

THE ORDINARY UNIVERSAL MAGISTERIUM: UNRESOLVED QUESTIONS

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[The conviction that the common teaching of the bishops was a sure guide for Christian faith goes back to the earliest centuries. In the decades since Vatican II, appeals to this category of common episcopal teaching, now referred to under the rubric "ordinary universal magisterium," have grown dramatically. The author here documents the expanded appeals to the ordinary universal magisterium under the pontificate of John Paul II and explores the difficult theological questions that this practice raises.]

ONE OF THE MOST significant contributions of the Second Vatican Council was its developed theological reflection on the role of the bishop. In *Lumen gentium* the council taught that preeminent among the bishops' responsibilities was that of preaching and teaching. In their individual teaching bishops are "witnesses to the divine and catholic truth," and the faithful should give to this teaching "a religious assent of the mind."¹ The council then added: "Although individual bishops do not enjoy the prerogative of infallibility, nevertheless, even though dispersed throughout the world, but maintaining the bond of communion among themselves and with the successor of Peter, when in teaching authentically matters concerning faith and morals they agree about a judgment as one that has to be definitively held, they infallibly proclaim the teaching of Christ" (no. 25). This text refers to the ordinary universal magisterium, a mode of episcopal teaching that has become a matter of no little controversy in the years since Vatican II.

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¹ Unless otherwise noted, translations of conciliar texts come from *Decrees of the Ecumenical Councils*, 2 vols., ed. Norman Tanner (Washington: Georgetown University, 1990).

The historical origins of the term, “ordinary universal magisterium,” have been amply documented elsewhere.² In this article I consider the expanded appeals to the ordinary universal magisterium that have taken place since Vatican II and, in particular, during the pontificate of John Paul II. Consequently, my article is divided into two sections: the first briefly considers the growing number of postconciliar appeals to the infallibility of the bishops while dispersed throughout the world, and the second section attends to a number of unresolved questions raised by this new development.

APPEALS TO THE INFALLIBILITY OF THE ORDINARY UNIVERSAL MAGISTERIUM: 1965–2002

Explicit claims to the infallibility of the ordinary universal magisterium first appeared in ecclesiastical documents in the 1863 apostolic letter *Tuas libenter* of Pius IX. That teaching was adapted at Vatican I and with a few exceptions received only cursory treatment in various dogmatic manuals in the period between Vatican I and Vatican II.³ Perhaps because of the conciliar definition on papal infallibility at Vatican I and Pius XII’s solemn definition in 1950 of the Assumption of Mary, most ecclesiological treatments of infallibility between the two councils focused on questions related to papal infallibility. Since Vatican II, however, discussion of infallibility and claims to its formal exercise have shifted to the infallibility of the college of bishops not while they are gathered in council but while dispersed throughout the world. This development needs to be considered in greater detail.

Humanae Vitae

After Paul VI issued his encyclical *Humanae vitae*, a number of theologians contended that the Church’s teaching on artificial contraception had met the conditions set forward in *Lumen gentium* (no. 25) for the infallible exercise of the ordinary universal magisterium. One such claim came, rather unexpectedly, from Hans Küng. He proposed that the teaching on artificial contraception had indeed fulfilled the conditions established in

² In-depth historical studies of the origins of the term “ordinary universal magisterium” can be found in: Marc Caudron, “Magistère ordinaire et infaillibilité pontificale d’après la constitution ‘Dei Filius’,” *Ephemerides theologicae lovanienses* 36 (1960) 393–431; John Boyle, “The Ordinary Magisterium: Towards a History of the Concept,” *Heythrop Journal* 20 (1979) 380–98, and 21 (1980) 91–102; Richard R. Gaillardetz, *Witnesses to the Faith: Community, Infallibility and the Ordinary Magisterium of Bishops* (New York: Paulist, 1992) 18–35.

³ See J. M. R. Vacant, *Le magistère ordinaire de l’église et ses organes* (Paris-Lyons: Delhomme et Briguët, 1887).

that passage of *Lumen gentium* for an infallible exercise of the ordinary universal magisterium. Küng's intention, however, was to show that since modern scholarship had persuasively demonstrated the error of this teaching, the Church's teaching on infallibility itself must be rejected.⁴ His argument, roundly criticized for its questionable assumptions, has been accepted by few theologians. Several years later, John C. Ford and Germain Grisez published their much discussed study of the topic, concluding, with a quite different intention from that of Küng, that the Church's teaching on artificial contraception had indeed been taught infallibly.⁵ Their article precipitated a lively debate between them and several other interlocutors, most notably, Francis A. Sullivan.⁶ In some ecclesiastical circles, the tendency has grown to accept the Ford/Grisez thesis: a disturbing reference was found, for example, in a *vade mecum* (an official guide) for confessors, issued by a Vatican congregation, that referred to the teaching on artificial contraception as "definitive."⁷

Ordinatio Sacerdotalis and the *Responsum ad Dubium*

It is under the pontificate of John Paul II that we have witnessed a vast expansion of official claims for the exercise of the ordinary universal magisterium. Perhaps the most significant and controversial claim for the exercise of the ordinary universal magisterium is associated with John Paul II's apostolic letter *Ordinatio sacerdotalis* regarding the ordination of women. In this apostolic letter he wrote: "Wherefore, in order that all doubt may be removed regarding a matter of great importance, a matter which pertains to the church's divine constitution itself, in virtue of my ministry of confirming the brethren I declare that the church has no authority whatsoever to confer priestly ordination on women and that this

⁴ Hans Küng, *Infallible? An Inquiry*, trans. Edward Quinn (New York: Doubleday, 1971).

⁵ John C. Ford and Germain Grisez, "Contraception and the Infallibility of the Ordinary Magisterium," *Theological Studies* 39 (1978) 258–312.

⁶ Francis A. Sullivan, *Magisterium: Teaching Authority in the Catholic Church* (New York: Paulist, 1983) 143–52; Germain Grisez, "Infallibility and Specific Moral Norms: A Review Discussion," *The Thomist* 49 (1985) 248–87; Francis A. Sullivan, "The 'Secondary Object' of Infallibility," *Theological Studies* 54 (1993) 536–50; Germain Grisez, "The Ordinary Magisterium's Infallibility: A Reply to Some New Arguments," *TS* 55 (1994) 720–32; Francis A. Sullivan, "Reply to Grisez," *TS* 55 (1994) 732–37. See also Garth Hallett, "Contraception and Prescriptive Infallibility," *TS* 43 (1982) 629–50; Germain Grisez, "Infallibility and Contraception: A Reply to Garth Hallett," *TS* 47 (1986) 134–45; Garth Hallett, "Infallibility and Contraception: The Debate Continues," *TS* 49 (1988) 517–28.

⁷ Pontifical Council for the Family, "Vade mecum for Confessors Concerning Some Aspects of the Morality of Conjugal Life," *Origins* 26 (March 13, 1997) 617–25.

judgment is to be definitively held by all the church's faithful."⁸ His apostolic letter reaffirmed what had been proposed earlier in his own pontificate and in that of Paul VI regarding the exclusion of women from ordination to the priesthood.⁹ Unlike those previous documents, however, the 1994 apostolic letter did not focus on the theological arguments that the magisterium proposes in support of this teaching.¹⁰ What was new in the 1994 letter was not the theological argumentation but the formulation of the teaching itself.

The phrase "to be definitively held" is found in *Lumen gentium* (no. 25) referring to the infallible teaching of the ordinary universal magisterium of bishops. Thus, while the word "infallible" was not found in the apostolic letter, the use of that phrase raised questions, for the pope was proposing a teaching "to be definitively held" in what appeared to be an exercise, not of the ordinary universal magisterium of the whole college of bishops, but of the ordinary papal magisterium. This assumption was confirmed in the subsequent commentary of Cardinal Ratzinger published in *L'Osservatore Romano*:

In view of a magisterial text of the weight of the present Apostolic Letter, inevitably another question is raised: how binding is this document? It is explicitly stated that what is affirmed here must be definitively held in the Church, and that this question is no longer open to the interplay of differing opinions. Is this therefore an act of dogmatizing? Here one must answer that the Pope is not proposing any new dogmatic formula, but is confirming a certainty which has been constantly lived and held firm in the Church. In the technical language one should say: here we have an

⁸ "Apostolic Letter on Ordination of Women [*Ordinatio sacerdotalis*]," *Origins* 24 (June 9, 1994) 49–52, at 51. Not surprisingly, this letter instigated a flurry of theological responses. See in particular, Angel Antón, "*Ordinatio Sacerdotalis*: Algunas reflexiones de 'gnoseología teológica,'" *Gregorianum* 75 (1994) 723–42; Peter Hünermann, "Schwerwiegende Bedenken: Eine Analyse des Apostolischen Schreibens 'Ordinatio Sacerdotalis,'" *Herder Korrespondenz* 48 (1994) 406–10; Francis A. Sullivan, "New Claims for the Pope," *The Tablet* 248 (June 18, 1994) 767–69.

⁹ See Pope Paul VI's response to the letter of Donald Coggan, Archbishop of Canterbury, concerning the ordination of women to the priesthood, *Origins* 6 (August 12, 1976) 131–32; The CDF Declaration, "Women in the Ministerial Priesthood [*Inter insigniores*]," *Origins* 6 (February 3, 1977) 517–24; John Paul II, "On the Dignity and Vocation of Women [*Mulieris dignitatem*]," *Origins* 18 (October 6, 1988) 261–83, esp. 278–79 (no. 26).

¹⁰ The brief theological arguments offered in *Ordinatio sacerdotalis* were from Scripture (the expressed will of Christ in choosing only men as apostles) and from tradition (the unchanging 2000 year tradition of excluding women from the ordination to the priesthood). Noticeably absent is what the CDF referred to as the argument from fittingness or "the analogy of faith" (*Inter insigniores* no. 5) that combines a sacramental theology based on iconic representation with a theological anthropology which stresses gender "complementarity."

act of the ordinary Magisterium of the Supreme Pontiff, an act therefore which is not a solemn definition *ex cathedra*, even though in terms of content a doctrine is presented which is to be considered definitive. In other words, a certainty already existing in the Church, but now questioned by some, is confirmed by the Pope's apostolic authority. It has been given a concrete expression, which also puts in a binding form what has always been lived.¹¹

Approximately 16 months later the Congregation for the Doctrine of the Faith (CDF) on October 28, 1995, issued a *Responsum ad dubium*, a formal response to an inquiry posed to the Holy See. The inquiry or *dubium* concerned the authoritative status of the teaching of John Paul II in *Ordinatio sacerdotalis* regarding the ordination of women. The CDF's response was brief, if provocative:

Dubium: Whether the teaching that the Church has no authority whatsoever to confer priestly ordination on women, which is presented in the Apostolic Letter *Ordinatio sacerdotalis* to be held definitively, is to be understood as belonging to the deposit of faith.

Responsum: In the affirmative.

This teaching requires definitive assent, since, founded on the written Word of God, and from the beginning constantly preserved and applied in the Tradition of the Church, it has been set forth infallibly by the ordinary and universal Magisterium (cf. Second Vatican Council, Dogmatic Constitution on the Church *Lumen gentium* 25, 2). Thus, in the present circumstances, the Roman Pontiff, exercising his proper office of confirming the brethren (cf. Lk. 22:32), has handed on this same teaching by a formal declaration, explicitly stating what is to be held always, everywhere, and by all, as belonging to the deposit of the faith.¹²

¹¹ Joseph Cardinal Ratzinger, "The Limits of Church Authority," *L'Osservatore Romano* [English Edition] 26 (June 29, 1994) 7.

¹² CDF, "Responsum ad Dubium," *Origins* 25 (November 30, 1995) 401. The English translation of the *Responsum ad dubium* has raised an important issue. The final clause, *ad fidei depositum pertinens*, is translated in English as "belonging to the deposit of faith," thereby suggesting that the teaching on the ordination of women belongs to divine revelation and is a dogma of faith. However, in the Ratzinger/Bertone commentary on the final paragraphs of the Profession of Faith issued at the same time as *Ad tuendam fidem*, it lists the doctrine that priestly ordination is reserved to men as an example of a teaching proposed not as a dogma of faith but as a definitive doctrine (though the authors suggest that "in the future the consciousness of the church might progress to the point where this teaching could be defined as a doctrine to be believed as divinely revealed."). See Joseph Ratzinger and Tarcisio Bertone, "Commentary on Profession of Faith's Concluding Paragraphs," *Origins* 28 (July 16, 1998) 116–19, at 118. This suggests that the meaning that the Vatican intended in the use of *pertinens* was not "belongs to" but rather "pertains to," in reference to teaching not itself divinely revealed but standing in a necessary relationship to divine revelation. Francis Sullivan had already come to the same conclusion based on his reading of the Profession of Faith given to Tissa Balasuriya, in which Balasuriya was to "accept and hold that the Church has no authority whatsoever to confer priestly ordination on women." "To accept

As was the case with *Ordinatio sacerdotalis*, the *Responsum ad dubium*, far from eliminating theological discussion of the topic, dramatically increased it.¹³

Evangelium Vitae

Earlier that same year, John Paul II issued his encyclical *Evangelium vitae* in which he explicitly appealed to the authority of the ordinary universal magisterium in his three condemnations of (1) the direct and voluntary killing of an innocent life, (2) abortion, and (3) euthanasia. According to the pope, the first condemnation was “reaffirmed by Sacred Scripture, transmitted by the Tradition of the church and taught by the ordinary and universal Magisterium.”¹⁴ The second and third teachings were both “based upon the natural law and upon the written Word of God, as transmitted by the Church’s Tradition and taught by the ordinary and universal Magisterium.”¹⁵ The official Vatican summary of the encyclical notes that in this encyclical the pope, “exercising his own magisterial authority . . . ‘confirms’ ” a doctrine taught by the ordinary universal magisterium.¹⁶ The formulations in this encyclical, when conjoined to the claims made by the CDF regarding papal teaching in *Ordinatio sacerdotalis*, have raised important questions regarding the relationship between an exercise of the ordinary papal magisterium in “confirming” a teaching of the ordinary universal magisterium and the exercise of the ordinary universal magisterium itself.¹⁷

and hold” is a response that corresponds, not to dogmas of faith, but to definitive doctrines. See Francis A. Sullivan, “Heresy and Women Priests,” *Tablet* 251 (Jan. 18, 1997) 69–71.

¹³ See Richard R. Gaillardetz, “Infallibility and the Ordination of Women,” *Louvain Studies* 21 (1996) 3–24; Brian E. Ferme, “The Response [28 October 1995] of the Congregation for the Doctrine of the Faith to the *Dubium* Concerning the Apostolic Letter *Ordinatio Sacerdotalis* [22 May 1994]: Authority and Significance,” *Periodica de re canonica* 85 (1996) 689–727; Norbert Lüdecke, “Also doch ein Dogma? Fragen zum Verbindlichkeitsanspruch der Lehre über die Unmöglichkeit der Priesterweihe für Frauen aus kanonistischer Perspektive,” *Trierer theologische Zeitschrift* 105 (1996) 161–211; Ladislav Orsy, “The Congregation’s ‘Response’: Its Authority and Meaning,” *America* 173 (December 9, 1995) 4–9.

¹⁴ John Paul II, “*Evangelium vitae*,” *Origins* 24 (April 6, 1995) 689–727, at 709.

¹⁵ *Ibid.* 711–12.

¹⁶ “The Vatican Summary of *Evangelium vitae*,” *Origins* 24 (April 6, 1995) 728–30, at 729.

¹⁷ An important study focusing on this “new form of papal teaching” evident in both *Ordinatio sacerdotalis* and *Evangelium vitae* is Norbert Lüdecke, *Die Grundnormen des katholischen Lehrrechts in den päpstlichen Gesetzbüchern und neueren Äusserungen in päpstlicher Autorität* (Würzburg: Echter, 1997).

***Ad Tuendam Fidem* and the Ratzinger/Bertone Commentary**

In the summer of 1998 John Paul II issued an apostolic letter *Ad tuendam fidem*.¹⁸ In this letter he incorporated several “commas” or insertions into both the Code of Canon Law and the Code of Canons of the Eastern Churches. This was intended to bring the 1983 Code of Canon Law into accord with the doctrinal categories established in the 1989 Profession of Faith and Oath of Fidelity.¹⁹ In the *Professio fidei* three paragraphs were appended to the Nicene-Constantinopolitan Creed. The first paragraph referred to those teachings of the Church which have been proposed as divinely revealed either by the solemn definition of pope or council or by the ordinary and universal magisterium. The second paragraph considered those teachings on faith and morals that have been “definitively proposed by the Church.” The believer must “firmly accept and hold” these teachings as true. I refer to these as “definitive doctrines.” Finally, the third paragraph referred to those teachings which have been taught authoritatively but not infallibly by the magisterium. The believer is to adhere to these teachings with a “religious submission of intellect and will.” I refer to these as “authoritative, non-definitive doctrines.”

The intent of the papal letter was to address a legislative lacuna. While the current Code of Canon Law already mentioned the first and third categories of Church teaching and specified “just penalties” to be imposed on those who dissent from these teachings, there was no mention in the Code of the second category, definitive doctrine, and consequently no mention of penalties for those who dissent from this second category. The prescribed “commas” corrected this lacuna. Of more significance for our topic was the commentary on the *Professio fidei* authored by Cardinal Ratzinger and Archbishop Bertone that accompanied the apostolic letter. While the commentary itself has no formal magisterial status, quite likely it reflects the mind of the pope and leads one to interpret this emendation of canon law within a larger framework. The commentary offered examples of definitive doctrines taught with the charism of infallibility: the teaching on the illicit nature of prostitution and fornication, *Evangelium vitae*’s condemnation of euthanasia, the teaching that priestly ordination is reserved to men, and Leo XIII’s declaration that Anglican orders were null and void.²⁰ None of the examples cited, however, would appear to be the result of solemn definitions but rather teachings proposed by the ordinary universal magisterium.²¹ The inclusion of the teaching on Anglican orders

¹⁸ John Paul II, “*Ad tuendam fidem*,” *Origins* 28 (July 16, 1998) 113–16.

¹⁹ Congregation for the Doctrine of the Faith, “Profession of Faith and Oath of Fidelity,” *Origins* 18 (March 16, 1989) 661–63.

²⁰ Ratzinger-Bertone, “Commentary” 118–19.

²¹ The canonization of saints was also mentioned, though one might argue that if

drew the most attention and elicited widespread objections from ecumenists.

The CDF Profession of Faith Composed for Robert Nugent

In the winter of 1998, at the end of a protracted series of investigations into the teaching and writing of Father Robert Nugent and Sister Jeannine Gramick, Nugent was sent a profession of faith in which he was to affirm the Church's teaching on homosexuality. The various teachings were arranged according to three categories: dogmatic teaching, definitive doctrine, and authoritative, non-definitive doctrine. Of particular significance here are the teachings on homosexuality included in the second category. This section of the profession read as follows:

I firmly accept and hold that every baptized person, "clothed with Christ" (Gal. 3:27), is called to live the virtue of chastity according to his particular state of life: married persons are called to live conjugal chastity; all others must practice chastity in the form of continence. Sexual intercourse may take place only within marriage (cf. *Persona humana* 7, 11–12; *Familiaris consortio* 11; *Catechism of the Catholic Church* 2348–2350).

I also firmly accept and hold that homosexual acts are always objectively evil. On the solid foundation of a constant biblical testimony, which presents homosexual acts as acts of grave depravity (cf. Gn. 19:1–29; Lv. 18:22, 10:13; Rm. 1:24–27; 1 Cor. 6:10; 1 Tim. 1:10), Tradition has always declared that homosexual acts are intrinsically disordered (cf. *Persona humana* 8; *Homosexualitatis problema* 3–8; *Catechism of the Catholic Church* 2357, 2396).²²

Since I know of no solemn definition on the objectively evil nature of homosexual acts, one must infer that this teaching is being presented by the Vatican as a definitive doctrine taught infallibly by the ordinary universal magisterium. These two paragraphs are followed by three additional paragraphs, each beginning with "I adhere with religious submission of will and intellect to . . ." thereby signaling that, in the mind of the CDF, what follows are to be viewed as authoritative, non-definitive doctrines. Included in those paragraphs are formulations stating that the homosexual

the practice of canonization involves an infallible teaching exercise (and I am not persuaded that it does), it would be as an exercise of the extraordinary papal magisterium.

²² The text of the profession of faith has not been made public, however its formal articulation of church teaching brings it into the church's public domain. Father Robert Nugent has provided the official text of the profession of faith and other Vatican correspondence and I cite this documentation with his permission. For background documentation see Congregation for the Doctrine of the Faith, "Notification Regarding Sister Gramick and Father Nugent," *Origins* 29 (July 29, 1999) 133–36; Robert Nugent, "Statement after Vatican Notification," *Origins* 29 (July 29, 1999) 140–42.

inclination constitutes a tendency toward behavior that is intrinsically evil, that homosexual persons while deserving to be treated with respect and without “unjust forms of discrimination” cannot claim any right to homosexual behavior, and finally that homosexual persons, “by virtues of self-mastery,” may grow in Christian perfection.

Nugent returned to Rome a slightly amended form of the profession (e.g., substituting “homosexual [genital] acts are always, objectively speaking, morally wrong” for “homosexual acts are always objectively evil”) and a concluding paragraph which read:

Regarding difficulties in determining whether a particular teaching has in fact been taught infallibly by a nondefining act of the ordinary and universal magisterium (CIC 749.3) and while still acknowledging and affirming the authoritative and binding nature of such teaching, I will endeavor to maintain a positive attitude of prayer, study and ongoing communication with the Apostolic See on these matters.

The Vatican’s response to his final emendation is pertinent:

While its precise meaning is not altogether clear, the reference to “difficulties in determining whether a particular teaching has in fact been taught infallibly by a non-defining act of the ordinary and universal magisterium,” *in the specific context of a Profession of Faith on the subject of homosexuality*, can only be taken to mean that the author wishes to call into question the definitive status of doctrines regarding homosexuality belonging to the first and second paragraphs of the *Professio fidei*. The implication is that the status of doctrines of the first and second paragraphs is open to debate, thus, this addition contributes decisively to the inadequacy of his *Response* [italics in the original].

I will discuss later the implications of this exchange between Nugent and the Vatican. This survey of contemporary claims to the infallibility of the ordinary universal magisterium after Vatican II and, in particular, during the pontificate of John Paul II, while not comprehensive, should demonstrate the heightened significance given to this exercise of church teaching authority. A common characteristic of many of these claims to infallibility is that they concern church teachings that are disputed among reputable Catholic theologians. In what follows I address some of the theological issues raised by this new development.

UNRESOLVED QUESTIONS

While the dogmatic manuals popular in the period between the two Vatican councils dutifully addressed the ordinary universal magisterium, there was relatively little sustained theological reflection on this topic before Vatican II. This changed dramatically in the last 25 years, largely because of the appeal to this exercise of episcopal teaching with respect to controversial matters. I would like now in this section to review several

theological issues raised by this expanded appeal to the ordinary universal magisterium.

The Precise Authoritative Status of the Teachings by the Ordinary Universal Magisterium

When a truth of divine revelation is taught infallibly by the ordinary universal magisterium, what results is, in effect, a “non-defined dogma.” The fact that such dogmatic teachings are “definitive” yet “non-defined” invites the question whether such dogmas are to be granted the same status as “defined” dogmas. Or, put negatively, does the obstinate denial of a non-defined dogma constitute heresy as would be the case with a defined dogma? The Code of Canon Law offers an affirmative answer. Canon 750 holds that “all that is proposed as divinely revealed either by the solemn magisterium of the Church or by its ordinary and universal magisterium, must be believed with divine and catholic faith.”²³ In the following canon, heresy is defined as “the obstinate post-baptismal denial of some truth which must be believed with divine and catholic faith.” It would follow from these two canons that if one obstinately denies a teaching proposed by the ordinary universal magisterium as a matter to “be believed with divine and catholic faith” one commits heresy. Francis Sullivan has argued from this conclusion that since the consequences for denying a non-defined dogma (the canonical penalties attached to the determination of heresy in canon 1364) are the same as those for denying a defined dogma, the principle articulated in canon 749§3 that “no doctrine is understood to be infallibly defined unless it is clearly established as such” should be applied not only to defined dogmas, but to non-defined dogmas as well. He argues: “From the fact that the consequences for the faithful are the same whether doctrine has been solemnly defined or infallibly taught by the ordinary universal magisterium, I conclude that on theological grounds, the principle is equally true that no doctrine should be understood as having been infallibly proposed unless this fact is clearly established, whether the doctrine has been defined or taught by the ordinary universal magisterium.”²⁴ Sullivan’s approach, it would seem, is not to differentiate between defined and non-defined dogmas but to insist on the relatively high standard of manifestly establishing that a teaching has indeed been taught infallibly by the ordinary universal magisterium.

Another line of thought, extending at least to the late-19th century, came to a somewhat different conclusion. Vacant published in 1887 one of the

²³ All citations of the 1983 code are taken from *Code of Canon Law: Latin-English Edition* (Washington: Canon Law Society of America, 1983).

²⁴ Sullivan, “The Ordinary Universal Magisterium” 353.

rare monographs on the ordinary universal magisterium to which I have already made reference. He wrote that the teachings of the ordinary universal magisterium, although taught infallibly, could not be considered as dogmas of Catholic faith. He based this claim on his analysis of tradition. He could find no evidence of the negative theological note of heresy being attached to a teaching proposed only by the ordinary universal magisterium. He specifically mentions the dogma of the Immaculate Conception, the denial of which, in his view, had never been deemed a heresy prior to its formal definition even though it had presumably been taught by the ordinary universal magisterium.²⁵

Some 70 years after Vacant, Karl Rahner and Karl Lehmann in their article on kerygma and dogma in the theological series *Mysterium Salutis* also looked back at tradition and concluded that since the narrowing of the term “dogma” to its modern usage, there was a tendency to think of dogmas in terms of a solemn definition.²⁶ Rahner and Lehmann affirmed this tendency and noted the need to recognize the higher degree of certitude (*Gewissheitsgrad*) offered by defined dogmas. Recently Kenneth Kaucke, a canon lawyer, came to the same conclusion: “While the ordinary magisterium possesses the same authority as solemn judgements, only a solemn judgement could define a teaching and only it determines that a teaching is actually heretical. Only in the denial of a defined proposition does one constitute oneself heretical.”²⁷ I suspect that the differences between the viewpoint of Sullivan and that of Rahner/Lehmann are not as significant as appear at first. Both viewpoints share a concern for the welfare of the faithful. Sullivan offers a stricter standard for acknowledging non-defined dogmas, and Rahner/Lehmann recognize that, in the tradition, non-defined dogmas did not offer the same degree of certitude as defined dogmas, at least as regards the consequences for theological disagreement. Even if one grants the position that a defined dogma possesses a higher degree of certitude and that repudiation of a non-defined dogma would not constitute heresy, Sullivan’s argument would still hold that there could be grave consequences for the faithful should a teaching be mistakenly held to be dogmatic.

Surely similar concerns about the consequences for the faithful hold not only for non-defined dogmas but also for definitive doctrines taught by the ordinary universal magisterium. One of the most troubling aspects of the

²⁵ Vacant, *Le magistère ordinaire* 76–81 (see n. 3 above).

²⁶ Karl Rahner and Karl Lehmann, “Kerygma und Dogma,” in *Mysterium Salutis*, vol. 1, ed. Johannes Feiner and Magnus Löhrer (Einsiedeln: Benziger, 1965) 655.

²⁷ Kenneth Kaucke, “Must the Act of Divine and Catholic Faith Be Given to *Ordinatio sacerdotalis*? A Study of the Ordinary Universal Magisterium,” *Studia canonica* 31 (1997) 211.

exchange between Nugent and the Vatican concerns the Vatican's unwillingness to accept Nugent's proviso regarding difficulties in determining whether a particular teaching has been taught infallibly by the ordinary universal magisterium. In his case (and that of Gramick) the consequences were quite serious—his failure to sign the prescribed *Professio fidei* has resulted in severe restrictions being placed on his pastoral and theological activity. It is my contention that not only is Sullivan justified in expanding the scope of canon 749§3 beyond defined dogmas to non-defined dogmas; its scope ought also to include definitive doctrine. Any claim to infallibility in formal church teaching, whether it is a matter of dogma or definitive doctrine, must be “clearly established” in order to avoid unwarranted and potentially harmful assertions of heresy or serious error and the canonical penalties that could follow.

The Scope of the Object of the Ordinary Universal Magisterium

The relatively new category of church teaching considered in *Ad tuendam fidem*, definitive doctrine, yields a host of difficulties.²⁸ It is noteworthy that many of the recent claims made regarding the infallible exer-

²⁸ There is a growing body of literature on this topic, particularly in the light of *Ad tuendam fidem*: Christoph Theobald, “Le développement de la notion des ‘vérités historiquement et logiquement connexes avec la Révélation,’ de Vatican I à Vatican II,” *Cristianesimo nella storia* 21 (2000) 37–70; idem, “The ‘Definitive’ Discourse of the Magisterium: Why be Afraid of a Creative Reception?” in *Unanswered Questions*, ed. Christoph Theobald and Dietmar Mieth, *Concilium* 1999/1 (Maryknoll: Orbis, 1999) 60–69; Alberto Melloni, “Definitus/definitive,” *Cristianesimo nella storia* 21 (2000) 171–205; Jean-François Chiron, *L’infailibilité et son objet: L’autorité du magistère infaillible de l’Église s’étend-elle aux vérités non révélées?* (Paris: Cerf, 1999); see also his “L’autorité du magistère infaillible de l’Église lorsqu’il se prononce sur des vérités non révélées: Dossier théologique,” *Revue d’éthique de théologie morale [Le Supplément]* 216 (2001) 35–48; Hermann Pottmeyer, “Auf fehlbare Weise unfehlbar? Zu einer neuen Form päpstlichen Lehrens,” *Stimmen der Zeit* 217 (1999) 233–42 [an English version appeared as “Fallibly Infallible? A New Form of Papal Teaching,” on the website of *America* (April 3, 1999), <www.americapress.org/articles/pottmeynew.htm>]; Brian E. Ferme, “*Ad tuendam fidem*: Some Reflections,” *Periodica de re canonica* 88 (1999) 579–606; Richard R. Gaillardetz, “*Ad tuendam fidem*: An Emerging Pattern in Current Papal Teaching,” *New Theology Review* 12 (February, 1999) 43–51; Bernard Sesboué, “A propos du ‘Motu Proprio’ de Jean-Paul II, *Ad tuendam fidem*,” *Études* 389 (1998) 357–67; Ladislav Orsy, “Von der Autorität kirchlicher Dokumente,” *Stimmen der Zeit* 216 (1998) 735–40; Joseph Ratzinger, “Stellungnahme,” *Stimmen der Zeit* 217 (1999) 169–71; H. Schmitz, “‘*Professio fidei*’ und ‘*Iusiurandum fidelitatis*.’ Glaubensbekenntnis und Treueid. Wiederbelebung des Antimodernisteneides?” *Archiv für katholisches Kirchenrecht* 157 (1988) 353–429; Francis A. Sullivan, “The ‘Secondary Object of Infallibility,” *TS* 54 (1993) 536–50; also his *Magisterium: Teaching Authority in the Catholic Church* (New York: Paulist, 1983) 127–36.

cise of the ordinary universal magisterium (e.g., the teaching on the ordination of women in *Ordinatio sacerdotalis*, and the intrinsically evil character of homosexual acts included in the *Professio fidei* for Nugent) are concerned not with dogma but definitive doctrine. The expansion of such claims has been facilitated, in the minds of many, by a subtle re-interpretation of the scope of the category of definitive doctrine.

According to Jean-François Chiron, explicit claims to the exercise of the charism of infallibility with respect to non-revealed truths can be traced back to the 17th-century Jansenist controversy in which the magisterium was presumed to be teaching infallibly, not only in its condemnation of the five heretical propositions held to be present in Cornelius Jansen's *Augustinus*, but also in its determination that these affirmations were, in fact, present in the work. While the judgment of heresy clearly concerned divine revelation, the judgment of fact did not.²⁹

The possibility of the exercise of infallibility with respect to non-revealed truths was affirmed in the 18th- and early-19th-century seminary manuals. After Vatican I, the explicit distinction between two objects of infallibility, the primary object corresponding to revealed truths and a secondary object corresponding to non-revealed truths, became common in the manuals. In some cases, the second category was defined quite narrowly as those facts necessary to defend revelation, and, in other instances, defined quite broadly as facts merely "connected" to revelation.³⁰ Vatican I did not address the matter explicitly in its two constitutions. However, *Pastor aeternus*, the decree on papal infallibility, stated that the pope defines "a doctrine concerning faith or morals to be held (*tenendam*) by the whole church."³¹ The use of *tenenda* rather than *credenda* suggests that the pope might teach infallibly on a matter not itself divinely revealed and therefore a matter not to be "believed" but "held." Bishop Gasser, in his *relatio* offered to the council, made explicit mention of the possibility of the Church's infallibility extending to non-revealed truths, but presents these as truths taught infallibly only to the extent that they are necessary to safeguard divine revelation.³² Even so, both Gasser and the manualists

²⁹ Chiron, *L'infailibilité et son objet* 41–70.

³⁰ For a survey of the manuals on this point, see Chiron, *L'infailibilité et son objet* 121–202.

³¹ Tanner, *Decrees of the Ecumenical Councils* 2.816.

³² "But together with revealed truths, there are . . . other truths more or less strictly connected. These truths, although they are not revealed *in se*, are nevertheless required in order to guard fully, explain properly and define efficaciously the very deposit of faith" *Mansi* 52.1226 [English translation from Bishop Vincent Gasser, *The Gift of Infallibility*, trans. James T. O'Connor (Boston: Daughters of St. Paul, 1986) 76]. For the significance of this passage see Christoph Theobald, "Le développement de la notion des 'vérités historiquement et logiquement connexes

after Vatican I were in agreement that the position that infallibility extended to non-revealed truths was not itself revealed but merely “theologically certain.”³³

While Vatican II does not treat this topic explicitly, *Lumen gentium* states that the exercise of infallibility “extends just as far as the deposit of divine revelation that is to be guarded as sacred and faithfully expounded” (no. 25). The stress is clearly placed on divine revelation itself, as the extension of the object of infallibility is justified strictly in terms of safeguarding of revelation.³⁴ The council’s Theological Commission took up this question explicitly, opting for a narrow scope for the secondary object, which it described as those teachings “required in order that the same deposit may be religiously safeguarded and faithfully expounded.”³⁵ This interpretation was followed in 1973 in *Mysterium ecclesiae*, a pronouncement of the Congregation for the Doctrine of the Faith.³⁶ It is this narrow interpretation that, in substance, finds its way into the new clause that John Paul II had inserted into the Code of Canon Laws as canon 750§2: “. . . each and every proposition *required* for the sacred preservation and faithful explanation of the same deposit of faith must be firmly embraced and maintained.”³⁷

Against the restrictive interpretation of the secondary object of infallibility evident in Vatican I and II and enshrined in the canonical insertion promulgated in *Ad tuendam fidem*, an earlier passage in the apostolic letter, and an assertion in the Ratzinger/Bertone commentary, broaden the scope considerably beyond “matters required for the sacred preservation and faithful explanation of the same deposit of faith” to include teachings which are *connected to divine revelation* by “logical” or “historical necessity.” This more ambiguous formulation had already emerged in earlier documents under John Paul II’s pontificate, most notably in the “Instruction on the Ecclesial Vocation of the Theologian.”³⁸ These more recent formulations signal a return to a broader interpretation of the scope of the secondary object, for there are many teachings which might have a historical or logical connection to revelation but which are not, strictly speaking, necessary for safeguarding revelation. This shift to a broad interpretation

avec la révélation,’ de Vatican I à Vatican II” 39–43; Gustave Thils, *L’infaillibilité pontificale: Source—conditions—limites* (Gembloux: J. Duculot, 1969) 240–43.

³³ *Mansi* 52.1226B.

³⁴ Chiron, “L’autorité du magistère infaillible de l’Église” 46.

³⁵ *Acta synodalia* 3/1.251.

³⁶ Congregation for the Doctrine of the Faith, *Mysterium ecclesiae*, *Origins* 3 (July 19, 1973) 110.

³⁷ John Paul II, *Ad tuendam fidem* 115, emphasis mine.

³⁸ Congregation for the Doctrine of the Faith, *Donum veritatis*, *Origins* 20 (July 5, 1990) 117–26, at 121.

is unfortunate. How does one go about distinguishing teachings “logically connected” to divine revelation from those proposed as authoritative doctrine? In fact, is there not a danger of collapsing the third category of church teaching, authoritative doctrine, into this second category by way of convoluted demonstrations of logical or historical necessity? As Chiron observed in his careful study of the treatment of the extension of the object of infallibility in the tradition, “it has always been a question, on the part of the most qualified authors and of the councils, of protecting revelation itself, and not of enlarging, more or less surreptitiously, the field of infallibility.”³⁹

Finally we may ask whether this move to assert definitive doctrines taught by the ordinary universal magisterium reflects a return to a propositional model of revelation preoccupied with the enumeration of discrete propositional truths and the protracted elucidation of their logical and historical relationships one to one another. Yet was it not the thrust of Vatican II’s teaching on revelation, *Dei Verbum*, to effect a move away from this view of revelation and toward one which stressed the integral unity of divine revelation manifested not in a propositional statement but in a person, Jesus of Nazareth?⁴⁰ As one distinguished commentator on *Dei Verbum* observed:

The Council’s intention in this matter was a simple one. . . . The fathers were merely concerned with overcoming neo-scholastic intellectualism, for which revelation chiefly meant a store of mysterious supernatural teachings, which automatically reduces faith very much to an acceptance of these supernatural insights. As opposed to this, the Council desired to express again the character of revelation as a totality, in which word and event make up one whole, a true dialogue which touches man in his totality, not only challenging his reason, but, as dialogue, addressing him as a partner, indeed, giving him his true nature for the first time.⁴¹

It would appear that what we are seeing today with regard to this new category of definitive doctrines, is not unlike the neo-Scholastic treatment of revealed truths criticized above.

The Problem of Verification

Timothy Zapelena, in a dogmatic manual whose first edition was published decades before Vatican II, warned of the difficulties involved in verifying the consensus of bishops in the teaching of the ordinary universal

³⁹ Chiron, “L’autorité du magistère infaillible de l’Église” 48.

⁴⁰ See Christoph Theobald, “The ‘Definitive’ Discourse of the Magisterium: Why Be Afraid of Creative Reception?” in *Unanswered Questions, Concilium* 1999/1, 63.

⁴¹ Joseph Ratzinger, “The Dogmatic Constitution on Divine Revelation: Chapter I,” in *Commentary on the Documents of Vatican II*, vol. 3, ed. Herbert Vorgrimler (New York: Crossroad, 1989) 170–80, at 172.

magisterium.⁴² Today it is commonly recognized that one of the vexing features of the exercise of the ordinary universal magisterium arises because no clearly defining act is involved. This creates serious difficulties for verifying that a given teaching has, in fact, been taught infallibly by the ordinary universal magisterium. The difficulties in this process of verification become even greater when one recognizes that the sought after episcopal consensus, past and present, cannot simply be a matter of tacit episcopal agreement on a particular teaching. *Lumen gentium* holds that the bishops must be in agreement that “a particular teaching is to be held definitively (*tamquam definitive tenendam*)” (no. 25). This final clause suggests that there must be not only agreement among the bishops but an agreement that such a teaching is to be proposed *irrevocabiliter*.⁴³ One cannot exclude the possibility that the bishops might agree upon a given teaching but hold that it was, to use the language of the theological notes, only “theologically probable” and not a matter “to be held as definitive.” How then, apart from explicit consultation of the bishops, is the note they assign to a teaching to be ascertained? Sullivan suggests that “it is possible that some ordinary papal teaching, while not openly contradicted, might be given a rather passive reception or might even be qualified by a significant number of bishops.”⁴⁴ Indeed, have there not been significant moments in church history when a bishop or bishops may have lacked the requisite experience or knowledge to give a teaching any more than this kind of passive acceptance?⁴⁵

More serious are the difficulties raised by the possibility of a consensus virtually coerced by papal directive. One can admit that the Vatican prohibition of free discussion among the bishops on a particular topic might be prudent in certain circumstances. However, when such a prohibition has been imposed, any subsequent claims to episcopal unanimity on that topic will inevitably be compromised as such unanimity will appear as little more than episcopal acquiescence to a Vatican directive.

It is possible to conceive of ecclesial processes that might demonstrate a

⁴² Timothy Zapelena, *De Ecclesia Christi*, vol. 2, 6th ed. (Rome: Gregorian University, 1954–1955) 185–86.

⁴³ This meaning of *definitive tenendam* comes from the early-20th century manualist, J. Salaverri. See *Sacrae Theologiae Summa*, 5th ed. (Madrid: Biblioteca de autores cristianos, 1962) 665. A number of theologians share the conviction that this clause must be understood as a further restriction: Sullivan, *Magisterium* 127; Joseph Komonchak, “*Humanae vitae* and Its Reception: Ecclesiological Reflections,” *TS* 39 (1978) 221–57, at 246; Karl Rahner, “The Dogmatic Constitution on the Church: Chapter III, Articles 18–27,” in *Commentary on the Documents of Vatican II*, vol. 1, 186–218, at 210; Gerard Philips, *L’Église et son mystère au deuxième concile du Vatican*, 2 vols. (Paris: Desclée, 1967) 1.325.

⁴⁴ Sullivan, *Magisterium* 127.

⁴⁵ See Gaillardetz, *Witnesses* 132–34.

genuine episcopal consensus. In the life of the early Church, collegial interaction was manifested in numerous ways: by participation in regional synods, in the distribution of circular letters, shared participation at the ordinations of bishops, the sending and receiving of “letters of commendation,” etc. In these many episcopal interactions, a common teaching was nourished, often by fits and starts, by the whole college. The common teaching depended on the support of episcopal communion. This explains the seriousness with which ecclesial schism was viewed; schism isolated one church from the larger *communio ecclesiarum* and deprived the isolated church of the particular witness of the other churches. Today there are alternative opportunities to build up the common teaching of the bishops: collegiality manifested in episcopal conferences, episcopal synods, even the possibility (all too rarely employed unfortunately) of plenary and provincial councils, etc. Yet the potential for these institutions to facilitate a growth in shared episcopal teaching has been severely compromised by an atmosphere created by the Vatican in which synodal agendas are carefully controlled, treatment of controversial topics in letters of episcopal conferences is discouraged, and stringent litmus tests are employed for episcopal appointment. Bishops are told that they are not to voice publicly disagreements with current papal teaching. Such an atmosphere renders dubious any appeal to episcopal unanimity on controversial teachings in the face of evidence of widespread theological disagreement and private admissions of reservations on the part of bishops.

Beyond the question of directly discerning episcopal consensus, Sullivan has also proposed two other criteria for discerning whether a teaching has been taught infallibly by the ordinary universal magisterium: the consensus of theologians, and the *consensus fidelium*. He finds his first criterion in Pius IX’s *Tuas libenter*, where the pope affirmed that an act of faith was due as well to those teachings proposed infallibly by the ordinary magisterium and “therefore are held by the universal and constant consent of Catholic theologians to pertain to the faith.” Sullivan writes: “In this final clause, Pius IX is clearly proposing a criterion by which one can identify doctrines that have been taught by the ordinary universal magisterium as divinely revealed: there will be a universal and constant consensus among Catholic theologians that such doctrines are *de fide*.”⁴⁶ Sullivan further emphasizes that such consensus must be constant. “This suggests that the kind of consensus by which we can conclude that a doctrine has been infallibly taught must be one that perseveres and remains firm.”⁴⁷ He offers two examples: polygenism and artificial contraception. For a time it was possible to recognize a theological consensus on the Church’s condemna-

⁴⁶ Sullivan, “The Ordinary Universal Magisterium” 348.

⁴⁷ *Ibid.*

tion of polygenism, particularly in the years between Vatican I and *Humani generis*, but that consensus did not “persevere” among theologians after Vatican II. In like manner, a long-standing consensus regarding the Church’s teaching on artificial contraception was shattered in the years after *Humanae vitae*. In each case, an apparent unanimity dissolved in the face of significant new developments or new interpretive frameworks. I would extend this judgment to include both the teaching on the ordination of women and the moral character of homosexual acts; both have been the subject of considerable theological reflection drawing on new interpretive contexts. Consequently, it would seem difficult to judge any purported consensus regarding these two teachings as one which “perseveres and remains firm.”

The second criterion Sullivan offers is suggested by canon 750 of the 1983 Code of Canon Law. This canon refers to those teachings that are to be believed by “divine and catholic faith,” whether proposed by a solemn definition or taught by the ordinary universal magisterium “which is manifested by the common adherence of Christ’s faithful under the guidance of the sacred magisterium.” In this clause, an addition to canon 1323§1 of the previous Code of Canon Law, one finds a rare reference to the ecclesiological notion of “reception of church teaching” by the faithful.⁴⁸ As Sullivan suggests, the common adherence of the faithful is another way of verifying that a teaching has been infallibly proposed by the ordinary universal magisterium.

Sullivan’s attempt to develop a criteriology for the verification of the exercise of the ordinary universal magisterium has come under some criticism. In particular, Lawrence Welch has accused him of introducing *sine qua non* conditions for the exercise of the ordinary universal magisterium.⁴⁹ After a lengthy analysis of Sullivan’s arguments, particularly as regards Pius IX’s mention of the consensus of theologians, Welch writes: “But there is no reason to believe that this Pope [Pius IX], who insisted that theologians must subject themselves to the doctrinal decisions of the Roman Congregations, understood this to be not only a sign of, *but a condition for definitive teachings whose absence would throw into doubt that the ordinary magisterium had taught a doctrine definitively*. A sign is one thing, a condition is another. Sullivan seems to assume that sign and condition mean the same thing in this instance.”⁵⁰ As best as I can ascertain, however, Welch has misread Sullivan’s argument, for nowhere does Sullivan

⁴⁸ For an exegesis of this canon with respect to the exercise of church authority see, John Boyle, *Church Teaching Authority* (Notre Dame: University of Notre Dame, 1995) 105–6.

⁴⁹ Lawrence J. Welch, “The Infallibility of the Ordinary Universal Magisterium: A Critique of Some Recent Observations,” *Heythrop Journal* 39 (1998) 18–36.

⁵⁰ *Ibid.* 29 [italics in original].

assert that either criteria are necessary conditions for the exercise of the ordinary universal magisterium. Rather, he recognizes that there is an important distinction between a factual instance of universal episcopal teaching to be held as definitive by the faithful, and the verification that such a teaching has been so proposed. It is possible for a teaching to have been taught by the ordinary universal magisterium without that fact being readily evident at a given point in time.

This is why Sullivan's appeal to canon 749§3 is crucial: "No doctrine is understood to be infallibly defined unless it is clearly established as such (*Infallibiliter definita nulla intellegitur doctrina nisi id manifeste constiterit*)." This canon is concerned not with establishing conditions for the de facto exercise of infallibility (as did *Pastor aeternus* with respect to papal infallibility), but with the necessary verification that the exercise of infallibility has in fact taken place. Sullivan grants that the canon refers explicitly only to defined dogmas. However, he argues that it is theologically justifiable to extend the scope of the canon to non-defined dogmas. As we have seen, Sullivan's primary argument is from the consequences to the faithful for denying such a dogma.

Germain Grisez has also challenged Sullivan's position on several counts. First, he questions whether, in canon 749§3, *constiterit* ought to be translated as "established." Grisez holds that the Latin bears a different interpretation, namely that "one should not judge that this or that magisterial statement is a solemn definition unless the very formulation and its context makes this clear."⁵¹ This canon then, is concerned strictly with the formulation of a dogmatic proposition. Since only solemn definitions have specific formulations, this canon could not be applied to non-defined dogmatic teaching of the ordinary universal magisterium. Curiously, Grisez does grant that in the case that he is arguing, that of the infallibility of the Church's teaching on contraception, the faithful need respond to the teaching only as proposed authoritatively not infallibly. "For in view of the silence up to now of virtually all the bishops on the teaching's infallibility, as well as the absence of consensus among theologians who have dealt with the issue, most of the faithful who lack theological training will be unable to see that this teaching has been proposed infallibly."⁵²

Grisez would then appear to accept, in part, Sullivan's extension of canon 749§3 to nondefined dogma, at least *for the faithful*, since, in the case of artificial contraception, the irreformability of this teaching would not have been clearly established for them. However, Grisez insists that the lack of consensus, significant for the faithful, does not hold the same significance for theologians themselves. "Psychologically, no doubt, it is re-

⁵¹ Germain Grisez, "The Ordinary Magisterium's Infallibility" 731.

⁵² *Ibid.* 732.

assuring to find one's views supported by many colleagues. Methodologically, however, this at best provides an unreliable sign of where the truth might lie.⁵³ But of course, the point of appealing to the consensus of theologians is to "clearly establish" not that a teaching is true but rather that it has been taught infallibly by the ordinary universal magisterium. In this regard, establishing a consensus of theologians that a teaching has been proposed infallibly would seem equally important for theologians themselves as for the rest of the faithful.

Welch grants, against Grisez, Sullivan's translation of the canon, but still holds that the canon is concerned only with evaluating the formulation and context of a purported solemn definition. Thus the canon is concerned with "clearly establishing" that a purported solemn definition does indeed meet the conditions for the exercise of infallibility by either pope or council. "Surely canon 749§3 cannot be applied in a straightforward way to undefined dogmas because they do not have the same precise formulation as defined dogmas and the same kind of identifiable context."⁵⁴ Still, Welch goes on to admit that "it remains true, of course, that when theologians try to identify undefined dogmas they must painstakingly inquire as to whether the Pope and the bishops have been in agreement that a particular doctrine must be held definitively."⁵⁵ It is not clear why "painstakingly inquiring" whether pope and bishops have proposed a teaching as definitive by the ordinary universal magisterium is not equivalent to inquiring into the intention of a pope or council to offer a solemn definition. That the former task is more difficult than the latter is precisely the reason Sullivan appeals to the importance of ascertaining a theological consensus.

I contend that the problem of verification emerges whenever there are appeals to the teaching of the ordinary universal magisterium with respect to currently disputed issues. When appeals to the ordinary universal magisterium are made with respect to long-standing affirmations of the kind found in the baptismal creeds regarding, for example, the communion of saints or the resurrection of the body, the question of verification rarely comes into play because these teachings are so evidently accepted as belonging to the apostolic faith. This may explain why, of all of the claims made in this present pontificate for the exercise of the ordinary universal magisterium, those made in *Evangelium vitae* have received the least criticism; while moral theologians will doubtlessly desire clarification regarding the scope and the concrete application of the three condemnations found

⁵³ Ibid.

⁵⁴ Welch, "The Infallibility of the Ordinary Universal Magisterium" 22. See also Basil Cole, "Infallibility: Breadth and Depth, A Possible Explanation," *Angelicum* 72 (1995) 503.

⁵⁵ Welch, "The Infallibility of the Ordinary Universal Magisterium" 23.

in that encyclical, there would appear to be a longstanding consensus on the general tenor of all three moral condemnations. However, claims made regarding both the prohibition of the ordination of women and the intrinsic evil of homosexual acts have raised significant questions precisely because many scholars believe that these teachings must be re-considered today in the light of fundamentally new interpretive frameworks.⁵⁶ Some ten years ago, I suggested that “in the face of controversy, the determination of the authoritative status of any teaching not solemnly defined can only be pursued tentatively. . . . Where serious questions are leveled against a particular teaching of the church, appeals to the ordinary universal magisterium cannot be expected to resolve the matter.”⁵⁷ Welch, in the article discussed above, took issue with my conclusion. “Suppose, for instance, that some time in the future the resurrection of the body became a controversial doctrine as it was in the early centuries. Would we really be justified in saying that its definitive and infallible status would only be tentative because it had become controversial? I would suggest that controversy or the lack of it is not really helpful in determining the definitive status of a doctrine taught by the ordinary universal magisterium.”⁵⁸

My answer, however provocative, to Welch’s hypothetical case, is yes. The controversial status of that teaching would need to be resolved in one of several ways. First, there might be a well grounded demonstration of the diachronic and synchronic unanimity of the episcopate regarding the teaching on the resurrection of the body. Affirming the diachronic unanimity would involve a demonstration of a common witness to the truth of this teaching across the centuries while the synchronic unanimity of the bishops in the present moment by, for example, an explicit and public consultation with the whole college of bishops. Another alternative, with an ancient pedigree in our tradition, would be an exercise of the extraordinary magisterium to resolve the controversy by solemn judgment of either pope or, more preferable to be sure, an ecumenical council. After all, in the past the exercise of the extraordinary magisterium in solemnly defining a dogma generally occurred only as the result of a certain teaching having come

⁵⁶ This claim for new interpretive frameworks cannot be developed here, but I have in mind, with respect to the ordination of women, the changing status of women in the world today and the repudiation of the dominant medieval argument against the ordination of women from the subordinate status of women in the natural order. With respect to the teaching on the intrinsic evil of homosexual acts I have in mind new scientific insights about the existence of a permanent homosexual orientation and the possibility of a genetic foundation for that orientation.

⁵⁷ Gaillardetz, *Witnesses* 174–75. For a similar viewpoint see, Magnus Löhrer, “Das besondere Lehramt der Kirche,” in *Mysterium Salutis*, vol. 1, ed. Johannes Feiner and Magnus Löhrer (Einsiedeln: Benziger, 1965) 573.

⁵⁸ Welch, “The Infallibility of the Ordinary Universal Magisterium” 36, n. 58.

under attack. As but one example we might mention Catholic convictions about the real presence of Christ in the Eucharist, affirmed without controversy for the first eight centuries of Christianity before a series of disputes, culminating in the challenges of some of the Reformers, would finally lead to its solemn definition at the Council of Trent.

Papal Confirmation as a Means of Verification

Brian Ferme joins with Welch and others in challenging the view of those who seek clear criteria for verifying whether a teaching has been proposed infallibly by the ordinary universal magisterium. While Ferme agrees with Welch that consultation of the bishops, the consensus of theologians, and the adherence of the faithful have value, Ferme contends that “the most important criterion seems to have been overlooked, namely the action of the Head of the College without whom it has no sense.”⁵⁹ The pope may exercise his own ordinary papal magisterium to confirm the teaching of the bishops. We have seen this papal confirmation at work implicitly in *Ordinatio sacerdotalis* and explicitly in *Evangelium vitae*. Such an exercise need not be problematic. As Hermann Pottmeyer has observed:

[I]t is, in fact, very conceivable that the papal declaration could represent the end point of an intensive exchange between pope and episcopate: an exchange in which each bishop had an opportunity to make his views known. For, in the exercise of his responsibility as teacher, a bishop cannot be replaced either by the college of cardinals or by the presidents of the episcopal conferences. Such an exchange can be carried out in such a way that the existence of a synchronic consensus becomes evident to the faithful.⁶⁰

I believe Peter Hünermann has something similar in mind when he proposes a new paradigm for the exercise of papal teaching authority in which the pope functions as a kind of “notary public,” formally affirming/witnessing the faith.⁶¹ With this “notary” exercise of papal teaching the pope would be, not imposing a new teaching, but rather setting his “seal” on that which has emerged in the consciousness of the Church. The effectiveness of this confirmatory ministry would depend on its manifest character as confirmation rather than an autonomous determination. One would expect, for example, that such a confirming act might follow upon a

⁵⁹ Ferme, “The Response [28 October 1995] of the Congregation for the Doctrine of the Faith” 724.

⁶⁰ Pottmeyer, “Auf fehlbare Weise unfehlbar?” 242. See also Lüdecke, *Die Grundnormen* 531–33.

⁶¹ Peter Hünermann, “Die Herausbildung der Lehre von den definitive zu haltenden Wahrheiten seit dem Zweiten Vatikanischen Konzil: Ein historischer Bericht und eine systematische Reflexion,” *Cristianesimo nella storia* 21 (2000) 71–101, at 96–101.

direct consultation of the bishops.⁶² An example of this kind of consultation is found in *Evangelium vitae*. In that encyclical the pope explicitly recounts his consultation by means of a personal letter addressed to every bishop.⁶³ Alternatively, there ought to be an obvious manifestation of an unbroken diachronic consensus of episcopal teaching in tradition that a teaching has consistently been proposed by the bishops as to be held definitively.

Such a papal teaching act would have the merit of calling attention to a consensus within the tradition and among bishops at the present time, the significance of which may not have been sufficiently acknowledged. Difficulties arise, however, when an act of papal confirmation proceeds as a means of resolving doubts regarding the definitive status of a teaching. Let us consider this further. Ferme contends that “[i]f there is doubt as to whether a doctrine is proposed infallibly by the ordinary and universal magisterium of the Church in the sense of canon 749§2, then the Head of the College could declare this to be the case.”⁶⁴ This might be true if the doubt existed only among some individuals in the Church who, perhaps, never had cause to consider the authoritative status of a given teaching. It would not be appropriate in cases where there are serious questions among theologians as to whether a teaching has been so proposed by the bishops. In other words, however helpful a papal teaching act of confirmation might be, it cannot substitute for lack of evidence either that such a teaching has been consistently proclaimed in tradition or that such a teaching is, here and now, offered as a teaching to be held as definitive by the whole college of bishops. To adopt the image offered by Hünemann, a notary affixes a seal to a document, affirming that they have witnessed the proper signature of a document. The notary transcends their authority, however, when they affix their seal in the face of doubts regarding the authenticity of the signatory simply because they themselves are committed to the contents of the document.

The source of the difference between papal confirmation as conceived by Pottmeyer/Hünemann and that conceived by Ferme is reflected in a statement Ferme makes early in his paper. In a discussion of the first two paragraphs of canon 749 he notes that these paragraphs address “two subjects of infallibility in the Church,” where paragraph one speaks of the first subject, the pope, and paragraph two speaks of the second subject, the

⁶² For criticisms of John Paul II on this point see Werner Böckenförde, “Zur gegenwärtigen Lage in der römisch-katholischen Kirche. Kirchenrechtliche Anmerkung,” *Orientierung* 62 (1998) 228–34.

⁶³ *Evangelium vitae* no. 5.

⁶⁴ Ferme, “The Response [28 October 1995] of the Congregation for the Doctrine of the Faith” 708–9.

college of bishops.⁶⁵ This view, however common it may have been in certain neo-Scholastic manuals, represents a defective ecclesiological perspective.⁶⁶ Because the pope is the local bishop of Rome who, as such, functions as head of the college of bishops, he and the college can never be conceived as two distinct entities and two distinct (or as some manuals would say, “inadequately distinct”) subjects. When Pottmeyer grants the legitimacy of an act of papal confirmation it is because he recognizes the role of the pope as head of the college within the college to sum up and give explicit expression to the sense of the college. Ferme’s failure to acknowledge this ecclesiological reality leads him to give the papal confirmation of these purported episcopal teachings an autonomous value independent of any direct evidence of the bishops’ teaching itself. Though it may be helpful, Ferme insists that the pope is under no obligation to “poll” the bishops; it is enough that “in a deliberate discernment of the faith of the Church the Pope declares this faith.”⁶⁷ But if this is the case, since this papal confirmation is not, as Ferme admits, an infallible exercise, certain consequences follow. Most notably, the faithful may legitimately withhold assent from the pope’s determination if after prayerful reflection and study they fail to see the connection between the papal confirmation and the witness of episcopal teaching.

Finally, one should point out that this practice of papal confirmation risks obscuring what Bernard Sesboüé refers to as the fundamental “dissymmetry” intentionally preserved in the teaching of both Vatican I and II: while there are two modes of exercising the extraordinary magisterium (solemn judgment of an ecumenical council and the solemn judgment of the pope teaching *ex cathedra*) there is only one mode of exercise of the ordinary universal magisterium, the teaching of the whole college dispersed throughout the world.⁶⁸ The word “universal” was added to the passage in *Dei Filius* precisely to make the point that the exercise of the ordinary magisterium that Pius IX had in mind in *Tuas libenter* was not an exercise of the ordinary papal magisterium.⁶⁹ Emphasis on the role of papal confirmation risks creating an unintended symmetry in which this exercise of the ordinary papal magisterium is transformed into a second, papal mode of exercising the ordinary universal magisterium.

⁶⁵ Ibid. 693.

⁶⁶ Admittedly, evidence for this viewpoint can also be found in the *Nota explicative praevia* attached to *Lumen gentium*.

⁶⁷ Ibid. 726.

⁶⁸ Bernard Sesboüé, “Magistère ‘ordinaire’ et magistère authentique,” *Recherches de science religieuse* 84 (1996) 267–75, at 271.

⁶⁹ In spite of this, one still finds theological treatments that propose an infallible exercise of the pope’s ordinary magisterium. See Vacant, *Le magistère ordinaire* 98 (see n. 3 above).

CONCLUSION

In the early Church it was commonly held that when the bishops proclaimed the apostolic kerygma, they did so in confidence that they were united with their brother bishops in the proclamation of the one faith in Jesus Christ. This daily preaching and teaching was the “ordinary” mode by which bishops exercised their authority as preachers and teachers. Only when a proximate threat was raised against the received faith was it deemed necessary to “define” the faith in a more solemn fashion, initially by way of councils, and eventually by way of solemn papal judgments as well. In the years since the Second Vatican Council, this basic insight regarding the significance of the common teaching of the bishops exercised in their daily ministry has been transformed into a vehicle for addressing controversial matters. A disturbing trend has emerged in which the authoritative status of these disputed teachings has been elevated by appeal to this “third modality” for the exercise of infallibility. There is a real danger that a too far ranging appeal to the infallibility of the ordinary universal magisterium may foreshorten the necessary discourse of the whole Christian community on questions being posed in significantly new contexts and therefore not susceptible to “definitive” determinations. Claims to the exercise of the ordinary universal magisterium have changed in significant ways. It is only in recovering the more ancient ecclesiological vision of the universal consensus of the churches and their bishops that the problematic features of this shift can be overcome.