

“Infallibility and the Ordination of Women”

[Richard R. Gaillardetz, *Louvain Studies* 21 (1996): 3-24]

The Congregation for the Doctrine of the Faith 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 Pope John Paul II in *Ordinatio sacerdotalis* regarding the ordination of women. In this article I wish to consider what is new in the CDF *Responsum*, namely the declaration that the exclusion of women from the priesthood has been taught infallibly and belongs to the deposit of faith. In particular, I will consider whether, in this declaration, the magisterium has fulfilled the obligation to “clearly establish” a claim to infallibility as set forth in the important canonical principle: “no doctrine is understood to be infallibly defined unless it is clearly established as such (canon 749.3).” Consequently, my primary concern will be the teaching’s authoritative status; any consideration of the substantive arguments which the church has adduced in support of this teaching will be limited to their bearing on the teaching’s degree of authority.

According to the cover letter (November 8, 1995) of Joseph Cardinal Ratzinger, prefect for the CDF, which was sent to presidents of episcopal conferences, the *responsum* was required because of

a number of problematic and negative statements by certain theologians, organizations of priests and religious, as well as some associations of lay people. These reactions attempted to cast doubt on the definitive character of the Letter’s

teaching on the inadmissibility of women to the ministerial priesthood, and also questioned whether this teaching belonged to the deposit of faith.¹

Since the *Responsum* was intended, according to Cardinal Ratzinger, to “dispel the doubts and reservations that have arisen” regarding the pope’s apostolic letter, it is necessary that we first review the central teaching of *Ordinatio sacerdotalis*.

I. The Authoritative Status of the Teaching in *Ordinatio Sacerdotalis*

In the pope’s apostolic letter, *Ordinatio sacerdotalis* 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 judgment is to be definitively held by all the church’s faithful (#4).²

The apostolic letter reaffirmed what had been proposed earlier in his own pontificate and in that of Pope Paul VI regarding the exclusion of women from ordination to the priesthood.³ Unlike these previous documents, however, the 1994 apostolic letter did not focus on the theological

¹ *Origins* 25 (November 30, 1995): 403.

² *Origins* 24 (June 9, 1994): 51.

³ Cf. Pope Paul VI’s response to the letter of Rev. Dr. F.D. Coggan, Archbishop of Canterbury, concerning the ordination of women to the priesthood, *Origins* 6 (August 12, 1976): 131-2; The CDF declaration, “Women in the Ministerial Priesthood” [*Inter insigniores*], *Origins* 6 (February 3, 1977): 517-24; Pope John Paul II, “On the Dignity and Vocation of Women” [*Mulieris dignitatem*], *Origins* 18 (October 6, 1988): 261-83, see especially 278-9 (# 26).

arguments which the magisterium proposes in support of this teaching.⁴ What was new in the 1994 letter did not lie in the theological argumentation but in the formulation of the teaching itself.

The phrase, *to be definitively held*, echoes the teaching of Vatican II's Dogmatic Constitution on the Church, *Lumen gentium*, # 25.2 which refers to the infallible teaching of the ordinary universal magisterium of bishops. When the bishops, while dispersed throughout the world, are in communion with one another and are in agreement that a matter concerning faith and morals is "to be definitively held," they teach with the charism of infallibility. What was unusual in this instance was that 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 subsequently published commentary of Cardinal Ratzinger. He wrote 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 act of the ordinary Magisterium of the Supreme Pontiff, an

⁴ The brief theological arguments offered in *Ordinatio sacerdotalis* were from scripture (the express 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*, # 5] which combines a sacramental theology based on a theory of natural resemblance with a theological anthropology which stresses gender "complementarity."

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.⁵

This appeal to the ordinary papal magisterium raised serious questions because *Lumen gentium* # 25 makes no mention of the ordinary papal magisterium proposing teaching to be held as definitive. In considering the ordinary papal magisterium the constitution says:

The religious assent of will and intellect is to be given in a special way to the authentic teaching authority of the Roman pontiff even when he is not speaking *ex cathedra*; in such a way, that is, that his supreme teaching authority is respectfully acknowledged, and sincere adherence given to decisions he has delivered, in accordance with his manifest mind and will which is communicated chiefly by the nature of the documents, by the frequent repetition of the same doctrine or by the style of verbal expression.⁶

The clear burden of this passage is to affirm the authority of papal teaching even when it falls short of a definitive teaching act. The response owed to such teaching is not a definitive assent but an *obsequium* of intellect and will. However, the Note of Presentation attached to *Ordinatio sacerdotalis* maintained that the response owed to this teaching was “the full and unconditional assent of the faithful.”⁷ This appears to go beyond the response which *Lumen gentium* claimed for the ordinary papal magisterium. In conclusion, as Francis Sullivan has observed, the most significant aspect of *Ordinatio sacerdotalis* was that it appeared to presume a new category of

⁵ Joseph Cardinal Ratzinger, “The Limits of Church Authority,” *L’Osservatore Romano* [English Edition] 26 (June 29, 1994): 7.

⁶ Norman Tanner, ed., *Decrees of the Ecumenical Councils*, vol. 2 (Washington, D.C.: Georgetown University Press, 1990), 869. English translations of all conciliar documents will be taken from Tanner.

⁷ “Note of Presentation,” *L’Osservatore Romano* [English Edition] 22 (June 1, 1994): 2.

magisterial teaching, an exercise of the ordinary papal magisterium which could propose teaching to be held as definitive and irreformable.⁸

II. The CDF's *Responsum ad Dubium*

The CDF's formal response to the question posed to it regarding the teaching on the ordination of women was brief:

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.

⁸ Francis Sullivan noted the unprecedented character of this teaching exercise in "New Claims for the Pope," *The Tablet* 18 (18 June, 1994): 768. Due to its recent publication, there is very little scholarly literature available assessing the teaching of *Ordinatio sacerdotalis*. Angel Antón offers a careful assessment of the authoritative status of this teaching in his note, "*Ordinatio sacerdotalis*: Algunas reflexiones de 'gnoseología teológica'," *Gregorianum* 75 (1994): 723-42. For more substantive critiques of the theological argumentation presupposed in *Ordinatio sacerdotalis* see Peter Hünermann, "Schwerwiegende Bedenken. Eine Analyse des Apostolischen Schreibens '*Ordinatio sacerdotalis*,'" *Herder Korrespondenz* 48 (1994): 406-10; Ida Raming, "Endgültiges Nein zum Priestertum der Frau? Zum Apostolischen Schreiben Papst Johannes Pauls II. *Ordinatio Sacerdotalis*," *Orientierung: Katholische Blätter für weltanschauliche Information* 58 (1994): 190-3 [For a condensed English translation see "A Definitive No to Women's Ordination?" *Theology Digest* 42 (Spring, 1995): 43-6].

*The Sovereign Pontiff John Paul II, at the Audience granted to the undersigned Cardinal Prefect, approved this Reply, adopted in the ordinary session of this Congregation, and ordered it to be published.*⁹

I would like to begin an analysis of this statement with the closing paragraph and the question of the formal authority of the CDF *Responsum* itself as an ecclesial teaching act. It is but the latest in a series of pronouncements and instructions from the CDF which have raised questions regarding the proper relationship of the Roman curia to not only the pope but the college of bishops.

A. The Roman Curia and the Teaching Office of the Church

Born in the twelfth century as a kind of papal court for an imperial papacy, the Roman curia has functioned for nine centuries as the bureaucratic arm of the papacy. Like most bureaucratic structures, the curia has proven itself over the centuries to be remarkably resistant to reform.¹⁰ Following the conciliarist controversy which set the authority of the pope against the authority of the bishops, the curia, as an administrative arm of the papacy, frequently served a policing function and consequently has come to be viewed with suspicion by some bishops and theologians.

⁹ *Origins* 25 (November 30, 1995): 401.

¹⁰ Of course attempts at curial reform have been undertaken periodically, most notably by Pope Pius X [*Sapienti consilio, Acta Apostolicae Sedis* 1 (1909): 7-19], Pope Paul VI [*Regimini Ecclesiae universae, Acta Apostolicae Sedis* 59 (1967): 885-928] and Pope John Paul II [*Pastor bonus, Acta Apostolicae Sedis* 80 (1988): 841-932]. However, each of these attempts failed in achieving a fundamental restructuring of the curia in light of sound ecclesiological principles. Cf. I. Gordon, "De Curia Romana renovata," *Periodica de re Morali et Liturgica* 58 (1969): 59-116; Peter Huizing and Knut Walf, *The Roman Curia and the Communion of Churches* [*Concilium* # 127] (New York: Seabury Press, 1979) for essays which treat the question of curial reform. On the most recent attempt at curial reform, see James Provost, "Pastor Bonus: Reflections on the Reorganization of the Roman Curia," *The Jurist* 48 (1988): 499-535.

At Vatican II many bishops called for a reform of the curia in keeping with the renewed appreciation of the church as communion.¹¹ Numerous proposals were made in this regard. Some suggested the creation of a special council of bishops after the close of Vatican II which would assist the pope in the pastoral care of the Church universal (this suggestion eventually led to Pope Paul VI's creation of the world synod of bishops). Others suggested that a special congregation be created within the curia which would consist of representative bishops and would have authority over the other congregations. The general call for reform, however, elicited the objection that since the curia was a papal institution it was not within the competence of the council to consider its reform. In this view the Roman curia was just like the curia of each individual bishop. Against this view, Cardinal Alfrink insisted that the curia served not only the pope but the college of bishops. Alfrink's understanding seemed to follow from the council's teaching that the whole college shared with the pope supreme authority over the whole church (cf. LG # 22). In substantial agreement with the position of Alfrink, Karl Mörsdorf wrote: "The order in the Church was not first the Pope then the Curia and after that the bishops, but first the college of bishops, i.e., the Pope with the other bishops, and then the Curia as the executive instrument of the college of bishops though also of the Pope."¹² This latter view seems to be reflected in Vatican II's *Christus dominus* # 9:

In the exercise of his supreme, full and immediate authority over the entire church, the Roman pontiff makes use of the various departments of the Roman curia. These departments, accordingly, operate in his name and with his authority for the good of the churches and in the service of the sacred pastors. These departments

¹¹ Karl Mörsdorf, "Decree on the Bishops Pastoral Office in the Church," in *Commentary on the Documents of Vatican II*, vol. 2, ed. Herbert Vorgrimler (New York: Crossroad, 1989), 173-5, 210-13.

¹² *Ibid.*, 174.

have unquestionably given outstanding assistance to the Roman pontiff *and to the pastors of the church*. Nevertheless it is the express wish of the conciliar fathers that they should be reorganised in a way more appropriate to the needs of our own times and of different regions and rites (emphasis is mine).

Unfortunately, the 1983 Code of Canon Law (c. 360) deleted reference to the “pastors” and speaks only of the curia’s service to the Churches. In fact, both Vatican II and the new Code of Canon Law have failed to resolve satisfactorily the thorny complex of canonical and ecclesiological questions regarding the function and authority of the Roman curia. The larger issue concerns the *suprema potestas* given to the college of bishops and its head, the bishop of Rome. This supreme power and authority to teach the faith resides with the college (and its head) alone. According to Roman Catholic ecclesiology, the Roman curia in general, and the Congregation for the Doctrine of the Faith, in particular, plays only an auxiliary role in assisting the bishops in the exercise of this *suprema potestas*. However, the growing proliferation of doctrinal statements, clarifications and instructions issued *to* the bishops *from* the curia risks giving the impression that it is the CDF rather than the college of bishops who is the subject of supreme teaching authority.

Ancient canonical principle does allow for the delegation of the pope’s own power of jurisdiction to curial offices. While canon law envisions the participation of the Roman curia in papal governance of the church, there is reason to question the extent to which the curia can similarly participate in the doctrinal teaching authority of the pope. This authority cannot be delegated because it is the pope’s by virtue of his episcopal office as bishop of Rome. Peter Huizing and Knut Walf confirm this view:

The theological “sacral” character of the papal office rests on the sacramental character of his ordination as a bishop. It is not possible to delegate this sacramental character of the papal authority to a functionary whose authority

ultimately rests upon an administrative appointment. Nor is it possible to bestow this authority on an institution, the existence and power of which depends upon administrative structures and appointments.¹³

This brings us back to the question of the authority of the CDF's *Responsum*. This latest curial document provides but one more instance of the serious and unfortunate ambiguities outlined above. In canon law most curial documents require papal approval. This approval can take either one of two forms: the vast majority of curial documents are offered in "common form" and have only the general approval of the pope for the publication of the document. Documents promulgated in "special form" are documents the content of which the pope has made his own. Such documents must include some explicit declaration of this special form of approval. These documents would appear to derive their authority from the papal teaching office itself. In a brief article in *America*, Ladislav Örsy has noted that the CDF *Responsum* appears to be promulgated in common form, that is, there is no evidence in the document that the pope has formally sought to make this document's teaching an exercise of his papal magisterium.¹⁴ Consequently, the authority of the *responsum* itself cannot be that of an exercise of the ordinary papal magisterium; it is an authoritative interpretation of a Roman congregation. Unfortunately, this distinction has been almost universally ignored by the popular media resulting in a great deal of confusion.

¹³ Peter Huizing and Knut Walf, "Editorial," in *The Roman Curia and the Communion of Churches*, xii.

¹⁴ Ladislav Örsy, "The Congregation's 'Response': Its Authority and Meaning," *America* 173 (December 9, 1995): 4-5. Örsy had already called attention to the important questions regarding the teaching authority of Roman congregations in his book, *The Church: Learning and Teaching* (Wilmington: Glazier, 1987), 51-2.

B. New Claims Regarding the Church's Teaching on the Ordination of Women

Moving from the authority of the *Responsum* itself, to a consideration of what the CDF statement says, I find three significant, new elements: 1) the teaching of *Ordinatio sacerdotalis* belongs to the deposit of faith; 2) the magisterium's teaching on the ordination of women has been taught infallibly by the ordinary and universal magisterium; 3) the pope has handed on the teaching of the ordinary and universal magisterium through a "formal declaration" in *Ordinatio sacerdotalis*.

1. The Teaching of *Ordinatio Sacerdotalis* belongs to the Deposit of Faith

While *Ordinatio sacerdotalis* held that the teaching on the ordination of women "pertains to the church's divine constitution," it did not specify whether, in fact, the church's teaching was divinely revealed and belonged to the deposit of faith. By calling for this teaching "to be definitively held" rather than calling for the assent of faith which should be owed to a teaching which was divinely revealed, the apostolic letter suggested, if anything, that the teaching belonged to what the manualists called the secondary object of infallibility, those teachings which were not themselves divinely revealed but which were necessary for safeguarding divine revelation.¹⁵ The *Responsum*, on the other hand, explicitly states that this teaching belongs to the deposit of faith. We must not underestimate the seriousness of this claim. According to Catholic teaching, if the exclusion of women to the priesthood does belong to the deposit of faith then its dogmatic status

¹⁵ The 1973 Instruction, "In Defense of Catholic Doctrine," refers to the secondary object of infallibility when it writes: "according to Catholic doctrine, the infallibility of the Church's Magisterium extends not only to the deposit of faith but also to those matters without which that deposit cannot be rightly preserved and expounded." *Origins* 3 (July 19, 1973): 110. The CDF Instruction, "On the Ecclesial Vocation of the Theologian," similarly writes: "When the magisterium, proposes 'in a definitive way' truths concerning faith and morals, which even if not divinely revealed are nevertheless strictly and intimately connected with revelation, these must be firmly accepted and held." *Origins* 20 (July 5, 1990): 122 (# 23).

means that a failure to give an internal assent to this teaching, unlike the case with authoritative but non-definitive doctrine, risks placing one outside the Roman Catholic communion.¹⁶ Given the serious consequences, it is surely legitimate to hope for a careful and developed substantiation of this claim. Unfortunately, the *Responsum* offers none save its statement that this teaching is founded “on the written Word of God, and from the beginning constantly preserved and applied in the Tradition of the Church...” The reference to the “written Word of God” is curious since the Vatican’s own Pontifical Biblical Commission had concluded that the biblical testimony was inconclusive.¹⁷ This in itself suggests the need for a further elaboration of the argument from scripture.

Persuasive arguments sustaining this kind of appeal to the deposit of faith, I believe, require the exposition of a clear set of criteria for determining what is and is not part of that deposit. In the church’s sacramental life there are elements, sometimes significant ones, which have changed considerably. One need only think of marriage which for centuries had no ritual form.¹⁸ Similarly, the sacrament of reconciliation developed from a communal act which could be celebrated only once in a penitent’s lifetime and then only in cases of serious sin (e.g., apostasy,

¹⁶ I say “risks” because it is important to make a distinction between formal heresy and the many shades of gray involving personal difficulties with a particular dogma which are not that unusual in the journey of faith and which clearly fall short of heresy. The new Code of Canon Law defines heresy as “the obstinate post-baptismal denial of some truth which must be believed with divine and catholic faith, or it is likewise an obstinate doubt concerning the same... (canon 751).” See Karl Rahner, “What is Heresy?” in *Theological Investigations*, vol. 5, (Baltimore: Helicon, 1966), 468-512.

¹⁷ Report of the Pontifical Biblical Commission, *Origins* 6 (July 1, 1976): 92-96.

¹⁸ Edward Schillebeeckx, *Marriage: Human Reality and Saving Mystery*, vol. 2 (New York: Sheed & Ward, 1965), 233-72; Theodore Mackin, *The Marital Sacrament* (New York: Paulist Press, 1989), 83-273.

adultery, homicide), to the sixth century development of auricular confession.¹⁹ The Catholic church has generally acknowledged that it is within its power to change and adapt these elements in keeping with the needs of the church. *Inter insigniores*, the CDF declaration on the inadmissibility of women to the ministerial priesthood, had already acknowledged this, but distinguished between the changeable elements in the church's sacramental life and those elements which are essential to the sacramental economy. Quoting Pius XII the declaration said: "The church has no power over the substance of the sacraments, that is to say, over what Christ the Lord, as the sources of revelation bear witness, determined should be maintained in the sacramental sign."²⁰ This begs the question, however, of how the church goes about distinguishing the "substance of the sacraments," from those changeable aspects of the sacramental economy. Since the groundbreaking work of Yves Congar, theologians over the last fifty years have been struggling with how to differentiate adequately between changeable and unchangeable elements in the church.²¹ I do not believe that any ecclesiastical documents to date have adequately acknowledged these difficulties nor have they proposed a clear set of criteria for making these determinations. In the face of biblical testimony which the Pontifical Biblical

¹⁹ James Dallen, *The Reconciling Community: The Rite of Penance* (New York: Pueblo, 1986), 5-138.

²⁰ *Inter insigniores*, # 4 quoting Pope Pius XII, *Sacramentum ordinis*, AAS 40 (1947): 5.

²¹ Yves Congar, *Vraie et fausse réforme dans l'église* (Paris: Cerf, 1950). In the past, this kind of question has generally been treated under the rubric, *ius divinum*, though increasingly the language of law is proving inadequate to deal with the question of continuity and change in church structure. For a consideration of this difficult issue see Roger Haight, "The Structures of the Church," *Journal of Ecumenical Studies* 30 (Summer-Fall, 1993): 403-14; Avery Dulles, "*Ius Divinum* as an Ecumenical Problem," in *A Church to Believe In* (New York: Crossroad, 1982), 80-102; Michael A. Fahey, "Continuity in the Church amid Structural Changes," *Theological Studies* 35 (1974): 415-40; Yves Congar, "Ministères et structuration de l'église," in *Ministères et communion ecclésiale* (Paris: Cerf, 1971), 31-49; Karl Rahner, "Basic Observations on the Subject of Changeable and Unchangeable Factors in the Church," *Theological Investigations*, vol. 14 (New York: Seabury, 1976), 3-23; "Reflections on the Concept of *Ius divinum* in Catholic Thought," *Theological Investigations*, vol. 5 (Baltimore: Helicon, 1966), 219-43.

Commission itself viewed as inconclusive, a coherent demonstration of how the magisterium has come to this conclusion seems warranted. [Note offered subsequent to publication: On January 24th Cardinal Ratzinger offered an important clarification regarding the CDF *Responsum*, specifying that it did not intend to say that this teaching was a part of the deposit of faith but rather that it *pertained to* the deposit of faith. This ambiguity resulted in part from poor English translations of the Latin. The distinction is important however because it means that the teaching has the status of a definitive doctrine and not a dogma and the denial of this teaching would not constitute heresy. However, while it may not constitute heresy, the situation is sufficiently severe that a formal excommunication was declared for Fr. Tissa Ballisuriya, in part because of his positions on this issue. It should also be noted however, that according to Catholic teaching definitive doctrine belongs to the so called “secondary object of infallibility”—in other words, the CDF still insists that this teaching has been proposed infallibly. As will become clear in the balance of this essay, I do not believe this claim can be sustained at this point in time.]

2. The Teaching on the Ordination of Women has been Taught Infallibly by the Ordinary and Universal Magisterium

According to the commentary of Cardinal Ratzinger, *Ordinatio sacerdotalis* was an exercise of the ordinary papal magisterium. The *Responsum*, however, makes no mention of the ordinary papal magisterium and instead suggests that this teaching “has been set forth infallibly by

the ordinary and universal Magisterium.” Consequently, it may be helpful to rehearse briefly the history of the phrase *magisterium ordinarium*.²²

The first appearance of the expression *magisterium ordinarium* in an ecclesiastical document occurs in a letter of Pope Pius IX, *Tuas libenter*, to Gregor von Scherr, archbishop of Munich, in 1863.²³ The letter was a response to a theological congress held in Munich with the approval of the local archbishop. This congress had as one of its principal goals a critique of neo-scholastic thought. The letter to Archbishop von Scherr reflected the concern of the pope, under the influence of various curial officials and the papal nuncio in Munich, that the German bishops had been too lax in their oversight of theologians. The letter praised the work of the congress participants but admonished the theologians not to limit their obligations of fidelity to solemnly defined church teaching alone. The pope maintained that a response of divine faith was

²² For historical background regarding the origin and development of this term, see John P. Boyle, *Church Teaching Authority: Historical and Theological Studies* (Notre Dame: University of Notre Dame Press, 1995), 10-42; Richard R. Gaillardetz, *Witnesses to the Faith: Community, Infallibility, and the Ordinary Magisterium of Bishops* (New York: Paulist Press, 1992). Other important studies of the ordinary universal magisterium include: Herlinde Pissarek-Hudelist, “Das ordentliche Lehramt als kollegialer Akt des Bischofscollegiums,” in *Gott in Welt* [Festschrift for Karl Rahner], vol. 1, ed. Herbert Vorgrimmler (Freiburg: Herder, 1964), 166-85; Angel Antón, “Episcopi per orbem dispersi: estne collegiale eorum Magisterium ordinarium et infallibile?” *Periodica de Re Morali Canonica Liturgica* 56 (1967): 212-46; Francis A. Sullivan, “On the Infallibility of the Episcopal College in the Ordinary Exercise of its Teaching Office,” in *Acta Congressus Internationalis de Theologia Concilii Vaticani II*, eds. Eduardo Dhanis and Adolph Schönmetzer (Vatican City: Typis Polyglottis, 1968), 189-95; Miguel Nicolau, “El Magisterio universal ‘ordinario’ y la colegialidad episcopal,” in *El Colegio Episcopal*, vol. 2, eds. Jose Lopez Ortiz and Joaquin Blazquez (Madrid: Consejo Superior de Investigaciones Científicas, 1964), 567-87.

²³ DS 2875-80. The term *ordinarium* did appear in other ecclesiastical contexts. In the writings of the canonists it was used to distinguish that power which was *adnexum officio*, a power exercised by a bishop in his own diocese or a pastor in his own parish. This was a *potestas ordinaria* as opposed to a *potestas delegata*. It was also used in the late eighteenth century by Gallican writers in reference to papal primacy; they distinguished the exercise of ordinary power from an extraordinary exercise of power and held that the pope could intervene in the affairs of the local church only in extraordinary situations. Vatican I’s declaration that the pope’s jurisdiction over the local churches was full, *ordinary*, immediate and episcopal was a reaction to this Gallican distinction. See Gustave Thils, “Potestas Ordinaria,” in *L’Episcopat et l’Eglise Universelle*, eds. Yves Congar and B.-D. Dupuy (Paris: Cerf, 1962), 693.

owed as well to those teachings which had been handed on by the *ordinary magisterium* of the Church scattered throughout the world.²⁴ Vatican I confirmed the teaching of Pope Pius IX in *Dei Filius*, Vatican I's Dogmatic Constitution on the Catholic Faith:

Wherefore, by divine and catholic faith all those things are to be believed which are contained in the word of God as found in scripture and tradition, and which are proposed by the church as matters to be believed as divinely revealed, whether by her solemn judgment or in her ordinary and universal magisterium.²⁵

If the phrase “ordinary and universal magisterium” was new, the concept of course was quite ancient. That is, the early church had a firm conviction that the normative expression of the Christian faith could be found in the universal teaching of the bishops. It should be remembered, however, that in the early centuries of the church there was no clear distinction between ordinary and extraordinary means of teaching the faith.

The teaching of Vatican I was reaffirmed in the 1917 Code of Canon Law (canon 1323.1) and was alluded to in the writings of later popes.²⁶ Vatican II reformulated this teaching in the important second paragraph of *Lumen gentium* # 25:

²⁴ “We want to persuade ourselves that they do not wish to limit the obligation by which Catholic teachers and writers are bound only to those things which have been proposed by the infallible judgment of the Church as dogmas of faith to be believed by all. And we are persuaded that they did not wish to declare that that perfect adherence to revealed truths which they acknowledge to be absolutely necessary for the genuine progress of science and for the refutation of errors can be had if faith and assent is given only to the expressly defined dogmas of the Church. For even if it is a matter of that subjection which must be given in the act of divine faith, it must not be limited to those things which have been defined by the express decrees of councils or of the Roman Pontiffs and of this Apostolic See, but must also be extended to those things which are handed on *by the ordinary magisterium of the Church scattered throughout the world* as divinely revealed and therefore are held by the universal and constant consent of Catholic theologians to pertain to the faith” (DS 2879).

²⁵ *Decrees of the Ecumenical Councils*, vol. 2, 807.

²⁶ Cf. Pope Pius XI, *Mortalium Animos* (DS 3683) and Pope Pius XII, *Munificentissimus Deus*, AAS 42 (1950): 757.

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.

The teaching of Vatican II on the ordinary and universal magisterium would receive particular attention after Pope Paul VI's teaching on artificial contraception in *Humanae vitae*. Even prior to the council there had been theologians who contended that the church's teaching on contraception had been taught infallibly by the ordinary universal magisterium.²⁷ This was also the position taken by the minority report of the papal commission on birth regulation²⁸ and when the pope agreed with the minority report's recommendation to re-affirm the traditional teaching, many assumed that he was persuaded by the minority report's argumentation as well. In fact, Hans Küng highlighted the minority report's appeal to the infallibility of the ordinary universal magisterium in his controversial *Infallible? An Inquiry*. There he argued that the teaching on contraception had indeed fulfilled the conditions for an exercise of the infallible ordinary and universal magisterium as set forward in *Lumen gentium* #25.²⁹ Of course, in Küng's scheme,

²⁷ See Joseph Creusen, "L'enseignement du Magistère ordinaire," *Nouvelle revue théologie* 559 (1932): 132-42; Marcellino Zalba, *Theologiae moralis summa*, vol. 3 (Madrid: BAC, 1958), n. 1518; Sixtus Cartechini, *De valore notarum theologiarum et de criteriis a dea dignoscendis* (Rome: Gregorian University, 1951), 29.

²⁸ This report is published in Daniel Callahan, *The Catholic Case for Contraception* (New York: Macmillan, 1969), 174-211.

²⁹ Hans Küng, *Infallible? An Inquiry* (Garden City: Doubleday, 1971), 54ff.

this exercise was intended to demonstrate fundamental flaws in the official position on infallibility.³⁰

In North America, John C. Ford and Germain Grisez offered the most developed exposition of this position in an article published in *Theological Studies* in 1978.³¹ Ford and Grisez also appealed to the infallibility of the ordinary universal magisterium as set forth in *Lumen gentium* # 25. In that conciliar text they identified four conditions for the exercise of the ordinary universal magisterium which, they maintained, served as a kind of criteriology:

first, that the bishops remain in communion with one another and with the pope; second, that they teach authoritatively on a matter of faith or morals; third, that they agree in one judgment; and fourth, that they propose this judgment as one to be held definitively.³²

They then concluded that with respect to the church's teaching on artificial contraception, even prior to *Humanae vitae*, these conditions had been fulfilled. Other theologians, however, have raised questions about the application of these conditions to the contraception teaching in particular and to any controversial teaching in general.³³

³⁰ Küng's "inquiry" drew a huge response from the theological community. For a helpful review of those responses see the recent article by Manuel Rebeiro, "The Ongoing Debate on Infallibility: Hans Küng's Contribution," *Louvain Studies* 19 (1994): 307-337, especially 322-30.

³¹ John C. Ford and Germain Grisez, "Contraception and the Infallibility of the Ordinary Magisterium," *Theological Studies* 39 (1978) 258-312.

³² *Ibid.*, 272.

³³ For a more in-depth analysis of the position of Ford and Grisez see Francis A. Sullivan, *Magisterium: Teaching Authority in the Catholic Church* (New York: Paulist, 1983), 142-52; Gaillardetz, *Witnesses to the Faith*, 127-38; Garth Hallett, "Contraception and Prescriptive Infallibility," *Theological Studies* 43 (1982): 629-50; Joseph Komonchak, "*Humanae vitae* and Its Reception: Ecclesiological Reflections," *Theological Studies* 39 (1978): 221-57.

The principal difficulty with this application of *Lumen gentium* #25 is that the ordinary universal magisterium does not involve a formal teaching act of the kind generally elicited by a sense of controversy or the need for a deliberate clarification of church teaching. Consequently, I believe the ordinary universal magisterium denotes the daily teaching of bishops in their preaching, catechesis and pastoral ministry in which, united as a college, they faithfully pass on those elements of the Christian faith which have never demanded a formal teaching act because they have never been seriously challenged. Francis Sullivan has suggested as examples of the exercise of the ordinary universal magisterium many of the articles of the ancient baptismal creeds like the bodily resurrection of Jesus or the Catholic Christian belief in the communion of saints.³⁴ Such teachings, though never seriously challenged, are nevertheless central to our faith and, most would agree, have dogmatic status. It is with respect to these central and non-controversial teachings that it can be said that all the bishops, though dispersed throughout the world, are in agreement that they should be held as definitive by the faithful. This explains the difficulty in appealing to the teaching of the ordinary universal magisterium where the dogmatic status of the teaching is not commonly accepted by all within the church.

I agree with Peter Chirico who describes the ordinary universal magisterium as more of a “concentrated *sensus fidelium*.”

In the present context we can say that the teaching of the universal episcopate can be compared to a concentrated *sensus fidelium*. It contains in an implicit fashion

³⁴ Francis A. Sullivan, s.v., “Magisterium,” *Dictionary of Fundamental Theology*, 618. More recently, Sullivan has considered the possibility that Pope John Paul II gave expression to three moral teachings of the ordinary universal magisterium in his encyclical, *Evangelium vitae*. Those three teachings involved condemnations of the “direct and voluntary killing of an innocent human being,” the claim that “direct abortion...always constitutes a grave moral disorder,” and that “euthanasia is a grave violation of the law of God.” These condemnations can be found in *Evangelium vitae*, *Origins* 24 (April 6, 1995) 689-727 at 709, 711 and 712. Sullivan’s analysis of these condemnations can be found in his article “The Doctrinal Weight of *Evangelium Vitae*,” *Theological Studies* 56 (1995) 560-65.

the universal ecclesial meanings that ground infallible recognition.... It is this implicit nature of the universal teaching of the Church as it appears in the teachings of the scattered bishops that has made the theological attempts to call any given teaching of the Church *de fide* by the ordinary and universal magisterium of the bishops such a hazardous venture. We simply do not have the techniques to uncover the universal intentionality that exists in an implicit way in the multifaceted teachings of bishops in the various parts of the world and over the many centuries of the Church's life.³⁵

Chirico recognizes the difficulties in verifying not only a unanimity regarding what the bishops actually teach, but the much more difficult matter of verifying a unanimity in intention: are the bishops all in agreement that a teaching is proposed as a merely probable theological opinion, as an authoritative but non-definitive doctrine, or as a teaching "to be held definitively"? Magnus Löhrer has offered a similar caution, noting that "the question of an obligation, out of faith, on the basis of the universal and ordinary teaching office must be examined, in an individual instance, very cautiously."³⁶ Löhrer contends that the ordinary and universal magisterium does not function "criteriologically," that is, it does not admit of a clearly verifiable set of conditions for determining its exercise of the kind that Vatican I offered with respect to solemn papal definitions. In conclusion, I suggest that the exercise of the ordinary universal magisterium cannot be easily

³⁵ Peter Chirico, *Infallibility: The Crossroads of Doctrine* (Wilmington: Glazier, 1983) 245ff.. Cf. Gaillardetz, *Witnesses to the Faith*, 169-72.

³⁶ Magnus Löhrer, "Das besondere Lehramt der Kirche," in *Mysterium Salutis*, vol. 1, eds. Johannes Feiner and Magnus Löhrer (Einsiedeln: Benziger, 1965), 573.

verified in a given instance by the application of a set of concrete criteria.³⁷ Where serious questions are raised regarding the authoritative status of a particular church teaching, the ordinary universal magisterium cannot offer a court of final appeal.

Having reviewed the history and theology of the ordinary universal magisterium, we can now consider the way it is being employed in the CDF *Responsum*. Let us grant that the Catholic church has never ordained women to the priesthood.³⁸ Such a statement is no more than a statement of historical fact. Catholicism has generally recognized that long-standing custom in the church, in and of itself, does not necessarily constitute an element of church tradition.³⁹ For long-standing church custom to be viewed as a binding element of church tradition we must investigate how that custom has been understood historically.

For example, in 1960 many could have spoken of an unbroken tradition granting the right of civil government to limit the exercise of all non-Catholic religions and privileging the exercise of the Roman Catholic faith. The unanimity of the tradition on this matter was related to the way

³⁷ Francis Sullivan believes that the church's tradition on the ordinary universal magisterium suggests three practical tools for discerning whether a teaching has been proposed infallibly by the whole college while dispersed throughout the world: 1) the explicit consultation with the whole college of bishops; 2) the "universal and constant consensus of Catholic theologians," as proposed by Pope Pius IX in *Tuas libenter*; 3) the "common adherence of the Christian faithful" as proposed in canon 750. Francis Sullivan, "Guideposts from Catholic Tradition," *America* 173 (December 9, 1995): 5-6. Since controversy regarding a teaching's dogmatic status is generally manifested by disagreement among the episcopate, among theologians or among the faithful, I contend that these three manifestations of a teaching proposed infallibly by the ordinary universal magisterium are sufficiently restrictive as to exclude any but the most central and non-controversial of church teachings.

³⁸ I grant this for the sake of the discussion regarding the ordinary and universal magisterium. The scholarly assessment of this question goes beyond the purview of this study but would certainly have to include the important work done by scholars such as Giorgio Otranto. Cf. Giorgio Otranto, "Note sul sacerdozio femminile nell'antichità in margine a una testimonianza di Gelasio I," *Vetera Christianorum* 19 (1982): 341-60 [An English translation can be found in Mary Ann Rossi, "Priesthood, Precedent and Prejudice: On Recovering the Women Priests of Early Christianity," *Journal for the Feminist Study of Religion* 7 (1991): 73-93.

³⁹ Hervé Legrand, "Traditio perpetuo servata? The Non-ordination of Women: Tradition or Simply an Historical Fact?" *Worship* 65 (November, 1991): 482-508.

the question was posed. Only when the question was re-phrased such that it focused not on the competing claims of truth and error but on the dignity of the person and the religious liberty which that dignity presupposed, was the church's position reformulated in Vatican II's *Dignitatis humanae*. To relate the unchanging church custom to the ordinary and universal magisterium, one must demonstrate that the bishops throughout history have been "of one judgment" not just with respect to the practice itself but with respect to the theological meaning or significance of this custom.⁴⁰ It is the custom's *theological import* that ultimately determines whether it belongs merely to the realm of church history or to that of binding church tradition.

It should be noted that neither the *Responsum* nor *Ordinatio sacerdotalis* provided argumentation in support of its appeal to this "constant tradition." While the 1976 CDF declaration, *Inter insigniores*, offered several citations from early church and medieval texts in support of current teaching, it provided no substantive analysis of the theological arguments proposed in those texts. Until there is more scholarly work done in the primary sources assessing the theological arguments adduced in support of church custom it is difficult to equate the consistent custom of the church with the infallible teaching of the ordinary universal magisterium

⁴⁰ Garth Hallett made a similar point in his refutation of Grisez/Ford on the question of the consistency of the Catholic tradition regarding the prohibition of artificial contraception. Hallett distinguished between the fairly obvious consistency in the prescriptive aspect of the teaching but he noted that the descriptive component of the church's teaching on contraception had changed considerably. Hallett, "Contraception and Prescriptive Infallibility." Germain Grisez's rebuttal can be found in, "Infallibility and Contraception: A Reply to Garth Hallett," *Theological Studies* 47 (1986): 134-45. For Hallett's response see, "Infallibility and Contraception: The Debate Continues," *Theological Studies* 49 (1988): 517-28.

in church tradition.⁴¹ The tentative, first fruits of this scholarly endeavor suggest that rarely was the question of women's ordination ever posed in the classical texts from a framework which presupposed 1) the full equality of men and women in the order of nature, 2) an historically conscious analysis of the pertinent biblical and early church texts regarding the gradual development of ordained ministry in the first three centuries of the church. It is only in the 20th century that we can find in Catholic theology and in ecclesiastical documents a consistent affirmation of the full equality of women.⁴² It is only in the fifty or so years since Pope Pius XII's encyclical *Divino afflante spiritu* that Catholic biblical scholars have been free to use the tools of historical criticism to assess the biblical foundations of church teachings. These facts suggest that the question of the ordination of women has been considered *in its modern formulation* for no more than fifty years. Consequently, an appeal to the universal teaching of bishops, that is, the ordinary universal magisterium, must pay particular attention to discerning a unanimity among the bishops during this modern period.

⁴¹ Important examples of this kind of scholarship include the work of Dennis Michael Ferrara, "Representation or Self-Effacement: The Axiom *In Persona Christi* in St. Thomas and the Magisterium," *Theological Studies* 55 (June, 1994): 195-224; "The Ordination of Women: Tradition and Meaning," *Theological Studies* 55 (December, 1994): 706-19, the response to Ferrara by Sara Butler and Ferrara's reply in, "Questio Disputata: 'In Persona Christi,'" *Theological Studies* 56 (March, 1995): 61-91. Other significant studies of the theological arguments imbedded in tradition include, Philip Lyndon Reynolds, "Scholastic Theology and the Case Against Women's Ordination," *Heythrop Journal* 36 (1995): 249-285 and Kari Elisabeth Børreson, "The Ordination of Women: To Nurture Tradition by Continuing Inculturation," *Studia Theologica* 46 (1992): 3-13; *Subordination and Equivalence. The Nature and Role of Woman in Augustine and Thomas Aquinas* (Washington, D.C.: University Press of America, 1981).

⁴² Cf. Pope Pius XII, Address to Italian Women, AAS 37 (1945): 284-95; Address to the World Union of Catholic Women's Organizations, AAS 44 (1952): 420-24; Pope John XXIII, *Pacem in Terris*, AAS 62 (1970): 267-8 (#41); Vatican II's Pastoral Constitution on the Church in the Modern World, *Gaudium et spes*, # s 8, 9, 60; Vatican II's Message to Women, AAS 58 (1966): 13-14; Pope Paul VI, Address to participants at the National Meeting of the Centro Italiano Femminile, *Insegnamenti di Paolo V*, 14 (1976): 1017; Pope John Paul II, "On the Dignity of Women"; "Letter to Women" offered in preparation for the United Nations Beijing conference on women, *Origins* 25 (July 27, 1995): 137-43.

But how does one discern this unanimity? As I suggested above, this discernment is difficult even in the best of circumstances.⁴³ With regard to the exclusion of women from the ministerial priesthood the matter becomes more difficult. How does one evaluate the unanimity of the episcopal college in an ecclesiastical environment in which the bishops have been told that the question of the ordination of women is not a matter for free discussion and in which requests to have the matter reconsidered have been consistently rejected? This ecclesiastical climate was commented upon with respect to the teaching on contraception by Leo Cardinal Suenens, the Belgian prelate who was one of the most influential bishops at Vatican II. What he says is pertinent to the current ecclesiastical climate regarding the ordination of women:

We have heard arguments based on “what the bishops all taught for decades.” Well, the bishops did defend the classical position. But it was one imposed on them by authority. The bishops didn’t study the pros and cons. They received directives, they bowed to them, and they tried to explain them to their congregations.⁴⁴

The French theologian Andre Naud has also expressed concern about this ecclesiastical climate:

[t]he very serious problem which this vision of the relations between the magisterium of the bishops and that of Rome poses is that the magisterium of bishops is finding itself eclipsed and even completely erased... That which disappears, in one blow, is the collegial dimension of magisterial teaching inasmuch as it implies a true co-responsibility concerning the contents of teaching. When the bishops are considered as nothing more than the faithful with respect to papal

⁴³ Even before Vatican II, the Gregorian professor, Timothy Zapelena had acknowledged the difficulties involved in the recognition and verification of episcopal unanimity. He admitted that episcopal unanimity was much more easily recognized when the bishops were gathered in council. Zapelena also cited the principle from canon law that nothing was to be understood as dogmatically defined unless it was manifestly evident. Zapelena, *De Ecclesia Christi*, vol. 2, (6th ed., Rome: Gregorian, 1954-55), 185.

⁴⁴ As quoted in Robert Blair Kaiser, *The Politics of Sex and Religion* (Kansas City: Leaven Press, 1985), 170.

teaching, they are no longer true participants in the magisterial function of the church.⁴⁵

The theological significance of the unanimity of bishops on a particular matter is contingent on the determination that their unanimity is more than an aggregate of public episcopal statements but is rather the manifestation of a true collegial agreement. A true collegial agreement, in turn, presumes open dialogue, communal reflection and inquiry on a matter to be considered. To the extent that there is a perception that such an open conversation has not taken place, the theological significance of any claim to unanimity among the episcopate is seriously compromised.

In conclusion, I believe that appeal to the ordinary universal magisterium with respect to the inadmissibility of women to the priesthood is problematic on two counts. First, because, absent any formal teaching act of the whole college, there are inherent difficulties with the verification of episcopal unanimity regarding anything beyond central and non-controversial articles of faith. Second, because the ecclesiastical environment in the fifty years or so since this question has been given its modern formulation has not been conducive to the creation of a true collegial consensus through open conversation and theological study on the part of the bishops.

3. Ordinatio Sacerdotalis was a Formal Declaration of the Teaching of the Ordinary and Universal Magisterium

The final new development in the CDF's *Responsum* concerns the claim that in *Ordinatio sacerdotalis* the pope "has handed on this same teaching [the teaching of the ordinary universal magisterium] by a formal declaration...." This practice of the pope formally confirming the

⁴⁵ Andre Naud, *Le Magistère incertain* (Montreal: Fides, 1987), 127.

teaching of the ordinary and universal magisterium was already employed in the recent encyclical *Evangelium vitae*.⁴⁶ How are we to evaluate this teaching act?

First, I believe that the history of the ordinary and universal magisterium precludes interpreting this as a papal *exercise* of the ordinary and universal magisterium. As was mentioned earlier, the first reference to this term appeared in Pius IX's *Tuas Libenter* where it was referred to simply as the "ordinary magisterium." This teaching was to be taken up at Vatican I in the Constitution on the Catholic Faith, *Dei Filius*.⁴⁷ The first schema of that constitution made no explicit mention of the ordinary magisterium. However, during the process of revising the first schema Bishop Senestrey of Ratisbon, a leading ultramontanist at the council, petitioned for a clarification in the text whereby it would be clear that alongside those definitions proposed in response to heresy there existed another form of ecclesiastical teaching which, Senestrey maintained, possessed the same obligatory force. As a result the following passage was added:

⁴⁶ For an assessment of this reference to the ordinary universal magisterium see Sullivan, "The Doctrinal Weight of *Evangelium Vitae*," 560-5.

⁴⁷ The following analysis of the teaching on the ordinary universal magisterium in *Dei Filius* draws on the study of Marc Caudron, "Magistère ordinaire et infallibilité pontificale d'après la constitution *Dei Filius*," *Ephemerides theologicae lovanienses* 36 (1960): 393-431. This article is a summation of Caudron's unpublished dissertation, *Het 'magisterium ordinarium' volgens het Vaticans Concilie en de Pauselijke Onfeilbaarheid* (Louvain, 1958). For the history and analysis of *Dei Filius* see J.M.A. Vacant, *Etudes théologiques sur les Constitutions du Concile du Vatican d'après les Actes du Concile*, 2 volumes (Paris: Delhomme et Briguet, 1895); Roger Aubert, "La Constitution *Dei Filius* du Concile du Vatican," chapter 4 in *Le Problème de l'Acte de Foi* (Louvain: Wainy, 1945), 131-91; J.P. Torrell, *La théologie de l'épiscopat au premier concile du Vatican* (Paris: Cerf, 1961); Hermann J. Pottmeyer, *Der Glaube vor dem Anspruch der Wissenschaft: Die Konstitution über den katholischen Glauben "Dei Filius" des I. Vatikanischen Konzils und die unveröffentlichten theologischen Voten der vorbereitenden Kommission* (Freiburg: Herder, 1968).

All those things are to be believed by divine and catholic faith which are contained in the Word of God either written or handed on and are proposed by the church for belief either by a solemn judgment or by the ordinary magisterium.⁴⁸

In the commentary on this text Bishop Simor, Primate of Hungary, maintained that the passage was addressed to those who would pretend that only conciliar definitions are the object of an act of divine faith to the exclusion of that which is taught by the unanimous consensus of the church.⁴⁹ Significant disagreement regarding this passage continued. For some bishops the reference to the ordinary magisterium was too obscure. The confusion surrounding the passage was exemplified in the view of Bishop Martinez of Havana who apparently presumed that *magisterium ordinarium* referred to infallible *papal* teaching as opposed to the infallible pronouncements of councils.⁵⁰ To clarify matters, Bishop Meurin proposed an amendment in which the words *publico et universali* would be added to the phrase *magisterio ordinario*.⁵¹ The Deputation eventually agreed to add the word *universali*. Bishop Martin explained this addition, noting that it was intended to clearly differentiate the universal teaching of the bishops from papal teaching. The ordinary universal magisterium referred to the teaching of the church dispersed throughout the world.⁵²

This analysis of the debates surrounding Vatican I's teaching on the ordinary universal magisterium demonstrates that, in the mind of the council, the ordinary universal magisterium was to be distinguished from a papal teaching act. Nothing in *Lumen gentium* # 25 suggests a

⁴⁸ *Mansi*, 51, 35a.

⁴⁹ *Ibid.*, 51, 47c.

⁵⁰ *Ibid.*, 51, 216a.

⁵¹ *Ibid.*, 51, 234b-c.

⁵² *Ibid.*, 51, 322a-c.

departure from this understanding. The assumptions of both Vatican I and Vatican II regarding the three ways in which the charism of infallibility may be exercised by the teaching office of the church are reflected in the new Code of Canon Law, canon 749:

Canon 749.1. The Supreme Pontiff, in virtue of his office, possesses infallible teaching authority when, as supreme pastor and teacher of all the faithful, whose task is to confirm his fellow believers in the faith, he proclaims with a definitive act that a doctrine of faith or morals is to be held as such.

2. The college of bishops also possesses infallible teaching authority when the bishops exercise their teaching office gathered together in an ecumenical council, when, as teachers and judges of faith and morals, they declare that for the universal Church a doctrine of faith or morals must be definitively held; they also exercise it scattered throughout the world but united in a communion among themselves and with the successor of Peter when together with that same Roman Pontiff in their capacity as authentic teachers of faith and morals they agree on an opinion to be held as definitive.

3. No doctrine is understood to be infallibly defined unless it is clearly established as such.

In the teaching of Vatican I, Vatican II and the new Code of Canon Law it is clear that the infallibility of the college of bishops when dispersed throughout the world is to be distinguished from the infallibility of papal teaching. One must conclude that any claim that a papal teaching act is in itself an exercise of the ordinary universal magisterium represents a departure from the meaning of the ordinary universal magisterium assumed in the central ecclesiastical documents.

On the other hand, it is something altogether different to claim that the pope is only confirming or declaring what is taught by the whole college of bishops (a college in which the bishop of Rome participates as both member and head) in their ordinary universal magisterium. The commentary article which accompanied the publication of the *Responsum ad dubium* appears to confirm this interpretation: “In this case [*Ordinatio sacerdotalis*], an act of the ordinary papal

Magisterium, in itself not infallible, witnesses to the infallibility of the teaching of a doctrine already possessed by the Church.”⁵³ This seems to me to be a legitimate exercise of papal teaching. However, we must give the distinction which the commentary has made its full due. The papal declaration itself, as an exercise of the ordinary papal magisterium, is not and cannot be an exercise of infallibility (that is, there is at least a remote possibility that this declaration could be erroneous). This papal teaching act must be distinguished from the infallible teaching of the whole college of bishops in their ordinary universal magisterium. In other words, the authoritative weight of the claims made in the papal declaration depends on the weight of evidence that the conditions for the exercise of the ordinary universal magisterium have in fact been fulfilled. This would require, at the least, evidence of extensive and open consultation with the bishops in the determination that the whole college *is in fact* united in its judgment that this matter pertains to faith and morals and is to be held definitively. No papal declaration can substitute for the actual substantiation of the fulfillment of the conditions for the exercise of the ordinary universal magisterium set forth in *Lumen gentium* # 25.2. When a true collegial unanimity is not clearly evident, papal claims to the ordinary universal magisterium risk trivializing the church’s teaching on episcopal collegiality and returning to a time when episcopal teaching authority was viewed as a mere delegation of papal authority.

III. Conclusion

It is my contention that appeals to the infallibility of the ordinary universal magisterium are ill-suited for resolving controversial matters related to the Christian faith precisely because of the

⁵³ “Vatican Reflections on the Teaching of ‘*Ordinatio Sacerdotalis*,’” *Origins* 25 (November 30, 1995): 405.

inevitable ambiguities involved in verifying the fulfillment of the conditions for the exercise of the ordinary universal magisterium as outlined in *Lumen gentium* # 25.2. Given these ambiguities, it should not be surprising that even after the publication of the *CDF Responsum* questions linger regarding both the assertion that this teaching belongs to the deposit of faith (particularly in the light of the study of the Pontifical Biblical Commission) and the assertion that it has been infallibly taught as such in the unanimous teaching of the college of bishops. Given the gravity of the matter (the determination that this teaching is a dogma of faith) theologians would appear to be within their bounds to look for a clear substantiation of these assertions.⁵⁴

It may be appropriate at this point to recall the canonical principle cited at the beginning of this article: “no doctrine is understood to be infallibly defined unless it is clearly established as such.” I infer from this canon that the burden lies with the ecclesiastical magisterium, not only to assert that the church’s teaching on the exclusion of women from the priesthood has been taught infallibly by the ordinary universal magisterium but to “clearly establish” that fact. The questions which I have raised in this article suggest that the claims of the CDF, at this date, have not been “clearly established.”

⁵⁴ Many Catholic theologians have asserted the legitimate need to verify whether the conditions for a solemn definition of a pope or council have, in fact, been fulfilled. Cf. Francis Sullivan, *Magisterium*, 106-9; Avery Dulles, “Moderate Infallibilism: An Ecumenical Approach,” in *A Church to Believe In* (New York: Crossroad, 1982), 133-48 at 142; Yves Congar, “Après *Infaillible?* de Hans Küng, Bilans et Discussions,” *Revue des sciences philosophiques et théologiques* 58 (1974): 243-52 at 245; Walter Kasper, “Zur Diskussion um das Problem der Unfehlbarkeit,” *Stimmen der Zeit* 188 (1971): 363-76 at 368. If this is true in the case of a solemn definition in which the claims to infallibility are relatively straightforward, it surely must be applicable with respect to the exercise of the ordinary and universal magisterium where the fulfillment of the conditions set forth in *Lumen gentium* # 25.2 is considerably more difficult to ascertain.