

— Dr. Edward Peters, JCD, canon lawyer.

The death penalty debate and the Church's magisterium

I follow the death penalty debate, of course, but I am more concerned about how that debate impacts some ecclesiological aspects of the Church's teaching function.

As for the death penalty itself I find the arguments organized by Feser and Bessette in their treatise, *By Man Shall His Blood Be Shed* (Ignatius, 2017), upholding the liceity of the justly administered death penalty, convincing. Specifically I regard the liceity of the death penalty as having been established with infallible certitude by the Church's ordinary magisterium and am undecided only as to whether that infallible certainty proclaims a "primary object" of infallibility (i.e., an assertion *to be believed*) or establishes a "secondary object" of infallibility (i.e., an assertion *to be definitively held*). I lean toward the latter.

Given my conclusions about the certitude of Church teaching in this area (with which conclusions **some scholars I esteem disagree**) I naturally share the grave concerns **enunciated here** about Pope **Francis' alteration of Catechism 2267** to reflect his view that the death penalty itself is "inadmissible" (whatever *that* means, although everyone knows what it *means*). For the record I also found John Paul II's characterizations of the foundations for the death penalty to be historically and logically inadequate but, as he accepted the application of the death penalty in some cases, his unbalanced formulations of the issue did not occasion the serious magisterial issues that I think Francis' novel formulation has engendered.

Which brings me to the canonical points I wish to outline.

Canon 752, especially its passage "a religious submission of the intellect and will must be given to a doctrine which the Supreme Pontiff or the college of bishops declares concerning

faith or morals when they exercise the authentic magisterium, even if they do not intend to proclaim it by definitive act”, will be invoked by some as a canonical basis for demanding that the Christian faithful accept Francis’ alteration of the Catechism. How to think about this?

Granted that “by their very nature canonical laws are meant to be observed” (John Paul II, **here**) they are also to be assessed and applied in accord with canonical tradition (see esp. **Canons 17-19**). Before anyone concludes that Francis’ recent assertion demands “religious submission” under Canon 752 he or she should consider the following.

First, Canon 752 is very new in the canonical tradition. It was not present in the 1917 Code and the Legislator himself offers no foundations for it before the 1950s. In light of the intense debates over some other ‘first-time’ canonical provisions appearing in the 1983 Code—say, Canon 1095 n. 2 on due discretion for marriage or Canon 129 § 2 on lay cooperation in Church governance—debates suggesting that first attempts at legislation are often wanting, it would be temerarious to assume that a new legal formulation of personal, universal obligations in a theologically complex area, a formulation untested by time, as offered by Canon 752, represents exactly what the Church wants to say about a matter and precisely how she wants to say it. The public eruption over Francis’ novel death penalty text could itself illustrate the deficiencies of phrasing Canon 752 the way it is phrased.

Second—and this point takes longer to outline—although no one I know is arguing that Francis’ death penalty assertion itself was an “extraordinary” (i.e., an infallible) exercise of papal magisterium, many seem nevertheless to think that this single (or second, if we count Francis’ quoting of himself as qualifying as two assertions) papal assertion effectively demands the faithful’s immediate acceptance insofar as it appears to be a deliberate exercise of the papal “ordinary” magisterium.

But that's where confusion sets in: while popes can, in a single *extraordinary* act, assert something with infallible certitude sufficient to bind the faithful in belief or morals (Canon 749 § 1), no pope can, by a single *ordinary* act, assert something with anything like the equivalent force for Christian consciences.

THE CHURCH'S "EXTRAORDINARY" MAGISTERIUM, CAPABLE OF BINDING THE FAITHFUL IN FAITH AND DOCTRINE, CAN PROCEED SOLELY-PAPALLY OR PAPALLY-EPISCOPALLY; BUT HER "ORDINARY" MAGISTERIUM, ALSO CAPABLE OF BINDING THE FAITHFUL IN FAITH AND DOCTRINE, CAN PROCEED ONLY PAPALLY-EPISCOPALLY. AS FRANCIS' MOVE ON THE CATECHISM HARDLY QUALIFIES AS PAPAL-EPISCOPAL, AND THERE BEING NO SUCH THING AS AN 'PURELY PAPAL, ORDINARY, MAGISTERIUM' (THE TERM ITSELF SEEMS AN OXYMORON, IMPLYING THAT SOME SIGNIFICANT POINTS OF CHURCH TEACHING HAVE BEEN TAUGHT ONLY BY POPES!), THEN FRANCIS' VIEWS ON THE DEATH PENALTY MIGHT (I STRESS, MIGHT, GIVEN THE INFALLIBILITY CONCERNS ABOVE) CONTRIBUTE TO THE CHURCH'S ORDINARY MAGISTERIUM BUT THEY DO NOT, AND CANNOT, CONTROL IT.

The ordinary magisterium, one must see, takes a long, long time, to develop; it requires repetition and consistency over many generations, this, not simply on the part of popes *but also by the bishops* around the world, and even incorporates, to some extent, the lived acceptance of teachings by Catholic pastors, academics, and rank-and-file faithful through time. Its power as a source of certitude in Church teaching has sadly been overshadowed in the last 150 years as a result of the **lopsided pronouncements of Vatican I** and (despite the better balance struck between popes and bishops in this regard found in **Lumen gentium 25**) the post-conciliar confusion created by so many doctrinally wayward

or ineffective bishops. But the Church's ordinary magisterium is not the domain of an individual pope's preferences for a certain position; rather, its province is the protection and promotion of the deposit of Faith entrusted to the Church by Christ.

How to sum up the traditional understanding of this matter so far? Maybe thus: If it's not extraordinary, it's *at most* ordinary, but if it's ordinary, it requires popes *and bishops around the world and over a long, long time*, and not just a pope in a claim or two.

In light of the foregoing, then, it is easier to see why the present formulation of Canon 752 seems wanting: its language appears (I say appears, because scholars are divided over the meaning and implications of Canon 752) to regard as possible the obligation of "religious assent" being owed to a single, undoubtedly non-infallible, purely papal, no-matter-how-unprecedented, assertion regarding faith and morals. I, for one, frankly doubt that is what the Church meant to say although I grant that seems to be how her new law presently reads.

All of which is why the questions surrounding the death penalty impact not only that very important social and civil issue but also the Church's understanding and operation of her own magisterium.

AUGUST 16, 2018

About withholding donations to the Church

I worked directly for arch/dioceses for some 15 years and indirectly (teaching in a seminary) for a dozen more. Readers can use that fact to discount what I say below as biased or to credit it as informed. Readers' call.

Various voices are calling for the faithful to withhold donations from the Church in response to the McCarrick scandal, the Pennsylvania grand jury report, and so on. Other voices are

urging Catholics to resist such calls. As the calls pro and con seem, so far, to fall within the bounds of Canon 212 § 3, I say, have at it folks. May the better arguments win. But we should note a few relevant canonical and practical points.

First, no canon requires Catholics to drop a donation in the Sunday collection. *None*. What the 1983 Code does say, however, in this regard, includes:

- 1 The Christian faithful are obliged to assist with the needs of the Church so that the Church has what is necessary for divine worship, for the works of the apostolate and of charity, and for the decent support of ministers. 1983 CIC 222 § 1.
- 2 The Church has an innate right to require from the Christian faithful those things which are necessary for the purposes proper to it. 1983 CIC 1260.
- 3 The Christian faithful are free to give temporal goods for the benefit of the Church. 1983 CIC 1261 § 1.
- 4 The faithful are to give support to the Church by responding to appeals and according to the norms issued by the conference of bishops. 1983 CIC 1262.

The roots of some of these canons, moreover, go back many centuries in Church history suggesting that more than ecclesiastical convenience is behind them.

Second, in nearly all arch/dioceses I am familiar with, Sunday plate collection (and other routine donations) go to the benefit of parishes (largely by implication of Canon 1256). Thus, in most cases, withholding one's regular donations directly hurts *parish* operations and not arch/diocesan.

Third, many arch/diocesan annual fund-raising campaigns are, technically speaking, designed to help *parishes* meet assessments (canonically, taxes) imposed by bishops (in my view, usually reasonably) on parishes per Canon 1263. Withholding one's donations to annual arch/diocesan appeals therefore, again,

hurts *parishes* first, though parish problems in meeting their annual assessments would be noticed at the arch/diocesan level.

Fourth, arch/dioceses facing financial shortfalls generally do what any large organization does in such situations, cut expenses, liquidate investments, and/or borrow money. Thus, the actual impact of withholding one's donations to the arch/diocese, an impact often already diluted by the time it reaches the arch/diocesan level, is likely to be muted again by the usual financial expedients undertaken by other financially stressed organizations. By the way, intimations that arch/diocesan budgets get balanced at the expense of the poor, while such suggestions smack of emotional hostage-taking, do reflect the reality that *many* demands are made on arch/diocesan assets (see, e.g., Canon 1254 § 1) and that no undertaking would be immune from cuts.

What all this boils down to, I suggest, is that by the time one determines the exact financial footing of any given arch/diocese and predicts, rightly *or wrongly*, how that arch/diocese might respond to a drop in income, one should be able to see that across-the-board calls for Catholics to withhold donations "from the Church" are subject to so many qualifications and exceptions and ramifications (intended or not) that, well, it seems difficult to defend such calls as being based on convincing *reasons*.

Still, as stated above, no canon requires Catholics to make a donation on any Sunday to any parish and, given how little voice Catholics have in the selection of their leadership and their conduct, I understand why calls to strike back in some, in any, measurable way against massive, massive episcopal failures resonate with so many.

I'm just saying, be careful about punishing the Spouse of Christ and her dependent children because some priests and even bishops, men presumably wedded to her as Jesus was wedded to her, abandoned her so shamelessly.