

REPLY TO RICHARD GAILLARDETZ ON THE ORDINARY UNIVERSAL

MAGISTERIUM AND FRANCIS SULLIVAN

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In a recent article on the ordinary universal magisterium in this journal, Richard Gaillardetz,<sup>1</sup> took issue with some of my observations and criticisms that I wrote on the same subject in an article in the Heythrop Journal.<sup>2</sup> I suggested the discussion about the definitive teachings of the ordinary universal magisterium could be helped if it were conducted within the context of catholicity in time and the *communio* structure of the Church. Our communion with one another in Christ and the Spirit stretches through time and is not limited to the present age. I stated that questions about what the ordinary universal magisterium has taught definitively have to do with the task of achieving catholicity in time and communion across time between different generations of members of the Church. Obviously, theologians have an important role to play in this process. My article examined and criticized some principles that Francis Sullivan proposed as important for determining whether a doctrine had been definitively taught by the ordinary universal magisterium. I presented arguments against some of his principles because I believed that, despite Sullivan's intentions, they were of limited value or worked against the task of identifying definitive doctrines of the ordinary universal magisterium. My primary interest was, and remains, what is helpful to the Church in bringing the wholeness of the Catholic faith to a new expression and therefore to accomplish catholicity in time and communion in time. Here I reply to Gaillardetz's criticisms, and, in doing so, offer some further reflections on the ordinary universal magisterium.

## AN ACCURATE READING OF SULLIVAN

1. Gaillardetz takes exception to my criticism of Sullivan. After describing what he believes is the difficulty of directly discerning episcopal consensus today, Gaillardetz observes that Sullivan has proposed the constant and universal consensus of theologians, and the common adherence of the faithful as criteria for determining whether the ordinary universal magisterium has taught a doctrine definitively. He points out that Sullivan derives the criteria of the consensus of theologians from Pius IX's letter Tuas Libenter. Gaillardetz goes on to note my criticism of Sullivan's argument about the importance of the consensus of theologians. I made the point that Sullivan's argument depends largely on the accuracy of his interpretation of Tuas Libenter. I examined the historical context of that papal letter and argued for modesty as to what it could contribute today to the discussion about criteria for discerning definitive teachings of the ordinary universal magisterium. I contended that the most we should conclude was that Pius IX asserted that the constant and universal consensus of theologians is a sign that the ordinary universal magisterium has taught a doctrine definitively. I claimed that it does not follow that Pius IX meant that the consensus of theologians is not only a sign but a condition for definitive teachings, the absence of which would throw into doubt that the ordinary universal magisterium had taught a doctrine definitively. I went on to criticize Sullivan for not making what I think is an important distinction between a sign and condition. Gaillardetz, ignoring the context of my argument, quotes my conclusion to this effect. He then alleges that I misread Sullivan's argument about the criteria of universal and constant consensus of theologians. Below Gaillardetz speaks of "either

criteria” but he clearly refers to the consensus of theologians with regard to me since I make no argument about the common adherence of the faithful. He writes:

As best as I can ascertain, however, Welch has misread Sullivan's argument, for nowhere does Sullivan 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.<sup>3</sup>

In fact, this is exactly what Sullivan wrote about the consensus of theologians and in many of these very words. In my Heythrop Journal article I cited a passage from Sullivan's Creative Fidelity where he refers to an unapproved proposal to define monogenism at Vatican I.

Here we have an instance of a consensus that seemed strong enough in 1870 to justify defining a doctrine as a dogma of faith, but which has not remained constant and is no longer universal. It would hardly seem reasonable to argue that since the former consensus had fulfilled the conditions required for the infallible exercise of ordinary universal magisterium, the subsequent lack of consensus could nullify the claim that the doctrine had already been infallibly taught.<sup>4</sup>

There is another text in Creative Fidelity, which I did not cite, where Sullivan speaks in a similar manner:

It is true of course, that if something is indeed taught infallibly, subsequent dissent cannot negate it. But, to fulfill the conditions required for the infallible teaching of the ordinary universal magisterium, the consensus must not only be universal; it must also be constant.<sup>5</sup>

I should also point out that in my article I chose to use the terms “sign” and “condition” because they are Sullivan’s which appear in his writings.<sup>6</sup> Sometimes, Sullivan will speak about the consensus as a sign, sometimes he refers to it as a condition as in the passages above. I called attention to the fact that there is an important distinction between the two.

#### AN EXCESSIVE CLAIM ABOUT THE CONSENSUS OF THEOLOGIANS

2. What about Gaillardetz’s objection that I somehow overlook Sullivan’s recognition that there is a critical distinction between a factual instance of a definitive universal episcopal teaching and a verification of such a teaching? Again, I am afraid Gaillardetz has missed the point of my critique of Sullivan. Nothing I wrote denied the fact that there has to be some way (s) of recognizing definitive teachings of the ordinary universal magisterium. I did not deny that the constant and universal consensus of theologians could be a way to recognize them. My main point was while the consensus of theologians can be an important sign that the ordinary universal magisterium has taught a doctrine definitively, the absence of this sign does not necessarily mean that a doctrine has not been taught definitively. Sullivan quite clearly argues that the consensus of theologians is necessary for us to know whether the ordinary universal magisterium has taught a doctrine definitively. A very clear and important instance, besides the one quoted above, of this argument appears in Sullivan’s Creative Fidelity with regard to the teaching in Evangelium vitae against direct killing of the innocent, direct abortion and euthanasia. Sullivan admits there are good reasons to think that Pope John Paul intended to invoke the infallibility of the ordinary universal magisterium as set out in LG 25, nevertheless,

It is too soon to know whether there will be the consensus of theologians that would show that it is ‘clearly established’ that the immorality of murder, abortion and euthanasia are

infallibly taught. What this would mean is that the Church has taken an irreversible stand on these issues.<sup>7</sup>

According to Sullivan, despite the fact that the Pope, the head of the apostolic college, has made the confirmation that the ordinary universal magisterium has taught these doctrines definitively, it is still not clearly established that ordinary universal magisterium has done so. Clear establishment awaits a consensus of theologians.

It might be that objected that Sullivan, at least in the passage cited above, does not represent the consensus of theologians as a formal or constitutive condition of the infallible doctrines taught by the ordinary universal magisterium. On the other hand, he seems to say that the consensus of theologians is something like a logical condition of our ability to claim there has been such an exercise of the teaching authority of the ordinary universal magisterium. In other words, while Sullivan does not make the exercise of the ordinary universal magisterium when it teaches a doctrine infallibly subject to the consensus of theologians, he does seem to make the claim to such a doctrine subject to this consensus.

I must confess I am at a loss as to why anyone should believe that the consensus among theologians should hold so much weight. What reason is there to believe this when there is nothing in Tuas Libenter that requires us to think that Pius IX meant to teach that without the constant consensus of theologians, the definitive teachings of the ordinary universal magisterium cannot be recognized or verified? After reviewing the evidence again, I am even more certain of the correctness of my conclusion that Pius IX who has the reputation, rightly or wrongly, as being one of the more authoritarian popes in papal history, did not mean any such a thing about the consensus of theologians. Nothing in what Gaillardetz writes offers any evidence against this

conclusion. Unfortunately, Gaillardetz passes over my entire treatment of Pius IX and Tuas Libenter and simply assumes that Sullivan's interpretation of that papal letter is correct. If Sullivan and Gaillardetz want to argue that the lack of consensus of theologians or a breakdown in consensus means that we cannot then verify that the ordinary universal magisterium has taught a doctrine definitively, then they will have to do so on some other basis than on an appeal to Pius IX and Tuas Libenter. Some other argument must be made.

The three confirmations in EV of the definitive teachings of the ordinary universal magisterium against direct abortion, killing of the innocent and euthanasia illustrate the point I wish to make about the consensus of theologians. Let us assume for the sake of argument that Sullivan is correct about the lack of consensus of theologians "that would show that it is 'clearly established' that the immorality of murder, abortion and euthanasia are infallibly taught."<sup>8</sup> My argument is that there are other ways to recognize that these teachings are definitively and hence, infallibly taught by the ordinary universal magisterium. First it would not be difficult to show, as EV 54 points out, the common adherence of the faithful to the Church's doctrine about the inviolability of innocent human life. Second, there is the fact that, according to the encyclical (EV 62) the pope consulted the bishops and they showed unanimous agreement about this teaching. Thirdly, there is the confirmation of the pope, the head of the apostolic college of bishops, that this teaching is definitive, "unchanged and unchangeable." All these things are more than enough to for us to recognize the fact that the immorality of murder, direct abortion, and direct euthanasia have been taught definitively and infallibly by the ordinary universal magisterium. While the consensus of theologians with regard to this fact would be a further sign, we do not need it to recognize the fact that these doctrines have been infallibly taught.

## TWO DIFFERENT WAYS OF MANIFESTING

3. I also criticized Sullivan for asserting that canon 749.3 (No doctrine is to be understood to be infallibly defined unless this fact is clearly established as such) which is applicable to defined dogmas should also be applied to undefined dogmas and definitive teachings of the ordinary universal magisterium.<sup>9</sup> The point I tried to make was that 749.3 and its requirement of “clearly established” cannot be applied in a univocal way to the latter. I think it is better not to use this term from canon 749.9 for the undefined dogmas and definitive teachings of the ordinary universal magisterium because it is a juridical term that refers to the formulation of defined doctrine. To use the term univocally introduces a confusion about how definitive teachings of the ordinary universal magisterium are known and recognized. There is a distinction between “teaching something” (ordinary universal magisterium) and “teaching by way of defining” (extraordinary magisterium). The manifeste constiterit of canon 749.3 bears on the latter, as is clear from the context. The question is whether something is defined, and the answer is, so to speak, “not unless it is clear from the very formulation of the words, or the context.”<sup>10</sup> For these reasons I argued canon 749.3 could not be applied in a straightforward way to the undefined dogmas and definitive teachings of the ordinary universal magisterium. They do not have the same precise formula and identifiable context as defined dogmas. By its very nature, the ordinary universal magisterium does not say it is defining. There cannot be, in the very form and context of the many discrete acts in which the ordinary universal magisterium is to be located, anything to alert us, as there is for a conciliar or papal definition. I asserted that it remained the case 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. Gaillardetz asks me how is this not equivalent to inquiring into the intention of a pope or council to define a doctrine.

For one thing it is not equivalent because one has to look for something different in the case of the definitive teachings of the ordinary universal magisterium. Now it is certainly true to say that these teachings must be recognizable in some sense. But this recognition will be different from when the extra-ordinary magisterium defines a dogma. We can think of recognition in several ways. Certainly, there is a difference between “manifesting by defining” (extra-ordinary magisterium) and “manifesting by leaving clues” (ordinary magisterium).

An analogy may help to make my point. The manifesting of the infallible teachings of the ordinary universal magisterium might be compared to a lover’s manifestations of love that show an intent to marry. One could observe an intention from the lover’s exclusive relationship with the beloved, the flowers, the dinners, the long heart to heart conversations, the talk about children with the beloved and so on. No one of these things by itself ‘manifests’ the intention to marry but taken all together they do “See, he must mean to marry her for look what he said to her, and did for her in the past five months”. This sort of manifesting the intention to marry is different from the proposal which is formal and explicit and “defining” ( akin to the extra-ordinary magisterium carefully defining a doctrine). So the infallible teachings of the ordinary universal magisterium are like the lover’s pre-proposal actions, and words. They do not say “this is an infallible and irreversible doctrine” in a formal, explicit definition. They do say “this is Christian truth.”<sup>11</sup> The question of recognizing doctrines infallibly taught by ordinary universal magisterium is usually a matter of thoughtful review and gathering of many ordinary magisterial acts, to see whether there is uninterrupted universality.

## PAPAL CONFIRMATION

4. This brings me to another issue that Gaillardetz raises. It certainly is the proper business of theologians to tackle the question of whether a doctrine has been taught infallibly by the ordinary universal magisterium. But it is not only the business of theologians. There are times when it is also the proper business of the pope, who is head of the whole body of Catholic bishops, to determine when the whole episcopate has taught a doctrine infallibly. There can be a papal confirmation of this fact. Gaillardetz admits that there can be such a papal confirmation but thinks it can only function as a kind of notary public whereby the pope sets his seal on what has clearly emerged in the consciousness of the Church. A papal confirmation would be akin to a notary who affirms he has witnessed the proper signature. In the face of doubts or uncertainty about a doctrine the pope, like a notary confronted with doubts about a proper signature, would transcend his authority if attempted a confirmation in such a situation. If there is a serious question among theologians as to whether a teaching has been definitively proposed by the ordinary universal magisterium, Gaillardetz contends that a papal confirmation would be inappropriate. A confirmation, according to Gaillardetz cannot substitute for lack of evidence.

There are several significant problems with this argument. The role attributed to theologians is exaggerated and my criticism mentioned earlier about the consensus of theologians applies here. There is no reason to think that theologians can so limit the exercise of the teaching authority of the head of the apostolic college. Second, the decision about what counts as evidence and what does not count as evidence is built into the nature of the teaching office whether it is an exercise of the pope's ordinary magisterium or the extra-ordinary magisterium. The pope is not like a notary because in an act of confirmation he makes a judgment about what has been taught down

through the ages by the apostolic college. Third, historically the pope's role of confirming what belongs, or what does not belong, to the deposit of faith as handed on by the ordinary universal magisterium has never been limited as Gaillardetz has envisioned. When the papacy functioned as a court of appeal in the first millennium, the bishop of Rome did not limit himself as a notary who simply confirmed the end result of a process. The popes understood themselves as making a judgment about matters that were disputed at the time.

If there can be no act of the college of bishops without the pope who is its head, (Lumen gentium, no. 23) if the pope is the visible principle and foundation of unity of the bishops, (LG, no. 23) and if the participation of the pope is required for the ordinary magisterium to be universal, then it seems sound to think that another criterion for identifying the definitive teaching of the ordinary universal magisterium is whether there has been a papal confirmation of it even in matters that are controversial. This criterion is at least as important as the universal and constant consensus of theologians. To be sure, the absence of papal confirmation would not mean that we could not recognize a definitive teaching of the ordinary universal magisterium but its presence could greatly aid theologians in their quest to identify the definitive teachings of the ordinary universal magisterium.

In one of his many articles on the magisterium, Sullivan points out how papal definitions (extra-ordinary magisterium) can sometimes be “. . . needed to overcome a threat to the Church's unity in the faith and bring about a consensus, or restore one that had been lost.”<sup>12</sup> Is the extra-ordinary magisterium the only way a pope could meet such threats or restore a consensus about a doctrine that has been lost? Why should we not think that the pope can also address a threat to the faith and seek to restore a lost consensus about some point of faith by confirming and

identifying definitive teachings of the ordinary universal magisterium? Is not this form of papal teaching activity an older way of addressing threats to the Church's unity in faith than the extraordinary way of papal definitions? Rather than seeing Pope John Paul's recent confirmations as a novel or inappropriate way of exercising his teaching office an argument can be made that he returned to an older way of exercising the papal magisterium. The Pope in this way is very conscious of teaching as the head of the apostolic college together with his brother bishops continuing to pass down or defend what they have received.<sup>13</sup>

In a recent critique of the work of Sullivan, Livio Melina has made an important observation:

How could we see a strong relationship in a son who is said to his father or a young man who said to his bride-to-be: "I will only believe you when you solemnly swear to me on the Bible that you are not lying to me?" Analytical distinctions are valuable only within a greater context, otherwise the concentration on them destroys the vital synthesis (losing the forest for the trees). Authority is that charism that makes life grow in truth. It is realized as a complete and ordinary phenomena, before distinctions and formal and solemn expressions. The loss of this basic and fundamental dimension runs the risk of reducing the discussions on the Magisterium to a dry and minimalistic juridical formalism. Its recovery allows us to focus on the ordinary exercise of the universal magisterium as the normal dimension of the charism of infallibility, and welcomes also the ordinary Magisterium of the Pope as the authoritative witness of the head of the college of the same Magisterium.<sup>14</sup>

It is important, I think, that we not look at the definitive teachings of the ordinary universal magisterium through the spectacles of how the extra-ordinary magisterium teaches.<sup>15</sup> Otherwise

we will not be clear about what we should be looking for and may in fact overlook the definitive teachings of the ordinary universal magisterium and their relation to the deposit of faith. Given the long history of ecumenical councils and their doctrinal definitions, and given the more recent history of the first Vatican Council with its emphasis on the capability of the pope to issue doctrinal definitions, it is easy to think of doctrine primarily in terms of defined dogmas. There is a real danger today of regarding what is most important about a doctrine to be whether it has been defined. But what is really important about a doctrine is its significance and relationship to the deposit of faith. Some of the most significant doctrines of the faith, such as the hope for the resurrection of the body, have never been defined. In fact some defined doctrines depend on undefined ones. The bodily Assumption of the Blessed Virgin Mary is a case in point; it depends on the undefined dogma of the bodily resurrection.

#### THE STATUS OF AN ARTICLE OF FAITH CANNOT BECOME TENTATIVE

5. This touches, too, on a question I posed with regard to Gaillardetz's work and his response to me. I disagreed with Gaillardetz's argument "that in the face of controversy, the determination of the authoritative status of any teaching not solemnly defined can only be pursued tentatively."<sup>16</sup> I objected that what if in some time in the future the resurrection of the body became controversial would we really be justified in saying that its definitive and infallible status would be only tentative because it had become controversial? Gaillardetz answers provocatively "Yes" arguing that there would need to be a demonstration of the diachronic and synchronic unity of the episcopate; or there would need to be a public consultation of bishops; or even an exercise of the extra-ordinary magisterium, conciliar or papal, in a solemn definition.

My response: all of these things would be unnecessary. It should be perfectly legitimate for a

bishop or pope who faced such a heresy to simply appeal to what is confessed in the creed. The point I tried to make was that Gaillardetz's argument leads to rather unsound conclusions and massive problems. It would become legitimate, in the face of controversy, to doubt the infallible status of a doctrine that is utterly fundamental to the deposit of faith at least until there was a head count of bishops or a solemn definition. I chose the resurrection of the body to illustrate my point because it is an article of faith found in the creed. As such, I agreed with Sullivan,<sup>17</sup> that the articles of faith in the creed are the first place to go to see an examples of an undefined dogmas and hence infallible teachings of the ordinary universal magisterium. It should be rather clear that the Church has taught the doctrine of the resurrection of the body as central to her faith and that the response owed to it is one of divine faith. It also seems rather clear that to suspend assent to it or to withhold assent altogether puts one outside the Catholic faith communion whatever the controversy may be. Gaillardetz's argument removes a fundamental tool needed by bishop or pope for the defense of the faith: the ability to appeal to the creed.<sup>18</sup>

There are also other problems. In the face of controversy or "serious questions" the assent owed to articles of faith in the creed would suddenly no longer be that of divine faith, as it has been for centuries, but of something less than that. Presumably, even the withholding of assent could be justified at least until there was a definition or a formal consultation of all bishops. The problem here is that the Church has consistently maintained that the articles of faith are altogether certain and has consistently reminded the faithful that they are obligated to "firmly believe" them.<sup>19</sup> This obligation would really be contentless and vacuous if it were contingent on some controversy that might arise in the future.

In conclusion, I repeat the point I made in my Heythrop Journal article: the question about the

definitive, infallible teachings of the ordinary universal magisterium must be approached from the standpoint of working for communion with the previous generations of Christians that have gone before us as well as from a concern for the retrieval of the wholeness of the catholic faith for our time. Catholic theology must scan the tradition for doctrines taught by the ordinary universal magisterium that should be brought forward to be received by the current generation because of the clear, uninterrupted and definitive way those doctrines have been taught and lived down through the centuries. This task is about finding forgotten riches of the catholic tradition. If theologians are to assist the Church in bringing the wholeness of the Catholic faith to a new expression and therefore to achieve catholicity in time and communion in time, then they will avoid a rigid restricting of the binding character of doctrines to those that have been dogmatically defined.

<sup>1</sup> Richard Gaillardetz, “The Ordinary Universal Magisterium: Unresolved Questions,” Theological Studies 63 (2002) 447-471.

<sup>2</sup> Lawrence J. Welch, “The Infallibility of the Ordinary Universal Magisterium: A Critique of Some Recent Observations,” Heythrop Journal 39 (1998) 18-36.

<sup>3</sup> Gaillardetz, “The Ordinary Universal Magisterium,” 464-5.

<sup>4</sup> See my “The Ordinary Universal Magisterium” 24 citing Francis Sullivan, Creative Fidelity 105. Emphasis mine.

<sup>5</sup> Sullivan, Creative Fidelity 106.

<sup>6</sup> See Sullivan, Creative Fidelity, 103, 105, 106; Reply to Germain Grisez, Theological Studies 55 (1994) 733-736, at 736.

<sup>7</sup> Sullivan, Creative Fidelity 160. I cited this text in my “The Infallibility of the Ordinary Universal Magisterium” 33, n.24.

<sup>8</sup> Gaillardetz and Sullivan do not seem to agree on this point. Gaillardetz thinks that because these teachings in Evangelium vitae have received the least criticism that there would appear to be longstanding consensus on the “general tenor of all three moral condemnations.” On the other hand, it can also be pointed out that the pope, in his confirmation of these moral condemnations, has also illustrated that the magisterium can definitively teach particular moral norms. Prior to EV there were some theologians who disputed this possibility even with regard to abortion. Some 11 years prior to EV Richard McCormick, arguing against Grisez, wrote “They [theologians] simply disagree--as most would and should--with Grisez that the immorality of direct abortion is infallibly taught by the ordinary magisterium. More generally, they deny that such particular norms are the proper object of infallibility.” See “Medicaid and Abortion” Theological Studies (December 1984) 715-721, at 720. In another telling passage McCormick also claimed “Rahner’s analysis would deny the very possibility of infallible teaching where direct abortion is concerned. And it is safe to say that this is the common conviction of theologians.” Ibid. Emphasis mine.

<sup>9</sup> Defined dogmas refer to those doctrines that are taught as divinely revealed truth proclaimed by a solemn judgment of the Magisterium. They are proclaimed either by an ecumenical council or more rarely by the pope “ex cathedra.” An undefined dogma is a truth taught by the ordinary universal magisterium dispersed throughout the world as divinely revealed, although not in a solemn judgment or definition. Dogmas defined and undefined touch directly on the deposit of faith and call for the response of divine faith. On this point the discussion in Sullivan, Creative Fidelity 41-44; 93-108. Cf. Code of Canon Law, 750.1; Ad tuendam fidem no.2 Pius IX, Tuas libenter. Definitive teachings are those doctrines that are connected to the deposit of faith and therefore call for firm acceptance in order to protect the faith. On this see Code of Canon Law 750.2 and Ad tuendam fidem no.3

<sup>10</sup> I also contended that the knowledge of defined dogmas is something that rests and depends on the definition itself rather than on the consensus of theologians as Sullivan believes. See Sullivan, “Reply to Germain Grisez,” 734. “I claim it would be absurd to claim that the fact that a doctrine had been infallibly defined was manifestly ‘settled, established, undisputed,’ if there were no consensus among Catholic theologians about this alleged fact.”

<sup>11</sup> I think a strong argument can be made that it was on the basis of this kind ‘manifesting’ that it was just to charge Arius with heresy before the Council of Nicea in 325. Another example is the judgment of a Roman Synod in 377 that the Christological doctrine of Apollinarius was heretical before the Council of Constantinople in 381. Of course a number of Fathers reached the same conclusion about Apollinarius before 381 as well.

<sup>12</sup> Dictionary of Fundamental Theology s.v. “Magisterium,” (New York: Crossroads, 1994): 619.

<sup>13</sup> This is not the place to make this argument in detail. I am thinking of the popes in the first

millennium, sometimes in the midst of controversy, who made certain judgments about doctrine and these judgments were not understood as defined dogmas. One is reminded of Leo the Great's judgment that the Robber Synod at Ephesus in its statement of faith parted from the authentic Catholic tradition. Other times the Popes received that decisions of local councils as true expressions of the Catholic faith. In EV the language the Pope uses in his confirmation of definitive Church teaching shows that he is conscious of teaching as head of the college and together with the bishops. Unfortunately this is camouflaged in the English translation which has the pope speaking in the first person singular (I declare, I confirm). The official Latin in nos. 57, 62, 65 uses the first person plural: "confirmamus", "declaramus", "confirmamus", respectively.

<sup>14</sup> Livio Melina, "The Role of the Ordinary Universal Magisterium: On Francis Sullivan's Creative Fidelity" The Thomist 61 (1997) 605-615, at 615.

<sup>15</sup> Ironically, Sullivan criticizes Gaillardetz precisely on this point. See Sullivan, "The Ordinary Universal Magisterium" The Jurist 56 (1998) 338-360, at 346-7 where he takes issue with Gaillardetz's claim in Witnesses to the Faith, Community, Infallibility and the Ordinary Magisterium (New York: Paulist, 1992) at 167 that "the 1983 Code of Canon Law required for the exercise of the ordinary universal magisterium a formal papal approbation modeled on that given to conciliar decrees." Gaillardetz does not give a reference to this in the Code. I cannot find that it says this anywhere. Sullivan points out that Gaillardetz seems to refer to canon 341.2 which has to do with extra-conciliar decrees issued by the college of bishops not with the ordinary universal magisterium. At any rate, this example shows how easy it is to think of the ordinary magisterium in terms of the extra-ordinary magisterium.

<sup>16</sup> Gaillardetz, "The Ordinary Universal Magisterium" 465.

<sup>17</sup> Sullivan, Creative Fidelity 96.

<sup>18</sup> There is also an additional problem: For one thing, there is nothing to suggest when the Fathers at Vatican II (LG no.25) re-affirmed the ability of the ordinary universal magisterium to teach doctrines definitively that they meant to limit an appeal to this form of teaching to non-controversial matters. I can find nothing in the documents of Vatican or the Acta that would support this idea.

<sup>19</sup> Avery Dulles, The Assurance of Things Hoped For (New York: Oxford University Press, 1994) at 230 has pointed this out. After citing numerous professions of faith Dulles writes: “. . . the Church has asserted that its own faith is altogether certain and has required the faithful to confess that they ‘firmly believe’ the articles of faith. Negatively, the magisterium rejects the idea that mere probability, let alone merely hypothetical assent, suffices.”