using his own full apostolic authority.

It is not, however, and it has never been, the Catholic belief that in practical and temporal matters the Church at large, or its office holders, were given the charism of the highest degree of prudence. The history of the Church proves overwhelmingly that this is indeed the truth. Vatican Council II spoke on the matter: "In its pilgrimage on earth Christ summons the Church to continual reformation, of which it is always in need, in so far as it is an institution of human beings on earth."<sup>8</sup>

When Pope John Paul II offers his apologies for the past "mistakes" of those who acted "in the name of the Church," he therefore obeys the Council and confirms the timeless fragility of the Church in matters of prudence.<sup>9</sup>

This innate fragility affects the official operations of the Church. It affects all who are making, administering, and explaining ecclesiastical laws. This is not to suggest that the laws should not be obeyed, but it is to state that canon law must never be approached with the same reverence that is due to ecclesiastical teaching. The one is about truth eternal, the other is about matters temporal—some of them sacred but still temporal. Human laws in the Church can be supremely prudent—and they can fail to be prudent. Mostly, though, they do not represent the extremes. Instead, they honor God and display our human limitations. This is not to suggest that the officials of the Church can be so imprudent as to lose sight completely of the end of all laws, which is "the salvation of souls,"<sup>10</sup> and then mislead the Church away from the path of the Kingdom. It is to say that, in choosing the temporal means toward the organization of the community and its activities, the persons in charge may fail to reach well-balanced, prudential judgments, as it happened, for example, in the cases of the

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7 See VATICAN COUNCIL II, DOGMATIC CONSTITUTION ON THE CHURCH *Lumen gentium* Nos. 12, 22–23 (Clarence Gallagher trans. (1990)) [hereinafter *Lumen gentium*] (decreeing the infallibility of the people of God in Number 12 and the power of the episcopal college and its head, the bishop of Rome, in Numbers 22–23), reprinted in II DECREES OF THE ECUMENICAL COUNCILS 858, 865–68 (Norman Tanner ed., 1990).

8 VATICAN COUNCIL II, DECREE ON ECUMENISM *Unitatis redintegratio* No. 6 (Edward Yarnold trans., 1990).

9 See John Paul II, *Jubilee Characteristic: The Purification of Memory*, 29 ORIGINS 648, 649–50 (2000).

10 1983 CODE c.1752.

Crusades, the Inquisition, the close alliance with the secular power, and so forth.

This is the context in which any new legislation needs to be assessed.

## II. THE CASE OF DEFINITIVE TEACHING

By way of introducing the case of "definitive teaching," let me state firmly that in matters of doctrine stability is essential. The faithful must not lose the memory of the evangelical message; it is the source of their identity. Yet, as a seed is there to be sown, strike roots, and grow into a plant, so the message sown in the mind and heart of the people must strike roots, grow, and produce fruit that is the intelligence of faith. Such development is equally essential. Vatican Council II expressed this balance well:

The universal body of the faithful who have received the anointing of the holy one . . . cannot be mistaken in belief. . . . It adheres indefectibly to "the faith which was once for all delivered to the saints" (Jude 3); it penetrates more deeply into that same faith through right judgment and applies it more fully to life.<sup>11</sup>

"It adheres indefectibly": there is the demand of stability. "It penetrates more deeply": there is the imperative of development.

An oft-quoted traditional rule expresses well the ideal balance between stability and development in matters of belief: "in necessary things unity, in doubtful things liberty, in all things charity." The "necessary things" are what we need to believe because they belong to the very core of the Christian Tradition; we must be one in professing them.<sup>12</sup> In modern, mainly post Vatican I, times, such doctrines are often described as "articles of faith infallibly taught." They are articulated in our creeds, in the "determinations" of the ecumenical councils, and in the papal "definitions." They are also proclaimed and honored in the daily worship of the universal Church.

The "doubtful things" are not teachings that Christians ought to doubt or contest but points of doctrine that—as yet—have not been fully authenticated in any of the legitimate ways as integral parts of the Tradition.<sup>13</sup> They are positions and opinions (usually inherited) that

11 *Lumen gentium*, *supra* note 7, at No. 12.

12 In Christian theology it is customary to distinguish between *Tradition* (with a capital T) and *traditions*. The former refers to the one and undivided core of the evangelical message that must be kept intact. The latter refers to historical accretions that may be venerable but not indispensable.

13 Such legitimate ways include, for example, the whole Church so believing, ecumenical councils so teaching, popes so defining.

ought to be respected but are in need of scrutiny to discover their significance for the community. For such an inquiry liberty is essential.

Charity, of course, needs no explanation.

A. *The Code of Canon Law, 1983*

The *Code of Canon Law*, promulgated in 1983, mandated a healthy balance between stability and development. Its Canon 750 (as it was then) stressed the importance of stability.<sup>14</sup>

All that is contained in the word of God, handed over in writing or by tradition; that is, [all] that is in the one deposit of faith entrusted to the church, and is proclaimed either by the solemn magisterium of the church, or by its ordinary and universal magisterium, which is made manifest by the common assent of the faithful under the guidance of the sacred magisterium; must be believed with divine and Catholic faith; all are bound, therefore, to reject doctrines contrary to it.<sup>15</sup>

Canon 218 asserted the imperative of development and the need for "just freedom" in research.

Persons dedicated to sacred disciplines enjoy just freedom in research and in manifesting their opinion prudently in matters in which they are experts while paying due respect to the magisterium of the church.<sup>16</sup>

The two canons together stated well the right and duty of the community—to preserve *and* to let evolve the evangelical doctrine. In case of conflict between the two tasks, an additional norm tipped the scale in the favor of development, as Canon 749, paragraph 3, prescribed: "No doctrine is understood to be infallible unless it is manifestly so proven."<sup>17</sup> In other terms, the researcher must be free to investigate and report on his findings unless it is manifest that he

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14 The *Code of Canon Law* in its original Latin makes extensive use of complex and lengthy sentences with cascading subordinated clauses difficult to translate into English. To guide the reader through such texts, I break up the canons into brief and intelligible clauses. Mostly, I use the official translation by the Canon Law Society of America approved for the United States, CODE OF CANON LAW, *supra* note 1, except when greater fidelity to the original text demands some modification. Ironically, the style of the *Code of Canon Law* is often closer to the complicated compositions of Cicero than to the limpid simplicity of the classical lawyers of ancient Rome.

15 1983 CODE c.750.

16 *Id.* c.218.

17 *Id.* c.749.

would undermine infallible teaching. In legal language, there is a presumption in favor of the "faith seeking understanding."<sup>18</sup>

### B. *The Apostolic Letter, 1998*

This balance established by the *Code of Canon Law*, however, was changed in 1998 with the promulgation of the Apostolic Letter *motu proprio Ad tuendam fidem*.<sup>19</sup> The Letter introduced into, and imposed on, the Church a new category of teaching, called "definitive," and explained it as not infallible but irreformable. Effectively, if not verbally, it transferred some freely debated doctrines from the field of the "doubtful things" to the field of the "necessary things," where no question must be raised any more about their unchangeable nature.<sup>20</sup> To this effect, the *motu proprio* added a second paragraph to Canon 750 (the original text has become paragraph one). The added text reads:

Each and every proposition stated definitively by the magisterium of the church concerning the doctrine of the faith or morals, that is, each and every proposition required for the sacred preservation and faithful explanation of the same deposit of faith, must also be firmly embraced and maintained; anyone, therefore, who rejects

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18 The Church can afford such a generosity. After all, the Spirit is protecting its collective memory.

19 Pope John Paul II, *Ad tuendam fidem*, 28 ORIGINS 113 (1998). For a brief commentary, see Ladislav Orsy, *Von der Autorität kirchlicher Dokumente*, 216 STIMMEN DER ZEIT 735 (1998). The commentary was followed by Cardinal Joseph Ratzinger, *Stellungnahme*, 217 STIMMEN DER ZEIT 169 (1999), to which Ladislav Orsy responded with *Antwort an Kardinal Ratzinger*, 217 STIMMEN DER ZEIT 305 (1999).

20 A "Commentary" signed by the Prefect and the Secretary of the Congregation for the Doctrine of Faith but not approved by the Congregation as a corporate body (hence having no official standing) gives some examples of "definitive" teachings. For example, it lists the reservation of priestly ordination only to men, the illicitness of euthanasia, the illicitness of prostitution, the legitimacy of the election of the Pope, the validity of an ecumenical council, the canonization of saints, and the invalidity of Anglican orders. Cardinal Joseph Ratzinger & Archbishop Tarcisio Bertone, *Commentary on Profession of Faith's Concluding Paragraphs*, 28 ORIGINS 116, 118-19 (1998). The list demonstrates an intent to bring (not conceptually but practically) under papal infallibility a good number of sundry doctrines that many theologians considered disputed questions. It is difficult to determine what the common criterion was for the selection for the doctrines listed.

Cardinal Joseph Ratzinger suggested repeatedly that the "definitive doctrines" have the same standing and authority as the "secondary objects of infallibility" discussed, accepted, but not precisely defined at Vatican Council I. See Ratzinger, *supra* note 16. His suggestion, to date, has not obtained the consensus of the theological community.

those propositions which are to be held definitively is opposed to the doctrine of the Catholic Church.<sup>21</sup>

Thus the document places each and every point of teaching that has been declared "definitive" by the papal magisterium into the body of "the doctrine of the Catholic Church," even when such a declaration does not fulfill the stringent criteria of a papal definition—criteria that Vatican Council I articulated with meticulous care after much search and fierce debate.

The Roman Pontiff, when he speaks *ex cathedra*, that is, when, acting in the office of shepherd and teacher of all Christians, he defines, by virtue of his supreme apostolic authority, a doctrine concerning faith and morals to be held by the universal church, possesses through the divine assistance promised to him in the person of blessed Peter, the infallibility with which the divine Redeemer willed his church to be endowed.<sup>22</sup>

Vatican Council II confirmed this definition and articulated its limit with some precision: "This infallibility . . . extends just as far as the deposit of divine revelation that is to be guarded as sacred and faithfully expounded."<sup>23</sup>

In protecting the stability of doctrine, the Apostolic Letter went beyond the "deposit of revelation" when it declared that "each and everything [doctrine] which is required to safeguard reverently and expound faithfully the same deposit of faith" can be the object of a definitive statement and thus must be embraced and held as irreformable. Several commentators noted that, with the help of the theory of "definitive teaching," papal infallibility has been expanded beyond the Constitutions of Vatican I and II and beyond the limits "canonized" by the Council and by the *Code of Canon Law*.

To enforce the observance of this new provision, the *motu proprio* added a clause to Canon 1371, note 1, that institutes "just penalty" for anyone who fails to embrace and hold all and each that are definitively proposed and "obstinately rejects the doctrine mentioned in Canon 750, paragraph 2, and who does not retract after having been admonished." Such persons, although not heretics, are "opposed to the doctrine of the Catholic Church."

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21 1983 CODE c.750.

22 VATICAN COUNCIL I, FIRST DOGMATIC CONSTITUTION ON THE CHURCH OF CHRIST *Pastor aeternus* ch. 4 (Ian Brayley trans., 1990).

23 *Lumen gentium*, *supra* note 7, at No. 25.

### C. *An Assessment*

What is the result of this new legislation? It has created a new balance between stability and development. In the practical order, it has increased—as no law has ever done it before—the “necessary things,” the doctrines that must be held, and it has decreased the “doubtful things,” teachings that were disputed questions. It has done so not merely by normative directions but also by punitive sanctions. This was a break with the explicit policy of Vatican Council II, which wanted to proclaim the good news but refused to bolster its teaching with the threat of criminal actions.<sup>24</sup> Also to be noted is that the sanction in a given case can be heavy, since the delict is being “opposed to the doctrine of the Catholic Church,” which is, presumably, just one notch under the crime of heresy.

The scope of Canon 218’s affirming freedom in research is now more narrowly drawn. Canon 749, paragraph 3, stating that nothing should be held infallible unless it is manifestly so proven,<sup>25</sup> has become moot because some doctrines must be held irreformable even if they are not infallible, and persons in no way contesting infallible doctrine may be punished for being “opposed to the doctrine of the Catholic Church.”<sup>26</sup>

All this is canon law now. The universal Church has the task of receiving it, not in the sense of legal ratification but in the sense of understanding it and assimilating its content. Such a reception is bound to be a complex and long drawn-out process.

To reject the legislation would not be a Catholic response. Since it comes from an authoritative source, it must be received with *obsequium*, respect, in the canonical language.<sup>27</sup> Canon 752 is applicable:

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24 It is interesting that the opening paragraph of the Apostolic Letter strikes a note of distrust: “To protect the Catholic faith against errors arising on the part of some of the Christian faithful, *in particular among those who studiously dedicate themselves to the discipline of sacred theology*, it appeared highly necessary . . . to add new norms.” Pope John Paul II, *supra* note 16, at 113 (emphasis added). I do not know of any precedent in the acts of the Holy See for such a sweeping indictment of the Catholic theologians.

25 1983 CODE c.749.

26 Looking into the future, one can anticipate that much ink will flow (or many printouts will be produced) dealing with the question of how a proposition that is not guaranteed to be infallible can remain forever irreformable.

27 The Latin term *obsequium*, as it is used in canon law, has no precise equivalent in English. “Loyalty” would be the closest to it. It has an affinity with the Italian *ossequio*, which encompasses a whole gamut of meanings from greeting a friend with respect to paying obedience to God. In canon law its exact meaning can be conjectured from the context only. The official translation by the Canon Law Society of America renders *obsequium* with “submission,” which is an interpretation, and not al-

Although not assent of faith, religious *obsequium* [respect, loyalty] of the intellect and the will must be given to a doctrine which the Supreme Pontiff or the college of bishops declares concerning the faith and morals when they exercise the authentic magisterium.<sup>28</sup>

*Obsequium*, however, cannot determine the doctrinal weight of a document. That is a matter for critical theological judgment. Nor can reverence assess the degree of prudence that prompted the new legislation, for such a judgment can be articulated only from an historical distance.

While this process of reception is getting under way, some comments are possible and in order.

The initial question for any commentator needs to be about the weight of authority behind the Apostolic Letter. By way of exclusion, the Letter does not carry the authenticating marks of infallibility as they were determined by Vatican Council I and confirmed by Vatican Council II, because it is not a solemn *ex cathedra* pronouncement.<sup>29</sup> It is a papal document of high authority, but not of the highest. Through this *motu proprio*, the theory of "definitive teaching" has entered the realm of theology, although not with the same force as the definition of infallibility did at Vatican Council I. No theologian can

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ways the correct one. If the drafters of the *Code of Canon Law* had meant "submission," they had at their disposal precise Latin words such as *submissio* or *oboeidientia*.

28 1983 CODE c. 752.

29 The Pope uses his full apostolic authority when he defines, *ex cathedra*, an article of faith; it is a rare event, having happened only twice in recent history: in 1854 Pius IX defined the dogma of the Immaculate Conception, and in 1950 Pius XII proclaimed the dogma of the Assumption. The Pope uses his apostolic authority, but not to its fullness, in all of his other pronouncements, such as in Apostolic Constitutions, *motu proprio*, encyclicals, and so forth. To determine the exact weight of such teachings is always a complex task; much depends on the Pope's intention (often to be reconstructed), on the internal content of the document, and on the document's historical circumstances. There cannot be any doubt that Vatican Council II more than once corrected the non-infallible teachings of recent popes. For example, it did so in matters of religious freedom, salvation outside the Church, the historicity of the Scriptures, and so forth. One can ask (but no one can answer) as to what position a future ecumenical council would take concerning the theory of "definitive teaching." Be that as it may, Vatican Council II left no doubt that the magisterium of an ecumenical council can abandon, supercede, or modify earlier papal teachings which were not *ex cathedra* definitions. Since this happened, theologians and canon lawyers must face a delicate question: In assessing the authority, and interpreting the content, of the contemporary documents of the Holy See, how far should one take into account the fact that Vatican Council II, presided over by the then reigning popes, John XIII and Paul VI, overruled earlier papal pronouncements of high but not of the highest authority?

ignore or bypass it. Indeed, to understand its full meaning, studies are already well under way and progressing.<sup>30</sup>

As regards the content of the document and the substance of the issue, it is probably wise, at this point in time, for a commentator not to go beyond some tentative assessment relying on Newman's criteria for authentic development. I think that we are already in a position to raise some good questions and see where they lead us, but not in a situation to articulate well-grounded conclusions.

(1) *Does the new legislation confirm the old foundations and promote the vital operations of the institution?* The document certainly intends to protect the stability of the doctrinal foundations, but it seems to extend them beyond the traditional limits. It attributes unchangeable permanency to doctrines to which the universal Church has not committed itself infallibly. In consequence, the vital operation of "faith seeking understanding" appears restricted. The new laws impose a hitherto unknown uniformity in doctrinal matters and safeguard it by punitive measures.

(2) *Is the new legislation organically rooted in the old?* At the very core of the new legislation is the idea of non-infallible but unchangeable teaching. It is difficult to locate the origins of the idea in the Tradition; it has appeared in the last decades only. Neither Vatican I nor Vatican II discussed definitive but non-infallible teaching to any length or in any depth. Nor has there been—as far as we know—previous to the promulgation of the *motu proprio* any sustained consultation on this issue among the bishops.

(3) *Does the new legislation bring a new vigor of life to the Church?* The new legislation is not likely to bring new vigor into theological research. The danger is that "definitive" proclamations will hamper the natural and organic evolution of the "intelligence of faith;" the com-

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30 See Symposium, *Disciplinare la verita?*, 21 CRISTIANESIMO NELLA STORIA I (2000) (being a special issue of the journal entirely dedicated to the issues raised by *Ad tuendam fidem*). This text contains the papers of an international group of theologians gathered for a symposium at the Institute of Religious Studies in Bologna, Italy. The title of the collection points to the crux of the problem of the new legislation: *Disciplinare la verita?* That is, "To discipline the truth?"

A further remark (not from Bologna) on the issue of "disciplining the truth": today, it is commonly admitted that the radical misjudgment of the Inquisition was that the truth can be imposed by force. Question: Is it prudent to impose "definitive" doctrines with the threat of canonical penalties that in a given case can amount to the loss of authority, office, function, right, privilege, faculty, title, or insignia, even merely honorary, and so forth (*cf.* 1983 CODE c.1336, § 1), all at the discretion of a competent ecclesiastical superior? Does the Church really need such sanctions to uphold its teaching? Does such legislation create a better environment for receiving God's gifts—which is the main purpose of canon law?

munity endowed by Christ with a supernatural instinct of faith cannot play its part in the discovery of truth. Perhaps even more importantly (tragically?), the expanding of the "irreformable" doctrines is bound to slow down the ecumenical movement, a movement that we believe is wanted by God and sustained by his Spirit. Sooner or later the Catholic Church must state with no ambiguity whether or not the acceptance of "definitive teachings" will be considered an absolute condition for its reunion with other Christian churches. If we are part of the ecumenical movement, we must spell out our intentions.

Assessments of greater weight and of more lasting value will come over a longer period of time and from better sources than this Essay. They will come from the living Church, from all and each part of it: the faithful, the episcopate, the theologians. They, God's people, "cannot be mistaken in belief"—as Vatican Council II stated. Throughout this process of "faith seeking understanding," the magisterium must be present in several ways: first by listening to the people and encouraging their efforts, and then as the legitimate authority to pronounce decisive judgments.

#### CONCLUSION

One must not be a Hegelian to assert that, in the history of the human family, progress often comes through dialectical movements. A dominant trend is followed by its opposite, and out of their encounter, a new synthesis emerges. Such a pattern may have something to do with our human nature—we cannot comprehend the fullness of reality all at once, because we approach our complex challenges one-sidedly. Then, we realize that the truth is richer than our understanding of it, and we look at the other side and discover a synthesis.

This pattern of history, or this habit of the human mind, operates in the life of the Church as well. There, too, we find a succession of dialectical forces. To find it, it is enough to reflect on the events of the last century. The beginnings of it were marked by strong trends in support of the stability of doctrine and institutions: the "combat" against modernism and the promulgation of the first *Code of Canon Law* in 1917 are good examples of it. At the end of the pontificate of Pius XII, the Church lived and operated under a strong central administration. The Pope was the supreme teacher and, by and large the world over, the people lived under a strict discipline, imposed and upheld by clear laws and sanctions (not to mention the far-reaching eternal punishments detailed by many moral theologians and tacitly supported by the hierarchy). Many times we heard that no ecumeni-

cal council will ever be needed again: the papacy can take care of the Church. Obedience was the principal virtue.

Then came John XXIII, who in 1959, on the feast of the conversion of Saul the Persecutor who became Paul the Apostle, announced his intention to convoke an ecumenical council. With a few quiet words he reversed the forces of history. Returning to the ancient custom of the Church, he wanted to listen to the bishops and invited them to speak freely—to him and to each other. He risked a new balance between stability and development, and he succeeded. It is not surprising that Cardinal John Henry Newman's ideas dominated many of the debates.

Through an awareness of the dialectics of history, we can come to a better understanding of the Church's history. Today, stability seems to be favored over creativity. But "in the universal body of the faithful," that is, "in the whole people . . . from the bishops to the last of the faithful laity,"<sup>31</sup> there is an immense source of energy. Sooner or later, its forces are bound to break to the surface and surprise the observers. This seems to be the pattern of history—or, is this the pattern that God uses to lead his people?

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31 *Lumen gentium*, *supra* note 7, at No. 12.

