

A CRITIQUE OF THE MODUS OPERANDI OF THE CONGREGATION OF THE DOCTRINE OF THE FAITH WHEN INVESTIGATING 'DISSIDENT' CATHOLICS.

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October 2014

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Abstract

The Congregation of the Doctrine of the Faith occupy the role of the judicial branch of the Catholic Church. Their function is to denounce and expel those whose teachings or actions threaten the faithful members of the Catholic Church. It is, of course, vital that an organisation should have the mechanism to protect itself from internal or external threat, but it is also vital that this mechanism is constantly reviewed to ensure that it is fit for purpose and has not become a malign force within the organisation. This dissertation aims to show, by reference to both the judicial praxis and the theological methodology utilised by the CDF when investigating dissident Catholics, that the CDF is indeed no longer fit for purpose and has a great potential to become a malign influence, by comparing their Investigative Process to the tenets of natural law as proposed by John Finnis as well as engaging in a theological critique of the documents that the CDF produced during their investigation of Professor Hans Küng. Special reference is also made to the cases of Fr Tony Flannery and Sr Elizabeth Johnson.

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Introduction

On December 7th, 1965, the Supreme Sacred Congregation of the Holy Office changed its name. Having started existence as the 'Supreme Sacred Congregation of the Roman and Universal Inquisition' in 1542, and re-christened itself as the 'Holy Office' in 1904, the judicial branch of the Catholic Church underwent yet another transformation to become the 'Congregation for the Doctrine of the Faith' (CDF); and with this name change, the CDF slipped quietly into relative obscurity. Mention the Congregation of the Doctrine of the Faith to your average lay person (or even lay Catholic) and they will most likely not be sure what you are talking about. Mention the Holy Inquisition and suddenly a very clear, and blood-soaked, image comes to mind. It is unsurprising that the CDF wished to distance itself from this medieval image.

A blunt but accurate description of the CDF, in all its incarnations, would be to describe them as the 'heretic hunters' of the Roman Catholic Church. Their function is to protect the faithful from any teaching that could lead them into serious or grave error;¹ and this is a truly noble function, given that the church considers that souls are in the balance here. The CDF is not merely protecting the faithful from sin in this life; it is trying to ensure their eternal salvation. And as such one might expect the CDF to have a reputation as a benign defender; protecting the flock on a treacherous path to safe pastures. One look at the gothic horror section of any well stocked book or video shop will tell you that this is not the case. For most of its 500 year history the Inquisition, as it was, was feared, and with good reason. Denunciations were anonymous. Torture was permissible. Executions were fiery and painful. And their jurisdiction was universal. Even now the Inquisition is a cultural motif for oppressive religious institutions.²

Of course, the CDF no longer uses torture, and has no authority to execute anyone, or even put them under house arrest, as they most famously did with Galileo.³ Surely, then, it is only fair that they are no longer associated with their gory predecessors? The inquisition, one

¹ "Congregation for the Doctrine of the Faith": <http://www.doctrinafidei.va/>

² For example, a search of Horror Films including the CDF produced the results found at the following page: *Moviecus* accessed 17th September 2014: <http://www.moviecus.com/theme/movies-about-inquisition>

³ Hal Hellman, "Galileo vs. the Pope" *Washington Post* 9th September 1998, accessed 17th September 2014 <http://www.washingtonpost.com/wp-srv/national/horizon/sept98/galileo.htm>

might argue, was an unfortunate and unpleasant product of a time where life was cheap and violence was every-day. The CDF, on the other hand, is a thoroughly modern institution which deserves none of the reputation its predecessors gained. And, if the only problem with the previous incarnations of the CDF were their propensity for violence and temporal domination, then this argument might well be right. If, however, there were problems *other* than the blood spilt and bodies burned by the Inquisition; if, for example, the entire judicial process of the Inquisition was, from the view point of natural justice, fundamentally flawed or just plain unjust, then the CDF needs to have undergone radical reformation to be truly disassociated from its forbears.

In 1966 Cardinal Ottaviani stated that it was a great pity that the Holy Office, as was, had not implemented the reforms suggested by Pope Benedict the XIV... whose papal reign ran 1740-58! It is said that Rome thinks in centuries, but this must truly take the prize. He stated *"we have to admit that in the course of the centuries the Holy Office has departed from that procedure and substituted an authoritarian approach. It was unfortunate that this happened."*⁴ Here we have a Church official, living in the midst of the spirit of renewal of the Second Vatican Council, bemoaning the lack of movement on reforms proposed two centuries previously, and indeed how it was not simply a matter of not moving forward, but a matter of backsliding. It was only toward the end of Vatican II that, along with a new name, the CDF did get a new charter. It is, however, debatable whether this new charter really reformed the processes of the CDF, as we will see in later chapters.

It is not, I think, without symbolic significance that the reforms of the CDF were announced the day before the Council was closed (08.12.65.) The end of a long meeting is no time to do important or detailed work; people are tired and fidgety, the end is in sight, and there is an eagerness and impatience to get gone and get on with the work that must now take place. The Second Vatican Council lasted three years. The emotional and psychological fatigue of those who had been most involved with it must have been immense, and the three years must have been nothing less than a spiritual roller-coaster. As such, I believe it would be wise to revisit the reforms made during the Second Vatican Council, as we have had ample time to recharge our batteries since it closed in 1965.

⁴ Peter Hebblethwaite, *The New Inquisition? Schillebeeckx and Küng* (London: Fount Paperbacks, 1980) P33

One of the few reformations that were effectively implemented at Vatican II was the development of Committees on Doctrine within the various National Bishop's Conferences, working under the mandate of the CDF. These Committees tend to follow the same protocol as the CDF when investigating theologians, and have both the right to refer theologians to the CDF for further investigation if they feel that the scope for damage to the faith is international rather than national, and also the responsibility to investigate theologians the CDF may direct them to, working under the guise of subsidiarity (ironically making the CDF and the Committees on Doctrine one of the few places where the Vatican II call for greater subsidiarity was heard). As such my examination will include and make reference to some of the investigations made by Committees on Doctrine in various Bishops Conferences. As such I will also make reference to the investigation carried out by the Committee attached to the United States Conference of Catholic Bishops (USCCB) into Sr Elizabeth Johnson's 2007 book *Quest for the Living God*, because I believe that this particular process was as problematic as any of the fuller CDF investigations.⁵

The purpose of this thesis, then, is to question whether the CDF is really fit for purpose. My examination will focus on two key areas of the CDFs work; its judicial praxis and its theological methodology. I will be drawing both on the secular Natural Law theory (as interpreted by John Ferris) and the personal testimony of those theologians who have been placed under investigation, along with their theological objections to the conclusions the CDF, or its proxy Committees, have drawn. I will aim to show that the theological methodology adopted by the CDF is archaic and incapable of satisfactorily engaging with academically sound theological methods.

The first part of my argument will centre on the judicial praxis of the CDF. As I have already acknowledged, the CDF has reformed its ways enough to get rid of the torture chamber. As I will show, however, its judicial praxis beyond this has not much changed. Anonymous denunciations are still allowed. The accused is still given a court appointed defender, and is still not allowed contact with them. In fact, the CDF is still not required to tell the accused that they are under investigation until they are ready to pronounce sentence. It is, at least

⁵ For a full account of the Sr Johnson case, see the Elizabeth Johnson Dossier in RR Galliardetz, ed., *When the Magisterium Intervenes*. (Minnesota: Liturgical Press, 2012) PP177-275

on appearance, therefore, the sort of judicial system one might expect to find in Soviet Russia, or under a military dictator, but not the sort of system one would expect at the heart of an institution that is supposed to be a model of divine justice to the world. Through looking at a few cases where people have spoken out about their treatment by the CDF, such as the case of Fr Tony Flannery, we will see how the CDF not only undermines the Church as a just institution, but also how, despite melting down the iron maidens and chopping up the racks, the CDF still has the power and ability to cause great emotional distress and psychological trauma in those it investigates, and I will argue that this distress and trauma is a direct result of the CDF's judicial praxis.

The second part of my argument will focus on the objections raised by theologians to the doctrinal conclusions drawn by the CDF. In particular I will examine the controversy surrounding Hans Küng's *Infallible?* and the CDF's written responses to this book, although I will also make reference to the USCCB's conclusions on Sr. Johnson, as there are many similarities in both author's rebuttals, despite the fact that they are criticised for very different aspects of theology. There are several reasons why I consider *Infallible?* to be a key text to study for this thesis.

First, there is the fact that this is a, relatively, recent case which is, relatively, well known. Certainly, Professor Küng is probably one of the most famous Catholic theologians alive today, and many non-Catholics know that there is some sort of scandal surrounding him, even if they are not sure of the details. His was, in many respects (which will be discussed later), a landmark case.

Secondly, there is the topic of Küng's book: papal and ecclesiastical infallibility. Although there will not be much space to discuss fully the link between infallibility and the CDF's relative impunity to act, I perceive there to be a definite link; that were it not for infallibility, the CDF's power and authority would be severely curtailed.

Thirdly, much of Küng's critique of infallibility comes down to a critique of Rome's theological method, which he argues is anachronistic and historically/exegetically unsound. I will argue that these criticisms can be applied specifically to the CDF as well as more generally to Rome, and I feel confident in arguing this because;

Fourthly, the documents published by the CDF in response to Küng's *Infallible?* engage in every form of Roman theological methodology that Küng criticises in the book. (This argument is, of course, contingent on me showing that Küng is right in his criticisms of Roman theology.)

The CDF is a central and vital organ of the Vatican. As well as protecting the faithful from erroneous teachings, it is the body that laicises paedophile priests or priests who otherwise abuse their position. It protects not only the spiritual concerns of the faithful but also their physical and emotional safety. At a time when we have only just begun to understand the extent of the abuse scandal within the Church, it is more necessary than ever that we have a body that can expel these abusive elements of the Church. But because of its vital function, it is more important than ever that we ask the questions about who polices the police; that we have an open and transparent system that the faithful can scrutinise, that we have a robust and mature system that acts with integrity and chooses its focuses responsibly. Given the extent of the abuse scandal, it is hard to see how the CDF has time to investigate those who simply want to engage in open and honest debate. Their time should surely be taken up with removing and laicising those priests and religious who have brought true, violent scandal to the Church. Whilst this thesis will not be able to provide the CDF with a new charter (even if they wanted it!), ready to be adopted, it will aim to ask the questions necessary to take the first steps down the road to reform.

1: The Judicial Process of the CDF.

Art. 1. The Congregation for the Doctrine of the Faith has the function of promoting and safeguarding doctrine on faith and morals throughout the Catholic world. In accomplishing this purpose, it renders a service to the truth, by protecting the right of the People of God to receive the Gospel message in its purity and entirety. Therefore, in order that faith and morals not be harmed by errors however disseminated, it also has the duty of examining writings and opinions which appear contrary to correct faith or dangerous.⁶

This is the first article of *Ratio Agendi*, the CDF's most recently published Regulations for Doctrinal Examination, adopted on the 29th June 1997. Many of the documents published by the CDF will open by reiterating this mandate and claiming that they have a specific obligation towards the safeguarding of doctrine on faith and morals; they stand as defenders and protectors of doctrinal purity, or truth. This comes, of course, with the implication that they must have a greater access to this truth in order to protect it (for how else could they ensure that the 'People of God... receive the Gospel message in its purity and entirety'?) and the assertion that part of this mandate to protect the truth includes judging and condemning that which is not doctrinally pure; that which is not truth.

This dissertation will not quarrel with the need for some framework or criteria by which emerging theologies can be measured, nor with the need for an institution which will take responsibility for taking those measurements. Any religion has a duty to clearly communicate its doctrines and beliefs, and take seriously the implications of religious ideas which some may be willing to die, or kill, for. Dangerous heresies and misinterpretations of doctrine left unchecked can lead to awful real-world consequences.⁷ But here, in this first article of their regulations, the CDF strongly imply that they have the absolute ability to judge what is truth and what is not, that they have the ability to keep the Gospel message free from all perversion and human manipulation ('in its purity and entirety'), and the only

⁶ *Ratio Agendi* Accessed September 12th 2014

http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19970629_ratio-agendi_en.html

⁷ See Neville Richardson "Apartheid, Heresy and the Church in South Africa" *The Journal of Religious Ethics* Vol 14 No 1 (Spring 1986) pp1-21 accessed September 17, 2014 <http://www.jstor.org/stable/40015022>

way this would be possible would be through greater access to the pure Gospel message than other, ordinary people.

It is ironic, then, that the CDF is regularly criticised for the injustice of its processes when carrying out a formal doctrinal examination. Truth and justice are so heavily intertwined, the latter being at its heart the pursuit of the former as well as the consequence of the former being found, that one would think that those with greater access to the truth would also have a deeper insight into the process of justice. And yet from their investigations of Küng and Schillebeeckx in the 70's to Flannery and the Leadership Conference of Women Religious (USA), the LCWR, in recent years, the actions of the CDF have provoked protest after outraged protest from theologians themselves, the wider academic community, religious and secular media and from the lay themselves (who were particularly vocal in their support of the 'Nuns on the Bus').⁸

In examining the processes of the CDF, as set out in *Ratio Agendi* (1997), I will be comparing them to the process suggested by a joint commission of the Canon Law Society of America and the Catholic Theological Society of America in the document *Doctrinal Responsibilities* (published in 1983), a document which sets out to provide a framework for 'Formal Doctrinal Dialogue' between theologians and bishops particularly (although it does explicitly suggest that the processes suggested had a much wider application) and which was approved both by the USCCB and the CDF. I will also critique *Ratio Agendi* in the light of certain basic principles of Natural Law and Natural Justice. Throughout these critiques I will be making space for the human impact that these processes have, by calling on the experiences of Fr Tony Flannery, whose book *A Question of Conscience* details his investigation by the CDF and the profound impact the process had on his life, mental and spiritual wellbeing.

1.1.1: Ratio Agendi (1997)

⁸Catherine M. Odell "Supportive Crowd Greets Nuns on the Bus in Indiana" *National Catholic Reporter* June 25th 2012 Accessed September 10th 2014 <http://ncronline.org/news/supportive-crowd-greets-nuns-bus-indiana>

Michael Sean Winters "Nuns on the Bus" *National Catholic Reporter* May 31st 2013 Accessed September 10th 2014 <http://ncronline.org/blogs/distinctly-catholic/nuns-bus>

Bryan Cones "Women on a Mission: We Should Join the 'Nuns' in their Care for the Poor" *U.S. Catholic* August 2012 Accessed September 10th 2014 <http://www.uscatholic.org/church/2012/06/women-mission-we-should-join-nuns-their-care-poor>

The *Ratio Agendi* sets out the processes through which a Formal Doctrinal Examination will be carried out. The previous *Ratio Agendi*, published in 1971, was an innovation, and *Doctrinal Responsibilities* commended it as a great improvement on the previous procedure, which was kept completely secret.⁹

Comprising 5 subsections, and 29 Articles, the *Ratio Agendi* is not a particularly in-depth exposition of the processes of Formal Doctrinal Examination. One is struck by the amount of questions that are left unanswered in these Articles; usually questions of criteria used in making judgements or appointing offices. For example, the process of the preliminary investigation is dealt with in one Article. Article 3 states that the indicated writing is to be referred to the appropriate Office, who will submit a report to the *Congresso*, who will then decide whether to take up the investigation or not. At no point are we told how the appropriate office is decided, what criteria the report will be predicated upon, or what criteria the *Congresso* will use to decide whether to continue the investigation or not. Further, in Part III – Ordinary Procedures of Examination, Article 12, when specifying who can be invited to participate in the *Consulta*, the author's Ordinary¹⁰ is one of those specified, and is the only person who is specifically bound to secrecy. But why this is the case is not explained or even commented on. Terms like *Congresso* and *Consulta* are used without ever being properly defined.

The *Ratio Agendi* sets out a process the bulk of which is taken up by the primary internal aspect of the investigation, which occurs without the author's awareness. This primary investigation is characterised by a series of reports commissioned and discussions held until the key suspicious aspects of indicated work, and their severity, are agreed upon. The primary investigation will make use of experts appointed by the CDF (Article 9) to examine and evaluate the text/s, and a *relator pro auctore* who acts as a defence barrister for the 'indicated author' (the latter being the name *Ratio Agendi* uses for those being investigated), whose role is to present the positive aspects of the teachings/author and help

⁹ Joint Committee of the Canon Law Society of America and the Catholic Theological Society of America "Doctrinal Responsibilities: Procedures for Promoting Cooperation and Resolving Disputes Between Bishops and Theologians" *Canon Law Society of America Proceedings* 45 (1983): Appendix A

¹⁰ Ordinary referring to either a person's Bishop or their Religious Superior

put the indicated work into context within the rest of the author's works.¹¹ After each round of reports and discussions, the conclusion of the *Congresso* or *Consulta* will be referred back to the *Sessione Ordinaria*. The conclusions of the *Sessione Ordinaria* are reported back to the Pontiff for ratification, and then the next step of the procedure takes place.¹²

It is not until Article 17 in this process that the author is informed that they have been under Formal Doctrinal Examination, at which point they are given three months (two months if the case is considered urgent) to respond to the report of the CDF. The list of errors is to be presented through the author's Ordinary and is to include explanatory arguments for the objections raised and any relevant documentation necessary for mounting a defence.¹³ There is opportunity for the author to meet with delegates of the Congregation, appointed by the *Congresso*, but otherwise the process remains the collating of a series of written reports, mainly from CDF appointed experts, to be submitted for approval and further action by the *Sessione Ordinaria*.

Part V deals with Discipline, and consists of only two articles. Article 28 states that if an author does not correct themselves in a satisfactory manner and with an appropriate level of publicity, the *latae sententiae* of heresy, apostasy or schism is pronounced. There is no recourse available to the author if this route is taken. Article 29 deals with cases that do not fall under the *latae sententiae*, in which case the CDF is to 'proceed according to the norm of law, whether universal or proper to the Congregation'.¹⁴

When copied into a word document, the *Ratio Agendi* makes up 5 A4 sheets of paper. There is little or no attention paid in this document to the sub-processes; we are not told the criteria by which a potential expert's adequacy and appropriateness are judged. We are not told the criteria by which an adequate and appropriate *Relatio Pro Auctore* is appointed. The only time criteria are provided are in Part II – Office Study, Article 6, where the criteria for an intervention are listed. They are as follows; the potential errors that have been noted,

¹¹ It is interesting to note here that, whilst the CDF insist that an investigation into a particular author's work should never be interpreted as a judgement on the character of the author, the *Ratio Agendi* specifies that part of the Relator's role is to highlight positive 'merits of the author.'

¹² *Ratio Agendi* Articles 15, 22, 26

¹³ Although, again, the criteria for what documentation is necessary, and what isn't, is not presented and there is no comment as to why the author doesn't have access to all the documentation.

¹⁴ *Ratio Agendi* Article 29

their prominence, their seriousness, their dissemination, their influence, and the danger of harm to the faithful.¹⁵ We are not, however, offered any advice on how these criteria are measured. What is the distinction between dissemination and influence? and are the two based on different measurements? and if so what is measured to decide which? and how? There is no timeline for the primary, internal investigation, and no justification given for the deadlines imposed on the author during the second, external aspect of the investigation. There is no justification offered for the secrecy of the primary, internal investigation, and likewise there is no criteria offered by which the adequacy of the public recantation is judged.

The lack of adequate criteria and definition throughout *Ratio Agendi* increases the burden on indicated author's when it comes to mounting their defence. In a secular court, the defence counsel would be well acquainted not only with the evidence that was to be submitted in the prosecution's case, but also with the methods of evidence collecting utilised; they would be aware of the criteria by which the legitimacy of evidence was assessed and the short comings of various forms of evidence or evidential collection process. The lack of criteria means that the indicated author has no way of successfully answering the evidence submitted against him because they have no way of judging the evidence for themselves against criteria they know the prosecution to be working from. A defendant in a secular court always has the option of attacking the evidence submitted against them, or the methods of its collection, as well as the methods and motives of those investigators who unearthed the evidence. Secular defendants have the option of attacking and questioning not only the evidence provided by expert witnesses, but their careers to date and their very competence to be an expert witness. The lack of criteria in *Ratio Agendi* effectively leaves the indicated author cornered and purely defensive as there is no criteria of judgement here that they can attack as part of their defence, the expert witnesses are anonymous, and there is no opportunity to answer them directly or cross-examine them. In fact no cross-examination of any form is allowed for, and indicated authors are left to hope that the criteria by which they defend their own work is the same as the criteria by which it has been judged.

¹⁵ *Ratio Agendi*. Article 6.

It would appear that in several cases this lop-sided nature of the primary and second investigations works mainly to the benefit of the CDF, and to the detriment of the indicated author. That is not to accuse the CDF of a malicious or ill will in its formulation of its processes; it is far more likely that the authors of the *Ratio Agendi* simply formulated a process that would make their job relatively easy. Processes are on the whole formulated and applied in order to make doing one's job easier, and so a formal process will in most situations exist primarily for the convenience of those who are going to use it regularly. If we take the asymmetry of the lack of time line in the primary investigation and tight deadline applied to the second as an example, it is always convenient to be able to present a project as a *fait accompli*; if at any point the indicated work is found to be orthodox in the primary investigation, the investigation can be halted and no one, not even the author, would know that the magisterium had any questions or doubt on a matter of doctrine, and so their reputation as safeguards to the deposit of faith is maintained. Likewise, a tight timeframe for the inevitably public secondary investigation means that the CDF can be sure of a relatively swift conclusion of events. Again this works to the convenience of the CDF, who are able to present any media that pays attention to the inner-workings of Catholic academia and bureaucracy with a relatively swift and decisive conclusion to any investigation. In 1997, when these procedures were published, three months would not have given an indicated author a great deal of time to decide on an advisor, who would have to be fully briefed on the situation and already well versed in the works of the indicated author, (and presumably work their role as an advisor around whatever career or family commitments they had), write a detailed response to the initial accusations (which, of course, would mean re-reading the original texts and potentially involve new research, and may concern work that is by now several years old), meet with delegates from the Congregation, and co-ordinate any form of publicity campaign, such as the one we saw with the investigation of the LCWR, all potentially whilst maintaining career and family life.¹⁶ It is not, however, necessary to consider how something might inconvenience another when considering what would be most convenient to oneself. It does not take maliciousness to be

¹⁶ See LCWR.org – Official Website of the LCWR

Also: Abigail Frymann Rouch, "Mistrust has Replaced Communication, say Censured Nuns" *The Tablet* May 9th 2014 Accessed September 10th 2014 <http://www.thetablet.co.uk/news/763/0/mistrust-has-replaced-communication-say-censured-nuns->

inconsiderate of the other, just a lack of consideration! From the point of view of the CDF, the short timeline simply means that the public aspect of the investigation is swift and decisive.

It is difficult to envisage a situation where a member of the CDF would end up on the other side of an investigation,¹⁷ and it is even harder to imagine that a member of the CDF could ever envisage a situation where they themselves would end up under investigation. They do, after all, have a special mandate to safeguard the deposit of the faith.¹⁸ As such, to overlook how a process that is convenient to oneself is actually incredibly inconvenient to another, even to the point of creating a fundamental power imbalance in what is supposed to be a just process, is not a sign of malevolence or Dan Brown style conspiracy, but more likely a sign of everyday, mundane self-centredness.

However, once the process is put into practice, the inconveniences the other faces as a result of the process become clear. In 1971 the CDF first published its *Ratio Agendi*. In 1983 *Doctrinal Responsibilities* was published, with the support of the CDF and the USCCB, and including both praise and criticism of the 1971 *Ratio Agendi*, along with a proposed process that, whilst primarily concerned with disputes between individual bishops and theologians, was explicitly intended to be used as a guideline for any doctrinal dispute within the Catholic Church. It is pertinent then, to compare this 1997 *Ratio Agendi* with both the proposed process of Formal Doctrinal Dialogue, and also the criticisms of the 1971 *Ratio Agendi* in order to fully examine whether any of the issues brought up in *Doctrinal Responsibilities* were improved upon in the intervening years.

1.1.2 Ratio Agendi and Doctrinal Responsibilities

As has been stated, *Doctrinal Responsibilities* suggests a process for what it calls ‘Formal Doctrinal Dialogue’. It expands on the rights and responsibilities of both theologians and

¹⁷ Although this is exactly the position that Monsignor Carlo Molari found himself in. Hebblethwaite *A New Inquisition?*, 39.

¹⁸ Although it has to be said that most members rarely publish any academic articles, thus reducing the chances that they would be investigated, and some rarely read them. Hebblethwaite *A New Inquisition?*, 73-74. “Baggio is outstanding in that it is said that he has not opened a serious work of theology in the last twenty years...they would certainly be capable of a sensible judgement on a quazi-political question (e.g. should Lefebvre be rehabilitated and under what conditions?), but one is less convinced of their ability to handle strenuous a theological problem.”

bishops in dispute, and states that the primary purpose of the proposed process is to foster a climate of mutual cooperation between the two groups, particularly characterised by mutual support, encouragement, assistance, and invigoration of Church unity.¹⁹

The process suggested by *Doctrinal Responsibilities* is, like *Ratio Agendi*, characterised by a series of rounds of information gathering and report writing which continue on to the next level if no conclusion can be reached at that particular level. Unlike *Ratio Agendi*, the indicated author is informed of the investigation from the beginning and is actively involved at every level. Each level of the process is completed by the publication of a mutually agreed document which lays out positions that both parties can agree upon and positions where there is still disagreement. The use of facilitators, experts and delegates is encouraged, as long as there is agreement between both parties on who these facilitators etc. should be. At every level the process is to be transparent and open to full participation by both parties. The focus is always on what common ground can be found and what agreement can be made. Throughout *Doctrinal Responsibilities* clear criteria is given for the focus of each level of the process. There are expanded discussions of who would make appropriate experts etc. in such Formal Doctrinal Dialogues and how to set up panels of experts that would be available both to the magisterium and other theologians. There is discussion of how bishops and theologians should work together outside of Formal Doctrinal Dialogues, in order to foster a climate where Formal Doctrinal Dialogues are, hopefully, relatively unnecessary.

Doctrinal Responsibilities includes as an appendix a criticism of the 1971 *Ratio Agendi*. It praises the 1971 *Ratio Agendi* for being the first publication of its kind and a sign of willingness on the behalf of the CDF to be more transparent, as well as praising the *Agendi's* ample provision for (internal) discussion before a conclusion is reached, its allowing the indicated author to meet with the *colloquium* in the second phase, and its attempts to preserve the principles of confidentiality. *Doctrinal Responsibilities* also gives *Ratio Agendi* credit for recognising the changeable nature of processes and recognition of the safeguarding needs of the indicated author. In particular *Doctrinal Responsibilities*

¹⁹ *Doctrinal Responsibilities*: 215

commends the CDF for issuing a proclamation in December 1982 recognising the indicated author's need for an advisor or some form of counsel.²⁰

Doctrinal Responsibilities does, however, have some general and some specific improvements to suggest to the 1971 *Ratio Agendi*. Generally *Doctrinal Responsibilities* suggests that there is a need for greater subsidiarity, so that accusations are immediately referred to the indicated author's Ordinary, and do not return to the CDF until all attempts to solve the dispute have failed at both a local (Bishop/Religious Superior) and national (National Congregation of Bishops) level. The CDF should be seen as a court of last resort. The specific improvements suggested by *Doctrinal Responsibilities* are as follows; that indicated authors are immediately informed of the accusations made against them and by whom, that the investigation process be simplified and involved the indicated author from the outset, that time limits should be put in place on both the CDF and the indicated author, that the indicated author should have the right to suggest a pool of suitable persons from which the *Relator Pro Auctore* is drawn, that the indicated author has access to all relevant documentation, as well as a right to know who will be involved in the colloquium and to object to a person's presence with sufficient cause along with the right to call witnesses to the colloquium, that the CDF should publish the procedures used in the colloquium and the decisions of the CDF should be public where the case is public. *Doctrinal Responsibilities* also suggests that there should be a clearly indicated appeals process for the indicated author who feels that the CDF has either exceeded its competence or failed to follow its own procedure, suggesting that they should be able to appeal to the *Apostolic Signatura*.²¹

Certainly since the publication of *Doctrinal Responsibilities*, the CDF can make claim to a greater use of subsidiarity. National Congregations of Bishops were already expected to have Doctrinal Committees who are specifically mandated to investigate any allegations of heresy or misrepresentation of doctrine or tradition.²² Unfortunately, this move towards subsidiarity has resulted in less transparency rather than more. During the investigation of Sr Elizabeth Johnson's *Quest for the Living God*, the Doctrinal Committee of the USCCB

²⁰ *Doctrinal Responsibilities*: 230-31

²¹ *Doctrinal Responsibilities* P231-32

²² *Suggestions for bettering the serviceability of Doctrinal Committees* July 10th 1968 Accessed September 17th 2014 http://www.doctrinafidei.va/documents/rc_con_cfaith_doc_19680710_comitati-dottrinali_en.html

elected to use the investigative process of *Ratio Agendi* rather than *Doctrinal Responsibilities*, justifying this by claiming that *Doctrinal Responsibilities* was specifically for use during disputes between individual bishops and theologians.²³ This creates the somewhat unfortunate situation where the individual bishops (the equivalent of the lower/local courts) are working from one procedure, but the Congregations of Bishops (the middle/national courts) and the CDF (the upper/international courts) work from another procedure. In effect their subsidiarity has, by their own hand, been halted at the level of the middle/national court. This will create procedural problems if a case is passed up from the lower to middle court, as there is no way to ensure that the same criteria for judgement is used in each court if the same process is not followed in each court.

As far as the specific improvements are concerned, none have been taken up in the 1997 *Ratio Agendi*. There is still no mutual, transparent involvement from both the CDF and the indicated author from the outset, no timelines imposed on the CDF, and no input from the author on the selection of experts or even the *Relato Pro Auctore*. In fact, the only person whose involvement the indicated author has any say over is their advisor, who still has to be approved by the indicated author's Ordinary. As was discussed above, the processes for making decisions or the criteria those decisions are based upon are rarely discussed or defined in the 1997 *Ratio Agendi*, and there is still no appeals process.²⁴

Doctrinal Responsibilities was produced by a committee made up of two institutions that the magisterium recognises as authoritative (although not as 'Authoritative' as the magisterium consider themselves), and was given official approval by both the USCCB and the CDF. The process of Formal Doctrinal Dialogue suggested within *Doctrinal Responsibilities* has been repeatedly hailed by theologians as a fair and acceptable process for the necessary work of safeguarding the deposit of faith.²⁵ That the CDF should approve and affirm such a document and yet, 14 years later, publish a *Ratio Agendi* which has taken on none of the general or specific improvements suggested, seems to suggest that the self-interested nature of *Ratio Agendi* is no longer accidental but wilful. This self-interest is deeply

²³ Sr Johnson Dossier, *When the Magisterium Intervenes*, 179-182

²⁴ Although recently an appeals process has been introduced into CDF proceedings for those who are accused of grave abuses of their position, i.e. paedophile priests. There is, however, still no appeals process for those accused of doctrinal error.

²⁵ See *When the Magisterium Intervenes* Ed RR Galliardetz (Liturgical Press, Minnesota, 2012)

unsettling in any institution which is dedicated to the due process of justice, but is particularly unsettling in an institution which is dedicated to divine justice and the safeguarding of the deposit of the faith as, in such an institution, serving the interests of the self comes at the expense not only of the interests of the other but also possibly at the expense of the interests of the divine.

I will demonstrate precisely how problematic this procedure can be by examining the experience of one recent 'indicated author'.

1.2: Fr Tony Flannery

Fr Tony Flannery has produced what may well be a unique account of an encounter with the CDF. Indicated authors are bound to secrecy throughout the investigation and beyond. While Jacques Pohier refers to the deep melancholy and radical questioning of faith that followed his encounter in his book *God in Fragments*,²⁶ he does not describe the actual process. Fr Flannery was ordained as a Redemptorist in 1974, aged 17, just in time to experience the wave of reformation and renewal that Vatican II brought with it.²⁷ He was involved with the traditional missionary work of the Redemptorists, and as part of his evangelical vocation, wrote articles for several magazines, such as *The Furrow* and *Reality*.²⁸ It was these articles that were ostensibly to bring him to the attention of the CDF, although Flannery suspects that his involvement as a founding member of the ACP – Association of Catholic Priests in Ireland – was the real motivation behind the investigation.²⁹ Flannery recalls how he received a call summoning him to a meeting with the Irish Provincial of the Redemptorist order. Initially no reason for this meeting was given, and so Flannery refused to attend. It is not uncommon for those accused of sexual abuse to be summoned to such a meeting and effectively ambushed by their superior and the police, so the ACP recommends that any religious summoned to such a meeting obtains a written request for the meeting that states its purpose, so that they are able and prepared to mount an adequate defence. A second phone call told Flannery that his presence was required by the Redemptorist

²⁶ Jacques Pohier, *God in Fragments* (SCM Press, Norwich, 1985)

²⁷ Flannery, *Question of Conscience*, 13-14

²⁸ *Ibid*, 21-25

²⁹ *Ibid*, 26-32

Superior General in Rome and that the meeting concerned certain articles of his that had fallen under the suspicion of the CDF.³⁰

Thus started the second, external investigation of the CDF into Fr Flannery. What went before we will never know, as the first, internal investigation was carried out in complete secrecy, in line with the procedures described above. When Flannery was informed of the investigation or of developments in the investigation, it was through indirect routes as all contact from the CDF was directed through Flannery's superiors. Flannery recounts how he was initially passed a few sheets of plain, un-headed, undated, unsigned A4 paper which contained quotes from some of his articles, dating a few years back, and the objections to them listed underneath. He was also presented with a letter, addressed to his superiors, where the CDF requested that certain measures were taken in regard to Flannery. The letter did not address Flannery directly, but instead referred to him as the object of the desired actions of his superiors.³¹

The quotes from Flannery were from old articles concerning the development of the priesthood. Flannery states that he does not consider himself to be a theologian, but that his evangelical role lies in making intelligible to the laity the sometimes somewhat convoluted and lingo-laden works of theologians. His role was not to be a theologian but to offer a sort of "cliff-notes" for emerging theologies, as well as new theories in anthropology or archaeological discoveries that impact our understanding of the development of the Church. The CDF's criticisms did not, Flannery contends, take this into consideration, rather treating his articles as works of theology.³² Flannery also contends that the sentences objected to were divorced from their context. He will admit that when considered alone the sentences concerned did perhaps imply some error, but when the articles were taken as a whole, or even when the sentences were surrounded by one or two contextual sentences, their true meaning was apparent and the potential error was guarded against.

The letter that accompanied the allegations requested, firmly, that Flannery's superiors took the following action in the case of Fr Flannery; he was to be removed from active ministry,

³⁰ *Ibid*, 33-35

³¹ *Ibid*, 43-51

³² It is interesting to note that while Flannery protests his innocence of writing theology, Sr Johnson's protest was that she was indeed writing theology, and not a catechism. Flannery, *Question of Conscience*, 56-57

told to discontinue his column in *Reality*, undergo a period of ‘spiritual and theological reflection’ outside of Ireland (a demand Flannery experienced as a form of attempted exile, and a demand that Flannery managed to avoid), avoid all contact with the media, and resign from the ACP. These were to be the conditions imposed on Flannery throughout the investigation, although he refused to ever resign from the ACP.³³

Flannery asked a theologian friend, who remains anonymous, to aid him in writing a response to these accusations. He recounts the difficulty in producing a response that would be pleasing to the CDF but would not compromise his integrity, but finally he was able to produce a response that he was happy with.³⁴ Unfortunately, in the meantime the press had discovered that there was an investigation being held into Flannery’s works, but not the content of the investigation. This led to speculation in the Irish press as to the cause, many assuming that it was Flannery’s support of the ordination of women as priests, or his stance on certain moral issues that had got him into trouble.³⁵ At the same time, the head of the CDF, Cardinal Levada resigned and was replaced by Cardinal Muller, who is the current head of the CDF. This resulted in a shifting of the goal-posts and a demand from the CDF that Flannery’s statement included an explicit rejection of the possibility of the ordination of women and an explicit acceptance of all the Church’s moral teachings in their entirety.³⁶ At this point the process broke down, with Flannery unable to produce a statement that would be acceptable to both the CDF and his own integrity. His narrative ends in a place of limbo, with neither side able to find any common ground from which both parties could restart the conversation.³⁷

One of the most disturbing aspects of Flannery’s book is the effect this investigation had on Flannery’s emotional and spiritual health. Flannery speaks movingly of the fear and isolation engendered from the beginning of the process; from the refusal to give the purpose of the initial meeting, which led to a night of fear that there had been some allegation of sexual misconduct, to the isolation caused by the prohibition against discussing the very existence of the investigation. This human element, the fact that these investigations cause misery

³³ Flannery, *Question of Conscience*, 47-48

³⁴ *Ibid*, 88-95

³⁵ *Ibid*, 63-67

³⁶ *Ibid*, 96-103

³⁷ *Ibid*, 104-110, 120-139

and depression and crises of faith, cannot be forgotten during the necessary discussion of official processes and theories like Natural Law. These are not simply the irrelevant processes of some obscure organ of the Catholic Church. They have a real, human impact on those who are under investigation; an impact that I will argue is both unnecessary and avoidable.

1.3 Ratio Agendi and Natural Law

John Finnis, who holds a pre-eminent place in contemporary thinking on Natural Law defines Natural Law thus:

... (natural law can be formulated as) a set of basic methodological requirements of practical reasonableness (itself one of the basic forms of human flourishing) which distinguish sound from unsound practical thinking and which, when all brought to bear, provide the criteria for distinguishing between acts that are reasonable-all-things-considered (and not merely relative-to-a-particular purpose) and acts that are unreasonable-all-things-considered...³⁸

Natural Law is an aspect of philosophy that enjoys a strong history in Catholicism. The most famous proponent of Natural Law is Thomas Aquinas, the pre-eminent Catholic theologian of the modern period, much cited by the magisterium and theologians alike. In its opposition to homosexuality or same sex marriage or the use of contraceptives, officials of the Catholic Church often cite natural law as the basis of this stance. As such it is hardly unfair to expect the CDF, as the judicial branch of the Catholic Church, to adhere to principles of Natural Law, and its subsidiary Natural Justice, both when conducting its investigations and when enforcing its sentences.

There are several key themes running throughout the investigation of Fr Flannery that are worthy of close scrutiny and examination in the light of Natural Law. These are: the stricture of silence imposed on Flannery by the CDF throughout the investigation; the refusal on the part of the CDF to communicate directly with Flannery; and the denial of full access to community that was the result of Flannery's removal from active ministry.

1.3.1 The Rule of Law

³⁸ John Finnis, *Natural Law & Natural Rights (Second Edition)* (Oxford: Oxford University Press, 2011) p23

The Rule of Law (meaning the ideal form of legal rule) has, according to Finnis (2011), the following key features;

- I. Prospective, and not retroactive, laws. Whilst a law may be formulated to prevent repetition of a certain action, until that law has been formulated and promulgated, there is no legitimate way to condemn or punish this action.
- II. Laws that are not impossible to abide by.
- III. Laws that are efficiently promulgated, not only through the publication of legal documents etc. but also through the existence of a professional legal class, available for consultation to all citizens without barriers such as prohibitive fees.
- IV. Laws that are expressed in a clear and transparent manner.
- V. Laws that cohere one with each other.
- VI. Laws that are stable enough for citizens to be adequately guided by them. If a legal system is in a state of constant flux, where what is licit one day is illicit the next and licit again the third day, would be a system of laws impossible to abide by (See point II)
- VII. That Laws with limited applicability are guided by the clear, stable and promulgated general Laws. This ensures the congruence and continuity of the legal system, as well as enabling citizens to predict whether their actions will be licit or illicit without being acquainted with the finer points of the law.
- VIII. That those with authority to administer the Law are both accountable for the judgements they make and administer the Law consistently and in accord with the tenor of the Law
- IX. An independent judiciary.
- X. Open and transparent, public court proceedings.

- XI. A review/appeal process
- XII. Courts that are accessible to all citizens.

As will be shown below, the rule of law as implemented by the CDF falls short of several of these principles. It would be unfair to expect any judicial system to perfectly reflect each and every principle denoted here; after all, all worldly judicial systems are the work of human hands and so can only reflect Justice dimly and imperfectly. Again I say that it is not, however, unreasonable to expect the Church's judicial method to be better than most. The CDF, however, clearly fails to even approach meeting the requirements of the last five principles, and could be accused of failing principles 2-5 as well.

Laws that are not impossible to abide by –John Paul II defined the theologian as someone who fully accepts the teaching of the Catholic Church as a movement of faith, and who, having made this movement of faith, is granted the grace to fully explicate the Churches teaching. As such all theologians work must adhere faithfully to the catechism of the Catholic Church, never proposing any theology that falls outside of this catechism. If a theology outside of the catechism is to be described, it is to be explicitly condemned in favour for the theology expounded in the catechism. These interpretations of the role of the theologian have been accepted by the CDF and also played a heavy part in the criticism of Sr Johnson by the USCCB's Committee on Doctrine.³⁹ This definition of the role of the theologian in effect negates the possibility of being a theologian. The word 'theologian' is naturally applied to someone who studies God, and study is naturally understood to include questioning, debating and possibly refuting those theological principles that have gone before and those that are currently emerging. Under this definition, however, the theologian is reduced to a tool of repetition and amplification and little else. If the natural role of the theologian is to question and study, and the definition of theologian utilised by the CDF precludes these activities whilst the Catholic Church recognises the need for theologians within the Church, then the law that governs the mandates of Catholic theologians is impossible to adhere to.

³⁹ Galliardetz, *When the Magisterium Intervenes*, 184

This definition has practical implications as well, as, if a theologian is to maintain their career as such in an academic setting, i.e. as a university lecturer, then they are expected, and possibly contractually obliged, to produce new works of theology that help promote the department as a centre of theological learning and research. The faithful explication and repetition of catechism, while adhering to John Paul II's definition of the role of the theologian, will not produce many opportunities for career advancement or even maintenance. As such, the role of theologian as defined by John Paul II is one that will almost inevitably lead to the extinction of the Catholic theologian in the academic setting, outside of a few Catholic Universities, as if every Catholic theologian is only capable of reproducing one type of theology there is no reason for academic institutions to employ them, and there is no need for anyone to read them as they could simply read the catechism instead.

Laws that are effectively promulgated etc. – Catholic Laws are arguably the most extensively promulgated laws in the world. The Catechism is translated into many world languages, and several different publications of the catechism will be available from most well stocked Church piety stalls. Children receiving First Holy Communion and adults entering the Church are expected to receive catechism training as part of their formation, and if you are in a room with a group of Catholic adults of a certain age, you simply need to say “Who made you?” and the whole group will more likely than not respond “God made me” and continue to quote the penny catechism by rote. It should be noted that this response is less likely in the younger generation of Catholics, as Catholic formation has declined over recent decades, much to the consternation of many in the Church.

It cannot be said, however, that the Church provides the second form of promulgation: *the existence of a professional legal class, available for consultation to all citizens without barriers such as prohibitive fees.* Certainly there are canon lawyers within the Catholic Church, but they are not the sort of lawyers you can find in directory enquiries. There are no canon law solicitors who can take on a case, no chambers of canon law defence barristers. There is simply the Church Prosecution Service, as most canon lawyers work for the Church.

Bishops and Cardinals, as the ones who make up the CDF and Committees on Doctrine, could also be included in the ‘professional legal class’ of the Church, but for the fact that,

despite sitting on such committees, they do not all have qualifications in canon law. It would seem to me, however, that the bishop would be the first logical port of call for any citizen of the Church who finds themselves on either side of a doctrinal dispute. Gaining an audience with a bishop is no easy feat for the average citizen of the Church, however. After requesting a meeting, you can be waiting months, or even a year, before gaining an audience. As there are time limits placed on the indicated author in a Doctrinal Investigation, the lack of accessibility to the bishops and their secretaries presents an almost insurmountable barrier to the equivalent 'professional legal class' of the Church.

Laws that are expressed in a clear and transparent manner – expression of the law and promulgation of the law are not quite the same thing. Expression of the law deals more with how the law is applied to individual cases; how the law is seen to be done. As we have discussed above, the first part of the investigation carried out by the CDF is an internal, secret investigation, and above this, the indicated author or other interested parties will not necessarily have access to all the documentation produced by the primary investigation, only those the CDF considers 'necessary' to mount a defence. This is clearly contrary to the principle of law being expressed in a 'clear and transparent' manner.

Beyond the obvious problems posed by the secret nature of the investigation, there is a second problem with the expression of law by the CDF. As the expression of law includes the application of law to each individual case, so the conclusion of that investigation and the judgement provided on the indicated author's work should engender a general feeling of clarity on the case. In both the cases of Fr Flannery and Sr Johnson, however, they report a great feeling of confusion in the face of these judgements.⁴⁰ As original statements were divorced from all context in the judgements provided, and used to reach conclusions that were never intended, both state that they felt that the CDF were reading something completely different from what was originally written. This is neither a clear nor a transparent expression of the law. A transparent expression of the law would involve including all contextual statements around the original statement in question, in an effort to ensure that the intention of the indicated author is fully understood and not assumed to be something it is not.

⁴⁰ Flannery *Question of Conscience*, 44-51: Galliardetz, *When the Magisterium Intervenes* 246-249

Laws that cohere with one another – In the case of the LCWR, the perception amongst many was that the nuns represented by the LCWR were being criticised for focusing more on practicing Christian charity than preaching Catholic moral doctrine. The nuns were in particular criticised by the CDF for not vocally proclaiming the Catholic Church’s position on homosexuality during their work with LGBTQ+ youth and not promoting a strong anti-abortion or abstinence only position in youth work more generally. The criticisms of the nuns work with LGBTQ+ youth in particular show how the obligations of Christian charity and Catholic moral doctrines, as interpreted by the CDF, do not cohere. The official Catholic position in regard to LGBTQ+ people can be summed up as ‘hate the sin, love the sinner.’ In the case of LGBTQ+ youth, who experience disproportionate levels of physical and sexual abuse, homelessness, drug and alcohol dependency, and suicide, it would be reasonable to assume that ‘loving the sinner’ would involve addressing these issues and attempting to alleviate them. Housing the homeless, protecting the abused, treating the sick are all works of Christian charity that Catholics are expected to engage in. This was exactly the sort of work that many members of the LCWR were involved with.

It would also be reasonable to assume that ‘loving the sinner’ would also involve a recognition of the fact that telling a young member of the LGBTQ+ society facing these problems that they are ‘intrinsically dis-ordered’ or being called by God to a life of celibacy, will in no way help them face and tackle the more immediate problems of their homelessness or drug/alcohol dependency or suicidal ideation, and it certainly will not help in the cases of LGBTQ+ youth facing abuse at home, whose parents probably tell them the exact same thing, with varying levels of viciousness.⁴¹ To insist, then, that the nuns promote this message to the LGBTQ+ youth they work with is, in fact, probably contrary to ‘loving the sinner’ as it can only work to further damage an already vulnerable social group, and undermine the more practical help that is being offered.⁴² As such the rules governing the Catholic duty to others through charity and the moral teaching on homosexuality, have been

⁴¹Alex Morris “The Forsaken, A Rising Number of Homeless Gay Teens are being Cast Out by their Religious Families” *Rolling Stone Magazine*, September 3rd 2014 Accessed September 9th 2014 <http://www.rollingstone.com/culture/features/the-forsaken-a-rising-number-of-homeless-gay-teens-are-being-cast-out-by-religious-families-20140903>)

⁴² Nic Holas “Gay or Transgender Youth Feel Alienated by Faith-Based Homeless Services” *news.com.au* September 8th 2014 Accessed September 9th 2014 <http://www.news.com.au/national/gay-or-transgender-youth-feel-alienated-by-faithbased-homeless-services/story-fncynjr2-1227050043638>)

pitted against one another and cannot be said to cohere. Christian charity demands the preferential treatment of the poor and oppressed, it demands that the social evils of homelessness and drug abuse and so on and so forth are addressed as a matter of priority, regardless of who is experiencing those social evils. The Church's moral teaching (as interpreted by the CDF), however, asserts that opposition to assumed sin must be proclaimed even if it undermines or obstructs the carrying out of works of charity. These are incoherent laws, where one negative law works to frustrate the implementation of the other positive law.

Finally, expecting people to 'hate the sin, love the sinner' in regard to LGBTQ+ people lacks internal coherence. A person's identity cannot be divorced from their sexuality or gender as they are both often integral parts of the former. In order to 'hate the sin, love the sinner' the sin has to be a purely external act, that does not speak to an innate aspect of the person themselves. It is possible to hate the act of stealing, and yet still love and show compassion for the thief in their entire self, as 'thief' is not an innate, integral aspect of a person's self. Once, however, you try to hate that which is an external expression of an innate personality trait you are, in fact, hating the sinner, as you are hating their expression of their selves. As such attempting to 'hate the sin, love the sinner' in the case of LGBTQ+ people will almost inevitably result in the sin of hating the sinner. Additionally, by recognising the sexuality of LGBTQ+ people (the Church does not recognise the validity of the gender identity of Trans and Non-Binary people) as part of their innate, created self, they are imputing a necessary sinful consequence to the expression of an aspect of a person that God has created. To suggest that God may create something whose expression will only and inevitably result in sin is to reject the perfect goodness of God's creation, and indeed the perfect goodness of God's self.

That those with authority to administer the Law are... accountable for the judgements they make... - The *Ratio Agendi* includes several points where the CDF are to submit their decisions to the Pope. Section 3 Article 15 (The Ordinary Procedure of Examination) states that when the first, internal investigation is drawing to its conclusion, just before the indicated author's Ordinary is informed of the investigation, the decision of the *Ordinaria* is to be submitted to the 'Supreme Pontiff', and again in Article 22 the decision is referred to the Pope before the indicated author is informed of the investigation. Section 4 Article 26

(Examinations in Cases of Urgency) likewise refers to the decision of the *Sessione* being brought before the Pope for his approval. In all these cases there is, however, no exposition of the actions available to the Supreme Pontiff at this point, and it is not clear whether the Pope could decide to veto the decision of the CDF. While it may be presumed that the Pope would have power of veto, this is not clearly stated in the *Ratio Agendi* and so there is no real accountability to be found in *Ratio Agendi*. Accountability cannot be defined as simply reporting your actions to someone higher up in the hierarchy, even if that person is at the top of the hierarchy. As such all that is explicitly demonstrated is the expectation of communication between the CDF and the Pope. While it may be totally reasonable to assume that the Pope would have some power of veto, given more general powers of the Pope within the Roman Catholic Church as head of the Roman Catholic Church, the lack of explicit definition of the role of the Pope as Supreme Pontiff in the process of an investigation, and the powers that the Pope may legitimately wield in such an investigation means the citizens of the Church cannot be sure of accountability in this process, but are left to infer it. There is, likewise, no discussion of procedure in a case where the Pope does not accept or agree with the conclusion of the CDF. This could suggest the quite worrying assumption that the Pope will always agree with the conclusions of the CDF, in which case the whole purpose of accountability is frustrated, as accountability is a process in which there has to be the possibility of disagreement over drawn conclusions and provisions for such disagreements to be resolved. The *Ratio Agendi* makes no such provisions and so cannot claim to support the principles of accountability.

An independent judiciary – as all members of the CDF are members of the Catholic hierarchy, Bishops, Cardinals etc. and act collectively as prosecution, defence, judge, and jury, they cannot be described as an independent judiciary. The lack of a professional class of *Relato Pro Auctores*, or defence barristers qualified in canon law, and the appointment of *Relato Pro Auctore* by the CDF rather than the indicated author, likewise illustrates the lack of independence of the judiciary within the investigations carried out by the CDF.

Open and transparent, public court proceedings – Given that the primary, internal aspect of the investigation is, by the CDF's own admission, held in complete secrecy, it is simply impossible to claim that the *Ratio Agendi* is either open, transparent or public.

A review/appeal process – The *Ratio Agendi* clearly and explicitly makes no provision for a review or appeal process.

Courts that are accessible to all citizens – Given that the primary, internal investigation is populated solely with people appointed by the CDF, and sworn to absolute secrecy, the CDF cannot be described as a court that is accessible to all citizens.

I believe therefore that having critiqued its core principles on coherent, rational grounds, *Ratio Agendi* as a judicial process either falls short of living up to many of the expectations of the Rule of Law, or fails completely to meet those expectations. As I have said, it would be unreasonable to expect any legal system to perfectly reflect the Rule of Law, but of the twelve rules, there were only three where the CDF and *Ratio Agendi* meet their requirements; prospective over retroactive laws, laws which are stable enough to be predicted by citizens, and judgements of limited applicability being guided by stable general laws. Three out of twelve is a poor mark for any legal system, but is a deeply worrying score for a legal system that is considered to be divinely guided.

1.3.2: Human Flourishing and the Fundamental Good of Knowledge

*This secrecy thing again! What was this awful accusation against me that could not be mentioned over the 'phone? Was it of such terrible moment that it would burn the telephone wires?... I had enough information to know for sure that my life was about to be turned upside down.*⁴³

The investigation into Flannery was, for a long time, shrouded in secrecy and rumour. It was, in fact, so shrouded in secrecy that, when the CDF finally decided to involve Flannery in the process via his superiors in the Redemptorists, the Irish Provincial of the Redemptorists was initially prohibited from telling Flannery the purpose of the meeting he was requested to attend, and it was not until Flannery refused to attend any meeting without prior knowledge of its content that he learned of the investigation by the CDF into his writing.⁴⁴ Having learned the purpose of the meeting, however, Flannery found that he too was

⁴³ Flannery, *Question of Conscience*, 35-36

⁴⁴ *Ibid.* 34

prohibited from discussing the investigation with anyone.⁴⁵ This was Flannery's first introduction to the secrecy of the CDF, reinforced through Flannery's pre-emptory removal from active ministry and injunction not to have any contact with the media. His weekly article in *Reality* was to be discontinued.

Flannery makes it clear in his book that he does not consider himself a theologian.⁴⁶ He, instead, considers his role to be one of translation; Flannery attempts to translate the sometimes complex and overly academically expressed theories of theologians (by theologians, for theologians) into concepts that are not only intelligible to the non-theologically trained lay, but also more obviously applicable to their faith and lives. Flannery, then, attempts to occupy a space between mediator and educator. Even before his role in the ACP and subsequent investigation by the CDF propelled him to infamy, he was a well-known and widely appreciated columnist and had that peculiar form of fame one can have in the Catholic Church.⁴⁷

The CDF could be accused of having a certain fondness for censorship. Certainly it would seem to be the go-to response to any theologian who will not capitulate to the CDF's demands. Flannery mentions knowing of five other priests in Ireland whose work routinely has to pass through Vatican censors before being published. The CDF has ordered books by religious such as Lavinia Byrne to be pulped, and removed the teaching authority of Hans Küng in the hope that this would lead to his losing his chair at Tübingen University.⁴⁸ This reliance on censorship, I believe, stands in direct contradiction of some of the most basic principles of Natural Law.

When considering the basic forms of human flourishing (or basic human good/values, as they will be referred to hereafter) Finnis dedicates an entire chapter to the basic human good of knowledge.⁴⁹ This is not due to him considering knowledge to be the primary basic human good (Finnis states that the forms of basic human good are fundamentally incommensurate, as each form of human good he identifies could be argued to be the most

⁴⁵ *Ibid.* 36

⁴⁶ *Ibid.* 56-57

⁴⁷ A level of fame akin with being one of the more obscure guests of Radio 4's *Desert Island Discs*.

⁴⁸ As it happened, Tübingen simply offered Küng a different chair in the Protestant faculty.

⁴⁹ Finnis, *Natural Law*, 59-74

important, and so there is no rational hierarchy in which they can be placed and any hierarchy in which they are placed is purely subjective),⁵⁰ but certainly one of the most self-evident. Little further explanation is needed when someone justifies their actions as a quest for knowledge.

In justifying their frustration of both the basic human value of knowledge and the common good of imparting knowledge, the CDF will claim to be protecting the faithful from dangerous error which could lead them astray and off the path to salvation. Whilst censorship may be bad the eternal nature of the risk posed to the Church, and particularly the lay of the Church, by heretics, apostates or those simply in grave error, justifies the use of a method that is otherwise to be condemned. This form of 'greater good' or 'costs analysis' approach to justice, or indeed any sphere of moral action, is, however, denied to those who claim to follow the precepts of Natural Law. As Finnis argues that the basic human values are incommensurate, and that any ordering of these values into hierarchy is subjective at best and sentimental at heart, any form of balancing of positive consequences against the negative act of acting against a basic human good is both 'arbitrary and delusive.'⁵¹ As such, we can see that the CDF's continued use of censorship both stands in contradiction to the principle of knowledge as a basic human good and engages in the fundamentally irrational and futile justification of consequentialism.

1.3.3 The Fundamental Good of Community

If I had kept these developments to myself rather than sharing them with people close to me, I would probably be going for psychological help rather than to a meeting in Rome. It was my first clear indication of the inhumanity of the process engaged in by the Vatican and by those who carry out their orders.⁵²

Finnis includes in his taxonomy of basic human goods the good of sociability or friendship. He states that at its weakest form this is a general peace or harmony amongst individuals,

⁵⁰ *Ibid.* 92

⁵¹ *Ibid.* p118-19

⁵² Flannery, *Question of Conscience*, 41

and at its strongest is a willingness to act for the sake of or well-being of another person.⁵³ As has been previously discussed, basic human goods are incommensurate and so the psychological effects of the silence imposed on those investigated and the discord these investigations cause both within academic theological circles, and between Catholic communities, are not beneath the notice of Natural Law.

The stricture of silence and removal from ministry that Flannery was placed under worked to make Flannery withdraw from his friends and community. As is natural in humans, his feelings of isolation, exacerbated by the indirect nature of communication with the CDF, lead him to isolate himself. This is a natural and foreseeable consequence of the manner in which the CDF conducts its investigations. Flannery was unable to officiate over any baptisms, weddings or funerals he was asked to, but was also unable to explain his reasons for refusing. This would understandably create many awkward and painful situations for Flannery and those who knew him well enough to request him specifically. The only option available to Flannery to avoid such situations would be to avoid the people of his parish in general. Indeed, the CDF seemed intent on separating Flannery from his community; not only was he ordered to dis-associate himself from the ACP and resign as a member of their leadership team, he was also ordered to go on a period of retreat and reflection, preferably not in his native Ireland. Flannery repeatedly speaks of this as an attempted exile.⁵⁴

This attempt to remove Flannery from a community that could and probably would offer him its support clearly works to frustrate the fundamental good of friendship; a baffling thing to do as part of an organisation that preaches the ideal of a loving community of friends.

1.3.4: Collaboration/Reciprocity in Governance

It is important to note that the CDF was ordering Michael Brehl to give me these instructions, because spokespeople for the Vatican have often claimed that matters to do with the

⁵³ Finnis, *Natural Law*, 88

⁵⁴ Flannery, *Question of Conscience*, 74-77

*disciplining of religious is solely the responsibility of the relevant religious superiors. In my experience, this was clearly not the case.*⁵⁵

Throughout the investigation conducted by the CDF, all communication was held with Flannery indirectly through first the Irish Provincial and then through the Superior General of the Redemptorists, Michael Brehl. Flannery had, at the time of publication, no direct contact with the CDF or any Vatican official other than Brehl. The implementation of the judgements of the CDF through the disciplinary procedures of the Religious Order is essentially a case of the CDF attempting to eat its cake and have it. As Finnis points out:

*There is ... an essential component of collaboration and reciprocity in the enterprise of subjecting human conduct to the governance of legal, as distinct from merely managerial, norms.*⁵⁶

Through electing the politicians who formulate new laws and through testing those laws in court (usually by breaking them) 'the people' have a collaborative relationship with the secular legal system under which they live. Whilst it may be tempting to say that the divine nature of dogmatic law as distinct from secular law means this reciprocity is absent in the creation of and protection of doctrinal law, the history of the development of doctrinal law belies this idea. Doctrinal law was created through Council, which could be seen as analogous to parliament. Each Bishop represented his constituency or diocese, and certainly at the time of Nicaea, each bishop would have been confirmed in his diocese by a laying on of hands, analogous to a local election. As such there was, in the earliest developments of doctrinal law, a recognisable level of collaboration and reciprocity from the whole Church in their creation. And certainly canon law is open to collaboration, for they have been re-codified several times throughout history; a task that I would argue is inherently collaborative.

For the CDF to claim to be a judicial body, it has to be open to this collaboration and reciprocity, but by refusing to deal directly with the defendant, and instead exerting its will through the managerial norms that are the disciplinary process of any organisation, religious

⁵⁵ *Ibid*, 98

⁵⁶ Finnis, *Natural Law*, 9

or otherwise, the CDF denies the most basic form of collaboration open to the people; that of testing law in court.

1.4: The CDF and Natural Law – Conclusion

At its most simplistic level, Natural Law can be understood as the divine justice that God built into the fabric of the universe during its creation. They are rules as immutable as the laws of physics, despite humanities ability to act against them. To act against Natural Law is, from a Catholic point of view, to work against God's Law. There is a deep and unsettling irony that the branch of the Catholic Church set up to safeguard the deposit of the faith, to uphold the teachings of God, can be so clearly demonstrated to work against several major principles of Natural Law. Most disturbing, I would argue, is their catastrophic failure to abide by the majority of the principles of the Rule of Law.

The consequences of this failure is that an organisation that is meant to model Divine justice to the secular world in fact models a system of injustice.

In many ways, and despite its intention, the CDF has contributed to undermining the authority and credibility of the church in the world and among its own constituents. Many conclude that it has stifled the spirit in the Church and impeded the Church's dynamic development in communities.⁵⁷

The failure of the Catholic Church to model Natural Law in their judicial process has three key ramifications. The first of these is that in secular countries where their justice system is demonstrably more in line with Natural Law, the failure of the Catholic Church to live up to its own ideals may make the Church seem irrelevant. Secular approaches, it would appear, bring us closer to the ideals demanded by God than the Church's approach has, and so the Church loses not only credibility but relevance.

Secondly, the Church's failure to model Divine justice creates hypocrites-by-association out of those members of the Catholic Church who speak out against unjust and corrupt secular judicial systems. Those Catholics who protested the military regimes and dictators of Latin

⁵⁷ BE Hinze "A Decade of Disciplining Theologians" in *When the Magisterium Intervenes* ed. RR Galliardetz, 37

America or the former USSR did so, and do so, against a backdrop of a Church hierarchy that does not show the same concern for its citizens that it demands from secular governments.

The final ramification of this failure to model Natural Law when dealing with dissident Catholics is the creation of a climate of fear amongst not only theologians, but the laity more widely.

For the greater part of the history of the Church, theologians did not traditionally labour so universally under the fear that what they say might jeopardise their careers, livelihoods, and personal as well as families' well-being. But they have done so for the last two decades or more at least.⁵⁸

This climate of fear exists in a religious organisation where the most common phrase in their scripture is 'Do not be afraid!' This injunction not to fear is usually a direct command from God; the God of scripture is one that wants to dispel fear, who wants humans to find comfort in His presence. The actions of the CDF, in failing to uphold the most basic principles of Natural Law, also work against the most often repeated command of the God they try to serve.

⁵⁸ G Mannion, "Magisterium as a Social imaginary: Exploring the Old Problem in a New Way" in *When the Magisterium Intervenes* ed. RR Galliardetz, 137

2: The Methodological Approach of the CDF in Investigating Dissident Catholics

Whilst it is clear that many theologians are deeply concerned by the unjust judicial methods utilised by the CDF during a doctrinal inquiry, most complaints tend to focus on the discrepancy in theological methodological between the CDF and the author's it investigates.

As Ormond Rush puts it:

Both the propositional and ahistorical models would generally conceive the role of theologians as exclusively concerned with preserving the fides quae creditur in its propositional and ahistorical integrity. The personalist and historical models would understand the role of theology as one of exploring the hermeneutical circle between the Church's official fides quae creditur as taught by the magisterium and the contemporary fides qua creditur, and to see the entry point into that hermeneutical circle as being the discernment of how people are attempting to live the faith in contemporary circumstances (as expressed in the sensus fidelium).⁵⁹

When discussing the criteria by which doctrinal errors will be assessed *Ratio Agendi* states the *Consultors* must judge the errors by

... specifically identifying these in light of the different categories of truth-propositions found in the Professio fidei.⁶⁰

It is rare for a theologian to use the propositional methodology these days. Methodology has developed, particularly since the onset of modernism and the rise of inter-disciplinary theological projects, which utilise theories and methodologies found in other disciplines such as the social sciences, historical criticism etc. but the theological methodology of the Magisterium has actively resisted such changes ever since the publication of the Syllabus of Errors and the rise of Neo-Scholasticism in response to the perceived threat of modernism. This creates a situation where those who are to judge the work of an indicated author are working from a completely different framework from that which the indicated author worked within. It would be akin to a doctor trying to diagnose a patient suffering from

⁵⁹ Ormond Rush "The Prophetic Office in the Church: Pneumatological Perspectives on the Sensus fidelium-Theology-Magisterium Relationship" in *When the Magisterium Intervenes*. ed. RR Gaillardetz. 100

⁶⁰ *Ratio Agendi* Article 13

radiation sickness using the four humours. The method of diagnosis is not only antiquated and anachronistic, but inadequate as understanding radiation sickness requires knowledge of human anatomy that cannot be incorporated into the theory of the four humours.

As has been briefly mentioned above, this conflict over theological methodology extends to conflict over the role of the theologian within the Church. As Galliardetz says in his introduction to *When the Magisterium Intervenes*:

Pope Pius XII, in his encyclical Humani Generis, limited the task of the theologian to that of faithfully explicating that which was proclaimed by the Pope and bishops. Theologians were teachers of the faith only by virtue of a delegation of authority from the bishops. They were expected to submit their work to authoritative scrutiny and potential censorship of the magisterium. 'Dissent,' understood as the rejection or even questioning of any authoritative teaching of the magisterium, was viewed with suspicion as an attack on the authority of the magisterium itself.⁶¹

Whilst the theologian may consider themselves to have an academic duty to faithfully explore all aspects of a theological argument, the Church considers theologians to have a duty to faithfully replicate the teaching of the magisterium and satisfy themselves with that. It was precisely this discord between the definitions of the role of the theologian that underlines much of the criticisms the USCCB made of Sr Johnson, who was several times criticised for presenting the arguments of other theologians that have been condemned or rejected by the Catholic Church. Sr Johnson maintains that, as she was writing a theological text and not a catechism, it was perfectly legitimate for her to include varying interpretations of doctrine in order to compare and contrast these positions.

It appears that part of the present difficulty stems from the Statement's reading my book as if it belonged to a genre other than theology. Theological research does not simply reiterate received doctrinal formula but probes and interprets them in order to deepen understanding. To do this well, theology throughout history has articulated faith in different thought forms,

⁶¹ RR Galliardetz, introduction to *When the Magisterium Intervenes*, ed. RR Galliardetz, xi.

*images, and linguistic expressions. Its work employs all manner of methods and ideas taken from other disciplines in order to shed light on the meaning of faith.*⁶²

Further, she states:

*It appears, however, that the Committee on Doctrine holds that certain formulas such as 'Jesus is ontologically the eternal Son of the Father' must be explicitly used and a specific metaphysical system adopted in order for any discussion to pass muster... No matter what the context or the question under review, the basic truth must be expressed in an explicitly determined set of words, words assumed to have a certain a-historical, unchanging meaning, or it is judged to be not in accord with Catholic teaching. These precise phrases themselves, such as the one above, are not biblical, creedal, or conciliar. Could it be said that this demand presented by the Statement is like Neo-Scholastic theology insofar as it focuses on certain propositions as the litmus test for right-thinking theology?*⁶³

How one conceives the role of the theologian is central to determining the methodology one will use when producing theology. If, as the CDF maintains, the role of a theologian is faithful replication of doctrine, then all theology is a form of catechism and the acceptable formulation of those theological ideas is pre-ordained. If, however, you conceive the role of a theologian as one of exploration and development, examination of theological ideas currently unrecognized or rejected by the Magisterium is necessary in order to provide a counter point to the traditional, orthodox positions. Without the counter point provided by heterodox interpretations, without a range of ideas and interpretations of dogma and doctrine, the possibility of exploration of ideas is massively curtailed.

The USCCB's document *Bishops as Teachers, A Resource for Bishops (18.04.11)*, published during the investigation of Sr Johnson, contrasts the academic freedom of theologians and the pastoral obligation Bishops have towards the safeguarding of the deposit of the faith.

The legitimate academic freedom of Catholic theologians, then, is understood like any other freedom, with its own appropriate limits and its own ordering to human flourishing. At times

⁶² Sr Elizabeth Johnson "To Speak Rightly of the Living God: Observations by Dr E Johnson, CSJ" in "The Elizabeth Johnson Dossier" in *When the Magisterium Intervenes*, ed. RR Galliardetz, 214

⁶³ *Ibid.* P244

*it may seem to conflict with the pastoral freedom and, in fact, the pastoral obligation of the bishop to protect the authenticity of the faith and the spiritual good of the faithful.*⁶⁴

The highlighting of the limits of a theologian's freedoms, without any consideration of the correlating limits on the freedom of bishops to intervene in the work of theologians, is a common theme throughout the documents relating to both Sr Johnson and Prof Küng. The general mistrust in the academic ability and rigorousness of theologians by, at the very least, the Bishops of the USCCB (one of, if not the, most powerful Bishops' Conference in the world) is nowhere more clearly stated than in the following quotation:

*To be sure, as in other disciplines the most effective check on fruitless investigations is the vigorous exercise of peer review, critique, and dialogue, **as once was a strong tradition in the theological disciplines.** When that peer review is absent or ineffective, however, it is the responsibility of the bishops to make the call and to declare, if necessary, certain notions out of bounds, the bounds of Christian revelation.*⁶⁵ (Emphasis mine)

This quotation quite clearly states that peer review, critique and dialogue, ideals that most academia is built on, is in decline amongst theologians, without providing any evidence to back up this claim. It is difficult to see how theologians and bishops can ever work together without theologians becoming completely subservient to the Magisterium if this is the sort of attitude bishops have towards theologians. If bishops and theologians cannot even agree over the role of a theologian in the Catholic Church, how can they be expected to agree over the methodologies employed by theologians?

The discussion below will mainly focus on *Infallible?* By Prof Hans Küng, but the case of Sr Johnson is equally relevant as in both cases the lack of concord between the methodologies of the Magisterium and the theologian are, I would argue, quite clearly the main cause for the disagreement.

2.1 Brief Analysis of Küng's *Infallible?*

⁶⁴ "Bishops as Teachers, A Resource for Bishops" in "The Elizabeth Johnson Dossier" in *When the Magisterium Intervenes*, ed. RR Galliardetz, 206

⁶⁵ *Ibid* P206

Küng's book, *Infallible?*,⁶⁶ was arguably the most controversial work of his career. Its publication, and subsequent condemnation by the CDF, even made headlines in secular papers and propelled not only a relatively unknown Catholic theologian into the limelight, but also the lesser known organ of the Vatican, the CDF. Küng may have felt safe in the post-Vatican II Church to question Church doctrine. After all the Church was exhorted to open up its windows and let the Holy Spirit in, but the CDF's response, and their continuing feud with him (which, it must be admitted, Küng has done little to defuse) has shown that, despite all the rhetoric of the Second Vatican Council, concepts of dialogue and openness do not seem to have permeated through the Vatican as far as the CDF, or at least they certainly had not in the 1970's.⁶⁷

Infallible?, whilst being critically engaged with papal infallibility, can more accurately, certainly for the first half, to be seen as a critique of the Roman methodology of theology, rather than a critique of the doctrine itself. If there is not an old adage that states 'bad theology produces bad dogma', then there certainly should be. Catholic theology is unfortunately like a mangrove swamp; whilst each tree trunk may be distinct from the other, their roots are so tangled and intimately entwined that it becomes impossible to describe one root system without discussing many. And this is speaking through a purely theological lens; once sociological, historical, political and psychological filters are added to the lens even the tree trunks start to knot into one another. This is why in order to talk about infallibility, Küng had to discuss the 1968 encyclical of Pope Paul VI *Humanae Vitae*, and the theological and political implications and motivations of this document.

Humanae Vitae confirmed the edicts of Pius XII in condemning the use of artificial contraception in all forms. The contraceptive pill was becoming more widely available and its use more widely accepted within Western societies and the Church was compelled to respond to this emerging trend. Paul VI found himself in an incredibly difficult position; many of his bishops, and the majority of lay people consulted, were supportive of a change in Church teaching that would be permissive on the issue of contraception. On the other

⁶⁶ Hans Küng *Infallible?* (London, SCM Press, 1994)

⁶⁷ The parallels between the Küng case and the more recent case of Sr Johnson would suggest that these principles are, indeed, yet to reach the CDF.

hand, if the Church was to change its position, Paul would be directly contradicting the edicts of Pius XII.

*This certainly put him in a difficult position when the theologians drew his attention to the fact that a papal announcement of the mere possibility of a change, the appointment of a commission to investigate the whole question, and the intense theological debate that had broken out in the meantime, clearly demonstrated the doubtfulness of the obligation to observe the birth control ban, for the ancient Roman principle *lex dubia non obligat*, a doubtful law is not binding, holds good under catholic general moral theology.⁶⁸*

Küng notes that this document came at a time when it had become impossible to deny error in past Church teaching (burning Copernicus and incarcerating Galileo come to mind) and yet there was a real fear that to admit fallibility in one area was to admit the total and universal fallibility of the Church,⁶⁹ undermining the promises Christ makes to his Church in the gospel. In other cases this forced Church leaders to indulge in the most spectacular displays of semantic acrobatics in order to gloss over or drastically reinterpret the facts of the past, but that simply was not possible in the case of *Humanae Vitae* as previous Popes had been so explicit in their condemnation of contraception. *Humanae Vitae*, being (Küng argues) a blend of Aristotelian, Platonic and Thomistic philosophies with no real scriptural basis, claims to be a formal proclamation of Catholic teaching otherwise accepted and proclaimed universally by Catholics (or at least, Catholic leadership) as part of the *Ordinary Magisterium*.⁷⁰ Given the questioning of Church's authority and scrutiny of its track record that was occurring at the time, it was politically expedient to be able to hold up a formal proclamation that seemingly was supported by the universal teaching of an un-erring Church and so supported the idea of an un-erring Church with a coherent universal teaching.

This was, however, a distortion of the Truth. *Humanae Vitae* claims infallibility through the ordinary magisterium, but many bishops and laity advised against it, and so it was not, in fact, universally proclaimed (to say nothing of the fact that there are so many bishops and

⁶⁸ Küng, *Infallible?*, 35

⁶⁹ *Ibid* 28

⁷⁰ *Ibid* 31

minor Church leaders who have been entirely forgotten, lost in the mist of time, and so their position on the subject cannot be verified!) Even Paul VI implicitly accepts that there is not, in fact, universal assent as he stated “the ‘**overwhelming majority** of the Church’ has given the encyclical their ‘assent and obedience’.”⁷¹ As the teaching has been denied, publically, by a considerable minority of bishops, and has been overwhelmingly rejected by Catholic laity, and indeed still is rejected by the majority of Catholic laity, claims of universal assent were dubious at the time and remain so.⁷²

Küng argues that the reason Paul VI was willing to be so shamefully dishonest was because of the pressure right-wing members of the Curia were putting on him, and their insistence that to do anything but condemn contraceptives would undermine infallibility; a doctrine that, to them, is the very core and foundation of all Church authority.⁷³ In the end, Paul VI (unsurprisingly) decided to maintain infallibility by maintaining the prohibition of contraceptives, against all theological and experiential evidence that he should do the opposite. And this will forever be the case with any Church teaching now that infallibility has been officially defined. Eventually, one Pope is going to have to denounce previous Popes and take the Church in a new direction. But every Pope who does not do so is yet another Pope who will have to be eventually denounced.⁷⁴ The Church is held hostage to a doctrine that, Küng argues, is not even theologically well formulated.

Küng’s objections to the formation of the doctrine of infallibility are these:

It is a-historical.

Whilst Küng accepts that there has been a long held idea of the Church being in some way infallible, he argues that until the First Vatican Council, this was not interpreted as a literal or personal infallibility (and in fact had not really been defined at all).⁷⁵ Church hierarchy is based on the idea of apostolic succession, and this is important to the Church as there were

⁷¹ *Ibid* 35 Emphasis mine.

⁷² Michael Lipka, “Majority of US Catholics’ Opinions Run Counter to Church on Contraception, Homosexuality.” *Pew Research Centre* September 19th 2013 Accessed on September 11th 2014 <http://www.pewresearch.org/fact-tank/2013/09/19/majority-of-u-s-catholics-opinions-run-counter-to-church-on-contraception-homosexuality/>

⁷³ Küng, *Infallible?*, 46-52

⁷⁴ *Ibid.* 43

⁷⁵ *Ibid* 54-56

key promises made to the apostles; that the Holy Spirit would keep them in the Truth of God. The hierarchy, then, are the agents of this promise, just as the apostles were. Küng points out, however, that there is no evidence that the apostles considered themselves to be in any way personally infallible, nor were they considered infallible by wider Christian community. And it would be hard to do so, considering how publically Peter got it wrong when he denied Christ during his passion, or how openly Paul was willing to question Peter 'to his face'. In fact, to arrive at a scriptural justification for any one person or body of people to claim infallibility, the Scripture must be read in a most peculiar way.⁷⁶

Another aspect of the doctrine of infallibility that makes it, arguably, a-historical, is its reliance on certain 'proclamations' made by Church Fathers etc. that have later been proven to be forgeries. This creates a deep fissure of irony in the doctrine of infallibility as infallibility involves a certain amount of cyclical thinking. Vatican I defined a new form of infallibility and that was the infallibility of the ordinary magisterium; that is, that that which had been universally taught or proclaimed was infallible teaching. Once Vatican I had defined this form of infallibility, it could then claim that the infallibility of the Church (which particular form of infallibility they don't state) had been proclaimed universally through the Church and so was infallible, and they had the documents to prove it. But the documents do not, in fact, show that infallibility was universally proclaimed. In fact they show the opposite; that infallibility was so little proclaimed that people needed to resort to forging examples of its proclamation.

This form of ahistorical thinking and proclamation can be seen throughout the Church. For example, listening to Church leaders today, one would get the impression that the Catholic Church has always held a complete prohibition on abortion as all life begins at the moment of conception. This, however, is not the case. Augustine, it is true, preached against abortion, but specifically in the case of married couples, as the abortion was evidence that the sexual activity was concupiscence, and therefore sinful. Aquinas believed that the soul was not given to the foetus until the 'quickenning' or the first time the mother felt the child move in her womb. And, in fact, there is no absolute prohibition against abortion even

⁷⁶ *Ibid* 55

today, as the Church recognises the validity of abortion in the case of an unsustainable pregnancy or where the pregnancy poses a serious health risk to the mother.

It is un-scriptural.

In order to find a scriptural basis for infallibility, one must force a causal link between three otherwise unconnected passages and read between the lines (what could be termed the ‘mash-up’ technique). Matthew 28.20 is the starting point, with the promise that Christ would remain with the apostles. From there we move to John 14.16, where we learn Christ will remain in the form of the Holy Spirit. We then leap to Luke 10.16 where the purity of the proclamation of the apostles and their successors is assured, and with a hop, skip and a jump we arrive at infallibility. This is certainly one way to interpret the Scripture, although not perhaps the most obvious one. Certainly these passages could also be used to support the ‘indefectibility’ or ‘perpetuity’ of the Church that Küng suggests would be much better concepts to use than infallibility.⁷⁷

Similar use of ‘mash-up’ techniques can be seen in many Church documents. Popes and bishops will flit from one book, chapter, or verse to another like butterflies to flowers, taking what they need from this, cross pollinating it with the bits they need from that, and coming up with hybrid interpretations that fail to consider the text as a whole or even in its wider context. An obvious example of this would be the Church’s positional statements on LGBTQ+ issues, which will make much of Leviticus, but refuse to put these scriptural snippets in the context of a long list of purity laws that also technically prohibits the wearing of poly-cotton shirts.

The obvious political and social motivations behind the defining of infallibility.

Küng points out that, in the definition of infallibility, we have the first example of the Church defining something that was not in immediate need of defining.⁷⁸ Nobody was claiming that the Pope or hierarchy were completely incapable of speaking correctly; of being fallible to the point of total incompetence. The temporal authority of the Pope was, however,

⁷⁷ *Ibid* 149-152

⁷⁸ *Ibid* 72-76

challenged. The Church had lost the Papal States and the Pope had had to live in exile for many years. Not only was the temporal authority of the Vatican being challenged, the general authority of the Church was being challenged by modernist/humanist/secular philosophies.

As a result of this historical constellation, or historical predicament, into which a Church leadership that had ceased to understand the signs of the times and was always too late had largely manoeuvred itself, it was almost inevitable that Vatican I, in complete contrast to Vatican II, was conceived as a Council, not of hope but of fear, not of internal reform and renewal but of reaction and encapsulation against the outside world, not of aggiornamento but of polemical self-defensiveness.⁷⁹

Given the collective psychological blow the hierarchy had received, an increasingly centralised and authoritarian response is unsurprising, if disappointing. But this is precisely the issue; that the doctrine of infallibility, which claims to be an eternal and universal doctrine, has a very real socio-political context that it has to be understood in, and does not make sense outside of that socio-political context. In fact, Küng argues that the original function of infallible definitions was to settle a matter at that point in time, not to be considered eternally binding.⁸⁰ The purpose of a definition was to make a statement on what the Church believed to be the Truth given the information and revelation available at the time. The definition was binding in as much as it was not permitted to hold the position the proclamation was in opposition to, not that it was impermissible to hold any other view whatsoever. Truth was seen in a context of ongoing revelation, not as a fixed position.

The Definition of Truth

Küng points out the unfortunate habit of the Church of conflating 'Truth' with 'Church teaching'.⁸¹ An analogy I would propose for Truth that both the Church and Küng might accept is that of a magnetic force field. The closer to the source of the force field you are, the more protected you are, but the further away you get, the less power the force-field has

⁷⁹ *Ibid* 73-74

⁸⁰ *Ibid* 53-55

⁸¹ *Ibid* 115

over you and the poorer your defence against falsehood. Küng argues that the Church, in proclaiming itself infallible, is effectively claiming to be the source of Truth, and so positioning itself at the very centre of the force-field, incapable of coming in range of the un-truths that may attack it. Küng, however, if using my analogy, might say that it would be more accurate to understand God as the centre of this force-field (in fact, God might say so as well, and did when Jesus said “I am the Way, the Truth and the Life.”)⁸² The Church, like all the other citizens of the area under the Truth force-field, can move around within this perimeter of Truth, sometimes close to the source, God, sometimes on the boundaries, but, unlike the other citizens, the Church is incapable of crossing those boundaries into un-truth, and, unlike the other citizens, has been promised that it will always eventually return to the source of the force-field, God. Basically, Küng argues that infallibility is a property that properly belongs to God alone (a remarkably uncontentious statement; one might even call it orthodox!) and that for the Church to claim infallibility is appropriation of Divine qualities.⁸³ Much more accurate would be to understand the Church as being ‘indefectible’ or ‘perpetual’; that no matter what errors the Church may make, no matter what malicious or incompetent hands it falls in to, the gospel message will survive and the Church will survive to pronounce it. After all, it survived the Borgias!

Küng’s criticisms of infallibility have a great deal to do with the Roman approach to theology; the willingness to cherry pick Scripture, or base Church teaching on pre-Christian philosophical ideas when Scripture cannot be forced to support them. An a-historical approach to theology that incorporates neither the social context of the original formulations, nor new evidence or revelatory interpretation. An approach that is reactive to the immediate concerns of the day, rather than active in the continual process of forging the path to a more complete understanding of the truth. A theological method that would rather ban a book than enter into dialogue with its author. This method of cherry picking quotes to suit their argument is, as will be shown, carried over into the declarations the CDF makes on the works of indicated author’s. In both the cases of Küng and Sr Johnson, and indeed the case of Fr Flannery, the declarations of the CDF and its mandated subsidiaries, the Committees on Doctrine found in National Bishops Conferences’, have been accused of

⁸² John 14:6

⁸³ Küng, *Infallible?*, 116-117

decontextualizing the writings of the indicated author to a point where the intended meaning is completely obscured.

2.2 Declaration of the Congregation for the Doctrine of Faith (Declaration on Some Major Points in the Theological Doctrine of Professor Hans Küng), dated 15 December 1979.⁸⁴

The Declaration of the CDF on the 15th of December, 1979, was, to all intents and purposes, designed to sound the death knell for Professor Küng's career. Given the gravity of the potential consequences of this declaration, one could reasonably expect a detailed and lengthy exposition on the doctrinal errors contained in Küng's work, if nothing else to ensure that the laity would be fully protected from the errors contained in a book that had become immensely popular but also to fully demonstrate the validity of taking such drastic action. When a company wishes to terminate someone's contract on the basis of alleged misconduct, they must provide ample documentation and evidence for that termination, with a view to complying with the rule of law in that jurisdiction. It is my contention that the Declaration the CDF made was, in this case, inadequate.

The first criticism of this Declaration has to be that it has little substance to it at all; certainly it does not quote or outline Küng's arguments. It does not even fully outline the counter-arguments that the Church puts forward. If you wish to learn exactly why the Church was taking such extraordinary measures, you would have to look to the Declaration of the German Bishops Conference, of the same date.⁸⁵ What the Declaration does contain is a fairly bland reiteration on the Churches position on infallibility; that the Church has been given a sacred mandate to safeguard the deposit of revelation and it is the duty solely of the Magisterium to interpret this revelation. As the mandate is of divine origin, the Church/Magisterium cannot fail in its task and cannot err in its interpretation. As we shall see, this position unfortunately relies on some rather dubious implicit definitions of "Church" and who does and who does not constitute part of the Church that has received

⁸⁴ "Declaration" December 15th 1979, Accessed on September 11th 2014

http://www.doctrinafidei.va/documents/rc_con_cfaith_doc_19791215_christi-ecclesia_en.html

⁸⁵ "Episcopal Commission on Doctrine response to Infallibility? An Enquiry by Hans Küng." *The Furrow*, Vol 22, No 11, Nov 1971)

said divine mandate. This is remarkable, given that this is one of only two documents⁸⁶ stemming from this investigation that the public have access to in which they can find the official Vatican position on Küng's teachings; Bishops conferences usually only have a quasi-official role in the Church, as the current situation between the German bishops and the CDF show.⁸⁷ Whilst we are yet to get to the meat of the Declaration, already the very existence of this document in this format has serious theological ramifications. How can a Church teach on justice when its own courts act in secrecy and do not follow even the most basic level of judicial process we would expect from a secular judiciary? The actions of the CDF undermine the actions of every Bishop, Priest and Religious protesting the corruption within secular governments and judiciary, and are particularly ironic within a faith system that follows a Messiah who was condemned by a secret and illegal trial. As has been discussed above, those who fall under the suspicions of the CDF are routinely not informed that they are under investigation until the conclusions have been drawn. Those investigated are not allowed to know who accused them, or who defended them and how. Communication with those under investigation is done by proxy or on un-headed and unsigned paper. The only purpose of meeting those under investigation is to pronounce the determinations of the CDF and the requirement for coming back in line with the Church. Certainly, the Church does not use torture or disappearances, but their practice of anonymous denunciations and what are effectively show-trials, echoes the tactics of totalitarian governments. The unsettling irony of this situation is amply highlighted when one considers that Oscar Romero, who will soon hopefully be canonised, was martyred by one such totalitarian regime just three months after this Declaration was published.

The Declaration begins by stating the role of the Church in promulgation of the faith, and the role of theologians within the Church. It states:

⁸⁶ The other being the "Declaration Regarding Two Works of Professor Hans Küng" February 15th 1975 Accessed on September 12th 2014

(http://www.doctrinafidei.va/documents/rc_con_cfaith_doc_19750215_libri-Küng_en.html)

⁸⁷ The Congregation of German Bishops have recently rejected the new translation of the liturgy on the basis of the violence it does to the German language, and are putting together a document that would allow those in "irregular" marriages to receive the Eucharist. The CDF deny that the German Bishops have authority to do this, although they have been rather hobbled by Pope Francis I exhorting Catholics not to fear the CDF and carry on with in their endeavours even in the face of CDF denunciation. See C Pongratz-Lippitt "New German Missal Translation Runs Into Difficulties" *National Catholic Reporter* October 22nd 2013 Accessed on September 11th 2014 http://www.doctrinafidei.va/documents/rc_con_cfaith_doc_19750215_libri-Küng_en.html

*The Church of Christ has received from God the mandate to keep and to safeguard the deposit of faith so that all the faithful, under the guidance of the Sacred **Magisterium**...may cling without fail to the faith once delivered to the saints...*

Within this statement the CDF has, I would argue, created both a false dichotomy and a false equivalency. The Church and the faithful have been separated, so that the faithful are something exterior to the Church, something that must “cling” to the Church. At the same time The Church has been conflated with the Magisterium. Certainly this definition of Church would be the “smaller, purer” Church that Benedict XVI famously sought, but it would not be a definition of Church most Catholics, or even Christians in general, would recognise. Most Christians would habitually speak of “belonging to” or “being part of” the Church; not “clinging” to it. This separation of Church into Magisterium and faithful is, I would argue, reminiscent of Mark 9:38-40. John tells Jesus that the Apostles told an exorcist who worked in Christ’s name to stop, as he was not “one of us.” Jesus replies

Do not stop him, for no one who does a miracle in my name can in the next moment say anything bad about me, for whoever is not against us is for us.

The Apostles had tried to define their group through exclusion, whereas Jesus defined the group by a self-determining inclusion.

It is this false dichotomy and equivalency that enables the CDF to go on to claim hierarchical superiority over theologians, for, if the “mandate to keep and safeguard” was given to a Church that is solely made up of the Magisterium, then they are correct in their assertion that any deviation from their interpretation is deviation from the Catholic Truth. If, however, the Church is made up of the whole body of the faithful, and is not just the Magisterium to whom the faithful cling, then the Church includes the theologians, and if the Church includes the theologians then that mandate to safeguard the deposit of faith belongs to the theologians as well. If this is the case, then the Magisterium need to prove that they are the ones who are truly safeguarding the deposit of faith; to simply claim that it is the theologians who are not is not enough.

In order to fulfil the important task entrusted to itself alone the Magisterium of the Church avails itself of the work of theologians, especially those who in the Church have received

from the authorities the task of teaching and who therefore have been designated in a certain way as teachers of the truth.

Here, the role of the theologian is defined, and is defined as someone whom the Church “avails itself” of, as someone who is “designated in a certain way” by “the authorities.” Again, my mind is brought back to John, trying to use his authority to designate who could and who could not cast out spirits in Christ’s name. Again, we see the conflation of Magisterium and Church, and in this case, it is used to give the Magisterium sole authority over theologians. Theologians can only get their authority from the Magisterium, and only if that theology matches the theology of the Magisterium. Peter Hebblethwaite describes this way of doing theology as having “the answers in the back of the book”.⁸⁸ All that is required is for the theologian to show how they arrive at the correct answer; the answer is already set in stone. As the body that bestows teaching authority on the theologian, they are also the body that can take that authority away. This creates a power dynamic where theologians are directly reliant upon the Church for their jobs, and so their freedom to dissent is limited or hampered, despite what the CDF may later go on to say about theologians “enjoy(ing) a legitimate scientific liberty, though within the limits of the method of sacred theology.” In fact, this document proves just how dependant on the Church theologians are for their continued career, as this document claims to have the authority to remove Küng’s authority to teach in all Catholic institutions. This claim was going to be challenged in the secular court, until Professor Küng agreed to teach in the Protestant, rather than the Catholic, faculty of Tübingen University.⁸⁹ There is no real “scientific liberty” if you can lose your job for producing work that breaks no ethical, academic or legal code, particularly when the person who effectively fires you is not a member of the institution that employs you.

The Declaration goes on to cite a previous document, released on the 15th February, 1975, which held that “some opinions of Professor Küng were opposed in different degrees to the doctrine of the Church which must be held by all the faithful.” It sums up these opinions thus:

⁸⁸ Hebblethwaite, *The New Inquisition?*, 46.

⁸⁹ *Ibid*, 96-97

Among these opinions it noted especially, as of greater importance, those which pertain to the dogma of faith about infallibility in the Church, to the task of authentically interpreting the unique sacred deposit of the word of God which has been entrusted only to the living Magisterium of the Church, and finally to the valid consecration of the Eucharist.

It is unfortunate that the CDF does not feel the need to fully explain either Küng's or the Magisterium's own position on these issues. It is interesting, however, that infallibility is presumably considered by the CDF of more concern than the valid consecration of the Eucharist. This seems to show seriously disordered priorities; in the hierarchy of truths the Eucharist is far, far more important than infallibility. Later, they claim that Küng's opinion on infallibility and "contempt for the Magisterium" are to be found throughout his work:

"...undoubtedly with serious harm to some essential points of Catholic faith (e.g., those teachings which pertain to the consubstantiality of Christ with His Father, and to the Blessed Virgin Mary.)"

Consubstantiality is one of the primary truths in the hierarchy of Catholic Truths, and the Blessed Virgin Mary is the inspiration behind the only two *ex-cathedra* statements any Pope has made since infallibility was doctrinally defined. These are the kind of issues that the Council of Nicaea concerned itself with. And yet, they are mentioned and dismissed in between parentheses. Whilst these inclusions do show that these are issues that the Magisterium is concerned with in the work of Küng, their inclusion in such an off-hand manner certainly add to the overall impression that this is a document more concerned with a reassertion of power and authority than any real theological controversies. It could be argued that, if Küng's arguments are heretical and dangerous then the CDF would possibly be failing in its duty of care to repeat them. On the other hand, whilst St Augustine, the proto-typical heretic-hunter, felt the need to order all of Pelagius' books destroyed, he also felt it was necessary to quote Pelagius at length and robustly refute the heretical positions he held.⁹⁰ Alas, St Augustine was a theologian and not a member of the CDF. Maybe he would have approached things differently if he had been a member.

⁹⁰ Thus, ironically, ensuring the preservation of these fragments of Pelagius' work for over 1500 years to date.

Once again, in the quote above, Church and Magisterium are conflated, in this case in order to appropriate the divine authority to interpret to the Magisterium alone. The most telling passage of this document, and the only passage that gives any real, explicit insight into either sides opinion, states:

However, up to the present time he (Küng) has in no way changed his opinion on the matters called to his attention.

*This fact is particularly evident in the matter of the opinion which at least puts in doubt the dogma of infallibility in the Church or reduces it to a certain fundamental indefectibility of the Church in truth, with the possibility of error in doctrinal statements which the Magisterium of the Church teaches must be held definitively. **On this point Hans Küng has in no way sought to conform to the doctrine of the Magisterium.** (Emphasis mine.)*

Thus is Küng caught in a catch-22. Küng's understanding of infallibility, although obliquely stated, is probably an understanding that most Catholics intuitively come to; that the Church has the right fundamental message but can get the details wrong. And indeed the Church's actions, if not its words, suggest that the Church itself can recognise when it's been wrong. After all, Pope John Paul II, on November the 4th, 1992, famously apologised to Galileo for the Church condemning him as a heretic for nigh on three centuries. That said, Pope John Paul II put the blame on "The error of theologians at the time..." and not on the Church as such. But again, the Church both ensured that Joan of Arc would be burned as a heretic and canonised her (5 centuries later), which would suggest an implicit, if not explicit admission of error. If asked, most Catholics would simply point to the Churches historical stance on slavery, torture, the death penalty, burning witches, racism,⁹¹ etc. as evidence of just how wrong the Church can be, but would also point to the continual and perpetual central Gospel message of love as the fundamental Truth that the Church has promulgated through history (to greater or lesser extent). The Magisterium, however, have a narrow and ridged understanding of infallibility; that is, that the Church/Magisterium **is** infallible, and it knows it is infallible because it is infallible and infallible institutions know these things. Any

⁹¹ It is interesting to note that there is a current call to revoke the Doctrine of Discovery as an example of racist Church teaching. Renne K Gadoua "Nuns to Pope: Revoke 15th Century Doctrine that Allows Christians to Seize Native Land" *The Washington Post* September 9th 2014 Accessed on September 12th 2014 http://www.washingtonpost.com/national/religion/nuns-to-pope-revoke-15th-century-doctrine-that-allows-christians-to-seize-native-land/2014/09/09/fe7453ee-3831-11e4-a023-1d61f7f31a05_story.html

theologian who comes into conflict with the Magisterium, particularly on issues of infallibility, is caught between a chicken and an egg. The only way for a theologian to be right, under these conditions, is to agree with the Magisterium. The principle of the primacy of the conscience, a central Augustinian and Thomistic theme, rich and resplendent with orthodoxy, does not get a mention.

All in all, the Declaration is not a theological criticism. The Declaration has, implicitly and explicitly, revealed itself to be rather an exercise in asserting authority. Its brief skating over of serious theological accusations and its overwhelming concern with precisely who has teaching authority, I would argue, shows that the CDF's real concern was with quelling challenges to its power within the Church. It is ironic that an organisation whose members had rarely recently been centre stage in a lecture theatre (if they ever had) would claim a teaching authority over an employed professor at a respected university. It was noted that, of the members of the CDF at the time of this Declaration, those who had a claim to the title "theologian" were in the minority, and none had made the sort of serious academic contributions that Küng had made.⁹² A major criticism of the CDF during the Küng affair, and during their investigation of Schillebeeckx, was that they had no concept of modern academic and theological method. Theologians need to be free to debate, to argue and to analyse the positions other theologians take, and to censor a book or remove a theologian's teaching authority is to disrupt this process. This has unfortunate consequences for an increasingly educated laity as, whilst they are expected to know what they should and should not believe, they are not expected to necessarily understand why they should or should not believe something, and sometimes it would appear that the CDF attempts to explicitly deny the chance to understand by suppressing theological discourse. The method of suppressing texts or silencing theologians may have worked before the printing press, but as soon as theological texts became easily accessible through secular publishing houses, and now through social media and the new trend in creating online archives of ancient and modern texts, this method of censoring lost all efficacy. And, in fact, this method became dangerous as a censored theologian's work would still be available, but few theologians would feel able to publish a rebuttal without also risking facing the wrath of the CDF if they

⁹² Hebblethwaite, *A New Inquisition?*, 73-74

do not get it entirely “right”, or possibly being seen as kicking a fellow academic when they are down. And so the censored theologians effectively go unchallenged, aside from the Declaration of the CDF which, as we have seen, is thin on theological rebuttal. These criticisms of the CDF’s methods have been widely made during many recent investigations, and yet the CDF adheres to the same procedure and method; a method developed when the CDF was still known as the Holy Roman Inquisition and, aside from no longer torturing and executing people, has largely remained unchanged. As this method is, and always was, one of asserting authority in the face of dissidence rather than engaging in true dialogue with opposing interpretations, it is difficult not to read this Declaration as a declaration of power rather than Catholic Truth.

3: Conclusion

As has been amply demonstrated, the judicial process of the CDF cannot be described as 'just' when taken into consideration in the light of Natural Justice. The cases of Küng and Sr Johnson illustrate how the CDF cannot be described as theologically competent when considered in the light of modern, prevalent theological methodologies. Criticisms of Küng, as with criticisms of Sr Johnson, amounted to the reiteration of propositional truths with little or no consideration of the historical context in which those propositional truths were formulated in, nor for the context in which the indicated theology was formulated in. By adopting a theological method which involves reiterating historically held positions, highlighting where modern theology diverges from these historical positions, and then demanding a return to those historical positions, the CDF utilises a theological methodology which is not based on dialogue but imposition. Whilst the USCCB may be suspicious of the rigorousness with which theologians and academics police themselves and each other, the Declarations of the CDF and its subsidiaries show no rigorousness of investigation as the conclusion is in effect predetermined by the pre-existing propositional truths that theologians are expected to express. If a theologian had expressed these propositional truths, and only these propositional truths, in their work, then there would be no need for investigation. Since anything other than these propositional truths is false, then any theologian who is investigated is by default guilty of doctrinal error.

Modern methodologies, on the other hand, demand that the possibility of error on both sides is acknowledged from the outset, as well as the possibility that both positions may contain, to lesser or greater extents, truth. Modern theology is generally inductive rather than didactic, interdisciplinary rather than a-historical, and based on interpreting theory in light of experience, rather than experience in light of dogma. Communication between these two opposing methodologies is difficult at best, and further frustrated by the fact that the nature of the two methodologies means that even their interpretation of the purpose of conversation is wildly divergent. Whilst modern methodologies would consider communication between two methodologies to be a highly necessary two way process between two equally valid positions (until or unless one position could be fundamentally shown to be without validity) the Neo-Scholasticism of the CDF would conceive of communication as a one way process where the magisterium dictates the boundaries of

theological endeavour, and theologians accept these boundaries unquestioningly and work within them.

This Neo-Scholastic theological method is fundamentally inadequate in the face of an ever increasingly educated laity with ever expanding access to sources of knowledge previously denied to them and a culture that empowers them to seek out this knowledge and form their own opinions and beliefs based on their own research. In maintaining a Neo-Scholastic approach, the CDF undermines itself not only in the eyes of theologians who may be expected to care about such things out of at least professional concern, but also an educated laity who are now capable of reaching their own conclusions on the subjects that interest them, and indeed expect the freedom to do so. The Neo-Scholastic need to enforce certain positions to the exclusion of all other possibilities, coupled with the CDFs willingness to impose these positions on theologians through censorship and threats against the career of dissident catholic theologians, will be offensive to many within a laity that lives in a world that highly values the principles of freedom of speech and conscience. Not only may they find it an offensive attack on their intellectual powers, as the propositional, didactic methodology can have an unfortunate habit of presuming utter ignorance on the behalf of those being taught, but also an offensive attack on their very rights as a human being.

An accusation of acting as 'thought police' can be one of the most damning accusations a person can make in the modern world, and with good reason. We have seen in recent history, from Nazi Germany to North Korea, the devastating effects of suppression of all dissent, not only on the physicality of people, but on their mentality as well. The principles of freedom of thought and freedom of speech, so hard fought for, are integral to much of the West's understanding of itself, its history and its identity. For a major world institution to adopt positions that are so counter these principles is unwise, particularly when that institution has very little real temporal power. Those who are unwilling to capitulate to the ideologies and dogmas that the Church seeks to impose as propositional truths may either simply reject the institution as irrelevant, or may be so outraged at what they perceive to be an attack on their basic human rights that they decide to dedicate their lives to reforming the institution that offends them so. Professor Küng, for example, has certainly made himself a thorn in the side of the Catholic Church since the '70's, becoming possibly the worlds most famous dissident Catholic living today. Lavinia Byrne has become a focal point

for those who call for women's ordination, and Fr Flannery has become one of the current faces of the internal struggle that the Irish Catholic Church is facing, Sr Johnson holding a similar position in America and the controversy surrounding the LCWR.

The modus operandi of the CDF is based on medieval principles of both justice and theology. Its process of investigation is one that the Church would condemn as unjust in a secular setting, but seems to be justified within the Church on the basis that this is divine, rather than secular, law. This attitude seems reminiscent of the Divine Right to Rule that justified a medieval monarch's ability to regard or disregard the laws that others were expected to adhere to. Its Neo-Scholastic approach to theology stems from a deliberate looking back to medieval theology in the face of the supposed threat of modernism. All in all the modus operandi of the CDF represents a religious judicial process that would be completely unacceptable to the vast majority of Catholic laity if found in a secular judicial system. As such, there is no reason for the Catholic laity to have any faith in the religious judicial process found within their own Church, and a judicial process that cannot inspire the faith of those held under it is a judicial process that is in need of radical reform.

Bibliography

Books and Journals

“The Elizabeth Johnson Dossier” in *When the Magisterium Intervenes* Edited by Richard R Galliardetz, 175-294, Minnesota: Liturgical Press, 2012

Coriden, James A, “Canonical Perspectives on the Ecclesiastical Processes for Investigating Theologians” in *When the Magisterium Intervenes* Edited by Richard R Galliardetz, 40-62 Minnesota: Liturgical Press, 2012

Finnis, John, *Natural Law & Natural Rights (Second Edition)* Oxford: Oxford University Press, 2011

Galliardetz, Richard R, Introduction to *When the Magisterium Intervenes* Edited by Richard R Galliardetz, Minnesota: Liturgical Press, 2012

Godzieba, Anthony J, “The Magisterium in an Age of Digital Reproduction” in *When the Magisterium Intervenes* Edited by Richard R Galliardetz, 140-153, Minnesota: Liturgical Press, 2012

Hebblethwaite, Peter, *The New Inquisition? Schillebeeckx and Küng*. London: Fount Paperbacks, 1980

Hinze, Bradford E, “A Decade of disciplining Theologians” in *When the Magisterium Intervenes* Edited by Richard R Galliardetz, 3-39, Minnesota: Liturgical Press, 2012

Joint Committee of the Canon Law Society of America and the Catholic Theological Society of America “Doctrinal Responsibilities: Procedures for Promoting Cooperation and Resolving Disputes Between bishops and Theologians” *Canon Law Society of America Proceedings* 45 (1983): 261-84

Küng, Hans, *Infallible?* (London, SCM Press, 1994)

Mallon, Colleen M, OP, “Gracious Resistance: Religious Women Charting an Ecclesial Path” in *When the Magisterium Intervenes* Edited by Richard R Galliardetz, 63-85, Minnesota: Liturgical Press, 2012

Mannion, Gerard, "Magisterium as a Social imaginary: Exploring an Old Problem in a New Way" in *When the Magisterium Intervenes* Edited by Richard R Galliardetz, 113-139, Minnesota: Liturgical Press, 2012

Miller, Vincent J, "When Mediating Structures Change: The Magisterium, the Media, and the Culture Wars" in *When the Magisterium Intervenes* Edited by Richard R Galliardetz, 154-174 Minnesota: Liturgical Press, 2012

Richardson, Neville "Apartheid, Heresy and the Church in South Africa" *The Journal of Religious Ethics* Vol 14 No 1 (Spring 1986): 1-21. Accessed September 17, 2014
<http://www.jstor.org/stable/40015022>

Rush, Ormond, "The Prophetic Office in the Church: Pneumatological Perspectives on the *Sensus Fidelium*-Theology-Magisterium Relationship" in *When the Magisterium Intervenes* Edited by Richard R Galliardetz, 89-112, Minnesota: Liturgical Press, 2012

Official Church Declarations and Documents

"Declaration Regarding Two Works of Professor Hans Küng" February 15th 1975 Accessed on September 12th 2014

(http://www.doctrinafidei.va/documents/rc_con_cfaith_doc_19750215_libri-Küng_en.html)

"Declaration" December 15th 1979, Accessed on September 11th 2014

http://www.doctrinafidei.va/documents/rc_con_cfaith_doc_19791215_christi-ecclesia_en.html

"Episcopal Commission on Doctrine response to Infallibility? An Enquiry by Hans Küng." *The Furrow*, Vol 22, No 11, Nov 1971

Paul VI, "Humanae Vitae" July 25th 1968. Accessed on September 11th 2014

http://www.vatican.va/holy_father/paul_vi/encyclicals/documents/hf_p-vi_enc_25071968_humanae-vitae_en.html

Newspaper Articles

Bryan Cones "Women on a Mission: We Should Join the 'Nuns' in their Care for the Poor" *U.S. Catholic* August 2012 Accessed September 10th 2014

<http://www.uscatholic.org/church/2012/06/women-mission-we-should-join-nuns-their-care-poor>

Gadoua, Renne K, "Nuns to Pope: Revoke 15th Century Doctrine that Allows Christians to Seize Native Land" *The Washington Post* September 9th 2014 Accessed on September 12th 2014 http://www.washingtonpost.com/national/religion/nuns-to-Pope-revoke-15th-century-doctrine-that-allows-christians-to-seize-native-land/2014/09/09/fe7453ee-3831-11e4-a023-1d61f7f31a05_story.html

Hellman, Hal, "Galileo vs. the Pope" *Washington Post* 9th September 1998, accessed 17th September 2014 <http://www.washingtonpost.com/wp-srv/national/horizon/sept98/galileo.htm>

Holas, Nic, "Gay or Transgender Youth Feel Alienated by Faith-Based Homeless Services" *news.com.au* September 8th 2014 Accessed September 9th 2014 <http://www.news.com.au/national/gay-or-transgender-youth-feel-alienated-by-faithbased-homeless-services/story-fncynjr2-1227050043638>)

Lipka, Michael "Majority of US Catholics' Opinions Run Counter to Church on Contraception, Homosexuality." *Pew Research Centre* September 19th 2013 Accessed on September 11th 2014 <http://www.pewresearch.org/fact-tank/2013/09/19/majority-of-u-s-catholics-opinions-run-counter-to-church-on-contraception-homosexuality/>

Morris, Alex, "The Forsaken, A Rising Number of Homeless Gay Teens are being Cast Out by their Religious Families" *Rolling Stone Magazine*, September 3rd 2014 Accessed September 9th 2014 <http://www.rollingstone.com/culture/features/the-forsaken-a-rising-number-of-homeless-gay-teens-are-being-cast-out-by-religious-families-20140903>)

Odell, Catherine M, "Supportive Crowd Greets Nuns on the Bus in Indiana" *National Catholic Reporter* June 25th 2012 Accessed September 10th 2014 <http://ncronline.org/news/supportive-crowd-greets-nuns-bus-indiana>

Pongratz-Lippitt, C “New German Missal Translation Runs Into Difficulties” *National Catholic Reporter* October 22nd 2013 Accessed on September 11th 2014

http://www.doctrinafidei.va/documents/rc_con_cfaith_doc_19750215_libri-Küng_en.html

Rouch, Abigail Frymann, “Mistrust has Replaced Communication, say Censured Nuns” *The Tablet* May 9th 2014 Accessed September 10th 2014

<http://www.thetablet.co.uk/news/763/0/mistrust-has-replaced-communication-say-censured-nuns->

Winters, Michael Sean, “Nuns on the Bus” *National Catholic Reporter* May 31st 2013

Accessed September 10th 2014 <http://ncronline.org/blogs/distinctly-catholic/nuns-bus>

Websites

“Congregation for the Doctrine of the Faith”: <http://www.doctrinafidei.va/>

Official Website of the LCWR: <https://lcwr.org/>

Moviecus search of “inquisition” accessed 17th September 2014:

<http://www.moviecus.com/theme/movies-about-inquisition>

Ratio Agendi Accessed September 12th 2014

http://www.vatican.va/roman_curia/congregations/cfaith/documents/rc_con_cfaith_doc_19970629_ratio-agendi_en.html