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—Richard Lennan, Boston College School of Theology and Ministry

“This major work on ‘the sense of the faith’ gives further evidence for why John Burkhard is one of the most important Catholic theologians working in the field of fundamental theology today. His extraordinary erudition, clarity of thought, and capacity for synthesis are all on full display in these pages, as is his deep commitment to the welfare of the church. Almost six decades since the close of the council, our church is still struggling to fully embrace the council’s teaching that all the baptized faithful receive and penetrate the gift of God’s Word and so contribute in crucial ways to the life and mission of the church. Burkhard’s book is certain to help this central teaching gain wider acceptance and deeper appreciation in the church today.”

—Richard R. Gaillardetz, Boston College, author of *By What Authority? Foundations for Understanding Authority in the Church*

“For decades John Burkhard has been tracking the emergence of the doctrine of the ‘sense of the faith’ in official church teachings and influential theological contributions and debates. Here he offers his fullest assessment of these materials. This is an immensely important resource for understanding this history and identifying unresolved issues.”

—Bradford E. Hinze, Fordham University

“With his encyclopedic knowledge of research into the topic of *sensus fidei*, John Burkhard does the church a great service with this book. He highlights the indispensable role the people’s ‘sense of the faith’ plays in the transmission of Christian faith throughout history. Above all, he shows the need for the church to be attentive continually to this expression of the lived faith of the people of God. For anyone wanting to understand Pope Francis’s vision of ‘a synodal church . . . a church which listens,’ this book is a sure guide.”

—Ormond Rush, Australian Catholic University

“After having provided us over many decades with precious lists of annotated bibliography on the theme of *sensus fidei*, John J. Burkhard now comes out with a historical and systematic analysis on this crucial category of theological discourse. He demonstrates how central and vital *sensus fidei* is for the whole of theology. It is not only ecclesiology or fundamental theology that needs to recognize and study in depth this category, but also the theology of sacraments, the liturgy, and moral theology can benefit from the richness of this idea. This book can rightly be considered the *opus magnum*, the *Lebenswerk* (Life’s work) of a refined scholar of the history of theology and its traditions, as is John J. Burkhard. His analysis and his perspective are all played out in the theological climate of the Second Vatican Council and the post-conciliar reflections regarding the rediscovery of *sensus fidei*.”

—Antonio Autiero, Professor Emeritus of Moral Theology, University of Münster

# The “Sense of the Faith” in History

*Its Sources, Reception, and Theology*

John J. Burkhard, OFM Conv



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*In memoriam*  
*Reverendi Dionysii Gallagher, OFM Conv,*  
*ac magistrorum meorum,*  
*qui in studentibus pluribus*  
*amorem studii et litterarum*  
*incenderunt.*



# Contents

Preface xi

**Chapter 1 The “Sense of the Faith” before, during, and after  
the Council of Trent 1**

Before Trent 2

The Council of Trent (1545–63) 9

After Trent 11

Conclusion and Prospect 22

**Chapter 2 Conscious Stirrings of the “Sense of the Faith”  
in Nineteenth-Century Germany 23**

Johann Adam Möhler 23

Nineteenth-Century Roman Catholic Canon Lawyers 32

**Chapter 3 The Role of the “Sense of the Faith” and the Definition  
of Mary’s Immaculate Conception 41**

History of the Liturgy and the Theology  
of the Immaculate Conception 42

Definition of Mary’s Immaculate Conception and the Role  
of the “Sense of the Faithful” 56

Meaning of the Dogma of Mary’s  
Immaculate Conception 70

**Chapter 4 John Henry Newman and the Testing of the “Sense  
of the Faithful” in the Crucible of Controversy 85**

The *Rambler* Commentary of May 1859 86

The <i>Rambler</i> Article of July 1859	89
Characteristics of the “Sense of the Faithful” according to Newman	96
The Validity of Newman’s View of Arianism and His Understanding of the “Sense of the Faithful”	99
Conclusion	101

**Chapter 5 The “Sense of the Faith” in the Nineteenth Century:  
Gains and Losses 103**

Johann Baptist Franzelin, SJ	103
Matthias Joseph Scheeben	110
Vatican I (1869–70)	120
The Aftermath of Vatican I	130

**Chapter 6 The Growing Conviction of a Theology of the “Sense  
of the Faith” in the Twentieth Century 133**

Francisco Marín-Sola, OP	134
Mannes Dominikus Koster, OP	143

**Chapter 7 Consolidation of the Theology of the “Sense of the Faith”  
in the Twentieth Century 161**

Yves Congar, OP	162
Clément Dillenschneider, CSSR	172

**Chapter 8 The “Sense of the Faith” and the Dogmatic Definition  
of Mary’s Assumption into Heaven 183**

The Emergence of the Feast of the Assumption	185
The Debate of Mary’s Assumption	197
The Definition of Mary’s Assumption	200
The Meaning of the Dogma of Mary’s Assumption	205
A Continuing Task	218

**Chapter 9 The “Sense of the Faith” and Vatican II 221**

Preparatory Phase of Vatican II (January 1959 to Fall of 1962)	223
-------------------------------------------------------------------	-----

First Session (Fall 1962) and Intersession (December 1962 to September 1963)	227
Second Session (Fall 1963)	235
Intersession (December 1963 to September 1964) and Third Session (Fall 1964)	240
<i>Lumen Gentium</i> , Article 12	243
<i>Lumen Gentium</i> , Article 35	254
The Presence of the “Sense of the Faith” in <i>Dei Verbum</i> , Articles 8 and 10	260
Conclusions on the Teaching of Vatican II on the “Sense of the Faith”	268
<b>Chapter 10 Official Reception of the “Sense of the Faith”</b>	<b>273</b>
What Is Reception?	274
The Revised Code of Canon Law (1983) and the Code of the Canons of the Eastern Churches (1990)	277
The Papal Magisterium since Vatican II	287
The <i>Catechism of the Catholic Church</i>	296
The Role Played by the Congregation for the Doctrine of the Faith	299
The Contribution of the International Theological Commission	303
Conclusion	321
<b>Chapter 11 The “Sense of the Faith”:</b>	
<b>Components of a Possible Synthesis</b>	<b>323</b>
The Retrieval of Experience	324
Historical Consciousness	336
Questions and Human Being	339
Language and Symbol	342
Levels of Understanding	346
A Fuller Understanding of Revelation	349

An Emerging Understanding of Tradition	357
The Place of Pneumatology	362
Conclusion	373
Appendix A <i>Lumen Gentium</i> 12, 1: Latin Text and English Translations	381
Appendix B <i>Lumen Gentium</i> 35, 1 and 4: Latin Text and English Translations	383
A Chronological Bibliography of the “Sense of the Faith” from 1940 to 2020	387
General Bibliography	415
Index of Names	428
Index of Subjects	436

## Preface

The Second Vatican Council vindicated the role of every believer in the church to witness to the church's faith and to participate in understanding, formulating, and determining that faith. Vatican II spoke of the *sensus fidei* ("the sense of the faith") and the *sensus christianus fidelium* ("the Christian sense of the faithful") to express this teaching. In many ways, the emergence of the teaching on the "sense of the faith" at the council was quite unexpected. However, as the council unfolded, bishops and theologians refined the teaching and in the end it emerged with greater clarity. Subsequent theological development after the council has greatly contributed to clarifying the "sense of the faith" and moved it to the center of the church's life. And yet, most people in the church either do not know what the teaching means or have not even heard about it. As important as the teaching is, and as fruitful as it can be in renewing the vitality of the church, to this day it hardly impacts the church. In many respects, what the terms the "sense of the faith" and the "sense of the faithful" try to express is not a novelty. The terms attempt to reconnect with the earlier teaching that stressed the unity of everyone in the church in the one faith and their responsibility for its purity and transmission.

From the beginning of this project I have wanted the book to take the sources of the "sense of the faith" seriously and make them available to scholars and the general public. Many studies have pointed out these sources, but by and large they have not appeared in English. My intention is to cite them in their original languages and translate them when necessary, while also placing them in their historical context and in the context of their authors' thought. In this way I hope that readers will have the evidence they need to make up their own minds about the meaning and scope of this seminal teaching of Vatican II.

I proceed chronologically by examining in chapter 1 the emergence of the terms the “sense of the faith” and the “sense of the faithful” in the light of the ecclesial crisis of the Great Western Schism in the fourteenth and fifteenth centuries followed by the Reformation and the Tridentine reform. What factors from these events formed the terms and how did they in turn form the church’s understanding of teaching authority in the church? Chapters 2, 4, and 5 examine the explicit emergence of the terms in the nineteenth century. The thought of Johann Adam Möhler, Giovanni Perrone, John Henry Newman, and the Roman school are studied. Chapters 6 and 7 examine the contributions to the “sense of the faith” of several influential twentieth-century theologians in the years shortly before Vatican II. The contributions of the ordinary faithful in the nineteenth- and twentieth-century definitions of Mary’s immaculate conception and her assumption into heaven played a unique role in the church’s process of defining two recent Marian dogmas. What does this process say about the role of the laity in arriving at a deeper understanding of the faith as summarized in the term the “sense of the faithful”? I examine these questions in chapters 3 and 8. In chapter 9 I study how these terms found their way into the documents of Vatican II from the first formulation of the pre-conciliar preparatory texts. What happened to the terms as the conciliar fathers discussed such thorny issues as revelation and tradition and the nature and mission of the church? What were the contexts in which the “sense of the faith” and the “sense of the faithful” emerged at the council? How do they fit into the ecclesiology of Vatican II? Chapter 10 examines how the “sense of the faithful” has been received in the period after the council, in canon law and the *Catechism of the Catholic Church*, in the teachings of the popes, and the actions of the Congregation for the Doctrine of the Faith. What do the various statements of the International Theological Commission reveal about the meaning of these terms and of their growing acceptance in the church? What remains to be done in the process of reception? In chapter 11 I conclude with some observations and suggestions about formulating a theological understanding of the “sense of the faith” and the “sense of the faithful.”

In the vast theological literature on the terms the “sense of the faith” and the “sense of the faithful” before, during, and after Vatican II, English-speaking authors have preferred the Latin expressions. In the early stage

of writing the book, I repeated these Latin expressions again and again in the text. Eventually, it dawned on me that if the reality represented by the Latin terms *sensus fidei* and *sensus fidelium* is going to be understood and received by the whole church, it is necessary to refer to them in the vernacular.<sup>1</sup> Using the Latin only perpetuates the strangeness and formality of the terms, while the vernacular makes them accessible to everyone. And so, I have decided in general to refer to these terms by their English equivalents. It is my hope that this effort will help in the continuing process of their reception by the whole church—by those trained to understand Latin and those for whom Latin is entirely foreign. I have used the convention of enclosing the English terms in quotation marks to indicate the technical character of these expressions. I look forward to the day when the quotation marks, too, can be removed because the meaning and import of the terms will be more broadly understood in the church.

I wish to thank the many theologians and scholars who have helped me throughout the long process of writing this book. I thank Dr. Ormond Rush who first suggested I write the book. Dr. Bradford E. Hinze also gave the project added impetus by inviting me to give a plenary presentation on the “sense of the faithful” to the members of the Catholic Theological Society of America in June 2015. I thank Msgr. Paul McPartlan who invited me to share the results of my research with the faculty and doctoral students of the School of Theology and Religious Studies of the Catholic University of America. My former academic dean and colleague at the Washington Theological Union, Dr. James A. Coriden, has been generous in sharing his time and insights on the text as it unfolded. My thanks, too, to professors Bradford E. Hinze, Brian P. Flanagan, John P. Galvin, and Paul Lakeland who have shared their observations on various chapters in the course of the composition of the book. I also want to thank my confrere Friar Christopher Garcia, who graciously helped obtain books and photocopies of articles for me from the library of The Catholic University of America. A special word of thanks to the librarians at the Woodstock Theological Library at Georgetown University for providing me with access to the amazing treasures of this collection. I could not

1. This is generally the case among German authors, who regularly refer to the “Glaubenssinn” and the “Glaubenssinn der Gläubigen.” French-speaking authors, too, often speak of “le sens de la foi” instead of the Latin *sensus fidei*.

have written this book without these resources. Finally, my thanks to Hans Christoffersen who showed an interest in my book early in the process of its conception and who encouraged me to complete the manuscript. I am indebted to Liturgical Press for agreeing to publish my book.

## *Chapter Ten*

# Official Reception of the “Sense of the Faith”

The Second Vatican Council was formally adjourned by Pope Paul VI on December 8, 1965. This solemn act of concluding the council, however, does not mean the end of the council as a process. Other official acts must follow the council to bring it to completion: the promulgation of the decisions or decrees of the council, the implementation of these decisions, and its reception by the church. Since the councils of Trent and Vatican I in particular, the element of reception of a council has been largely ignored. Scholars such as Alois Grillmeier, SJ, and Yves Congar, OP, however, recalled the role and the importance of the process of the reception of a council.<sup>1</sup> The present chapter will consider only one indispensable dimension of the reception of Vatican II's teaching on the “sense of the faith”—namely, its official reception in the Codes of Canon Law of the Latin and the Eastern churches, its importance and role in the

1. Grillmeier's first contribution appeared in conjunction with a collection of studies in *The Ecumenical Review* for 1970 on the Council of Chalcedon. This landmark council had been celebrated 1,500 years earlier in 451 and had been the subject of a collection of scholarly studies edited by A. Grillmeier and H. Bacht as *Das Konzil von Chalkedon* in 3 volumes (Würzburg: Echter, 1951–1954). The fifteenth centenary of Chalcedon provoked keen interest in the ecumenical councils of the early church and accounts for Grillmeier's discovery of the idea of the reception of a council.

statements of the popes since Vatican II, its inclusion in the *Catechism of the Catholic Church*, and recent statements of the International Theological Commission on the topic.<sup>2</sup>

### What Is Reception?

In a helpful article on reception, the Greek Orthodox theologian John Zizioulas pointed out that, based on his personal experience, the topic first emerged at meetings of the Faith and Order Commission of the World Council of Churches in Oxford, England, in 1965 and Bad Gastein, Austria, in 1966.<sup>3</sup> He wrote:

[These meetings] brought together Church historians and patristic scholars to discuss the Councils in the Ancient Church. It emerged then that reception is an important part of conciliarity. But it also emerged that we know very little about the meaning and especially the theological content of this term, a fact that called for further reflection.

As time went on the idea of reception began to enter into the ecumenical vocabulary officially and in a decisive way. It was, I remember, in Louvain, at the meeting of Faith and Order Commission in 1972 that an attempt was made to make use of this idea in a decisive way. As time went on the idea of reception became more and more the object of attention both theologically and practically in the ecumenical movement. Reception is now a subject we cannot ignore.<sup>4</sup>

Building on these modest origins described by Zizioulas, a small handful of contributions to reception began to appear in the 1970s, and by the

2. I have examined the reception of the "sense of the faith" in my articles that have surveyed the theological literature after Vatican II. These should be consulted for a broader view of the discussion of the issue, problems in interpreting the "sense of the faith," and the general consensus among theologians regarding its importance and its role in the life of the church. However, to date I have not examined the "sense of the faith" in the documents of the magisterium as I attempt to do in this chapter.

3. "The Theological Problem of 'Reception,'" *Centro Pro Unione Bulletin* no. 26 (1984): 3–6 and reprinted in *One in Christ* 21 (1985): 187–93.

4. "The Theological Problem of 'Reception,'" *One in Christ* 21 (1985): 188.

1980s the literature was rapidly expanding.<sup>5</sup> The first to do so was Yves Congar who, already in 1972, had published his "Reception as an Ecclesiological Reality" in the influential and widely read journal *Concilium*, and with this one stroke ended the long neglect of this important topic of the faith.<sup>6</sup> Congar wanted to expand the understanding of reception beyond the juridical confines of how the decisions and teachings of the bishops in council to include how decisions would lead to a genuine enrichment of the life of the church in a broader way. He also wanted to go beyond the scholastic understanding of reception as the obedience of the faithful to the bishops as official teachers. The result of Congar's initiative on reception was a much broader understanding of the idea that traced it through the ecumenical councils and regional synods, the emergence of the canon of Scripture, the use of synodal letters among bishops for centuries, liturgical matters including the determination of a calendar of feasts and commemorations, the veneration of saints by establishing a canon of saints, and finally matters of church law and discipline. Congar was able to show that a phenomenon like reception or consensus among the local churches was a fact of the church's life. Reception did not represent an innovation or a dangerous form of conciliarist or Gallican theology but the normal way in which the apostolicity of the church's teaching and practices came to expression and were shared by the churches.

After Congar, numerous scholars were able to build on the solid and positive foundations he had established. One of these was John Zizioulas. In a short but significant contribution, Zizioulas added a number of

5. I have counted over 200 books, articles, entries in encyclopedias, and treatments in ecclesiological treatises that have appeared since 1968. Works that can be profitably consulted include *Glaube als Zustimmung: Zur Interpretation kirchlicher Rezeptionsvorgänge*, Quaestiones Disputatae 131, ed. Wolfgang Beinert (Freiburg: Herder, 1991); *Reception and Communion among Churches*, ed. Hervé Legrand, Julio Manzanarez, and Antonio García y García (Washington, DC: Canon Law Department of Catholic University of America, 1997); Gilles Routhier, *La réception d'un concile*, Cogitatio Fidei 174 (Paris: Cerf, 1993); and Ormond Rush, *The Reception of Doctrine: An Appropriation of Hans Robert Jauss' Reception Aesthetics and Literary Hermeneutics* (Rome: Gregorian University Press, 1997).

6. A slightly more detailed version had originally appeared as "La 'réception' comme réalité ecclésiologique" in *Revue des sciences philosophiques et théologiques* 56 (1972): 369–403, but it received much greater attention with its appearance in *Concilium* in English, German, Italian, Spanish, Portuguese, and Dutch.

important theological considerations that extended Congar's pioneering ideas. Zizioulas addresses what might otherwise be passed over in silence because it is so rudimentary to the faith.<sup>7</sup> Thus, he pointed out that what the church has received is first and foremost the divine love of the triune God: "The Church exists in order to give what she has received as the love of God for the world."<sup>8</sup> This gift of God takes the form of the "gospel" as the good news of this divine love for the world, a gospel that proclaims "a *Creed* which she confesses to be a true statement of the acts of God in the history of his people and Man, that is, of the way God so loved the world as to give his only Son for it."<sup>9</sup> In turn, the gospel and its creedal formulation must not obscure the fact that it represents a person and not merely ideas: "The Church does not receive and perpetuate ideas or doctrines as such, but life and love, the very life and love of God for Man."<sup>10</sup> Finally, then, at the very center of the church's life stands the fact of reception and this in two senses. First, the church offers itself to the world in order that the gospel of God's love for the world will be received by the world. Second, as a communion of local churches, these very churches must receive each other and in this way constitute the one church of God. For Zizioulas, reception is realized in the Spirit as an event of communion that comes to expression in concrete communities who celebrate the Eucharist in the unity of the ministry of the local bishop (*episkopē*) but that is open to the ministry of all the other local bishops and is thereby universal. Finally, because the church is identified by the oneness of the gospel it proclaims, it can do so only in the context of the local culture and its forms of expression. The church, as the embodiment of receiving and being received by God and the world, can do so only within the diversity of the world's cultures. There is no supra-historical or universalizing culture that is the context of reception in the radical sense intended by Zizioulas. The church comes to realization as local churches enfolded by culture.

Though tantalizing in its brevity, Zizioulas's contribution rendered an indispensable service to those who wrote after the appearance of his

7. "Theological Problem of 'Reception,'" 187–93.

8. *Ibid.*, 190.

9. *Ibid.*

10. *Ibid.*, 191.

article by reducing reception to its ultimate theological principles. Reception is not some secondary topic in theology or in ecclesiology but a theme at the very heart of the Christian faith: the church and the world receive all from a loving God who calls everyone and everything to receive divine love and share it with others, who are themselves in turn called to receive it from them and extend it to others. In a word, reception is the very rule of life both in the cosmos and in the "world of belief."

With the solid base provided by Zizioulas, it is possible to move on to other fruitful aspects of the notion of reception. The literature is replete with historical studies of the councils and synods of the church, of the mutual exchange of doctrinal formulas; of liturgical rituals and practices, and of the sacraments; of ecclesiastical discipline; of canonical legislation and processes; of matters of institutional order, forms of the ministry, and the exercise of authority; of gifts of the Spirit and the rich spiritual and contemplative treasures of each local church and rite; of the exemplary, courageous, and saintly women and men of the multitude of local churches; of the clarity and challenge of the moral teaching espoused by each church; of ecumenical polity, collaboration, and cooperation among the churches and ecclesial communities; of the mutually supportive leaders of the churches; of the pastoral insights and strengths that have emerged among the churches over the centuries; and finally of the numerous carefully crafted bilateral, multilateral, and international ecumenical statements and agreements that have emerged from the ecumenical movement since the conclusion of Vatican II. This vast and rich literature is available for all to consult and mine as it confirms and encapsulates the fundamental principles outlined briefly yet clearly by Zizioulas. Now we, too, can proceed with an examination of reception in the areas I indicated at the start of this chapter.

### **The Revised Code of Canon Law (1983) and the Code of the Canons of the Eastern Churches (1990)**

An aspect of the reception of the "sense of the faith" that has received considerable attention has been the question of why the 1983 Code did not refer to the "sense of the faith" or the "sense of the faithful" explicitly. This silence has often been understood as an expression of the ambiguity of this teaching of Vatican II itself and also of how awkwardly such a notion

fits into the legal framework of a code of laws. Since it was the intention of the pope as the supreme legislator of the church to reframe the church’s laws in light of the teaching of Vatican II,<sup>11</sup> some have even inferred that the absence of the term indicates that John Paul II had serious reservations about it.<sup>12</sup> Whatever reasons John Paul II had for not including an explicit reference to the “sense of the faith” in the Code, some history of how the Code of 1983 emerged is necessary for understanding it.

### ***The Emergence of a Lex Ecclesiae Fundamentalis***

When John XXIII announced the Second Vatican Council, he also indicated the need to reformulate the church’s Code of Canon Law. It would be necessary to reframe the canons of the church in light of the teachings of the council. The Roman Catholic Church, however, consists of a Latin church and an Eastern church, each with its own code of laws. As Vatican II was drawing to its conclusion, Paul VI began to entertain the idea that the church should have a basic statement of the nature of the church and its mission. Such a statement could undergird the codes of the churches of the East and the West vis-à-vis one another. Outside the church, too, it could serve as a statement of the basic principles of how the church presented itself to other national states. These countries had already formulated their constitutions or were in the process of doing so, after the realignment of nations that took place after the Second World War and with the dismantling of the colonial system in the 1950s and 1960s.<sup>13</sup>

11. See John Paul II, Apostolic Constitution *Sacrae disciplinae leges* (January 25, 1983) in *Code of Canon Law, Latin-English Edition: New English Translation* (Washington, DC: Canon Law Society of America, 2017), xxvii–xxxii.

12. Commentators have sometimes asked such leading questions as: Does the council’s teaching on the “sense of the faith” confuse the matter of how the pope and the bishops teach with authority? Does the teaching imply a limitation on papal teaching as taught by Vatican I and reiterated by Vatican II? Does the notion smack of democratizing tendencies in the church after Vatican II that have no place in the Catholic Church? Wouldn’t advancing the “sense of the faith” inevitably implant the modern and inappropriate idea that the Catholic faithful should be polled for their views on matters of faith and morals? Wouldn’t it politicize the faith and how the church arrives at its doctrinal and pastoral determinations? In my opinion, these questions are really invidious because they misunderstand the meaning of the teaching of Vatican II and try to sow doubts about it.

13. The formulation of a “charter” for the recently founded United Nations (1945) was also an impetus for the Roman Catholic Church to clearly state for all the world to read how it understood itself in terms they could understand.

Not many Catholics were aware of this project of writing a charter of the church. Nevertheless, it occupied a great deal of time of canonists from mid-1965 until 1982, when the final product was presented to John Paul II.<sup>14</sup> The bishops were kept apprised of the project and their support was sought at the First General Synod of Bishops in 1967, the First Extraordinary Synod of Bishops in 1969, and the Second General Synod of Bishops in 1971. There are three editions of the *Lex Ecclesiae Fundamental* (*LEF*): a *textus prior* in 1968, a *textus emendatus* in 1970, and a final *schema postremus* in 1982.<sup>15</sup> The history of the editions shows that the "sense of the faithful" was mentioned explicitly in the various versions and rewritings of the *textus prior* and *emendatus*. It did not appear in the final version, however.

In both the *textus prior* and *textus emendatus*, the church is referred to as the "People of God" and the ministry of teaching is related to the prophetic role of Christ in which all the faithful (*christifideles*) participate, some of whom are ordained while the vast majority are not. The teaching is drawn practically verbatim from article 12 of *Lumen Gentium*, and the "sense of the faith" is mentioned explicitly.<sup>16</sup> The language is lively and concrete. By the emergence of the final version, the *schema postremus*, the tenor has changed completely. There is no mention of the church as the people of God, or of the prophetic ministry of the church, or of the "infallibility in belief" of the faithful, or of the "sense of the faith" of all the faithful and their pastors. Canon 59 refers to the lay faithful as those

14. On the history, interpretation, and documentation of the *Lex Ecclesiae Fundamental*, I have relied heavily on Daniel Cenalmor Palanca, *La Ley Fundamental de la Iglesia: Historia y análisis de un proyecto legislativo* (Pamplona: Ediciones Universidad de Navarra, 1991). See also Thomas J. Green, "Lex fundamentalis: The Law Within," in *Proceedings of the Canon Law Society of America* 67 (2005): 21–76 and Winfried Aymans, "Das Projekt einer *Lex Ecclesiae Fundamental*," in *Handbuch des katholischen Kirchenrechts*, ed. J. Listl, H. Müller, and H. Schmitz (Regensburg: F. Pustet, 1983), 65–71.

15. For the texts, see Pontificia Commissio Codici Iuris Canonici Recognoscendo, *Schema Lex Ecclesiae Fundamental* cum relatione (Rome: Typis Polyglottis Vaticanis, 1969); idem, *Schema Lex Ecclesiae Fundamental: Textus emendatus cum relatione de ipso schemate deque emendationibus receptis* (Rome: Typis Polyglottis Vaticanis, 1971); and *Schema Lex Ecclesiae Fundamental: Codex recognitus* (Rome: Typis Polyglottis Vaticanis, 1976). The *textus prior* and the *schema postremus* can be found in Daniel Cenalmor Palanca, *La Ley Fundamental de la Iglesia*, Appendices III and IV.

16. See canon 55, with three paragraphs, in the *textus prior*, and canon 55, with two paragraphs, for the *textus emendatus*.

who "manifest their universal adherence to what the church teaches under the guidance of the sacred magisterium."<sup>17</sup> The language is no longer that of Vatican II, but has reverted to the dry and lifeless terminology of neoscholasticism before Vatican II. How is the radical change in the language and the perspective of the final draft to be accounted for? We will see the same process unfold during the preparation of the text of the new Code of Canon Law.

### *The Revision of the Code of Canon Law*

At the same time that canonists, theologians, bishops, and cardinals were working on the *Lex Ecclesiae Fundamentalis*, many others were working on a revision of the Code of Canon Law for the Latin church and writing a Code for the Eastern churches. The Pontifical Commission for the Revision of the Code of Canon Law began its work in earnest on November 20, 1965, a few days before the conclusion of Vatican II.<sup>18</sup> As with *LEF*, the bishops gathered for the First Ordinary General Assembly of the Synod of Bishops in 1967 were informed about the process and approved ten principles formulated by the commission that would govern the revision.<sup>19</sup> The universal episcopate was consulted throughout the process and the bishops who had assembled for the Fifth Ordinary General Assembly of the Synod of Bishops in 1980 were consulted on the progress that had been made up to that time. Clearly, the process of studying, consulting, and drafting the new Code was intensive and world-wide. The final text was submitted to John Paul II on October 29, 1981. The Code of Canon Law for the Latin church has been favorably received in general, it seems,

17. See Daniel Cenalmor Palanca, *La Ley Fundamental de la Iglesia*, canon 59, p. 492.

18. I have relied on John A. Alesandro, "General Introduction," in *The Code of Canon Law: A Text and a Commentary*, ed. James A. Coriden, Thomas J. Green, and Donald E. Heintschel (New York: Paulist Press, 1985), where the author outlines the process of revision, 1–22, at 4–8 ["The Process of Revision"], and Carlo Fantappiè, *Storia del diritto canonico e delle istituzioni della Chiesa* (Bologna: Il Mulino, 2011), 286–94 ["La svolta costituzionale del Concilio Vaticano II"], 294–99 ["La difficile transizione: dal Concilio ai Codici"], and 299–309 ["Il Codice Latino del 1983 e il Codice delle Chiese Orientali del 1990"].

19. According to John A. Alesandro, "One of the main purposes of the ten principles was to guarantee harmony between the Church's revised law and the conciliar documents." These principles can be found in "General Introduction," *Code of Canon Law*, 6.

but of course one would not expect that a document of this scope would escape all calls for improvement. The ambiguity of the Code in regard to "the sense of the faith" is a point at issue.

The final text of the Code does not explicitly mention the teaching function of all the faithful. The earlier drafts, too, fail to mention the "sense of the faith" in conjunction with the role of all the baptized in fulfilling the teaching function entrusted to each believer in baptism. At most, it could be said that the appropriate passages contain traces and hints of the conciliar teaching, and many canonists and theologians have called for these passages to be revised to explicitly mention the "sense of the faith." In this way, the council's teaching on the responsibility of all the faithful for the church's witness to Christian revelation would be clearly expressed. The text of the Code needs to be clear on this central conviction of the bishops at Vatican II. Silence on this matter simply leads to continued neglect of this central, albeit to some, inconvenient teaching. The persistent neglect of the teaching continues to promote an unhealthy imbalance in the church.<sup>20</sup> Many canonists have pointed to various canons where this imbalance can be redressed. I want to point to two canons in particular.

Book 3 of the Code treats the teaching function of the church and this is where one would expect to find a clear statement of the universal responsibility in the church for its teaching—its content, confession, and

20. Just as Vatican II had to address the ecclesiological imbalance between papal primacy and episcopal collegiality in the church after Vatican I, the post-Vatican II church needs to address a new imbalance that has been provoked by the council's clear empowerment of the laity and their equal responsibility for the whole life of the church—its teaching and witnessing to Christian truth (*munus docendi*), its mission of sanctifying the world (*munus sanctificandi*), and its co-responsibility in leadership (*munus regendi*). Vatican II has called forth just such a vision of the church. By necessity, it had to leave the details of implementing its vision to the bishops and the faithful after the council. This vision is not served by maintaining silence on the "sense of the faith" of all the faithful, and by not implementing the concrete changes in polity that will advance it. Instead, in the face of its own legitimate concern to defend its authority in a world where authority itself is often under attack, the pope and the bishops have maneuvered themselves into a position in which the equal claims of the faithful have been neglected. They have failed to see that their greatest ally is in a situation where all in the church "conspire" or "breathe together" in fulfilling the same mission and task. This has contributed to the debilitating imbalance that the church now faces.

transmission. After defending the right of the church to teach Christian truth in freedom and its right to teach even truths of the moral and social order that defend the human person and her or his salvation (cc. 747–748), and after canon 749 defends the rights of the pope and the bishops to teach and define divine revelation with authority, the Code finally addresses the role of the faithful in fulfilling the teaching function.

A person must believe with divine and Catholic faith all those things contained in the word of God, written or handed on, that is, in the one deposit of faith entrusted to the Church, and at the same time proposed as divinely revealed either by the solemn magisterium of the Church or by its ordinary and universal magisterium which is manifested by the common adherence of the Christian faithful under the leadership of the sacred magisterium; therefore all are bound to avoid any doctrines whatsoever contrary to them (c. 750, §1).<sup>21</sup>

An attentive reading of this canon reveals an overly cautious and hesitant expression of the teaching of Vatican II. First of all, it makes clear that the deposit of faith is “entrusted to the Church,” which can only mean the whole church. Here, only the church in its entirety adequately expresses the meaning of “Church” in canon 750. The second phrase that deserves attention is the mention of Christian revelation being “manifested by the common adherence of the Christian faithful under the leadership of the sacred magisterium.” This, too, can only mean the whole church, the entire people of God, since revelation is not present where the Christian faithful withhold their adherence or where the pastors do not teach with the fullness of their authority. Both elements, the faithful and the pope and the bishops, together constitute the “sense of the faithful.” It would have been clearer here if the Code had simply mentioned the gift of the Spirit to each and every believer in the form of the “sense of the faith,” or the gift to all in the “consensus of the faithful.” The substance of the teaching of Vatican II is present in canon 750, but its clarity, and hence its full implementation, has been dimmed. This lack of clarity and conviction is what has created the sense of imbalance regarding the teaching function of the whole church. Only a clear insertion of the teaching of article 12

21. *Code of Canon Law, Latin-English Edition: New English Translation* (Washington, DC: Canon Law Society of America, 2017), 246.

of *Lumen Gentium* on the "sense of the faith" can remedy this situation and thereby open up the concrete means by which all in the church will be able to participate in the teaching function.

The second area where the Code could have been more faithful to Vatican II concerns its treatment of the obligations and rights of all the Christian faithful in canon 212. Paragraph 3 of this canon quotes article 37 of *Lumen Gentium* and says the following:

To the degree that their knowledge, competence, and excellence are well founded, [the Christian faithful] have the right and even at times the duty to inform their sacred pastors of *their judgment on matters which pertain to the good of the Church* and to communicate their judgment to the rest of the Christian faithful, without prejudice to the integrity of the faith and morals, with respect for their pastors, and conscious of the advantage for all and the dignity of each person.<sup>22</sup>

The German canonist Dominik Burghardt has correctly pointed out the confusion caused by the formulation of the canon in terms of "competence" (*pro scientia, competentia et praestantia quibus pollent*). The faithful, whatever their status in the church, do not base their "judgments" (*sententiae*) on their human competence alone but primarily on the gift of truth by the Spirit—the "sense of the faith" as taught by Vatican II. Burghardt writes:

22. "Pro scientia, competentia et praestantia quibus pollent, ipsis ius est, immo et aliquando officium, ut sententiam suam de his quae ad bonum Ecclesiae pertinent sacris Pastoribus manifestent eamque, salva fidei morumque integritate ac reverentia erga Pastores, attentisque communi utilitate et personarum dignitate, ceteris christifidelibus notam faciant." *Code of Canon Law, New English Translation*, 63. I have given my own translation of canon 212. I find the translation in the new English version deficient. The earlier English translation is closer at points to what I have tried to express with my translation. See *Code of Canon Law: A Text and Commentary*, 146. My principal objection is to the translation of *sententia* as "opinion," in both the earlier and the new English translation of the Code. "Opinion" is much too weak and misleading. *Sententia* also connotes "meaning," "purpose," "judgment," and "decision." In light of what I indicated in chapter 9 of the council's decision to change the context of the "sense of the faith" from the discussion of public opinion to the responsibility for teaching (*munus docendi*) in the revised text of Gérard Philips, the mistranslation of *sententia* as "opinion" seems particularly egregious.

It is not “knowledge, competence and excellence” on the part of believers that primarily entitles them to express their judgments, but the fact that they are bearers of the “sense of the faith” that gives them the “right to be heard.” The fact that not every Christian can claim knowledge, competence, and excellence means that the danger of crassly misunderstanding the meaning of the paragraph needs to be guarded against. On the one hand, it creates confusion by incorporating constitutional elitism into the law, and on the other, it transposes intra-ecclesial dialogue into a realm governed by purely secular principles. The “sense of the faith,” on the other hand, does not depend on secular qualifications but on the intensity of lived communion with God and the Church. Its incorporation would have avoided such misunderstandings and would have imparted to the canon a clearly theological figuration. Moreover, the complementarity of the office of the magisterium and the “sense of the faith” of the faithful, as well as the obligation to obey and the “right to be heard” would have found appropriate expression.<sup>23</sup>

The formulation of canon 212, §3 seems to miss the whole point of the “sense of the faith” and so demands reformulation.<sup>24</sup>

### *The Contribution of the Code of Canons of the Eastern Churches*

Unlike the Code of Canon Law for the Latin church, the Code of Canons of the Eastern churches contains two explicit references to the “sense of

23. *Institution Glaubenssinn. Die Bedeutung des sensus fidei im kirchlichen Verfassungsrecht und für die Interpretation kanonischer Gesetze* (Paderborn: Bonifatius Verlag, 2002), 179–80. It is not that human knowledge, competence, and even excellence are not to be welcomed in the church and that Christians who possess these desirable qualities are not to be encouraged to make these gifts available to the church, but the fact that they are not the most secure basis for the teaching function in the church. Canon 212, §3 needed to draw on the teaching of *Lumen Gentium* 12 and 35, as well as article 37.

24. The only point at which the *New Commentary on the Code of Canon Law* refers to the “sense of the faith” is in Robert J. Kaslyn’s commentary on canon 212. Kaslyn does not state clearly that the canon is based on *Lumen Gentium* 12, but instead invokes the teaching of Vatican II to maintain the balance between the ordinary faithful and their pastors when the former express their opinions to their leaders, and when differences of opinion can threaten the *communio* of the church. To his credit, however, Kaslyn offers a very positive reading of “the ‘knowledge, competence, and prestige’ of the faithful who express opinions,” seeing in these qualities real contributions to the church’s understanding of the faith. See *New Commentary on the Code of Canon Law*, ed. John P. Beal, James A. Coriden and Thomas J. Green (New York: Paulist Press, 2000), 265–67, at 266.

the faith." They are in canons 603 and 604, and appear in chapter 1 of the section that deals with the Ecclesiastical Magisterium (Title XV).<sup>25</sup> Although canons 603 and 604 fall within the treatment of "The Teaching Function of the Church in General," they seem to be dominated by the theme of the official ecclesiastical magisterium, so that the participation in the teaching function by the ordinary faithful, according to Vatican II, does not emerge with sufficient clarity. Neither canon makes any reference to articles 12 or 35 of *Lumen Gentium* in the footnotes citing their sources. As we will see, however, this is not really a shortchanging of Vatican II in the teaching of the Eastern Code.<sup>26</sup>

Canon 603 refers to the Pastoral Constitution on the Church in the Modern World, article 62, which deals with the relationship of the Christian faith to culture. Paragraph 2 in particular urges greater openness on the part of the church to more contemporary forms of literature and the arts, in order to elevate human life and values through the collaboration of the church and the cultures in which it lives and operates. When the canon is read against the contents of the whole of article 62, it offers a pertinent and powerful insight on the scope of the "sense of the faith," yet in a way different from *Lumen Gentium* 12.

Canon 604 also approaches the teaching of Vatican II on the "sense of the faith" from a different perspective and so helps to deepen how the postconciliar church understands the teaching. This canon refers to the multiplicity of the particular churches in the universal church as something fundamentally positive, but that can also be challenging, given "the varieties of doctrinal enunciations in the various churches."<sup>27</sup> The footnote

25. The two codes are organized differently. Whereas the Code of the Latin church has seven general sections, called "Books," that are further divided into "titles" and "chapters," the Code of the Eastern Churches simply has thirty different sections, called "titles," that follow thematically one after the other. These "titles" are further divided into "chapters" and "articles."

26. Dominik Burghardt, too, has interpreted these canons positively, even though they do not reference *Lumen Gentium* 12. He writes: "Even though LG 12 is not what supports the formulation of canons 603 and 604, nevertheless we can identify the use of the notion of the *sensus fidei* in these canons with what the Council meant by the expression the 'sense of the faith.'" *Institution Glaubenssinn*, 202.

27. *Code of Canons of the Eastern Churches, Latin-English Edition*, prepared under the Auspices of the Canon Law Society of America (Washington, DC: Canon Law Society of America, 2001), 235.

refers to the Decree on the Catholic Eastern Churches, article 2, which states: "There is a remarkable interchange between them [the various churches or rites], so that the variety within the Church not only does no harm to its unity, but rather makes it manifest."<sup>28</sup> And, as canon 604 states: "The Catholicity of the Church is brought into better light through legitimate diversity."<sup>29</sup> Moreover, this insight is extended to the other churches and ecclesial communities that have issued from the Reformation, when the footnote also references the Decree on Ecumenism, article 4.<sup>30</sup> In both instances cited in the footnote to canon 604, these conciliar documents do not mention the "sense of the faith" explicitly, but the Code of Canons of the Eastern Churches has discerned its implied teaching there.<sup>31</sup>

The Latin church, then, could be enriched by the clarity of the teaching of the Eastern churches on the "sense of the faith." Will it dare to clarify its espousal of Vatican II on this point in reformulating and improving its treatment of the topic in the Code of Canon Law in the future?<sup>32</sup>

28. *Orientalium ecclesiarum*, 2. See Norman P. Tanner, *Decrees of the Ecumenical Councils*, vol. 2 (Washington, DC: Georgetown University Press, 1990), 900.

29. *Code of Canons of the Eastern Churches*, 235.

30. See Tanner, *Decrees of the Ecumenical Councils*, 2:911–12.

31. In his commentary on the Code of Canons of the Eastern Churches, George Nedungatt strangely does not mention the appearance of the term the "sense of the faith" in canons 603–604. He talks around this important term of Vatican II, but never explicitly adverts to it. See *A Guide to the Eastern Code: A Commentary on the Code of Canons of the Eastern Churches*, ed. George Nedungatt (Rome: Pontificio Istituto Orientale, 2002), 457–62.

32. Many canonists have made suggestions for which canons are prime candidates for mention of the "sense of the faith" in the Code. See Eugenio Corecco, "Aspects of the Reception of Vatican II in the Code of Canon Law," in *The Reception of Vatican II*, ed. Giuseppe Alberigo, Jean-Pierre Jossua, and Joseph A. Komonchak (Washington, DC: Catholic University of America Press, 1987), 249–96; Rinaldo Bertolino, "Sensus Fidei, Charismen und Recht im Volk Gottes," *Archiv für katholisches Kirchenrecht* 163 (1994): 28–73; Christoph Ohly, "Systematische Erwägungen zur ekklesiologisch-verfassungsrechtlichen Einbindung des 'sensus fidei fidelium' in das Wesen und die Sendung der Kirche," *Sensus fidelium. Zur Einordnung des Glaubenssinnes aller Gläubigen in die Communio-Struktur der Kirche im geschichtlichen Spiegel dogmatisch-kanonistischer Erkenntnisse und der Aussagen des II. Vatikanum* (St. Ottilien: EOS Verlag, 1999), 273–346; and Burghardt, *Institution Glaubenssinn*, 172–204 ["Sensus fidei und Kodifikation"] and 336–44 ["Ergebnisse und Ausblick"], to name only a few of the more prominent contributions.

# General Bibliography

This bibliography contains only the most general or frequently referenced works. Other books and articles can be located in the footnotes of the text after consulting the authors in the index of authors. Books and articles on the “sense of the faith” are located in the specialized chronological bibliography on the “sense of the faith.”

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# Index of Names

- Abbott, Walter M., 247  
Abraham and Sarah, 77  
Adam and Eve, 49  
Adam, Karl, 143  
Ahern, Barnabas, 299, 304  
Alban, Kevin J., 2, 3, 5  
Albert the Great, 51, 147, 197, 202  
Alesandro, John A., 280  
Alexander VII, Pope, 54, 55  
Alexander VIII, Pope, 128  
Alexander of Hales, 51, 147  
Alfaro, Juan, 35, 63, 67  
Alphonsus Liguori, 202  
Altaner, Berthold, 199  
Amadeus of Lausanne, 202  
Ambrose Autpert, 194, 196  
Ambrose of Milan, 215, 231, 329  
Andrew of Crete, 43, 44  
Andrew of Gortyna, 191  
Angelini, Domenico, 64, 65  
Angelini, Giuseppe, 65  
Anne and Joachim, 46  
Anselm of Bec/Canterbury, 20, 50–52, 74–75  
Anselm of Laon, 138  
Anthony of Cordova, 174  
Anthony of Padua, 202  
Antoninus of Florence, 6–8, 376  
Aquinas, Thomas, 6, 7, 51, 54, 74, 112, 136, 138–41, 146–49, 152, 155, 159, 167, 169, 180, 197, 202, 207, 310–11  
Aristotle, 328, 347  
Athanasius of Alexandria, 94, 231  
Aubert, Roger, 56–57, 68, 120, 123  
Audisio, Guglielmo, 65  
Augustine of Hippo, 3, 5, 20, 51–52, 59, 72, 75, 87, 107, 147, 155, 176, 179, 196, 231, 234, 244, 246, 351  
Aymans, Winfried, 35, 279  
Baillie, John, 350  
Balič, Carlo, 229  
Báñez, Domingo, 325  
Barbado y Vieja, Francisco, 230  
Bardy, Gustave, 173  
Barré, Henri, 195  
Bartolomei, Tommaso M., 221, 222  
Bausenhardt, Guido, 368  
Bautain, Louis, 352  
Beardsley, Patrick J., 216  
Beatrice, Pier Franco, 48  
Becker, Jürgen, 106  
Bellarmine, Robert, 12–14, 202  
Benedict XII, Pope, 91, 156  
Benedict XVI, Pope, 86, 131, 293, 294  
Benoît, Pierre, 217  
Beope, Gúrpide, 237, 238  
Bernard of Clairvaux, 21  
Bernardine of Siena, 202  
Bertolino, Rinaldo, 286  
Beumer, Johannes, 109, 158, 222  
Bier, Georg, 270  
Bizzarri, Giuseppe Andrea, 65  
Boeve, Lieven, 306  
Bolewski, Jacek, 73, 208  
Boman, Thorleif, 347

- Bonaventure of Bagnoregio, 51, 112, 147,  
197, 202, 310  
Boss, Sarah Jane, 81, 187  
Botte, Bernard, 231  
Bouchard, Charles E., 138  
Bradshaw, Paul F., 185  
Brennecke, Hans Christof, 93  
Brown, Peter, 48, 180  
Browne, Michael, 229  
Brox, Norbert, 119  
Burghardt, Dominik, 2, 250, 283, 285  
Burigana, Riccardo, 264  
Burkhard John J., 1, 93, 270  
Burrell, David, 113  
Butler, Cuthbert, 120, 123, 129  
Butler, Sara, 71
- Calabria, Raffaele, 224, 239  
Calabuig, Ignazio M., 185, 187  
Calvin, John, 38  
Cambourg, Jean de, 230  
Cannella, Giovanni Battista, 68  
Cano, Melchior, 11, 12, 59, 85, 147, 165, 376  
Cantero Cuadrado, Pedro, 237, 238  
Capalti, Annibale, 65  
Capelle, Bernard, 45, 47, 231  
Cappuyens, Maïeul J., 177  
Caprile, Giovanni, 184  
Carey, Patrick W., 11, 19  
Carlen, Claudia, 134, 147, 177, 200, 224,  
232  
Carroll, Denis, 176  
Caterini, Prospero, 65, 68  
Caudron, Marc, 131  
Celestine I, Pope, 177  
Cenalmor Palanca, Daniel, 279, 280  
Cerbelaud, Dominique, 51, 53  
Cerfaux, Lucien, 231  
Chadwick, Owen, 87, 90  
Charles V, Emperor, 9  
Charue, André Marie, 229  
Chavasse, Antoine, 121, 122  
Chéno, Rémi, 170  
Classen, Sophronius, 158  
Clement VIII, Pope, 325  
Clement XI, Pope, 47, 180  
Clement of Alexandria, 231  
Clifford, Catherine E., 355, 358, 364  
Collingwood, R. G., 337  
Congar, Yves, 3, 9, 10, 11, 20, 24, 30, 32, 35,  
36, 143, 161–71, 176, 181, 229, 231, 236,  
240, 241, 247, 249, 273, 275, 276, 311,  
331, 348, 358, 363  
Cooper, Kristina, 363  
Coppens, Joseph, 198, 199  
Corecco, Eugenio, 35, 286  
Coriden, James A., xiii, 280, 284  
Cossa, Filippo, 62, 65  
Costigan, Richard F., 58, 120  
Costigane, Helen, 271  
Cothenet, Édouard, 189  
Couenhoven, Jesse, 48  
Coulson, John, 87, 88, 97  
Courth, Franz, 207  
Crehan, Joseph H., 36  
Cucchetti, Setefano, 321  
Cullmann, Oscar, 189, 352  
Cyprian of Carthage, 15, 59  
Cyril of Alexandria, 42, 231  
Cyril of Jerusalem, 231, 329
- Dabin, Paul, 231  
Daniélou, Jean, 32, 229  
Daley, Brian E., 187, 189, 190, 216  
Dalmau, José María, 16  
Davies, Brian, 138  
Debrunner, Albert, 347  
Dejaifve, Georges, 129  
Demel, Sabine, 270  
De Mey, Peter, 36, 270  
De Palma, Giuseppe A., 223  
De Petter, Dominicus, 332  
Descartes, René, 326, 333  
Dietrich, Donald J., 24, 27, 32  
Dillenschneider, Clément, 44, 161, 171,  
172–81, 200  
Dionne, J. Robert, 64  
Döllinger, Ignaz von, 87  
Donnelly, John Patrick, 12  
Douie, Decima, 91

- Drey, Johann Sebastian von, 24  
 Driedo, Johannes, 25  
 Drilling, Peter, 36  
 Duffy, Eamon, 188  
 Dulles, Avery, 95, 114, 342, 345, 350, 359, 360, 377  
 Dunn, James D. G., 107  
 Dupuy, Bernard-Dominique, 264
- Eadmer of Canterbury, 45, 50  
 Edelby, Néophytos, 363  
 Ehrman, Terrence P., 213  
 Ekpo, Anthony, 253, 270  
 Elchinger, Léon-Arthur, 230  
 Elizabeth, Cousin of Mary, 43, 76  
 Elliott, J. K., 189  
 Eudean, Philip, 81  
 Epiphanius of Salamis, 59, 190, 217  
 Erb, Peter C., 26, 32  
 Ernst, Johannes, 197, 198  
 Esbroeck, Michel van, 189  
 Eugene IV, Pope, 53  
 Eusebius of Caesarea, 97  
 Eusebius of Vercellae, 94
- Famerée, Joseph, 170–71, 370  
 Fania da Rignano, Antonio, 65  
 Fantappiè, Carlo, 280  
 Fédou, Michel, 119  
 Feiner, Johannes, 264  
 Felten, Maurice, 230  
 Fernekeess, Peter, 113  
 Ferrandus of Carthage, 20  
 Fic, Leonard, 158, 391, 398  
 Fiedrowicz, Michael, 119  
 Fink, Karl August, 3, 53  
 Finucane, Daniel J., 1  
 Finucane, Ronald C., 6  
 Fisher, John, 98  
 Fisichella, Rino, 349  
 Fitzmyer, Joseph A., 49  
 Flanagan, Brian P., xiii  
 Flanagan, Donal, 216  
 Flannery, Austin, 247, 257, 355, 381  
 Florit, Ermengildus, 264, 267  
 Flynn, Gabriel, 163, 171, 327
- Ford, John T., 86  
 Fouilloux, Étienne, 163, 223  
 Francis, Pope, 86, 220, 294, 295, 296, 318, 319, 322, 380  
 Francis de Sales, 202  
 Francis of Assisi, 215, 348, 349  
 Franssen, Piet, 326  
 Franzelin, Johannes Baptist, 56, 58, 103–9, 110, 117, 158, 221, 240  
 Frattini, Andrea Maria, 65  
 Fries, Heinrich, 132, 354  
 Fuchs, Josef, 35, 163  
 Fulgentius of Ruspe, 20
- Gadamer, Hans-Georg, 340, 343  
 Gagnebet, Marie-Rosaire, 229  
 Gaillardetz, Richard R., 131, 355, 356, 358, 364  
 Galvin, John P., xiii, 105  
 Gambero, Luigi, 44, 45, 194  
 Garcia Extremeño, Claudio, 222  
 Garrone, Gabriele Marie, 229, 241, 242  
 Gasser, Vinzenz, 86, 126, 127, 128, 129, 130  
 Geaney, Dennis J., 133  
 Geiselman, Josef Rupert, 32, 105, 194, 261, 262  
 Geissler, Hermann, 86, 91  
 Germanus of Constantinople, 43, 191, 202  
 Gerson, Jean, 174  
 Ghattas, Isaac, 230  
 Ghellinck, Joseph de, 173  
 Gleeson, Philip, 178  
 Goethe, Johann Wolfgang von, 76, 146  
 Granfield, Patrick, 17  
 Grant, Robert M., 119  
 Green, Thomas J., 279  
 Gregory I, Pope, 231  
 Gregory XV, Pope, 55  
 Gregory of Nazianzen, 107, 231  
 Gregory of Nyssa, 231  
 Gregory of Valencia, 14, 15, 16, 59  
 Greshake, Gisbert, 78, 210–13, 215, 217  
 Grootaers, Jan, 229, 230, 261  
 Groppe, Elizabeth T., 163  
 Grosseteste, Robert, 74, 75  
 Gruber, Siegfried, 66

- Guardini, Romano, 352  
Guidi, Filippo Maria, 8
- Hadrian VI, Pope, 6  
Hahn, Judith, 270  
Haight, Roger, 244, 338  
Hamer, Jérôme, 299  
Hammans, Hubert, 101, 135  
Hauke, Manfred, 80, 211  
Häussling, Angelus, 207  
Hegel, Georg W. F., 326  
Heidegger, Martin, 343, 353  
Hell, Leonhard, 143  
Henn, William, 176  
Hennecke, Edgar, 189  
Herder, Johann Gottfried, 344  
Hervé, Jean Marie, 222  
Hilary of Arles, 20  
Hilary of Poitiers, 93  
Hilberath, Bernd J., 35, 176, 260  
Hilkert, Mary Catherine, 334  
Hinze, Bradford E., xiii, 24, 32  
Hödl, Ludwig, 35  
Hontheim, Johann N. von ("Justinus Febronius"), 123  
Hoping, Helmut, 261  
Horan, Daniel P., 74, 75  
Horst, Ulrich, 8, 129  
Hugh of St. Victor, 21  
Hughson, D. Thomas, 110  
Humboldt, Wilhelm von, 344  
Hünemann, Peter, 35, 259  
Hus, Jan, 2, 3, 357  
Husserl, Edmund, 353
- Ildephonse of Toledo, 20  
Irenaeus of Lyons, 25, 59  
Irwin, Kevin W., 177  
Iserloh, Erwin, 133
- Jacob of Serug, 42, 189, 190  
Jacquemont, Patrick, 331  
Jäger, Lorenz, 223  
Jedin, Hubert, 9, 20  
Jerome, Saint, 59, 147, 195, 231  
Jesus Christ, See Index of Subjects
- Johann, Robert O., 324  
John the Baptist, 43, 76  
John the Evangelist, 4, 42, 44, 74, 234, 235, 243, 288  
John Cassian, 147  
John Chrysostom, 42, 231, 329  
John of Damascus, 43, 191, 202  
John of Montenegro, 53  
John of Segovia, 53  
John of Thessalonica, 190  
John of Torquemada, 53  
John XXII, Pope, 91  
John XXIII, Antipope, 3  
John XXIII, Pope, 134, 221, 223, 227, 261, 262, 263, 278, 327  
John Paul II, Pope, 74, 80–81, 131, 278–80, 287, 292–94, 296, 299, 304, 310, 322, 356  
Johnson, Elizabeth A., 113, 216  
Johnson, Maxwell E., 329  
Joseph, Husband of Mary, 76  
Jossua, Jean-Pierre, 286, 331, 334  
Jounel, Pierre, 44, 45, 47, 186, 188, 194  
Jugie, Martin, 197, 199, 200  
Julian of Eclanum, 48, 179, 180  
Jungmann, Josef A., 353  
Justin Martyr, 185
- Kant, Immanuel, 326  
Karrer, Leo, 19, 20  
Karrer, Otto, 209, 210  
Kaslyn, Robert J., 284  
Kasper, Walter, 25, 57, 62, 104, 109, 362, 363, 373  
Kavanagh, Aidan, 177  
Kellenberg, Walter P., 223, 224  
Kelly, J. N. D., 3, 21  
Kelly, William J., 86, 104  
Kennedy, Philip, 331, 332  
Kent, Bonnie, 138  
Ker, Ian, 86, 87, 92  
Kern, Walter, 11  
Kessler, Hans, 213  
Ketter, Peter, 231  
Kilby, Karen, 353  
Kilmartin, Edward J., 177

- Kimball, Virginia M., 80  
 Kläden, Tobias, 214  
 Kleinknecht, H., 347  
 Kleutgen, Joseph, 122  
 Klostermann, Ferdinand, 368  
 Kodell, Jerome, 252  
 Komonchak, Joseph A., 216, 224, 260  
 König, Franz, 227, 229  
 Kopecek, Thomas A., 93  
 Köster, Heinrich M., 45  
 Koster, Mannes D., 143–59, 161, 163, 172, 181  
 Kuhn, Johannes Evangelist, 294  
 Kuhn, Thomas, 337  
 Küng, Hans, 287
- Labouré, Catherine, 58  
 Lafortune, Pierre, 229  
 Lahl, Alexander, 214  
 Lakeland, Paul, xiii  
 Lamberigts, Mathijs, 228  
 Lambruschini, Luigi, 58  
 Lamennais, Hugues de, 352  
 Lamy, Marielle, 46, 51–53, 56  
 Lash, Nicholas, 87  
 La Soujeole, Benoît-Dominique de, 51  
 Laurentin, René, 58, 63–64, 67–68, 188, 197  
 Lauret, Bernard, 163  
 Lawlor, Francis X., 158  
 Leckey, Dolores R., 367  
 Lee, James Ambrose, 32  
 Leger, Paul Émile, 227, 229, 335  
 Lenoble, Robert, 331  
 Leo I, Pope, 231  
 Leo XIII, Pope, 57, 104, 120, 216  
 Leven, Steven, 367  
 Levering, Matthew, 72  
 Ligier, Louis, 257  
 Lohfink, Gerhard, 74–75, 79, 81, 211, 213, 220  
 Lonergan, Bernard, 70, 101, 169, 338, 340–42, 347  
 Long, David P., 100  
 Lot-Borodine, Myrrha, 80–81  
 Löwith, Karl, 337  
 Lugo, Juan de, 147
- Lüke, Ulrich, 213  
 Luther, Martin, 9  
 Lutzmann, H., 252
- Maciotti, Alessandro, 65  
 Maggiolini, Alessandro, 326  
 Manoir, Hubert du, 45, 47, 189  
 Mansi, Giovanni Domenico, 54, 121, 126, 128–30  
 Maréchal, Joseph, 353  
 Marín-Sola, Francisco, 134–43, 146, 149, 172, 181, 311–12  
 Maritain, Jacques, 137  
 Marthaler, Berard L., 296–97  
 Martimort, Aimé-Georges, 44–45, 186, 188  
 Martin V, Pope, 3  
 Mary, Blessed Virgin, See Index of Subjects  
 Mason, Alistair, 123  
 Matuscheck, Dominik, 73  
 Mazza, Enrico, 329,  
 McCann, Pamela, 270  
 McCool, Gerald, 56  
 McDermott, Brian O., 79.  
 McDonnell, Kilian, 188  
 McKenzie, John L., 252  
 McPartlan, Paul, xiii, 305  
 Melloni, Alberto, 216, 224, 254  
 Menke, Karl-Heinz, 205, 212  
 Merkle, Judith, 320  
 Merrigan, Terrence, 92, 97  
 Meslin, Michel, 93  
 Metz, Johannes B., 86, 331  
 Meyer, Regina Pacis, 214  
 Migne, Jacques-Paul, 44, 195, 196, 351  
 Milburn, R. L. P., 189  
 Miller, Edward Jeremy, 86  
 Mimouni, Simon Claude, 185, 187, 189  
 Mišerda, Marko, 113  
 Moeller, Charles, 229, 264  
 Möhler, Johann Adam, xii, 23–32, 38, 56, 163, 262, 358  
 Molina, Luis de, 325  
 Moons, Jos, 245, 366  
 Moran, Gabriel, 350  
 Mörsdorf, Klaus, 35

- Mouroux, Jean, 331  
Müller, Gerhard, 62–63, 65–66  
Müller, Otfried, 126  
Murphy, Francis X., 19
- Nabert, Jean, 331  
Napiwodzki, Piotr, 143  
Nau, P., 131  
Naud, André, 229  
Nealy, Francis D., 135  
Nedungatt, George, 286  
Nestorius of Constantinople, 179  
Netter, Thomas, 2–6, 7, 9, 376  
Neumann, Johannes, 38  
Newman, John Henry, xii, 25, 35, 57, 61, 62, 69, 85–101, 103, 105, 108–9, 135, 147, 163, 350, 370, 379  
Nicholl, Donald, 2  
Nichols, Aidan, 110, 113, 163  
Nicolau, Michael, 350  
Niebecker, Engelbert, 231  
Niemann, Franz-Josef, 11  
Nitsche, Bernhard, 364  
Norelli, Enrico, 189
- O'Carroll, Michael, 189, 194, 201  
O'Collins, Gerald, 349, 358, 364  
O'Connor, Edward D., 63, 138, 140  
O'Gara, Margaret, 125  
Ohly, Christoph, 2, 17, 26–27, 32–39, 125, 178, 286  
O'Malley, John W., 8–9, 56–57, 109, 120–21, 123–24, 126–27, 129, 268–69, 326, 345  
O'Meara, Thomas F., 139–40  
Origin of Alexandria, 42, 231  
Osheim, Amanda C., 251  
O'Sullivan, James P., 72  
Ottaviani, Alfredo, 201
- Pacifici, Luigi, 68  
Palmer, Paul F., 231  
Pannenberg, Wolfhart, 113, 352  
Parente, Pietro, 229–30  
Paschasius Radbertus, 91, 195–96  
Passaglia, Carlo, 25, 56–57, 65, 67, 110  
Pasztor, L., 58
- Paul the Apostle, 10, 69, 74–75, 79, 106–7, 195, 203, 207, 213–14, 217  
Paul III, Pope, 9  
Paul V, Pope, 55  
Paul VI, Pope, 74, 131, 180, 243, 263, 273, 278, 294, 296, 299, 303, 356  
Paul, Eugen, 110  
Paulinus of Nola, 59  
Pawlowski, Antoni, 223  
Peinador, Máximo, 222  
Penaskovic, Richard J., 88  
Perez de Ayala, Martin, 165  
Perrin, Norman, 345  
Perrone, Giovanni, xii, 25, 41, 56–62, 63, 65, 67, 85, 90–92, 94, 96–97, 105, 110, 147  
Pétau (Petavius), Denis, 19–22, 60, 98, 104  
Peter the Apostle, 4, 5, 16, 39, 69, 108, 124, 203, 207, 214, 233, 242, 292  
Peter Canisius, 202  
Peter, Carl J., 304  
Peter Damian, 20  
Peter Lombard, 52, 138  
Philibert, Paul, 166  
Philip the Chancellor, 138  
Philips, Gérard, 169, 229–30, 233–34, 241, 247–49, 251–52, 254, 257, 283  
Phillips, George, 33, 37–40, 166  
Pinckaers, Servais, 138  
Pius V, Pope, 197  
Pius VII, Pope, 56  
Pius IX, Pope, 8, 37, 41, 56–58, 62–64, 68–69, 71, 91, 103, 107, 120–22, 156, 161, 177, 183–84, 197, 200, 354  
Pius X, Pope, 216  
Pius XI, Pope, 216, 254  
Pius XII, Pope, 147, 159, 161, 177, 181, 183–84, 194, 200, 201, 203, 206–9, 216, 223, 231, 233, 254, 327  
Pottmeyer, Hermann Josef, 26, 32, 34, 62, 119–20  
Power, David N., 10, 91  
Prosper of Aquitaine, 176, 231  
Prusak, Bernard P., 212–13  
Pseudo-Augustine, 194–95, 197  
Pseudo-Dionysius, 190  
Pseudo-Jerome, 195

- Pseudo-Modestus of Jerusalem, 191  
Puyo, Jean, 163
- Quadrio, Giuseppe, 196  
Quélen, Hyacinthe-Louis de, 58  
Quequejeu, Bernard, 331
- Rahner, Karl, 35, 48, 50, 55, 70, 73, 81, 135, 169, 196, 204, 208, 211–12, 214, 229, 325, 345, 351, 353, 364  
Ratramnus of Corbie, 91  
Ratzinger, Joseph, 75–78, 174, 206–7, 211–13, 228, 261–67, 294, 296, 303–4, 335, 348, 357, 361, 365–66  
Recanati, Giusto, 65  
Remenyi, Matthias, 211, 214  
Reynolds, Brian K., 42–43, 49–51, 55, 195, 197, 217  
Rigaux, Béda, 261  
Ripalda, Juan Martínez de, 147  
Ripberger, Albert, 195  
Root, Michael, 82, 251  
Rosani, Giovanni Battista, 65  
Rosato, Philip J., 32  
Rosmini Serbati, Antonio, 64  
Rouillard, Philippe, 186  
Routhier, Gilles, 275  
Rovira, German, 45  
Ruffini, Ernesto, 239, 335  
Ruggieri, Giuseppe, 228, 260  
Rupert of Deutz, 20, 74  
Rush, Ormond, xiii, 169, 251, 275, 339, 355, 358, 362, 364, 370  
Ryan, Thomas, 137
- Sage, Athanase, 48  
Sailer, Johann Michael, 24  
Salaville, Séverien, 45  
Sancho Bielsa, Jesús, 138, 223–24  
Sander, Ulrich, 111, 113  
Sanks, T. Howland, 58, 105  
Santucci, Vincenzo, 68  
Sardi, Vincenzo, 63, 67  
Sauras, Emilio, 135  
Sauter, Gerhard, 70  
Scharr, Peter, 249–51, Schärtl, Thomas, 214  
Schatz, Klaus, 122  
Schauf, Heribert, 229  
Scheeben, Matthias Joseph, 56, 103, 109, 110–20, 135–36, 155, 163  
Scheele, Paul-Werner, 24  
Scheffczyk, Leo, 24, 36, 95, 103–5, 211  
Schick, Ludwig, 38–40  
Schillebeeckx, Edward, 135, 216, 331–34  
Schmaus, Michael, 143  
Schmucker, Robert W., 2, 26, 28, 223–24, 227, 238–40, 260, 264, 266, 268  
Schnackenburg, Rudolf, 345  
Schneemelcher, Wilhelm, 189,  
Schneider, Gerhard, 107  
Schockenhoff, Eberhard, 117  
Schönborn, Christoph, 297  
Schrader, Clemens, 25, 56, 110  
Schröffer, Joseph, 229  
Scotus, John Duns, 51–52, 54, 74–75, 180  
Segalla, Giuseppe, 107  
Sammelroth, Otto, 215  
Sergius I, Pope, 187–88  
Sesboüé, Bernard, 82, 131  
Shea, C. Michael, 90  
Shoemaker, Stephen J., 185–87, 189  
Sibour, Marie Dominique Auguste, 66  
Sieben, Hermann Josef, 250  
Simeon and Anna, 76  
Simonetti, Manlio, 180  
Simons, Francis, 224  
Simpson, Richard, 87  
Siri, Giuseppe, 239  
Sixtus IV, Pope, 21, 47, 54  
Slusser, Michael, 99–101  
Smedt, Émile de, 237, 239  
Smith, John E., 350  
Söding, Thomas, 271, 305, 309, 364  
Söll, Georg, 51–52, 54–55, 58, 184  
Sophronius of Jerusalem, 43  
Spada, Mariano, 65  
Spendel, Stefanie Aurelia, 81  
Stacpoole, Alberic, 80  
Stapleton, Thomas, 25  
Stephen, I, Pope, 59  
Suárez, Francisco, 16–19, 147, 174, 202

- Tabera Araoz, Arturo, 223  
Tagle, Luis Antonio G., 216  
Talar, Charles J. T., 326  
Tavard, George, 52, 175  
Taylor, Charles, 343–45  
Temño Sáiz, Ángel, 264  
Tenhumberg, Heinrich, 367  
Tertullian of Carthage, 25, 42, 59, 107, 231  
Theobald, Christoph, 261  
Theodore I, Pope, 188  
Theodore of Mopsuestia, 42, 329  
Theodore the Studite, 191  
Theoteknos of Livias, 43, 190  
Thiel, John E., 356, 362  
Thils, Gustave, 18, 121–22, 125–26, 229, 231,  
Thomassin, Louis de, 104  
Tillard, Jean-Marie Roger, 95  
Tizzani, Vincenzo, 62, 65  
Tonini, Giovanni Battista, 63  
Torrell, Jean-Pierre, 231  
Toulmin, Stephen, 337  
Tracy, David, 113  
Treloar, Jack, 16  
Tyrrell, George, 326  
  
Unger, Dominic, 74  
  
Vacant, J.-M.-A., 131  
Van Ackeren, Gerald, 14  
Vanneste, Alfred, 48  
Vauchez, André, 163  
Vawter, Bruce, 252  
Velati, Mauro, 368  
Vico, Giambattista, 337  
Victor Emmanuel II, 123  
Vilanova, Evangelista, 216, 261, 263  
Villemin, Laurent, 35  
  
Vincent of Lérins, 59, 107, 147  
Vitali, Dario, 131, 226,  
Vliet, Cornelis Th. M. van, 163, 166–67  
Vorgrimler, Herbert, 35, 55,  
  
Wagner, Marion, 81  
Walenchurch, Adrian von, 25  
Walenchurch, Peter von, 25  
Walf, Knut, 17  
Walgrave, Jan H., 86–87  
Walker, James B., 6  
Walsh, Liam G., 203–4  
Walter, Ferdinand, 32–37, 40, 166  
Walter, Peter, 105  
Ware, Kallistos, 80–81  
Weber, Jean Julien, 223  
Weimer, Ludwig, 75, 79, 81  
Weis, Norbert, 253  
Wenger, Antoine, 189  
Westermann, Hartmut, 143  
Wicks, Jared, 228, 350  
Wiedenhofer, Siegfried, 72  
Wijlens, Myriam, 270  
William of Auxerre, 147  
William of Ware, 52  
Williams, A. N., 171  
Williams, Rowan, 93  
Witherup, Ronald D., 350, 355, 362  
Wohlmuth, Josef, 214  
Wood, Susan K., 137  
Wycliffe, John, 2–3, 357  
  
Yarnold, Edward J. , 329  
Yates, Stephen, 205, 211  
  
Zacharias, Pope, 188  
Ziegenaus, Anton, 207, 211  
Zizioulas, John, 274–77

# Index of Subjects

*Ad Gentes*, 36

*Ad tuendam fidem*, 356, 416

*Aeterni Patris*, 57

*Aeternus Unigeniti Pater* (Vatican II draft document), 225, 228–29, 233, 240, 243, 247–49, 251, 253–54

agency, human, 338

analogy, 30, 50, 101, 113, 253, 362

apocrypha, Marian. See *Transitus Mariae*

*Apostolican Actuositatem*, 36, 367, 368–69

apostolicity, 4–5, 10, 17, 27, 34, 60, 64, 89, 91, 96, 112, 114, 117, 120, 124, 128–29, 131, 157, 162, 167, 169, 185, 198, 242, 248, 257, 275, 290, 306–7, 314, 317, 361, 385; apostolic succession: 106, 108, 266

Arianism/Arian controversy, 93, 99

assumption of Mary, xii, 145, 161, 173–75, 183–85, 187, 200–8, 214–18; and liturgy/devotion: 185–90; and Eastern churches: 190–94; and Western church: 194–97

authority, ecclesiastical, xii, 4, 15, 22, 28, 34–35, 38–39, 62, 87, 106, 114, 116–20, 122, 128, 130, 150, 158, 167, 170, 177, 193, 200, 203, 207, 225, 227, 230, 236, 238–9, 243–44, 247, 256, 259, 277–78, 282, 295, 301, 304, 318, 339, 341–42, 351, 354, 355–56, 359–60, 362, 371, 376–77, 382–83

baptism/infant baptism, 50, 73, 94, 164, 167, 180, 192, 212, 220, 231–32, 281, 329, 368

Basel, Council of, 7, 53–54

bishops: and collegiality, 241, 335; and the pope, 22, 55, 69, 119–21, 126, 128–30, 149–51, 239, 247, 301, 315, 318, 341, 351, 354, 360; and the laity, 13, 33, 61–62, 69, 88, 91–92, 95–96, 100–101, 115, 119, 127, 150, 153, 157, 174, 225, 227, 234, 282, 292, 298

body of believers (*universitas fidelium*), 7–8, 12–13, 16–17, 106, 114–47, 126–27, 155, 162, 243, 246, 248–49, 295, 306, 310, 342, 355, 361, 375, 381

body of Christ, 28, 30, 34, 389, 96, 133, 223–24, 232, 253–55, 307, 345, 362–63

canon law; Revised *Code of Canon Law*, 280–84; *Code of the Canon of the Eastern Churches*, 284–86; inadequacy, 370, 379

capacity to believe (*Glaubenskraft*), 146, 148–49, 151

*Catechism of the Catholic Church*, xii, 74, 274, 296–99

catechumenate/rite of initiation, 329

Catholic Action, 133–34, 169

causality, four classic causes, 168, 177, 347

certainty, 325, 337, 339

Chalcedon, Council of, 9, 28, 174, 179, 273

charism, 170, 227, 242, 253, 289–90, 314, 316, 319–21, 364, 366, 368–69

*Christifideles laici*, 291, 416

“Church taught” (*ecclesia docta*), passive infallibility, 109, 158, 222, 224

“Church teaching” (*ecclesia docens*), active infallibility, 109, 158, 222, 224

- Cogitis me*, 195
- cognition/knowledge; evidentiary  
 knowledge, 245, 249, 283–84, 323, 328,  
 337–38, 377–78, 346–49; participatory  
 knowledge, 246, 359, 377–78; *scire/*  
*scientia*, 346–47; *intellegere/intelligentia*,  
 347; *sentire/sensus*, 347–48
- collegiality of bishops, 130, 228, 241, 281,  
 335, 359
- communion (*communio*), 16–17, 19, 69, 82,  
 100, 108, 120, 130, 157, 171, 176, 216,  
 251, 275–76, 284, 293, 306, 312, 315, 359
- communion of the saints, 26, 82–84, 201,  
 206, 216, 237
- conception/procreation, 49–50
- conceptualism/conceptualist thinking, 324,  
 343
- conciliarity, 123, 274
- Conference of Latin American Bishops, 296
- confirmation, sacrament of, 143, 145, 368
- Congregation for the Doctrine of the Faith,  
 xii, 210, 287, 296, 299, 322, 356, 416
- connaturality, 136–37, 139–40, 295, 311
- consciousness, 141, 144–45, 148, 153, 180,  
 238
- consensus/*consensus fidelium*, 10–11, 13,  
 14, 19, 22, 25, 60, 71, 90, 95–98, 105–9,  
 128, 130, 162, 165, 200, 203, 225–27,  
 234, 237, 24, 249, 250–51, 269–70, 274–  
 75, 282, 294, 309, 320, 344, 375, 382
- conspiratio pastorum ac fidelium*  
 (“breathing in unison of the pastors and  
 the faithful”), 19, 61–62, 90–91, 95–96,  
 101, 292, 298, 314, 316, 318, 346
- Constance, Council of, 3, 7, 53, 123, 357
- Constantinople I, Council of, 94, 174
- consult, 4, 90, 108, 200, 226, 240, 280, 304,  
 314, 317; consultation, 37, 57, 63, 67,  
 69, 88–89, 129, 132, 258, 319–20, 360,  
 370–71
- councils, ecumenical, 4, 5, 7–8, 11, 13, 37,  
 47, 55, 72, 86, 94, 98, 114, 123–24, 269,  
 273–75, 277, 357, 363
- creed, 5, 50, 100, 152, 177, 212, 276, 298,  
 307, 329
- culture, 72, 152, 241, 251, 276, 285, 289,  
 291, 297–98, 305, 307, 313, 321, 380
- De ecclesiae unitate* (Vatican II draft  
 document), 228
- De fontibus revelationis* (Vatican II draft  
 document), 222, 228, 261, 263, 349, 353
- De instrumentis communicationis socialis*  
 (Vatican II draft document), 228
- De sacra liturgia* (Vatican II draft  
 document), 227
- Dei Filius*, 123, 131, 354
- Deiparae Virginis Mariae*, 200
- deposit of the faith, 114, 150–51, 156, 166,  
 238, 268, 350–51, 354
- development of doctrine/dogma, 25, 57,  
 174, 202, 314
- Dignitatis Humanae*, 237
- discernment, 56, 162, 165, 251, 289–90,  
 309, 317, 319–21, 356, 379
- disposition, permanent. See *habit*
- dissent, 301, 302, 342
- diversity, 72, 145, 241, 276, 286, 289, 321
- Divino afflante Spiritu*, 327
- Donum veritatis*, CDF, 300–303, 308, 314, 316
- dormition of Mary. See assumption of Mary
- doxology/doxological thought, 206–7
- dynamism, 238, 252, 301, 340, 349, 360
- ecumenism/ecumenical movement, 134,  
 225, 262–63, 292–93
- Enlightenment, the, 17, 32–34, 133, 174,  
 198, 325, 351
- Ephesus, Council of, 174, 180, 186, 188, 190
- eschatology: individual, 212; corporate/  
 general, 112, 163, 208, 210–16, 218–20,  
 361
- eucharist, 10, 14, 36, 91, 147, 156, 167, 185,  
 193, 241, 276, 310, 325, 339, 374
- Evangelii gaudium*, 294
- Evangelium vitae*, 291, 297, 416
- experience, 49, 70, 100–101, 136–37,  
 142, 159, 152, 154, 192, 194, 228, 259,  
 266–67, 291, 303, 312, 317, 320, 324–26,  
 328–36, 338, 348, 352, 365, 378, 389

- faith: as content/doctrine (*fides quae*), 5, 11, 17–21, 25, 31–33, 53–54, 62–63, 68–69, 89–95, 96–97, 100–101, 106, 112–14, 119, 128, 140, 166, 176–77, 184, 190, 229, 242, 248, 351; as act of faith (*fides qua*), 127, 126, 140, 148–49, 179, 245–46, 295, 330, 381; and understanding, 149–52, 156, 252, 258–59, 266, 287, 293, 311, 341–42; as obedience, 106–7; and dialogue, 311; and the Holy Spirit, 115, 117–19, 138, 146, 151, 173, 202, 311, 364, 369  
 "faith and morals," 124, 222, 225, 234, 244, 249, 278, 283, 292, 350, 370, 375, 382  
 faith and reason, 41, 57, 111, 113, 147, 308  
 faithful, the (ordinary), 4–8, 11–16, 18–22, 30, 33–34, 36–37, 41, 47, 54–55, 60–62, 63–64, 69–71, 88–96, 99–101, 106–9, 114–17, 119, 127, 131, 136–37, 141–43, 149–56, 158–59, 162–64, 167, 169, 174, 176, 180–81, 200–203, 219, 225–27, 238–39, 241, 246, 251, 253–59, 266, 279, 281–85, 291–93, 299, 312, 314, 318, 339, 342, 355, 365, 368, 370, 375, 378–80, 381–85  
*Familiaris consortio*, 289, 291, 416  
 Fathers of the Church, 3, 11, 20, 25, 86, 104, 118–19, 138, 155–56, 173, 202, 310  
 Febronianism, see Gallicanism  
 Ferrara-Florence, Council of, 7, 9, 53  
 fideism, 352  
 fittingness (*convenientia*), the argument from, 196, 199, 201  
 Gallicanism: 8, 123, 127, 130; the Gallican Articles, 127; Febronianism, 123, 127; Josephenism, 123  
*Gaudium et Spes*, 1, 237, 285, 287, 298, 321, 335–36, 369  
 Gelasian sacramentary, 44  
 general judgment, the, 156, 209  
 gifts of the Holy Spirit, 7, 136–40, 148, 155, 159, 221, 243, 311  
 grace, 28–29, 43, 48–50, 55, 69, 72–75, 77–78, 80, 83–84, 111–12, 118, 136, 138, 140–42, 148, 156, 164, 166, 176–77, 214–15, 242, 244–45, 250, 254, 311, 315, 320, 325–26, 338, 351, 353, 366, 384  
*Grave nimis*, 54  
 Great Western Schism, xii, 2, 53  
 Gregorian sacramentary, 45  
 Groupe des Dombes, 82, 84  
 habit (*habitus*), 136, 138–39, 146, 148, 159, 221, 233, 311  
 hierarchy (ecclesiastical), 26, 32, 33, 38–40, 68, 88, 92, 103, 108–9, 125, 142, 158, 162, 166–67, 169, 230, 236, 241, 256, 258–59, 267, 309, 313–14, 341–42, 363, 368, 380, 383  
 hierarchy of truths, 171, 175–76  
 historical consciousness, 336–39  
 historical-critical method, 20, 352  
 historicity, 49, 141, 171, 249, 252, 313, 339, 349, 359  
 history, 20, 26–27, 70, 73, 79, 134, 147, 162, 169, 173, 199, 212, 215, 241, 313, 321, 337–39, 350–52, 355, 357, 359  
 holiness, 101, 236, 254, 316, 320; (universal call to) 230, 235–36  
 holiness of Mary, 20, 42–47, 71, 81, 173; perfect holiness of Mary (*panhagia*), 43, 79, 81, 201  
 Holy Spirit, 7, 14, 18, 23, 26–27, 49, 98, 108, 115–19, 136–40, 142, 146, 148, 151, 155, 157, 159, 162–64, 173–75, 177, 181, 215, 221, 225, 227, 237–38, 243, 245, 249–51, 259, 266, 288, 292–93, 298, 301, 311, 317, 320, 322, 335, 342, 356, 363–71, 375–76, 380; pneumatological deficit, 363, 369–70  
 hope, 79, 192, 215, 217, 219, 256, 258, 294, 307, 325, 334, 348, 371, 384  
*Humanae vitae*, 356, 403, 412  
 iconoclast controversy, 156, 188  
 imagination, 101, 180, 190, 214–15, 337; and metaphor, 38, 214–15, 219, 231, 245, 345–46, 377, 424; and symbol, 91, 114, 150, 214–15, 219, 237, 321, 324, 329–30, 342, 344–46, 352, 359  
 immaculate conception of Mary, xii, 20, 63–70, 72–75; and typology, 76–78; and holy remnant; and holiness, 80–81; and

- liturgy/devotion, 42–47; and precedent, 88–89, 98, 107, 156, 161, 197, 221, 238; and churches of the East, 42–44, 47, 79–81, 180; and church of the West, 44–45, 48–55, 80–81; and Protestant Christians, 82–84, 175; and Council of Basel, 53–54
- immortalists, 204
- incarnation of the Son, 20, 28–30, 43, 74–76, 104, 110, 168, 185–86, 188, 353, 361, 365
- indefectibility, 249
- Ineffabilis Deus*, 66, 78
- infallibility (in general), 4, 8, 13–16, 22, 32–34, 68, 85, 103, 106, 111, 120, 121–32, 222, 240, 247–49, 287–88, 299, 310, 354, 356, 376–79; infallibility in teaching, 12, 18–19, 22, 109, 116, 142, 144, 157, 287; infallibility in believing, 12–13, 18–19, 22, 28, 63, 106–7, 116, 121, 133, 142, 162, 222, 224, 247, 279, 287, 294, 300, 362, 376
- instinct, 96–97, 152, 165, 295, 309, 311, 317, 377
- intellectualism/intellectualist mindset, 324, 331. See conceptualism/conceptualist thinking
- intermediate state, the (post-mortem existence) 205, 209–11
- International Theological Commission, xii, 12, 260, 274, 303–5, 309, 322, 370, 407
- interpretation theory, 332–33
- intuition, 97, 139, 152, 179, 221, 237–38, 311, 313, 346, 377
- Jansenism, 87
- Jesus Christ: and authority, 69, 147, 203, 207, 301; his conception, 49; his divinity, 47; Jesus in history, 42–44, 80, 185–86, 345; and Israel, 79; and salvation (Jesus as savior), 55, 69, 74, 79, 214, 217; and mission, 5; and three offices, 23, 164, 232, 252, 259; and revelation, 355, 357; and the Church, 104. See incarnation of the Son
- Josephinism, see Gallicanism
- judgment (in epistemology), 31, 72, 89, 97, 101, 114, 126, 128, 140, 153, 283–84, 300, 341, 382; (in eschatology) 156, 209–10, 219
- juridical approbation, 128
- jurisdiction, 119. See authority
- justification, 10, 73, 83, 156, 325
- kingdom of God, 29, 39, 345
- knowledge. See cognition
- laity, xii, 5, 33, 36–38, 40, 46, 66, 86–95, 97, 99, 100, 107, 133, 145, 147, 162, 164, 167–71, 196–97, 222–25, 230–33, 235–37, 241–44, 247, 254, 256, 258–59, 281, 289–91, 294, 303, 309, 348, 353, 367–70, 375, 382–85
- language: 70, 219, 331, 333, 342–46, 358, 378; as speech, 152, 333, 344; and designation, 343; and expressivity, 343, 345; and linguistic style, 92, 152, 268, 279–80; and communication with others (conversation), 344; and social identity, 344
- Lateran IV, Council of, 124
- Lateran V, Council of, 124
- “Letter on Certain Questions concerning Eschatology,” CDF, 210
- Lex ecclesiae fundamentalis*, 278–80
- lex orandi, lex credendi*, 152, 176–77
- Liber de assumptione beatae Mariae Virginis*, 197
- liberation, 334
- light of faith (*lumen fidei*), 147–48
- locus theologicus*, 85, 90, 109
- Lumen Gentium*, 1, 30, 35–36, 73, 92, 130–32, 138, 143, 171, 216, 223, 225, 229, 233, 236–37, 241, 243, 245, 247–49, 251, 253–54, 257–60, 266, 268, 279, 283–85, 287, 291, 298, 300, 303, 310, 316, 320, 335, 345, 366–69, 373, 375
- Lutheran and Catholic Dialogue in the United States, 82
- Lyons II, Council of, 9
- maculists, 47, 55

- magisterium/body of teachers, 24, 34, 55, 59–60, 70, 105–6, 108, 126, 128, 131, 142, 144, 150, 152, 164, 171, 179, 183, 225, 238–39, 247, 262, 265, 267, 280, 282, 284–85, 287, 301–3, 307, 314–18, 354–56, 362, 364, 371, 376, 382
- "*Magnificate Dominum*," 232
- mariology, 77, 81, 86, 111, 201, 208–9, 236
- marriage, sacrament of, 10, 289, 291
- Mary, Blessed Virgin: devotion to/Marian piety, 41–42, 67, 186, 188, 197, 205; nativity, 43–45; purification, 43–44
- Mediator Dei*, 177, 231, 327
- metaphor. See imagination
- ministry, ecclesiastical, 23–24, 28, 34, 36, 38, 40, 80, 113, 117, 119, 166, 170, 220, 254, 257, 276–77, 279, 290, 329–30, 335, 346
- Miraculous Medal, the, 41, 58
- mission of the Church, xii, 32–33, 74, 119, 133–34, 164, 166–67, 169, 236, 241–42, 248, 254–55, 281, 287–88, 307, 319, 358, 366
- modernism, 326–27, 335
- Munificentissimus Deus*, 201–3, 218, 417
- mutuality/reciprocity, 19, 84, 95, 115, 117, 158, 170, 247, 266, 269, 306, 316, 318, 344, 357
- mystagogy, 329–30
- Mysterium Ecclesiae*, 287
- Mystici Corporis*, 147, 327
- Neo-scholasticism, 57, 104, 280, 327, 351
- Nicaea I, Council of, 9, 47, 92–94, 174
- Nicaea II, Council of, 188
- obedience, 19, 106–7, 109, 115, 127, 225, 227, 230, 247, 275, 302, 326, 351
- offices of Christ, 23, 34–35, 163–64, 166, 170, 253, 291, 309, 368
- Order of Preachers/Dominicans, 6–8, 51, 53–54, 129, 170, 180
- Ordinatio sacerdotalis*, 356, 416
- Orientalium Ecclesiarum*, 286
- original sin, 20–21, 42–44, 46, 48–53, 55, 70–73, 75–81, 179, 246
- Orthodox Churches, 70–71, 79, 80–81, 84, 130, 216, 258
- papacy, 2–4, 7, 11, 15–16, 38, 53–55, 119, 188, 233, 352, 354, 356; papal primacy, 7, 16, 111, 120–23, 130, 132, 241, 281
- Passage of Mary*, 189
- Pastor Aeternus*, 16, 121, 123, 126
- pastoral councils, 258, 370
- Pelagianism/Pelagian tendencies, 48, 177, 246
- people of God, 5, 133, 232–38, 240–44, 246, 248–49, 253–55, 259, 268–69, 279, 282, 288, 292–96, 298–99, 301–2, 307, 312, 314–15, 317, 345, 359–60, 362, 366, 373, 375, 380–82
- Perfectae Caritatis*, 237
- perfect society (*societas perfecta*), 17, 19, 133
- personalism/personalist thought, 78, 349
- petitionary movements, 200
- phronema, 96–97
- plan (divine)/economy, 72, 74–76, 79, 81–82, 84, 163, 217, 264–65, 289
- pneumatological deficit. See Holy Spirit
- positive theology, 19–20, 22, 57, 199
- power of orders/power of jurisdiction, 34–35, 163
- practices and customs, 3, 55, 59, 92, 150, 153–54, 158, 220, 275, 277, 291, 327, 357
- Presbyterorum Ordinis*, 1, 237, 290
- preservation from sin as salvation, 52, 75, 82
- priesthood: universal (common), 36, 170, 230–32, 233–34, 269; ordained (ministerial), 167, 225, 231–32, 346
- primacy, papal. See papacy
- primacy of Christ, 74
- primacy of the Word of God, 306
- principle of the life of the Church, 166–67
- principle of the structure of the Church, 167–68
- principles (*principia*), fundamenal, 112, 117, 139, 149, 162, 166–67, 169, 208, 277–78, 280, 284, 304, 337, 347, 378

- prophetic office, 170, 239, 243, 252–53, 255, 269, 287–88, 291, 309, 364, 366, 381, 383
- Protestant Christians, 58, 66, 70, 105, 130, 162, 175, 258, 262, 286, 352, 356
- Protoevangelium of James*, 202
- public opinion, 225–26, 230, 243, 283, 290, 302, 316–17, 370, 374
- questions, role of, 339–42
- reason (discursive, logical, as demonstration), 53, 83, 101, 104, 112, 135, 137, 139–40, 151, 174, 196, 199, 214–15, 218, 245, 308, 316, 323, 328, 343, 350, 362
- reception, xii–xiii, 32, 70, 132, 156, 171, 273–77, 286, 296, 309, 315, 321–22, 356, 376
- reconciliation (penance), sacrament of, 36, 73, 106, 325, 329
- Redemptor hominis*, 287, 416
- Reformation, the, xii, 9–19, 12, 82, 162, 166, 310
- relation/relationality/relatedness, 28, 33, 77–79, 109, 112, 114–15, 117, 159, 208–9, 212–13, 244–45, 301, 319, 347, 353, 361–62
- remnant, holy, 75–79
- ressourcement*, 324, 327, 357
- resurrection in death, 209–13
- revelation, xii, 4, 11, 19, 22, 55, 70–71, 86–87, 153, 174, 349–57; propositional, 136–37, 157, 350–51, 354; dialogical, 355, 357; divine self-revelation, 70, 306, 355; Jesus Christ, 104, 354–55, 357; words and deeds, 355, 357; and Holy Spirit, 173, 175, 364, 366; sources, 105, 153, 228, 261, 292, 353, 362
- rhetoric (oratory), role of, 192–93, 269, 337
- Risorgimento, the, 123
- Roman College, 12, 56–57, 62, 65, 103–4, 110
- Roman School, xii, 25, 56–57, 110
- Romanticism (German), 27, 32
- Sacrosanctum Concilium*, 73
- salvation/redemption, 30, 50, 72, 74–75, 205, 210, 214, 225, 229, 248, 325, 329, 334
- Sanctissimus*, 55
- scholastic theologians, 11, 20, 177
- scripture, 11, 13, 30–31, 53, 58, 60, 77, 84, 90, 104–5, 112, 114, 137, 153, 174, 185, 203, 229, 242, 245, 248, 262, 264, 298, 306–7, 327, 350, 360. See Word of God
- secularity. See world
- sense/*sensus*, 10, 21–22, 60, 91, 94–95, 97, 106, 139, 162, 165, 245, 347–49
- Sensus Fidei in the Life of the Church*, ITC, 12, 260, 303, 308–18, 370, 407–8
- signs of the times, 313, 321, 379
- social teaching of the church, 314
- Sollicitudo omnium ecclesiarum*, 55
- soul/body-soul relationship, 7, 139, 203–14, 218–20
- Supremi Pastoris* (Vatican I draft), 121–22, 125–26
- symbol. See imagination
- Synod of Bishops, 93, 189, 279–80, 294, 296
- synodality, 251
- Synodality in the Life and Mission of the Church*, ITC, 303, 318–21, 416
- Tametsi*, 10
- Tametsi Deus*, 122, 126
- theologians in the church, role of, 41, 63–68, 71, 118–19, 134, 155–56, 174, 196–97, 203, 205, 300–303, 305–8, 315–18, 339, 356, 374, 378–79
- Theological Commission of Vatican II, 228, 241, 261, 263
- Theology Today: Perspectives, Principles, and Criteria*, ITC, 303, 305–8, 416
- tradition, xii, 7, 11, 23, 25–28, 31–32, 41, 56–62, 85, 94, 97, 104, 108–9, 112–14, 118, 131, 153, 165, 171, 266–67, 292, 310, 335, 357–62, 354–55, 369; and “partly . . . partly” theory, 105, 261–62
- traditionalism, 352
- Transitus Mariae*. See *Passage of Mary*
- Trent, Council of, 2, 4, 8–10, 21–22
- Trinity, the, 20, 69, 74, 84, 110, 245, 355, 369

- truth, 245, 249, 251–52, 268, 282, 292, 311, 338, 341, 357, 365, 377–78; elusiveness, 308, 320, 342, 374; collective effort, 153, 247, 256, 321, 349, 364, 375, 379
- Tübingen School, the, 23–24
- type/typology, 76–78, 215–16
- Ubi primum*, 64, 66
- ultramontanism, 8, 26, 57, 109, 120, 122, 124, 127–28, 240
- Unitatis Redintegratio*, 175, 237, 298
- universal saving will of God, 70, 72–74, 248
- Ut Unum Sint*, 292, 416
- Vatican I, Council of, 8, 19, 22, 56–58, 86, 103, 111–12, 120–32, 134, 147, 174, 240, 248, 273, 278, 281, 287, 350, 352–54, 357, 376
- Vatican II, Council of, xi–xii, 1, 9, 37–38, 40, 132, 169, 216, 221–71, 281, 309–10, 320, 335–36, 349–71, 375, 378
- veneration of Mary, 44–45, 47, 83, 186, 188, 191, 206–7, 217
- Veritatis splendor*, 291, 416
- virginity, of Mary, 20, 47, 81, 173, 187, 189, 192, 201, 203
- virtual truths, 135, 175, 198, 202, 221
- virtues (theological, intellectual, moral), 7, 107, 127, 136, 138–41, 146–48, 159, 311, 349, 366
- Word of God, 112, 116, 234, 244, 252, 262, 282, 289, 302, 306–7, 310, 316, 327, 358, 360–61, 364, 382. See Scripture
- world, 29, 37, 167–68, 248, 253, 259, 306, 321, 338