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US bishops quietly adopt protocols for theological investigations

by Joshua J. McElwee

The U.S. bishops' committee tasked with enforcing church doctrine adopted new procedures for investigating theologians a year ago, apparently unbeknownst to the theologians whose teachings and writings would be subject to the protocols.

The procedures seem to indicate that the committee is eschewing dialogue with theologians when concerns over their adherence to church doctrine are reported, instead preferring a private in-house review process.

The procedures, dated Aug. 19, 2011, would have been formulated and approved at a time when the bishops and their committee were being questioned about their treatment of St. Joseph Sr. Elizabeth Johnson, a distinguished theologian whose work they sharply criticized in March 2011.

In various statements last year following the Johnson critique, the two primary U.S. theological membership societies faulted the bishops for not following a set of procedures promulgated in 1989 for dealing with doctrinal questions.

Those procedures were the result of deliberations between a group of bishops and theologians over a period of years, and were approved by the full body of U.S. bishops and endorsed by the Vatican.

The existence of new procedures came to light this summer in two academic journal articles by noted canon lawyer Fr. James Coriden. In the latest issue of the theological journal *Concilium*, Coriden writes that he had received a copy of the protocols from the U.S. bishops' doctrine committee, but their existence came as a surprise to several prominent theologians NCR called for comment.

The protocols state that while theologians being investigated by the committee "may be invited to respond to the Committee's observations in writing," the committee "reserves the right" to publish criticism without consultation "if it judges that intervention is needed for the pastoral guidance of the Catholic faithful."

Terrence Tilley, head of the theology department at Fordham University, said he was unaware of the new procedures. After reviewing a copy provided by NCR, Tilley said he wondered why they do not make reference to protections found in canon law for those under investigation to defend themselves in a "competent ecclesiastical forum."

Canon 221, specifically, "is not being observed," Tilley said.

"I would hope that that is incorrect, but the omission of that canon from the canons cited gives one concern," he continued. "The process on the whole permits the committee to take appropriate actions, but the process does not permit theologians whose works are examined to respond in a timely manner in a way that canon 221 seems to require."

The procedures approved in 1989 by the U.S. bishops for investigating theologians, titled "Doctrinal Responsibilities," specify that theologians who come into question by bishops should be engaged in dialogue in order to clarify their writings' data, meaning, and relationship with Catholic tradition while identifying the implications for the life of the church.

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In an April 2011 letter regarding the Johnson case, the head of the bishops' doctrine committee, Washington Cardinal Donald Wuerl, said that the 1989 procedures were "presented for consideration as one way of proceeding but not as obligatory" and "did not address the special responsibilities of the Committee on Doctrine."

The process contained in "Doctrinal Responsibilities" was "dialogal from the outset" and had an "explicit presupposition of sound doctrine, which holds unless it is refuted by contrary evidence," Coriden wrote in his *Concilium* article.

The lack of consultation with theologians in question under the new 2011 protocols means that there is "an assumption that the author is either ambiguous, in error, or both," wrote Coriden, who serves on the faculty of the Washington Theological Union.

Susan Ross, the president of the Catholic Theological Society of America (CTSA) and a co-editor of the issue of *Concilium* in which Coriden's article appears, also drew a similar distinction between the two sets of procedures.

While the 1989 protocols ensure "there is a process of dialogue as soon as a question is raised" about a theologian, Ross said, in the 2011 protocols "theologians have no clue that the process is ongoing."

Ross also said she and the CTSA leadership are planning to suggest to the bishops' doctrine committee that they "take another look" at the 1989 procedures and see if they can be used "beyond the narrow circumstances of which [they've] been interpreted to apply."

A full version of the 2011 protocol appears following an article by Coriden in the book *When the Magisterium Intervenes*

, a collection of essays on the relationship between theologians and bishops published this summer.

Mercy Sr. Mary Ann Walsh, director of media relations for the U.S. bishops' conference, said Friday that the protocol printed in the book "certainly appears to be" the same as the one in use by the bishops' committee.

Walsh said the protocol was approved by the full doctrine committee and was meant to be an "internal document, developed for internal use."

"It was developed to be used by the staff or committee as needed," Walsh continued. "The issues don't come up very often."

Walsh also said that the protocol came about because the committee's members were "looking at ways to deal with problems as they arise" and that it is "not incompatible" with the 1989 "Doctrinal Responsibilities"

"Doctrinal Responsibilities," Walsh said, "was written for basically bishops and theologians; this statement is more guidance for the committee."

According to the version of the protocols printed in that book, the U.S. bishops' committee has outlined three stages of response for when the committee is requested to look into a theologian or his or her works.

Such requests, it specifies, could come from an individual bishop, another U.S. bishops' committee, or from a member of the doctrine committee, which is composed of nine bishops and is chaired by Wuerl.

The process for investigation of the theologian, according to the protocols, begins with a review of the works in question by the executive director of the bishops' secretariat for doctrine, currently Capuchin Fr. Thomas Weinandy.

After Weinandy submits a report to the chairman of the doctrine committee, currently Wuerl, the protocols mandate that the full bishops' committee is to then make a determination if further review is warranted. If so, the letter says that Weinandy, in consultation with Wuerl, is to select "two or more experts" who will make another evaluation, addressing, among other things:

- The "positive aspects of the theologian's work;
- "Areas where differences of opinion may legitimately exist;" and,
- Places where the writing "departs from the Church's teaching on faith and morals ? through error and/or ambiguity."

Following the expert review, the letter mandates that the full doctrine committee determine whether to pursue further action. Such action, it states, could include referral to the theologian's diocesan bishop, referral to the Vatican's Congregation for the Doctrine of the Faith (because of what the protocols call the "gravity of the teachings in question"), or referral to another U.S. bishops' committee.

The doctrine committee itself, state the protocols, may also take a number of its own actions. Among those possible actions:

- Engaging the author in "constructive dialogue resulting in the publication of required clarifications and/or corrections;"
- Encouraging other scholars to publish a critique of the theologian's work in a public forum;
- Authorizing publication of a critique in the name of the committee's executive director, with the

- approval of the U.S. bishops' general secretary;
- Publishing a critique in the name of the committee's chairman, "with the prior authorization of the USCCB president," currently New York Cardinal Timothy Dolan;
- Publishing a critique in the name of the full committee.

"Because publication of a statement by a USCCB committee is an extraordinary action," the protocols state, "authorization by the Administrative Committee is needed for its publication."

The U.S. bishops' administrative committee is made up of 36 bishops, mostly conference committee heads, who direct the work of the bishops' conference between its plenary sessions.

That committee was also involved in the bishops' criticism of Johnson's work. In a July 2011 letter to theologian John Thiel, then the president of the Catholic Theological Society of America, Dolan explained that the bishops' administrative committee had unanimously approved of the doctrine committee's statement regarding Johnson's book in March 2010.

The 2011 protocol of the doctrine committee also states that "if circumstances appear to require more immediate action," a committee statement can be published with the authorization of the bishops' executive committee, or even with the sole authorization of its president, currently Dolan.

The bishops' executive committee is composed of its president, vice president, treasurer, secretary and one other member chosen from the administrative committee.

While the 2011 protocol specifies that prior to submission of any doctrine committee statements, the theologian in question "may be invited to respond to the Committee's observations in writing," it states that the committee "reserves the right to seek authorization" without consulting the theologian "if it judges that intervention is needed for the pastoral guidance of the Catholic faithful."

In March 2011, the U.S. bishops' doctrine committee sharply criticized Johnson's 2007 book *Quest for the Living God: Mapping Frontiers in the Theology of God* in a 30-page chapter-by-chapter rebuke which said the book was marred by a series of "misrepresentations, ambiguities and errors" and thus "does not accord with authentic Catholic teaching on essential points."

Following that rebuke, both the Catholic Theological Society of America and the College Theology Society sharply criticized the committee's process for issuing the rebuke and its lack of notification or consultation with Johnson about the investigation.

In June, Johnson herself responded to the committee's arguments in a detailed, 38-page letter in which she said the committee had thoroughly misunderstood, misrepresented and misinterpreted the book.

"As a work of theology, *Quest for the Living God* was thoroughly misunderstood and consistently misrepresented in the committee's statement," wrote Johnson. "As a result, the statement's judgment that *Quest* does not cohere with Catholic teaching is less than compelling. It hangs in the air, untethered by the text of the book itself."

In a statement released in October, the bishops' committee reaffirmed their critique of the book, saying it is a "new theological expression inadequate to Catholic faith."

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