

The new American commentary on canon law contains a plethora of speculative theology, dissident opinion and at times crass impudence.

New commentary, old nonsense

By John Trigilio, Jr.

■ An old proverb says “the more things change, the more they stay the same.” This is evident in the latest edition of the *New Commentary on the Code of Canon Law* ©2000 by the Canon Law Society of America. Like its 1985 predecessor, this current version combines English translation of ecclesiastical jurisprudence with modern theology as well as contemporary commentary. Readers will find more than comments, however, as blatant heterodoxy, dissent and outright nonsense punctuate the book. Unlike other English commentaries (Opus Dei’s *Code of Canon Law Annotated*, ©1993, University of Navarre, and the Canon Law Society of Great Britain and Ireland’s *The Canon Law: Letter & Spirit*, ©1995, Liturgical Press) where orthodox commentary is accompanied by authoritative sources, our American versions on the other hand are a plethora of speculative theology, dissident opinion and at times crass impudence.

Book One, General Norms, which covers canons 1-203 is ecclesiastical jurisprudence in its undiluted form. It is canon law, pure and simple. Book Two (cc. 204-746) concerns the People of God, from the Faithful to the Hierarchy to Religious Life. Book Three (cc. 747-833), however, is where one finds blatant and overt dissent. Ironically, this section covers the Teaching Office (*mundus docendi*), i.e., the Magisterium. It is this part of the Commentary where open heterodoxy rears its ugly head. Canon 749 deals with the infallibility of the Roman Pontiff and of the College of Bishops in union with him. The law is clear and succinct and is taken almost verbatim from *Pastor Aeternus* (DZ. 3065) of Vatican I and *Lumen Gentium* #25 of Vatican II: “By virtue of his office, the Supreme Pontiff possesses infallibility in teaching when as the supreme pastor and teacher of all the Christian faithful, who strengthens his brothers and sisters in the faith, he proclaims by definitive act

that a doctrine of faith and morals is to be held."¹

The new commentary opines "the narrowly circumscribed and almost-never-exercised prerogative of teaching infallibly, here attributed to the papal and episcopal offices, should be seen within the larger and more basic indefectibility and inerrancy of the Church itself. . . . Nearly all of the vast amount of papal teaching, i.e., encyclicals, exhortations, letters, addresses, homilies, etc, is non-infallible."² Obviously, the CLSA does not distinguish the infallible Extraordinary Magisterium (*ex cathedra* Papal pronouncements and solemnly defined decrees of Ecumenical Councils) from the infallible Ordinary Magisterium. A footnote on the same page makes an even bolder assertion, or more precisely, a brazen attack when it says "the statement by the CDF [Congregation for the Doctrine of the Faith] of October 28, 1995, that the teaching to the effect that the Church has no authority to confer priestly ordination on women requires the definitive assent of the faithful since 'it has been set forth infallibly by the ordinary and universal Magisterium' is an exaggeration" [emphasis mine].³ Joseph Cardinal Ratzinger in the *Responsum ad Dubium* (10-28-95) did not exaggerate the teaching in *Ordinatio Sacerdotalis*, rather, he aptly pointed out that it is definitive and to be understood as belonging to the deposit of faith and his assessment was authorized by the Roman Pontiff, Pope John Paul II. On November 17th, 1995, Archbishop J. Francis Stafford, concurred with the judgment that this was definitive and "infallible" teaching. The following day (November 18), the CDF issued yet another clarification on *Ordinatio Sacerdotalis* that whereas the document itself is not an *ex cathedra* statement, nevertheless, the doctrine contained in it is considered infallible since it emanates from the infallible Ordinary Magisterium: "all members of the faithful are required to give their assent to the teaching

stated therein."⁴

Classifying the official interpretation of the CDF as an "exaggeration" is offensive to say the least and has no place in a commentary on canon law. Canon Law reflects and implements the theology of the Magisterium; it does not create or interpret it. Yet, this cavalier attitude is seen again in the commentary on canon 752. The authentic Latin text reads: "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 intendant; christifideles ergo devitare curent quae cum eadem non congruant."⁵ CLSA translates it thus: "Although not an assent of faith, a religious submission of intellect and will must be given to a doctrine which the Supreme Pontiff or the

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or morals when they exercise the authentic magisterium, even if they do not intend to proclaim it by definitive act; therefore, the Christian faithful are to take care to avoid those things which do not agree with it.”⁶ Whereas the 1985 version renders “*obsequium*” as “respect” [religious respect of intellect and will . . .], the 2000 edition concurs with the other two English translations and uses the term “submission” [religious submission of intellect and will . . .]. The new commentary, though, contradicts itself when it says “an exact translation of *obsequium* is difficult but ‘submission’ is not the best one because it exaggerates the force of the Latin.”⁷ Austin Flannery, O.P., on the other hand, found no problem rendering *obsequium* as “submission” when he translated *Lumen Gentium* #25 in his monumental work, *Vatican Council II; The Conciliar and Post Conciliar Documents* (Costello Publishing, 1998). Not only is “submission” rejected, but an even more diluted concept of a “respectful religious deference [emphasis mine] of intellect and will” is proposed in the next paragraph.⁸

Why the soft language? It is clear when we read the proposition that “the canon [752] leaves room for dissent when such honest disagreement is based on preponderant evidence.”⁹ A footnote in the New Commentary on this very passage states: “the book of readings edited by Charles Curran and Richard

McCormick, listed in the bibliography, provides a thorough discussion of the issue of dissent in the Church.”¹⁰ Obviously, the line of reasoning is that anything which is not a formal statement of the Extraordinary Magisterium (*ex cathedra* papal teaching or solemn decrees of Ecumenical Councils) is open for debate and possible dissent. This faulty logic is refuted by canon 750 as well as by *Lumen Gentium* #25 where it states categorically: “A person must believe with divine and Catholic faith all those things contained in the word of God, written or handed on, that is, in the one deposit of faith entrusted to the Church, and at the same time proposed as divinely revealed either by the solemn magisterium of the Church or by its *ordinary and universal magisterium* [emphasis mine] . . .”¹¹ *Humanae Vitae* and *Ordinatio Sacerdotalis* would be vulnerable to dissent according to this commentary, which violates the very teaching of *Lumen Gentium* #25 and the Catechism #892.

The teaching authority of the bishops is then treated in canon 753 where it is reiterated that the bishops “individually or joined together in conferences of bishops or in particular councils, do not possess infallibility of teaching.”¹² “Religious submission of mind,” however, is to be given to the authentic magisterium of the bishops by the Christian faithful. Again, the New Commentary in the footnote accuses “submission” as being “too strong an English translation of *obsequium*.”¹³ Pope John Paul II explained in *Apostolos Suos* (May 21, 1998) that individual bishops as successors to the Apostles possess the fulness of the priesthood and therefore authentically teach, govern and sanctify in their own dioceses as “ambassadors of Christ” who exercise his three-fold office of priest, prophet and king. Episcopal (national or regional) Conferences, on the other hand, do not have the same autonomy as do local bishops in their own respective territory and they cannot bind or limit the member bishops without prior *recognitio* of

the Holy See or where specifically mandated by canon law. As Vatican II pointed out, bishops by themselves or as a conference must always be in communion with the Head of the college of bishops and its members around the world in order to exercise that authority. (*Lumen Gentium* #25) Paragraph 22 of the apostolic letter goes on to say:

... when the doctrinal declarations of Episcopal Conferences are approved unanimously, they may certainly be issued in the name of the Conferences themselves, and the faithful are obliged to adhere with a sense of religious respect to that authentic magisterium of their own Bishops. However, if this unanimity is lacking, a majority alone of the Bishops of a Conference cannot issue a declaration as authentic teaching of the Conference to which all the faithful of the territory would have to adhere, unless it obtains the recognition of the Apostolic See, which will not give it if the majority requesting it is not substantial.¹⁴

The New Commentary makes a sharp criticism in a footnote to the following paragraph:

“After the Council there was some controversy about the teaching authority of episcopal conferences. In light of this canon [753], the authentic and collegiate teaching role of the conferences in the Church’s magisterium seems obvious.”¹⁵ Then at the bottom of the page we read, “as obvious as it might seem, [emphasis mine] an apostolic letter issued *motu proprio* by John Paul II on May 21, 1998, *Apostolos Suos*, ... circumscribed the teaching authority of the episcopal conferences very narrowly.”¹⁶ Implied here is that the Holy Father who as Supreme Lawmaker issued the Code in 1983 somehow contradicted himself 15 years later.

Canon 754 deals with the non-infallible but nevertheless authentic teaching of the Church. “All the Christian faithful are obliged to observe the constitutions and decrees which the legitimate authority of the Church issues in order to propose doctrine and to pro-

which the Roman Pontiff or the college of bishops puts forth."¹⁷ The editorial is then made: "the canon comes from an age when it was thought that truth could be imposed and error proscribed by edict."¹⁸ This is a non-sequitur argument since it is only logical that the same authority which possesses the fullness of teaching authority (i.e., the Magisterium) would also have a jurisdictional right to identify certain errors and heresies which threaten the deposit of faith.

The Profession of Faith covered by canon 833 has another pejorative commentary. When the code was promulgated in 1983, the Nicene-Constantinopolitan Creed with a 1967 addition was the official Profession to be used, for instance, when an apostate was reconciled into full communion. Shorter than the additions after the Councils of Trent and Vatican I, this one stated after the Creed: "I firmly embrace and accept all and everything which has been either defined by the Church's solemn deliberations or affirmed and declared by its ordinary magisterium concerning the doctrine of faith and morals, according as they are proposed by it, especially those things dealing with the Holy Church of Christ, its sacraments and the sacrifice of the Mass, and the primacy of the Roman Pontiff."¹⁹

"However, in a hasty action on February 25, 1989, the Congregation for the Doctrine of the Faith published in *L'Osservatore Romano* a new, theologically ambiguous and controversial formula."²⁰ The validity of this harsh criticism evaporates when the actual text is examined. The CDF substituted these words at the end of the Creed to complete the Profession of Faith canonically required by those persons listed in canon 833:

1. With firm faith, I also believe everything contained in the Word of God, whether written or handed down in Tradition, which the Church, either by a solemn judgment or by the ordinary and universal Magisterium, sets forth to be believed as divinely revealed.

2. I also firmly accept and hold each and every thing that is proposed definitively by the Church regarding teaching on faith and morals.

3. Moreover, I adhere with religious submission of will and intellect to the teachings which either the Roman Pontiff or the College of Bishops enunciate when they exercise their authentic Magisterium, even if they do not intend to proclaim these teachings by a definitive act.²¹

The papal *motu proprio* of 1998 confirming the CDF adjustment of 1989 underscores the clarity and lack of ambiguity of this formula, yet the 2000 Commentary makes this unfair assessment nonetheless.

Moving on to Book Four: The Sanctifying Office (*munus sanctificandi*) of the Church, is covered by canons 834-1253. A subtle discrepancy can be located in the commentary on canon 910, the Minister of Holy Communion, 910.1 states that the ordinary minister is the bishop, priest or deacon while 910.2 speaks of the extraordinary minister of the Eucharist. The Latin text uses the word "*extraordinarius*" which the CLSA English translation renders as "extraordinary," yet the commentary cites an obscure ICEL translation of "special" minister which "avoids the connotation of the English word 'extraordinary' meaning 'unusual.'"²² Article 8 of the *Instruction on Certain Questions Regarding the Collaboration of the Non-Ordained Faithful in the Sacred Ministry of the Priest* explicitly states that the Extraordinary Minister may distribute Holy Communion only when there are no ordained ministers present or when there are particularly large numbers of the faithful. "This function is supplementary and *extraordinary*."²³ The Congregation for the Clergy and seven other Roman Dicasteries with the approval of the Roman Pontiff evidently consider it "extraordinary" and thus should be more "unusual" than normal (as practiced in many parishes in the U.S.).

Canon 914 unequivocally mandates First Penance before First Communion for children. "It is the primary duty of parents . . . as

well as the duty of pastors, to take care that children who have reached the age of reason are prepared properly and, *after they have made sacramental confession*, [emphasis mine] are refreshed with this divine food as soon as possible.⁷²⁴ Paradoxically, the New Commentary mentions that “in the years following Vatican II there was widespread experimentation with the practice of delaying first penance until after first communion, but the Apostolic See repeatedly ordered these experiments be halted,⁷²⁵ yet it also encourages disobedience by suggesting “if the parents, who have the primary responsibility for the child’s catechesis, should determine that their child is not yet ready for first penance but is ready for first communion, the child should not be denied the right to the sacrament.”⁷²⁶ Once again commentary is replaced with innovation.

Canon 938 concerns the tabernacle. Paragraph two reads that “the tabernacle in which

the Most Holy Eucharist is reserved is to be situated in some part of the church or oratory which is distinguished, conspicuous, beautifully decorated, and suitable for prayer.”⁷²⁷ The New Commentary insists that liturgical laws “strongly recommended a separate blessed sacrament [note the lack of capitalization] chapel as the most fitting place for eucharistic reservation.”⁷²⁸ It even footnotes the notorious *Environment and Art in Catholic Worship* (EACW) which is bizarre when one considers the vocal opposition to this liturgical committee statement by the general assembly of the NCCB. The bishops themselves emphasized the fact that only documents approved by the entire episcopal conference have any weight and *Apostolos Suos* would further decree that only unanimous statements have binding authority (subject to papal *recognitio*).

Note that the revised GIRM #314 states that the tabernacle should be reserved in a part

of the Church which is noble, worthy, conspicuous, well decorated and suitable for prayer. Paragraph 315 goes on to say that the tabernacle should be placed (a) either in the sanctuary, apart from the altar of celebration, in the most suitable form and place, not excluding on an old altar which is no longer used for celebration; (b) or even in another chapel suitable for adoration which is integrally connected with the church and is conspicuous to the faithful. *Inaestimabile Donum* #24 required a location for the tabernacle which is *very prominent, truly noble and duly decorated*. The option of a separate chapel is mentioned as a third alternative, not the primary, and the exhortation to *move* the tabernacle from the sanctuary to a chapel is clearly absent in recent official documents. Ironically, the New Commentary hearkens to out of date policies which sought to create small adoration closets instead of fostering healthy *latria* for the Real Presence among the entire congregation and parish at large.

The lamentable aspect is that the good commentary from orthodox contributors and authors contained in this new edition will be overshadowed by the deficient and sometimes dissident notions of their colleagues contained in other chapters of this book. Some astute and brilliant scholarship and sound jurisprudence can be found, however, the overt and veiled repudiation of recent authoritative decrees of Cardinal Ratzinger's office in Book Three on the Teaching Office is offensive, to say the least. The Machiavellian maneuvering in some of the commentaries on the sacraments (Book Four) to promote an agenda is further distasteful. As a former member of the CLSA, I wish that the good authors would have been forewarned about their confreres "philoso-

phy" and that the organization as a whole reform itself by absenting from creeping heterodoxy and subtle dissent. ■

¹ John P. Beal, ed., *New Commentary on the Code of Canon Law* (Mahwah, NJ: Paulist Press), 2000, p. 913.

² *Ibid.*

³ *Ibid.*

⁴ Congregation for the Doctrine of the Faith, "Reflections on *Ordinatio Sacerdotalis*", November 18, 1995.

⁵ *Codex Iuris Canonici*, 1983.

⁶ *New Commentary on the Code of Canon Law*, p. 916.

⁷ *Ibid.*

⁸ *Ibid.*, p. 917.

⁹ *Ibid.*

¹⁰ *Ibid.*

¹¹ *Ibid.*, p. 914.

¹² *Ibid.*, p. 917.

¹³ *Ibid.*

¹⁴ Pope John Paul II, *Apostolos Suos*, (AAS 90) #22.

¹⁵ *New Commentary on Code of Canon Law*, p. 918.

¹⁶ *Ibid.*

¹⁷ *Ibid.*

¹⁸ *Ibid.*, p. 919.

¹⁹ *Ibid.*, p. 19.

²⁰ *Ibid.*, p. 987.

²¹ CDF, *Professio Fidei*, 1989; Pope John Paul, *Ad Tuendam Fidem*, 1998.

²² *Ibid.*, p. 1105.

²³ *Instruction on Certain Questions Regarding the Collaboration of the Non-Ordained Faithful in the Sacred Ministry of the Priest*, 1997.

²⁴ *Ibid.*, p. 1108.

²⁵ *Ibid.*, p. 1109.

²⁶ *Ibid.*, p. 1110.

²⁷ *Ibid.*, p. 1125.

²⁸ *Ibid.*

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