

HUMANAE VITAE AND ITS RECEPTION: ECCLESIOLOGICAL REFLECTIONS

JOSEPH A. KOMONCHAK

The Catholic University of America

ALMOST SINCE the day it was issued, *Humanae vitae* (HV) has been the *signum cui contradicetur* which Pope Paul VI anticipated it might become. The encyclical met with an opposition and dissent stronger and more public than any papal statement within memory, and the controversy that ensued quickly excited profound and even violent emotions and reactions.

If emotions are somewhat calmer today and a certain peace, or at least truce, now rules over the Church's pastoral practice, opinions have not ceased to be divided on the subject and authority of the encyclical. A recent survey claims that nearly 77% of Catholic wives were practicing birth control in 1975, 94% of whom were using methods condemned by the Church.¹ It is reported elsewhere that only 29% of the lower clergy believe that artificial contraception is morally wrong, and that only 26% would deny absolution to those who practice it.² A major study by the National Opinion Research Center concluded two years ago that HV was the chief factor responsible for the decline in religious practice among Roman Catholics, and its principal investigator was moved to remark: "I have no doubts that historians of the future will judge *Humanae Vitae* to be one of the worst mistakes in the history of Catholic Christianity."³

On the other hand, the condemnation of artificial contraception remains official Catholic teaching and the principles on which it is based have either been repeated or presupposed in a series of official statements from Rome since 1968. Furthermore, besides attempting to provide a theological rationale for the encyclical's conclusion, defenders of HV claim to be able to point to a series of recent developments in which they see a fulfilment of the consequences which Pope Paul himself had foreseen would attend upon a rejection of his teaching. They refer to increasingly frequent interventions by governments in support of population control by illicit means, to the dehumanization of sexuality in

¹ The figures are taken from a report in the *New York Times*, Sept. 26, 1977, p. 18, on the conclusions of a study conducted by the Office of Population Research at Princeton University and published in the September/October 1977 issue of *Family Planning Perspectives*.

² Andrew M. Greeley *et al.*, *Catholic Schools in a Declining Church* (Kansas City: Sheed & Ward, 1976) 153.

³ The conclusions of the study are reported in the volume just cited; Greeley's comment is on p. 321.

pornography and other dark sides of the "sexual revolution," and to the growing departure, even among Catholics, from traditional Christian standards with regard to abortion, homosexuality, premarital and extra-marital sex, etc. They wonder whether any more justification is needed for the validity and central significance of Pope Paul's insistence on the necessary connection between sexuality and procreation.

Apart from arguments about its substance, *HV* remains at the center of the continuing controversies about the subject, nature, and role of magisterial authority in the Church. For both sides in this debate, the encyclical represents something of a test case. It seems that the majority of theologians continue to defend the legitimacy of dissent from *HV*; but there is a strong and officially-favored opposing view, many of whose proponents view that dissent as at least in principle largely responsible for what they see as the collapse of the Roman Catholic doctrinal and moral consensus,⁴ and a few of whom are not reluctant to revive the memory of the sterner and cleaner days of Pius XII when pope and bishops had the courage of their convictions.⁵

It is not my intention to review the enormous body of literature to which *HV* has given rise in the last ten years.⁶ I propose simply to address two questions that remain central to the controversy: the authority of the encyclical and of the tradition behind it, and then the character and quality of the internal argument employed in *HV*. I confess that I find myself with those who disagree with its teachings, and I seek not so much to win converts as to provide some explanation of the grounds on which such dissent is built.

AUTHORITY OF *HUMANAE VITAE*

From the time when *HV* was presented to the press, it has commonly been acknowledged that the encyclical itself did not represent an infallible exercise of the papal teaching-office.⁷ It has been considered rather an

⁴ For an example see Thomas Dubay, "The State of Moral Theology: A Critical Appraisal," *TS* 35 (1974) 482-506.

⁵ See George A. Kelly, "An Uncertain Church: The New Catholic Problem," *Critic* 35, no. 1 (Fall 1976) 14-26; Vincent P. Miceli, "A Forgotten Encyclical," *Homiletic and Pastoral Review* 76 (June 1976) 19-28.

⁶ A recent bibliography, which does not claim to be comprehensive, covers pp. xiv-lix in Joseph A. Selling, *The Reaction to Humanae vitae: A Study in Special and Fundamental Theology* (Unpublished doctoral dissertation, Katholieke Universiteit te Leuven, Faculty of Theology, 1977).

⁷ While many bishops and theologians attached great weight to the teaching in *HV*, claims that the encyclical itself was infallible were very rare; the most recent one, by Edward J. Berbusse, "Infallibility in the Ordinary Teaching of the Supreme Pontiff," *Homiletic and Pastoral Review* 76 (July 1976) 26-32, 50-56, builds upon a view of the authority of the ordinary papal magisterium that has no official and very little theological support.

exercise of what has come to be known as the *magisterium authenticum ordinarium*. It is called "ordinary" because it involves the day-to-day task of communicating and defending the faith, as distinguished from those solemn and extraordinary occasions on which the pope speaks *ex cathedra*. Although, at least in the common view of theologians, this exercise of the papal teaching-office is not infallible, it is said to be "authoritative," in the sense that it belongs to an office established by Christ, promised the assistance of the Holy Spirit, and so possessing the right to require the assent and obedience of Catholics.⁸ The literature provoked by *HV* has included a rather large body of material on this "ordinary" and "authoritative" teaching-role. I will review it under two headings: the historical development of the ordinary papal magisterium and some recent theological reconsiderations of the classical view of its nature and role.

Ordinary Papal Magisterium

Historical investigation of the nature and role of the magisterium in the Church is only just beginning;⁹ and we do not yet have a study of the development of the notion of the ordinary magisterium of the pope. The first official use of the phrase *magisterium ordinarium* occurs in Pius IX's *Tuas libenter* (1863; DS 2879). Its meaning was unfamiliar enough to require clarification by the *relatores* at Vatican I, who explained that both in the "Munich Brief" and in the proposed text of *Dei Filius*, it

⁸ Here and elsewhere I have always translated *authenticus* as "authoritative" and not as "authentic," because the latter word in English often connotes genuineness, accuracy, fidelity, none of which are directly intended in the Latin word. In justification of my version, see the use of the word *authenticus* to mean "officially promulgated" in the medieval canonists (for an example, see Brian Tierney, "'Only Truth Has Authority': The Problem of 'Reception' in the Decretists and in Johannes de Turrecremata," in *Law, Church, and Society: Essays in Honor of Stephan Kuttner*, ed. K. Pennington and R. Somerville [University of Pennsylvania, 1977] 90), the debate at Trent on the *authenticia* of the Vulgate (E. F. Sutcliffe, "The Council of Trent on the *authenticia* of the Vulgate," *JTS* 49 [1948] 35-42), Pius XII's explanation of the point "eiusmodi authenticia non primario nomine critica, sed iuridica potius vocatur" (*Divino afflante Spiritu* [DS 3825]), and the two clarifications recently given in official documents: *Lumen gentium* 25 explains "doctores authenticici" to mean "auctoritate Christi praediti," and *Mysterium ecclesiae* 2 interprets "authenticice" to mean "auctoritate Christi . . . participata."

⁹ A basis for such an investigation is provided in Yves Congar, "Pour une histoire sémantique du terme 'magisterium,'" *RSPT* 60 (1976) 85-98, and "Bref historique des formes du 'magistère' et de ses relations avec les docteurs," *ibid.* 99-112. T. Howland Sanks (*Authority in the Church: A Study in Changing Paradigms* [Missoula: Scholar's Press, 1974]) studies the teaching about the magisterium at the Gregorian University over the last century. Albert Descamp's judgment ("Théologie et magistère," *ETL* 52 [1976] 85) still holds: "In theory, the basis for a new reflection of the magisterium-theology relationship would, of course, be historical study of the subject. But the results of this study are still uncertain and, in any case, quite fragmentary."

referred, not to the papal teaching-role, but to the magisterium of the world-wide episcopate.¹⁰ *Magisterium ordinarium* does not seem to have been used officially of the papal teaching-role until *Humani generis* (1950).¹¹

This is not to say, of course, that the "ordinary" teaching-role of the pope was not acknowledged before the phrase was used of him. In fact, most theologians today would regard the vast majority of papal magisterial interventions in the Church's history as falling under this category. This judgment itself reflects a clarity of distinction made possible by Vatican I's careful restriction of papal infallibility to *ex cathedra* statements; things were not always seen so clearly before that. And it is remarkable how little attention was given at the beginning of the nineteenth century to what we call the "ordinary magisterium," intermediate between *ex cathedra* teachings and merely "private" papal teaching.¹²

The increased attention to the ordinary papal magisterium accompanied an extraordinary increase in its exercise. Since 1740, when Benedict XIV began the series, 235 papal encyclicals have been issued, 199 of them since Gregory XVI, 49 by Leo XIII, 30 by Pius XI, and 41 by Pius XII.¹³ And encyclicals, of course, are not the only instruments of the ordinary papal magisterium. The last edition of Denzinger's *Enchiridion* devotes nearly one third of its pages to the 150 years between Gregory XVI and John XXIII; all but two of the documents reprinted are from Roman sources, and of these only three are commonly considered infallible.

The frequency of these interventions was matched by the range of topics they covered and by the authority that was gradually claimed for them. Pius XII is said to have given nearly a thousand major addresses during his reign—an average of almost one a week—and they came close to covering the very generous extension of the magisterium's competence that pope claimed: "human activity, insofar as religious and moral issues are at stake."¹⁴ These ordinary, "noninfallible" interventions, moreover,

¹⁰ See M. Caudron, "Magistère ordinaire et infaillibilité pontificale d'après la constitution 'Dei Filius,'" in *De doctrina Concilii Vaticani Primi* (Libreria Editrice Vaticana, 1969) 122-60, and P. Nau, "Le magistère pontifical ordinaire au premier Concile du Vatican," *ibid.* 161-220.

¹¹ See A. Peiffer, *Die Enzykliken und ihr formaler Wert für die dogmatische Methode: Ein Beitrag zur theologischen Erkenntnislehre* (Freiburg: Universitätsverlag, 1968) 100.

¹² For example, in the first edition of his manual, J. Perrone devoted only one brief footnote to what we call the "ordinary magisterium" of the pope (*Praelectiones theologicae* 8/1 [Rome: Typis Collegii Urbani, 1841] 516).

¹³ I take these figures from Peiffer (*Die Enzykliken* 55) but update them to include all of Paul VI's encyclicals, including *HV*, the last one he has issued.

¹⁴ R. Leiber ("Pius XII, Pope," *NCE* 11, 417) provided the number of Pius XII's addresses; the quotation is from *Vous Nous avez* (*AAS* 48 [1956] 715), where the Pope was summarizing what he had already taught in *Si diligis* (*AAS* 46 [1954] 313-17) and in *Magnificate dominum* (*AAS* 46 [1954] 666-77).

benefited from the aura which Vatican I's definitions of papal primacy and infallibility had helped to create; and it was not uncommon for the careful limits within which the Council had confined its definitions to be forgotten or overlooked. A few theologians began to advance the view that the pope's ordinary magisterium was another locus of infallibility in the Church;¹⁵ but even where this view was not shared, ordinary papal teachings were considered to ground a *Wahrheitsbürgschaft*, a morally certain guarantee that they were true.¹⁶

Two other elements in this development should be noted. The first is the tendency of the ordinary papal magisterium to overshadow the magisterial role of the local bishop and of the universal episcopate. The pope became the "ordinary" teacher of the universal Church in the noncanonical sense of that adjective. Congar has noted that Denzinger's *Enchiridion* took hardly any note of local or regional episcopal statements, much less of statements by individual bishops.¹⁷ The effect was to make the pope appear to be the single great teacher in the Church, and the bishops to be the administrators or executors of his doctrinal determinations.¹⁸

But secondly, especially since Leo XIII, the popes increasingly concerned themselves not simply with settling disputes or judging in controversies, but also with actively promoting theological developments. One thinks of *Aeterni Patris*, *Satis cognitum*, *Providentissimus Deus*, *Spiritus Paraclitus*, *Casti connubii*, *Mystici corporis*, *Divino afflante Spiritu*, *Mediator Dei*, *Humani generis*, not to mention the great social encyclicals. In these and similar documents, the popes did not speak simply as "judges," but as "teachers" also, even as "theologians." They were engaging in the work of theology, and they promoted it in certain quite specific directions. These documents, as is well known, were usually composed by favored theological advisers and, at times, by theologians who had been involved in controversies about the very matters which became subjects of papal interventions. But because these documents

¹⁵ The discussion of the view as advanced by Vacant, Salaverri, Fenton, and Nau is reviewed in Peiffer, *Die Enzykliken* 72-100. The thesis has been revived, but without reference to the earlier debate, by Berbusse (n. 7 above) and seems to be taken for granted by Miceli ("A Forgotten Encyclical" 26) and by Joseph Costanzo ("Academic Dissent: An Original Ecclesiology. A Review Article," *Thomist* 34 [1970] 652). None of these authors, however, is very careful in his use of the phrase "ordinary magisterium."

¹⁶ See Peiffer, *Die Enzykliken* 140-42, 164-66, 183-87.

¹⁷ Yves Congar, "Du bon usage de 'Denzinger,'" in *Situation et tâches présentes de la théologie* (Paris: Cerf, 1967) 126: "More and more one gets the impression that the whole magisterium of the Church is concentrated in its head and is only expressed through him."

¹⁸ See, for recent examples, Joseph Costanzo, "Papal Magisterium and 'Humanæ vitæ,'" *Thought* 44 (1969) 380; or Theodore Hall, "Magisterium and Morality," *Homiletic and Pastoral Review* 77 (June 1977) 8-19, (July 1977) 24-32, 45-49.

were issued in the name of the pope, they could not be treated as the works of theologians might be; they gained thereby a superior authority and thus, so theologians were told, could not be criticized for the quality or rigor of their argumentation. The result was to introduce official papal authority into the course of theological development at stages where once issues were considered to be the object of free theological debate. The effect was all the more unfortunate when the composers of the papal documents were drawn principally from a single "school" and when the documents themselves did not display that simplicity or caution which Innocent III had chosen when he spoke *more apostolico*.¹⁹

The apogee of these developments was reached during the pontificate of Pius XII, and in *Humani generis* he made an authoritative statement about the authority of papal encyclicals:

Nor should it be thought that what is propounded in encyclicals does not of itself (*per se*) demand assent, since the pontiffs do not exercise the supreme power of their magisterium in them. For these things are taught by the ordinary magisterium, to which that word also applies, "He who hears you, hears me"; and quite often what is propounded and inculcated in encyclicals already belongs to Catholic doctrine on other grounds. But if the supreme pontiffs purposely pass judgment on a matter until then under dispute, it is clear to all that the matter, according to the mind and will of the same pontiffs, can no longer be considered a subject of free discussion among theologians.²⁰

Pius XII repeated or applied this teaching several times in the years that followed, particularly stressing its implications for the role of theologians in the Church.²¹

In *Lumen gentium* 25, the Second Vatican Council included a section on the ordinary magisterium of the pope, a passage which was to play a central role in the debates that followed the issuance of *HV*. The text read:

This religious submission of will and mind is to be given in a special way to the authoritative magisterium of the Roman pontiff even when he is not speaking *ex cathedra*, in such a way that his supreme magisterium is respectfully acknowledged and sincere assent is given to judgments made by him, according to his manifest mind and will which is made known principally either by the character of the documents, by the frequent proposal of a teaching, or by his manner of teaching.

¹⁹ "Haec ergo tibi scholastico more respondemus. Sed si oporteat nos more apostolico respondere, simplicius quidem sed cautius respondemus" (*PL* 216, 1178). See Descamp's brief remarks, "Théologie et magistère" 89-90, 107.

²⁰ Pius XII, *Humani generis* (*AAS* 42 [1950] 568; DS 3885).

²¹ Besides the documents cited in n. 14, see *Sedes sapientiae* (*AAS* 48 [1956] 354-65); there is a critical study in M. Seckler, "Die Theologie als kirchliche Wissenschaft nach Pius XII. und Paul VI.," *TQ* 149 (1969) 209-34.

This passage is clear enough, but, as with many other statements of the Council, a full appreciation of it requires attention to its elaboration and its context.²² The final text omits two sections proposed in the initial *Schema de ecclesia*, one of which had described the usual organs of the ordinary papal magisterium, while the other had reproduced Pius XII's prohibition of public debate of matters on which a pope had passed judgment.²³ An effort to have the latter restored to the text was unsuccessful, and for a resolution of questions about scholarly dissent and the freedom of theological inquiry the bishops were directed to consult the standard expositions in the manuals.²⁴

The Council's description of this teaching-role must also be placed against the backdrop of the entire ecclesiology of *Lumen gentium*. The Council made a major effort to overcome the primarily juridical framework within which much recent Roman Catholic ecclesiology had been developed and which had predominated in the first *Schema*, and also to balance what Vatican I had asserted about the papacy by its own teaching on the role of the episcopate. Both efforts resulted in a certain shift in emphasis. Before discussing the nature and role of hierarchical authority in the Church, the Council had placed chapters on "the Mystery of the Church" and on "the People of God"; and the latter included a clear statement on the infallibility of the whole believing community.²⁵ The papal magisterium itself was discussed within the larger framework of the teaching-role of the bishops. Their magisterial authority, singly and collectively, was strongly asserted, and the effort was made to strike a balance between the unique role of the pope in the episcopal college and a view of the role of bishops that sees them as something more than mere "vicars of the Roman pontiffs."²⁶

The new balance sought was in large part realized and seen to have been realized in the very event that was the Council. For the first time in anyone's experience, the highest teaching authority in the Church was being exercised collegially and not simply by the pope. The Council did not fail to confirm all that Vatican I had asserted about the unique role

²² See J. A. Komonchak, "Ordinary Papal Magisterium and Religious Assent," in *Contraception: Authority and Dissent*, ed. C. E. Curran (New York: Herder and Herder, 1969) 101-5.

²³ *Acta synodalia sacrosancti Concilii Oecumenici Vaticani II* 1/4 (Typis Polyglottis Vaticanis, 1971) 49-50.

²⁴ The request to have Pius XII's directive restored was made by five bishops and is found in the *Acta synodalia* 2/1 (Typis Polyglottis Vaticanis, 1971) 320. The reference to the *auctores probati* is found in the *expensio modorum* in *Acta synodalia* 3/8 (Typis Polyglottis Vaticanis, 1976) 88.

²⁵ *Lumen gentium* 12; the shift in emphasis can be perceived by comparing this text to the discussion of the subject in two passages in the initial *Schema de ecclesia*, *Acta synodalia* 1/4, 47 and 63.

²⁶ See *Lumen gentium* 27.

and power of the pope in the Church, nor did it mean to deny the papal primacy in what it said about episcopal collegiality. But, in fact, the Church saw and experienced something new in the process of the Council's deliberations, and the rough process by which the Council texts were hammered out over four years brought vividly before the Catholic consciousness a different image of how the supreme magisterial authority might be exercised. It may be doubted whether the response to *HV* would have been as strong or as widespread had the Church not so recently had the experience of the Council.²⁷

Neither the publication of *HV* nor the reactions it provoked among so many Catholics are fully intelligible without a knowledge of the historical developments briefly described above. The encyclical was issued on the basis of a view of the ordinary teaching-role of the pope that had been elaborated over the last hundred years. But the framework within which that view had been articulated and exercised had been severely criticized at the Second Vatican Council, which itself had demonstrated a different model of magisterial authority. Moreover, a theological reconsideration of the magisterium had begun even before *HV* was issued, and the publication of the encyclical only accelerated and sharpened its development. Some of the main lines of the critique that was instituted must now be reviewed.

Recent Developments in Theology of Magisterium

The most basic issue, of course, is the relationship between the magisterium and the whole Church. The classical view conceives of this relationship as a "descending" or "participatory" movement. Christ entrusts the *depositum fidei* to the apostles and their successors; these "possess" it and it is they who transmit it to the faithful, whose role is the primarily passive one of receiving it from them in obedience.²⁸ This paradigm places the pope and bishops (the *ecclesia docens*) between Christ or the Spirit and the faithful (the *ecclesia discens*).

An alternate and more adequate model inserts the magisterium of the pope and bishops *within* the whole body of believers, to whom Christ is

²⁷ "A major reason for the malaise provoked by the encyclical comes from the fact that, as it happened, one man decided alone. This was resented in the Church the more strongly because the Council and the proclamation of episcopal collegiality were such recent events. During the four years of the Council, after all, one saw all the bishops participating in the elaboration of the doctrinal documents which would engage the authority of the Church; and, besides, the circulating of inquiries and reflections, of requests and debates, spread through the whole body of the Church, which, as a whole, was truly interested in them. It then appeared very surprising that a single man decided alone a point so difficult and delicate, which so closely touched the personal lives of the Catholic faithful" (B. Sesboué, "Autorité du magistère et vie de foi ecclésiale," *NRT* 93 [1971] 360).

²⁸ This is a simple paraphrase of Pius XII, *Vous Nous avez* (AAS 48 [1956] 713-14).

immediately present in his Spirit of grace and truth. The magisterium exists and has authority within the Church by divine institution, and so it is not a derivation from the community in a modern democratic sense. But it exists and functions *within* the Church and not above it, and its insertion in the life of the Church is a constitutive principle of its authority and an indispensable presupposition of its effective exercise.

This shift in paradigms entails a shift also in the manner of conceiving the relationship between the magisterium and the other "bearers" of revelation and grace.²⁹ On the classical model, these are all filtered through the magisterium, which is conceived as the *regula veritatis proxima et universalis* in distinction from the Scriptures and tradition, which are the "remote" rule of faith because they need authoritative interpretation by the "living magisterium."³⁰ In *Humani generis* Pius XII gave a particularly clear expression of this view. The magisterium is "the proximate and universal norm of truth because to it Christ the Lord has entrusted the whole deposit of faith—the Scriptures and divine 'tradition'—for safeguarding, defense, and interpretation." Theologians are strongly urged to go to the inexhaustible sources of revelation; "for it is their role to point out how what the living magisterium teaches is found, explicitly or implicitly, in the Scriptures and in the divine 'tradition.'" But, since it is the unique task of the magisterium "to illumine and enucleate what is contained in the deposit of faith only obscurely and implicitly," it would be a false method to attempt "to explain what is clear by what is obscure." Instead, "the noblest task of theology is to show how a doctrine defined by the Church is contained in the sources . . . in that very sense in which it has been defined by the Church."³¹

As Bernard Sesbouë has pointed out,³² this theological method is a one-way street, from the magisterium to the "sources" of revelation but not back again. The magisterium illumines the Scriptures and tradition, but the obscure cannot throw light on the clear. When, in the extreme, the magisterium is thought to be *sibi fons veritatis*,³³ the constitutive

²⁹ "Bearers" is a term borrowed from sociology to refer to institutional, personal, social, cultural "carriers" or "mediators" of meaning. The notion is used effectively (though with a more restricted reference than I give it) in *Mysterium salutis: Grundriss heilsgeschichtlicher Dogmatik: Die Grundlagen heilsgeschichtlicher Dogmatik 1* (Einsiedeln: Benziger, 1965) 534–604.

³⁰ Yves Congar studies the development of this view in *Tradition and Traditions: An Historical and a Theological Essay* (New York: Macmillan, 1966) 196–209.

³¹ Pius XII, *Humani generis* (AAS 42 [1950] 567–69; DS 3884, 3886).

³² "Autorité du magistère" 342.

³³ "The Church, by God's charge the interpreter and guardian of the Scriptures, the depositary of the sacred tradition living within it, is itself, under the tutelage and guidance of the Holy Spirit, a source of truth for itself (*sibi fons est veritatis*)" (Pius XII, *Animus noster*, AAS 45 [1953] 685).

authority of the Scriptures and tradition is threatened,³⁴ and the regulative function of the apostolic faith is in danger of being absorbed into or overshadowed by that of the bearers of the apostolic office.³⁵

The ecumenical sterility of this view hardly needs to be pointed out,³⁶ but this view does not even adequately describe the concrete manner in which the Christian message is borne from one generation to another. For, in fact, this is accomplished through the interworking of a whole complex of "bearers" of authority: the Scriptures, the tradition, the magisterium, the *sensus fidei*, holy living, the liturgy, theological scholarship, etc. All of these are community realities, and it is only within the community of faith which they all mediate and realize that any one of them—including both the Scriptures and the magisterium—works effectively or is accepted as an authority. They are interrelated organically and not hierarchically, and the Church's ever-growing apprehension of the meaning of Christ's revelation derives from the distinctive and cooperative contributions of them all. No one of them is more "remote" or more "proximate" than the others; they "mediate" one another, in the sense that they all provide the intelligible and vital context outside of which no single one of them can exist or function properly. None of the great exclusive claims, then, adequately describes the concrete functioning of "authority" in the Church: not the *sola Scriptura*, not the *solii magisterio*, not the *lex orandi*, not the *sensus fidelium*. Authority in the Church, like the community of faith itself, is *circumamicta varietate*.³⁷

It is possible to misunderstand or even to caricature this view,³⁸ as if it

³⁴ "One can hardly deny that the point of view which sees only Scripture as what is unclear, but the teaching office as what is clear, is a very limited one and that to reduce the task of theology to the proof of the presence of the statements of the teaching office in the sources is to threaten the primacy of the sources which (were one to continue logically in this direction) would ultimately destroy the serving character of the teaching office" (J. Ratzinger, "Dogmatic Constitution on Divine Revelation," in *Commentary on the Documents of Vatican II*, ed. H. Vorgrimler, 3 [New York: Herder and Herder, 1969] 197).

³⁵ On the movement from the *quod* to the *quo*, see Congar, *Tradition and Traditions* 176.

³⁶ G. Ebeling saw in the exclusive and determining role assigned by Pius XII to the magisterium alone "the exact antithesis of '*Sola Scriptura*'" (*The Word of God and Tradition: Historical Studies Interpreting the Divisions of Christianity* [Philadelphia: Fortress, 1968] 251).

³⁷ On this see the helpful remarks of Yves Congar, "Norms of Christian Allegiance and Identity in the History of the Church," in *Truth and Certainty* (Concilium 83, ed. E. Schillebeeckx and B. van Iersel; New York: Herder and Herder, 1973) 24–25. Many hermeneutical and criteriological questions must be asked about each of these "bearers," of course, but a good deal of reflection still needs to be done with regard to their interrelationship and to the conditions for their effective collaboration; and I do not myself think that will get very far without making use of the resources of modern social theory.

³⁸ I think the view is misunderstood by J. R. Quinn, "The Magisterium and the Field of Theology," *Origins* 7 (Nov. 17, 1977) 341–43; I think it is caricatured in J. Costanzo, "Papal Magisterium" 402–3.

reduced the process of doctrinal discernment in the Church to an undifferentiated free-for-all. But the fuller view widely recommended today need not espouse undifferentiation. It can build upon a recognition that the diverse bearers of the Christian message have distinct roles and manners of fulfilling them. The Scriptures have their authority, and the tradition has its. The magisterium does not have their constitutive role nor does it benefit from the charisms of revelation or inspiration on which their authority is founded; but it is promised the assistance of the Holy Spirit for its role of communicating, defending, and interpreting the revelation of Christ. The *sensus fidei* includes all of these but is in turn mediated by their contributions. The liturgy celebrates and realizes the central mystery around which all focus, and holy men and women make the gospel's meaning and value effective in daily living. Difficulties arise when any one of the bearers is isolated out from among all and given a unique regulative role over the rest. Once again *sapientis est ordinare*, which need not mean, of course, *sub-ordinare*.³⁹

A further implication of the paradigm shift we are considering concerns the role of the pope: as the magisterium must be seen to function within the whole body of the Church, so the papal role must be seen to operate within the whole body of the episcopate. On the level with which I am concerned here, this is less a matter of choosing among the complex theories that attempt to explain the relationship between primacy and collegiality than it is of choosing between two governing images. As the papal magisterial role became more frequent and more insistent, we became accustomed to assigning paradigmatic significance to the figure of the lonely pontiff agonizing over controverted issues in the privacy of his chambered conscience.⁴⁰ In exaggerated presentations (which have not been all that rare), this image abstracts the pope not only from among the faithful but also from the episcopal college: "docet et non docetur, confirmat et non confirmatur."⁴¹ The effective power of this image was,

³⁹ A basis for this view may be found in *Dei verbum* 10, in the statements that "the magisterium is not above the Word of God but serves it" and that "by God's most wise counsel, sacred tradition, sacred Scripture, and the magisterium of the Church are so linked and associated with one another that one of them cannot stand without the others and that, working together, each in its own way, under the action of the Holy Spirit, they all contribute effectively to the salvation of souls."

⁴⁰ For example, "The lack of unanimity of opinion among the scientists, theologians, laity, bishops and experts from the Papal Birth Control Commission clearly shows the prudent and providential act of Pope Paul VI in taking away the birth control issue from the Fathers of the Second Vatican Council and reserving it for himself to decide" (F. Bak, "Bernard Häring and 'Humanae vitae,'" *Antonianum* 49 [1974] 237).

⁴¹ The quotation is from an address by Bishop d'Avanzo at the First Vatican Council (Mansi 52, 764); a more recent example may be found in Costanzo, "Papal Magisterium" 380: "Two dogmatic professions emerge: one, the plenary, supreme teaching authority of

of course, immensely aided by the fact that Vatican I was not able to complete the integral ecclesiology it had intended and also by some of the misunderstandings to which its famous "ex sese non autem ex consensu ecclesiae" so easily gives rise.

It would seem that in the normal case at least, the paradigm should be drawn rather from the manner in which ecumenical councils proceed (or should proceed). There open and free debate, the pitting of argument against argument, compromise and conciliation, head towards a final decision about which there can be at least the moral unanimity of all involved. In that process the issues at stake are openly debated; inadequate or prejudicial expressions are challenged and unconvincing arguments exposed and refuted; and if the process does not result in a generally acceptable determination or formulation, the matter is left unsettled. Such a process can create the conditions for the reception of its determinations, for the open consensus thus arrived at in the process grounds a reasonable expectation that the whole Church will be able to recognize its faith and its life in the resolutions reached. I am not here proposing that ecumenical councils become more frequent phenomena in the Church (though that suggestion has been urged), but that the give-and-take of conciliar debate in fact more closely describes the process by which the Church comes to apprehend more clearly what the gospel means and requires than does the in any case somewhat mythical figure of the single pope (or single bishop) resolving complex and controverted issues by himself.

To regard doctrinal discernment as a process is, further, to locate it firmly in history. Doctrinal development is not an abstract matter of deductions from first principles, natural or revealed. It is a complex historical process by which, in a given period, in response to particular problems and questions, and with the spiritual, intellectual, conceptual, and linguistic resources available, the Church attempts to understand and apply the gospel and succeeds more or less adequately. The resolution of controverted issues is not the simple process which a propositional view of revelation and a deductivistic ideal of theological method make it appear to be. It is a process that heads for understanding, judgment, decision, expression; and history demonstrates what perhaps might have

the Roman Pontiff in matters of faith and morals, whether solemnly exercised infallibly *ex cathedra* or otherwise officially expressed rests wholly and exclusively upon the mandate entrusted by Christ to Peter and his successors as His vicars upon earth. It is independent, unconditioned by any dependency upon the approval or consent of others within the Church. Second, the authenticity and authority of the magisterial functions of a bishop or severally of bishops is wholly contingent upon union and agreement with the Roman Pontiff." Neither of these two "professions" can be derived from Vatican I, much less from Vatican II.

been expected, that it proceeds not logically but dialectically, through "the antithesis of ideas, the slow clarification of the question, the gradual elimination of impossible answers."⁴² Since it is not promised new revelations or inspirations, the Church can only rely on the unfailing promise of the Lord that his Spirit will lead us into all the truth; and that promised assistance does not elevate us beyond the necessity of working out answers in the only way we know how, by venturing hypotheses, reviewing data, reconsidering presuppositions, listening and learning, and, it may be, having simply to wait for further light at a later time. This is not to reduce truth to the status of an eschatological ideal (though we might remember that understanding must await the final revelation); but it is to say that the discovery of the truth in the course of the Church's history is the *discovery* of the truth, and we have no reason to think that it occurs except through processes familiar to us in other fields of investigation and through events in our individual and ecclesial consciousness that are not strange to the intellectually, morally, and religiously converted.

This position requires in turn a reconsideration of the relationship between doctrinal authority and theological reasoning. The classical view of the magisterium places an enormous emphasis on the formal authority of the pope and bishops, whose teachings are said to have an authority independent of and superior to the reasons they do or even can advance in support of them. My hunch is that the widespread application of this principle to the ordinary magisterium is borrowed from the fairly common interpretative principle that, in the case of infallible teachings by council or pope, only the conclusion is guaranteed and not the arguments with which it is illustrated or defended. But even here, it should be noted, the theological reasoning employed in the preparation and expression of a teaching has great significance for the interpretation of the teaching itself and even for an evaluation of its authority.⁴³

However that may be, one may wonder if the principle of formal authority should operate so powerfully while a doctrinal controversy is in full course, that is, before it has reached a definitive resolution. The issue seems to turn on the understanding of the ground for the special authority

⁴² F. E. Crowe, "The Conscience of the Theologian with Reference to the Encyclical," in *Conscience: Its Freedom and Limitations*, ed. W. C. Bier (New York: Fordham, 1971) 325.

⁴³ We are dealing here, as Congar notes, with "une question assez délicate . . . peut-on séparer une phrase de tout le discours qui la porte?" ("Bulletin de théologie," *RSPT* 59 [1975] 493). Congar raises the question with respect to the relation between Vatican I's definition of infallibility and the ultramontane ecclesiology that lay behind it; but he points to a similar comment of George Tavard with respect to the dogmatic evaluation of *Unam sanctam*; see "The Bull *Unam sanctam* of Boniface VIII," in *Papal Primacy and the Universal Church*, ed. P. C. Empie and T. A. Murphy (Minneapolis: Augsburg, 1974) 116-19. The question, I believe, deserves much more attention from theologians.

claimed for the magisterium, namely, the assistance of the Holy Spirit. I think it has to be admitted that theological reflection on this charism is in a rather undeveloped state.⁴⁴ In the general literature, not much more is claimed than that this "assistance" is distinct from both "revelation" and "inspiration" and that its promise to teachers in the Church is the fundamental basis for their authority. If the theological notion remains undeveloped, that cannot be said of its use in controversies, which is primarily "dogmatic." The assistance of the Holy Spirit is often invoked to supply for the reasoned argument with which all other teachers are expected to be able to demonstrate their authority. Both with regard to its undeveloped state and with regard to its controversial use, the "assistance" of the Spirit is somewhat in the position of the notion of biblical "inerrancy" until fairly recently. The latter was commonly employed to exclude a priori the presence of *any* error in the Scriptures; in similar fashion, the notion of divine "assistance" is used to turn aside as illegitimate objections to reasonings employed in magisterial statements on the grounds that the Spirit guarantees the conclusion. As the earlier, deductivistic notion of inerrancy has had to give way to a concrete reading of the Bible, so, I think, the notion of divine "assistance" to the magisterium has to be brought down and shown to be concretely intelligible in the process of doctrinal discernment.

The traditional discussion of the divine "assistance" does include one very valuable element for such an effort. The promised aid of the Spirit does not excuse pope or bishops from using all appropriate and available means for investigating and interpreting Christ's revelation.⁴⁵ These may include consulting the other bishops, theologians, the faithful, and all the other "bearers" of the tradition. The necessity of employing such needs is also the necessity of theological reasoning, which is why Pope Paul recently spoke of this as "a supremely important, intrinsic, and necessary duty of the ecclesiastical magisterium."⁴⁶ This certainly would seem to imply that the magisterium must have theological reasons behind what it teaches; and it is this necessity that leads a number of theologians today to urge that it is at least a practical mistake and perhaps also a

⁴⁴ See Peiffer, *Die Enzykliken* 144, and S. J. Kilian, "The Question of Authority in 'Humanae vitae,'" *Thought* 44 (1969) 339; Kilian's article and that of G. B. Wilson, "The Gift of Infallibility," *TIS* 31 (1970) 625-43, are the only efforts I know to supply for the lack.

⁴⁵ The point was made in Gasser's official *relatio* at Vatican I (Mansi 52, 1213), from which *Lumen gentium* 25 borrowed, in weaker and less explicit form, its statement that "the Roman Pontiff and the bishops, in proportion to their responsibility and the seriousness of the matter, apply themselves with zeal to the work of enquiring by the suitable means into this revelation and of giving apt expression to its contents." Pope Paul VI has repeated the point on at least three occasions (AAS 58 [1966] 892-93; 61 [1969] 715; 65 [1973] 557-58).

⁴⁶ Paul VI, *Gratia domini* (AAS 61 [1969] 715).

theoretical one for the magisterium to place such great emphasis on its formal authority.⁴⁷ The intrinsic necessity of theological reasoning in the magisterial process should also mean that it is not illegitimate to ask of an authorized teacher: "Why do you teach this? How did you arrive at this conclusion? How is it related to the central truths of the gospel?" And it is not the destruction of fallible authority to allow that the answers to such questions be tested in the public process of ecclesial discernment by which the whole Church seeks to understand and apply the gospel.⁴⁸

Finally, the reconsideration of the magisterium's role in the Church has very recently given rise to interest in the notion of ecclesial "reception."⁴⁹ On a juridical notion of the magisterium, for which this is essentially a *Lehrgewalt*, a power to teach with obligatory force, "reception" can only or at least chiefly mean "obedience." One follows Thomas Stapleton's rule⁵⁰ and determines whether the teacher is legitimately authorized to teach; but once that is determined, the required response is clear.

⁴⁷ See K. Rahner, "The Teaching Office of the Church in the Present-day Crisis of Authority," *Theological Investigations* 12 (New York: Seabury, 1974) 3-30; A. Gutwenger, "The Role of the Magisterium," in *Dogma and Pluralism* (Concilium 51, ed. E. Schillebeeckx; New York: Herder and Herder, 1970) 33-43; R. Coffy, "Magisterium and Theology," *ITQ* 43 (1976) 253.

⁴⁸ J. F. Kippley (*Birth Control and the Marriage Covenant* [Collegeville: Liturgical Press, 1976] 95-96) has a paragraph that applies the issue to *HV*: "... one can object that the natural law reasoning advanced in *Humanæ Vitæ* has failed to convince many of its own value. To an objective onlooker who did not feel qualified to pass judgment on the values of the arguments of either side, it would seem that the reasoning advanced by each position met with criticism and rejection by the other. It would seem that the dispute would never be settled on the grounds of reasoning alone. With an apparent holdoff at the philosophical level (at least in the sense that each side's reasoning was unacceptable to the other), the issue needed clarification at some other level, the level of authority. Only an authoritative statement could break the apparent deadlock, and only through faith could this authoritative statement be accepted." Some of this is pertinent, but Kippley completely passes over the question of the basis on which *the Pope* decided: if the philosophical reasoning ended in a draw, was it "theological" reasoning that decided him? Has a pope the right to teach without some kind of reasoning behind his teaching? If he has reasons, is it illegitimate to expect that he should declare them or to measure his conclusions by assessing their value?

⁴⁹ The best introduction into the literature is Y. Congar, "La 'réception' comme réalité ecclésiologique," *RSPT* 56 (1972) 369-403; reprinted, but without much of the valuable documentation, in *Election and Consensus in the Church* (Concilium 77, ed. G. Alberigo and A. Weiler; New York: Herder and Herder, 1972) 43-68. The literature on the subject is growing, as some of the following notes will indicate.

⁵⁰ "In doctrina fidei, non quid dicatur, sed quis loquatur, a fidei populo attendendum est," as cited in Y. Congar, *L'Eglise: De saint Augustin à l'époque moderne* (Paris: Cerf, 1970) 371. Brian Tierney ("'Only Truth Has Authority': The Problem of 'Reception' in the Decretists and in Johannes de Turrecremata" 69-96) discusses the use by medieval canonists and theologians of the opposite principle: "Non est considerandum quis dicat sed quod dicatur."

But when the magisterium is understood to be in organic relationship to the whole Church and to the other "bearers" of authority in the Church, the "reception" of magisterial enactments takes on fuller dimensions than those of mere obedience to legitimately promulgated "laws." It can include, beyond the discernment and acknowledgment of the formal authority, an appreciation of the concrete measures taken, of their adequacy, and of their value for the life of the Church. The whole community of believers does not appear here simply as the passive recipient of decrees from on high, but as the conditioning matrix within which any formal instance has authority.

Theological reflection on "reception" is only in its infancy, and so it has not yet found a completely satisfactory or critical statement.⁵¹ But that it can point to historical facts and to theoretical considerations that demonstrate the inadequacy of the reception-as-obedience notion is already clear. There are the examples of the constitutive "reception" by the Church of the apostolic canon, creed, ministry, and liturgy.⁵² There are the historical *processes* by which the whole Church "received" the great ecumenical councils of antiquity and even those of more recent times.⁵³ There are the cases in which the determinations of local or regional councils were "received" by the Church as having an authority beyond what their "formal" character could require. There are the processes of "re-reception," as, for example, of Ephesus in the light of Chalcedon or of Vatican I in the light of Vatican II. All these are manifestly a diverse lot of phenomena, but there is a common element of "reception" in them all, which deserves serious theological reflection.

If there is an interpretative and evaluative dimension to "reception" even in the case of constitutive and infallible instances of authority,⁵⁴ that

⁵¹ The definitions of "reception" are often rather vague, but the reality is very complex. I think Congar ("La 'réception'" 399-401) is correct in suggesting that the meaning of the term will be clarified only with the help of a theory of authority; until then one must admit a certain validity to the reservations expressed by Descamps ("Théologie et magistère" 130-31).

⁵² See Liviu Stan, "Concerning the Church's Acceptance of the Decisions of Ecumenical Synods," in *Councils and the Ecumenical Movement* (World Council of Churches Studies 5; Geneva: World Council of Churches, 1968) 69-70.

⁵³ Besides the articles in the work just cited, see the four articles on "The Reception of the Council of Chalcedon," *Ecumenical Review* 22 (1970) 348-423; J. Sieben, "Zur Entwicklung der Konzilsidee: Werden und Eigenart der Konzilsidee des Athanasios von Alexandrien," *TP* 45 (1970) 353-89; J. Beumer, "Das Erste Vatikanum und seine Rezeption," *MTZ* 27 (1976) 258-76.

⁵⁴ The first of these refers to the "reception" by the Church of realities in which it recognizes a divine authority (another way of referring to *ius divinum*). That the Church's "reception" of infallible pronouncements is not simply mechanical is clear in *Lumen gentium* 25: "But the assent of the Church can never be lacking to such definitions because of the action of the same Holy Spirit, by which the whole flock of Christ is preserved and grows in the unity of the faith" (an explanation neatly summed up in the *expensio*

dimension must a fortiori be acknowledged for the "reception" of enactments of lesser authority.⁵⁵ This really is nothing new, for the Church has always effected a discrimination in its reception of these authoritative determinations, some of which thus come to possess enduring value, some of which prevail for a while but later are forgotten, some of which seem to fall stillborn from the press. Nor, commonly, is this discrimination directed by the hierarchy itself; there is no official canon by which the Church has discriminated among the 235 papal encyclicals, and, for good or ill, Rome does not usually declare with what degree of authority it is acting. The whole Church "receives" what it finds useful and valuable and, sooner or later, lets slip what is not. Finally, it may be noted that theologians have always been considered to have a major role in this evaluative process of "reception," as the very phrase "*theological notes*" indicates.⁵⁶

Finally, the new interest in the idea of "reception" is simply part and parcel of the effort to restore the communal context within which authority works effectively. That context was badly neglected in the ecclesiology which prevailed while the classical view of the magisterium was being formed; and until that grave omission is repaired, discussions about the magisterium are likely to be fruitless. To restore the communal context, two intellectual efforts will be necessary: a fuller historical study of the authority-Church dialectic⁵⁷ and an attempt to make use of contemporary social theory to articulate a theology of authority in the Church that is more adequate, both theoretically and practically, than the classical view.⁵⁸

modorum: "Principium unitatis fidei est assistentia Spiritus Sancti" [*Acta synodalia* 3/8, 92]). Bishop C. Butler ("Authority in the Church," *Tablet* 231 [1977] 479) observes on this passage: "So a genuine *ex cathedra* definition will always be received by the Church with the assent of faith. It follows, of course, though Vatican II does not say so, that if a definition failed in the end to enjoy such a 'reception' on the part of the Church, this would prove that the definition had not in fact met the stringent requirements for an *ex cathedra* pronouncement."

⁵⁵ See Beumer, "Das Erste Vatikanum" 271; H. Bacht, "Vom Lehramt der Kirche und in der Kirche," *Catholica* 25 (1971) 157-62; Sesbouë, "Autorité du magistère" 360-62. Costanzo ("Papal Magisterium" 397) seems to regard the "nonreception" of *HV* as in violation of Vatican I's "ex sese non autem ex consensu ecclesiae"; that is probably true in itself, but the famous phrase was used only of infallible declarations.

⁵⁶ This responsibility of the *schola theologorum* was much stressed by Newman both in his reply to Gladstone and in the introductory essay to the 1877 edition of the *Via Media*. See also the reply made to questions about the "theological qualification" to be given to *Lumen gentium* (*Acta synodalia* 3/8, 10).

⁵⁷ See Congar, "La 'réception'" 400-401.

⁵⁸ I have attempted a very brief statement of such a theory in "Theological Reflections on Teaching Authority in the Church," which at this writing is only available in foreign-language editions of *Concilium* 117.

Conclusion

The developments surveyed above are offered to assist an understanding of the "reception" which *HV* has received and, more particularly, of how it is that a good number of Catholics believe that they *may* dissent from the encyclical and do so while remaining Catholics. In the continuing reception-process, besides the different evaluations of the papal argument and conclusion, there also are widespread and in some cases fundamental differences with regard to more "formal" issues: the relationships between Church and magisterium and between magisterium and other "bearers" of Christian authority, the paradigms of authority and its exercise, the relationship between doctrinal authority and theological reasoning, the notion of ecclesial "reception." It is perhaps clear at least that any resolution of the continuing controversy about *HV* will not only have to settle the "material" questions, but will require also the emergence of a greater consensus than now exists on the ecclesiological issues.

AUTHORITY OF THE TRADITION

Questions about the formal authority of the papal condemnation of artificial contraception do not concern only the force of the encyclical itself; they also involve an interpretation of the authority of the tradition within which *HV* claimed to stand. No one seems to disagree with the fundamental conclusion of John Noonan that from the third to the twentieth centuries both the official teachers of the Church and Catholic theologians have consistently and unanimously condemned artificial techniques of contraception.⁵⁹ Noonan's work was known to both the "majority" and the "minority" on the Papal Commission: the former seem to have adopted Noonan's own view that the tradition was not of such force as to preclude further development and even change, while the "minority" accepted his data but disagreed with his interpretation of it. Noonan's work has been criticized on certain of its details,⁶⁰ but his judgment that the tradition has been unanimous has not been seriously challenged. The question at issue, then, concerns the authoritative weight to be assigned to this tradition. Those who disagreed with Pope Paul's teaching manifestly did not believe that the tradition was strong enough to settle the issue by itself. Many of those who supported the papal conclusion referred in at least general terms to the constant tradition, and some of them have urged more specifically that the constant and universal tradition is of such a nature as to constitute an infallible exercise

⁵⁹ J. T. Noonan, *Contraception: A History of Its Treatment by the Catholic Theologians and Canonists* (Cambridge: Belknap, 1965) 6.

⁶⁰ The most recent example is E. Lio, "Alessandro di Hales e la contraccezione," *Antoniano* 52 (1977) 289-308.

of the universal ordinary magisterium.⁶¹ I propose here to offer some primarily hermeneutical considerations that I believe should guide a criticism of this, the strongest claim made for the traditional condemnation.

Infallibility of Universal Ordinary Magisterium

The argument builds upon statements about the universal ordinary magisterium made by both Vatican Councils. At Vatican I, the third chapter of *Dei Filius* included a brief paragraph on the object of faith:

Further, all those things are to be believed with divine and Catholic faith which are contained in the Word of God, written or handed down, and which the Church, either by a solemn judgment or by its ordinary and universal magisterium, proposes to be believed as having been divinely revealed.⁶²

The direct source of this statement was *Tuas libenter*, in which Pius IX had taught that the submission of divine faith could not be limited simply to matters expressly defined in ecumenical councils or in papal decrees, "but must be extended also to those matters which are handed down by the ordinary magisterium of the whole Church throughout the world and are therefore unanimously and constantly considered by Catholic theologians to belong to the faith."⁶³

Both texts sought to exclude a minimalizing approach to traditional teaching which would restrict divine faith to solemnly defined dogmas. Both assert, on the contrary, that divine faith must also be given to teachings universally proposed by the ordinary magisterium as having been divinely revealed. These are the first official references to this ordinary universal magisterium.

At Vatican II, *Lumen gentium* 25 spoke of an infallibility of the universal episcopate even outside of an ecumenical council:

Although bishops individually do not enjoy the privilege of infallibility, still when, even though dispersed throughout the world but preserving the bond of communion among themselves and with the successor of Peter, in their authoritative teaching on matters of faith and morals, they agree upon a judgment as

⁶¹ This view is proposed with greater or lesser clarity and precision in the articles already cited by Bak, Costanzo, Hall, and Miceli, to which may be added M. Zalba, "Circa ordinem rectum in usu matrimonii episcopi per orbem quid tradiderint," *Periodica* 56 (1967) 61-87. Many other invocations of the tradition stop just short of making this claim. Perhaps the clearest and most developed presentation of the case is in H. Küng, *Infallible? An Inquiry* (Garden City: Doubleday, 1971) 31-63, where, however, the argument serves chiefly as a debater's ploy.

⁶² DS 3011; for the background and interpretation of the text, see R. Aubert, *Le problème de l'acte de foi: Données traditionnelles et résultats des controverses récentes* (3rd ed.; Louvain: Waryn, 1958) 185-91.

⁶³ DS 2879.

having to be held definitively, they infallibly proclaim Christ's teaching.

The previous draft of this passage had described the object of this teaching-exercise as "the revealed faith"; the more general phrase, "matters of faith and morals," was substituted "lest it seem that the infallibility of the episcopal body is limited only to matters proposed by it to be believed as having been divinely revealed. However, it is added that it is a case of their proposing an opinion *tamquam definitive tenendam*."⁶⁴ That there is an extension of the object of infallibility beyond what Vatican I explicitly stated is clear from the explanation given later that this object "has the same extension as the revealed deposit; and therefore it extends to all those things, and only to those things, which either directly relate to the deposit itself or are required if that same deposit is to be guarded religiously and expounded faithfully."⁶⁵

It is on these three texts that the argument has been constructed that the universal and constant condemnation of contraception represents an infallible exercise of the ordinary magisterium of the episcopate. I do not intend to deal with this claim directly, but to supply some principles which might guide a critical evaluation of the argument. Before addressing the question of the infallible ordinary magisterium, I want first to suggest two general considerations.

The first is the principle that it is the part of wisdom to be strict in the interpretation of magisterial statements, following the guidance of the Code: "Declarata seu definita dogmaticae res nulla intelligitur nisi id manifeste constiterit."⁶⁶ While the immediate reference of this canon is, perhaps, to solemn definitions, it articulates a hermeneutical principle of general application in the evaluation of other magisterial pronouncements. *Infallibilia non sunt multiplicanda*. . . .

Secondly, magisterial texts have meanings within historical contexts. This principle, which had become a commonplace of Catholic hermeneutics over the previous thirty years, finally received authoritative confirmation in *Mysterium ecclesiae* (1973). This document acknowledges (1) that the meaning of magisterial pronouncements "depends in part on the expressive power of the language used at a certain time and in particular circumstances"; (2) that a dogmatic truth may first be stated incompletely and only later receive a fuller and more perfect statement; (3) that magisterial statements intend not only to elucidate the Scriptures and tradition but also to respond to certain questions and to preclude certain errors; and (4) that magisterial statements "sometimes" are expressed in "the changeable conceptions of a given epoch."⁶⁷ While the immediate

⁶⁴ *Acta synodalia* 3/1 (Typis Polyglottis Vaticanis, 1973) 251.

⁶⁵ *Ibid.*

⁶⁶ *Codex iuris canonici*, c. 1323 §3.

⁶⁷ *Mysterium ecclesiae* 5 (AAS 65 [1973] 402-3).

reference of these very cautious statements is to dogmatic declarations, they surely apply also to statements of lesser authority.

Unfortunately, neither in this document nor in many other treatments of the hermeneutics of magisterial statements is much attention given to the distinct problems raised when teachings concern "morals" rather than "faith." But if the old tag is true that "verum et falsum sunt in mente, bonum et malum autem in rebus," then interpreters must attend not only to the concrete minds whose judgments are true or false but also to the concrete situations within and about which such minds make true or false moral judgments. Such judgments, in other words, suffer from a double concreteness or "historicity."

This general hermeneutical principle requires the interpreter to investigate a text in its historical and literary context. That context, particularly when it is a question of moral teachings, is concrete: at a certain time certain questions are being asked out of certain presuppositions in pursuit of a solution to certain problems. The conclusion reached is first intelligible only within the terms of that problematic and of the arguments used in order to establish or defend it. While there may be some validity to the distinction made between the conclusion and the argumentation, it should not be pressed, again particularly in moral questions, to the point of an artificial separation of meaning and truth or value. It is, of course, possible that someone may arrive at a correct conclusion by faulty logic or on the basis of inadequate data. But it may also happen that a conclusion is reached to a particular problem principally or even only because of the limited intellectual, conceptual, linguistic, etc. capacities of the moment. In the latter case, it cannot be assumed that those who reached the judgment within the limits of their age would do so if those limits are expanded.⁶⁸ In considering such possibilities, one is forced to associate conclusion and argument much more closely than is sometimes done.

With those general principles in mind, we may now look more closely at the question of the infallibility of the universal ordinary magisterium. Since our concern is principally with the formal question, it may be helpful to apply to this instance of the magisterium the technique which Bishop Gasser used at Vatican I in order to indicate the limits within which the papal magisterium could be considered infallible.⁶⁹ This consists simply in considering the "subject," the "object," and the "actual

⁶⁸ There is an important hermeneutical issue at stake here, which has become very clear in the controversies about the interpretation of the traditional exclusion of women from the priesthood.

⁶⁹ See Mansi 52, 1214. There is not much literature on the hermeneutics of the universal ordinary magisterium. Many manuals are very brief in treating the matter itself, and few offer even principles for determining how one applies the rule. The difficulties are not dissimilar to those encountered in making use of the *sensus fidei*.

exercise" of the universal ordinary magisterium which are necessary if it is to be considered to be teaching infallibly.

Subject of Universal Ordinary Magisterium

The subject of an infallible exercise of the universal ordinary magisterium is not individual bishops taken singly, but the whole body of bishops who are in communion with one another and with the pope. Individual bishops are not infallible; that degree of authority requires the moral unanimity of the body of bishops. Vatican II deliberately refrained from settling the question whether or not this infallible exercise constituted a "collegial" act; but *Lumen gentium* did require that the bishops be joined by "the bond of communion."

Communio is one of the most important words in the ecclesiological lexicon of Vatican II, but its meaning is not always clear.⁷⁰ The famous *Nota explicativa praevia* appended to the third chapter of *Lumen gentium* did give some brief indication of the meaning of "communion" with respect to the episcopal college:

Communio is a notion held in high honor in the ancient Church (as also today especially in the East). But it is not to be understood as some vague sentiment (*affectus*), but as an organic reality which requires a juridical form and at the same time is animated by love.⁷¹

Clearly this explanation was designed to calm the fears of the minority at Vatican II that the hierarchical relationships in the Church were threatened by the use of the word "communion" to describe them. It is not clear that the *Nota praevia* contributes anything else.

We are left to make our way through two extremes. One would so dissolve "communion" as to make it compatible with any degree of doctrinal or disciplinary disagreement. The other would read "hierarchical communion" as simply equivalent to "hierarchical subordination." We are dealing with the complex problem of the relation between papal primacy and episcopal collegiality. But it is not simply a question of the relation between "the full, supreme, and universal power" which the pope may always exercise freely and the "supreme and full power over the universal Church" of which the integral body of bishops is the subject,⁷² but also of the relation between the "proper, ordinary, and immediate" power which a bishop possesses by virtue of his ordination and the "hierarchical communion with the head and members of the episcopal college" and the "ultimate control by the supreme authority of the

⁷⁰ For a study of all its usages, see O. Saier, "*Communio*" in *der Lehre des Zweiten Vatikanischen Konzils: Eine rechtsbegriffliche Untersuchung* (Munich: Hueber, 1973); for the passages discussed below, see 182-245.

⁷¹ *Acta synodalia* 3/8, 11.

⁷² See *Lumen gentium* 22.

Church," outside of which a bishop cannot exercise his office.⁷³ On the one hand, there is an authority superior to that of single bishops; on the other, bishops are not simply vicars of the pope. Where the golden mean lies is not yet clear either practically or theoretically.

While that problem remains to be resolved, it may be pointed out that the requirement in *Lumen gentium* 25 that the bishops be in communion with one another and with the pope refers to a *formal* condition necessary for an exercise of their authority to be considered infallible. It does not describe the actual exercise of their authority. "The bond of communion," in other words, describes not the unanimous agreement of the bishops, but rather a prior condition that must be fulfilled for their unanimous agreement to be invested with supreme authority. This would seem to demand the possibility that a bishop could be in communion with the head and other members of the college even while he disagreed with him or them on a particular matter. If this were not possible, there could be no significance in the agreement of the world-wide episcopate, and Vatican II's statement would be reduced either to the banal or to the tautological. The theoretical possibility of a bishop's disagreeing within the episcopal college rests in the fact that his office is founded not in delegation but in ordination, and that in exercising it he acts out of his own "proper, ordinary, and immediate" power. The practical possibility of such disagreement rests, among other things, on his perception of the theoretical possibility and on his being given a genuine ecclesial freedom to act in his own name.⁷⁴

The first condition for an infallible exercise of the universal ordinary magisterium, then, is that in such freedom-in-communion the body of bishops be in moral unanimity in their teaching.

Object of Universal Ordinary Magisterium

This object is most generally described as *res fidei et morum*. It includes what has classically been known as "the primary object of infallibility"—revealed doctrines—and what is called "the secondary object"—truths not revealed but necessary to defend and expound what has been revealed.⁷⁵ There has been no official determination how far

⁷³ *Lumen gentium* 21 and 27; note the constant concern to relate *communio* to the whole episcopal college and not simply to its head.

⁷⁴ The theoretical and practical possibility underlies at least two interpretations of the traditional condemnation of contraception; see G. Baum, "Can the Church Change Her Position on Birth Control?" in *Contraception and Holiness: The Catholic Predicament* (New York: Herder and Herder, 1964) 313-14, and H. J. McSorley in *The Infallibility Debate*, ed. J. J. Kirvan (New York: Paulist, 1971) 100. For the distinct role of bishops as "judges," see also the texts cited by Congar, "La 'réception'" 387-88.

⁷⁵ The distinction between "primary" and "secondary" objects is not altogether adequate, especially with regard to moral matters; but to set out a different framework here would be distracting.

this "secondary object" extends; the only principle is that of "necessity" if the revelation is to be defended and expounded, and on this question there is a good deal of disagreement among theologians. It may be noted that it is possible for a matter to fall within the competence of the magisterium without its being thereby within the range of an infallible exercise of the magisterium. For example, one could argue that the magisterium has a right or even a duty to address many concrete moral issues without implying that they can teach on them infallibly. So, too, to say with *Dignitatis humanae* 14 that the Church has the authority to teach with regard to "principles of the moral order which flow from human nature itself" is not to say that the Church can teach them infallibly.

That issue and others are resolved by applying the rule of "necessity for the defense and exposition of revelation." Matters necessary for that come within the scope of infallible teaching; matters not so necessary do not. On that basis, it may also be that "principles of the moral order" are necessarily connected with revelation without all concrete applications of those principles being necessarily connected.

Further, whether a matter is necessary for the defense and exposition of revelation cannot always be decided on merely general, a priori, or formal principles. Such considerations may suffice to include, say, the "natural law" within the secondary object of infallibility; but whether concrete specifications of the natural law are necessarily connected requires further inquiry into both the nature of the concrete obligation and the concrete situation in which it is judged to be obligatory. Concrete specifications of the natural law are, obviously, less certain and more variable than general principles. And that lesser certainty and greater variability must qualify interpretative judgments about the necessity of concrete injunctions for the defense and exposition of revelation. It is possible, for example, that in one situation the bishops might teach that it is a Christian responsibility to have large families, while the bishops in another situation teach that it is a Christian responsibility to regulate births;⁷⁶ it is even possible that both groups of bishops regard their concrete injunctions as necessary applications of the gospel's demands; it is, finally, possible that both these judgments are true.

⁷⁶ The example is drawn from the facts. The bishops of Indonesia included in their response to *HV* the statement: "It is clear from the words of the encyclical and the council . . . that, taking into consideration the welfare of the family and the general interest of the nation, Catholics must regulate births" (*Humanæ vitæ and the Bishops: The Encyclical and the Statements of the National Hierarchies*, ed. J. Horgan [Shannon: Irish University Press, 1972] 135); while the bishops of Czechoslovakia, concerned "for the future of this nation and of the Christian community," remarked that "in our country it is imperative to realize that with two children per family we are in real danger of extinction" and praised parents of large families (*ibid.* 96-97). The motives behind a similar statement from the Polish bishops appear to be more mixed: "Nowadays Europe—and unfortunately Poland—is

What is possible in different circumstances at the same time is also possible in different circumstances over a period of time. What in one age might universally be considered a necessary application of the gospel might in another age no longer be considered necessary; and, of course, both judgments could be true. In one set of circumstances or at one time, a concrete prescription might be the only way known in which to defend and apply the gospel; in another set of circumstances or at another time, other ways may be known, and one or more of these could even materially contradict the earlier prescription without there being an instance of formal error. The greater the concreteness of moral instruction, of course, the greater will be the potential variability in any one generation or across several generations. I take it that these are commonplaces of moral theory and that what has classically been known as "prudence" is necessary to apply them well.

Besides the greater variability of concrete moral instruction, there is also its lesser certainty. The generally acknowledged principle that the farther one moves from general principles of revealed or natural morality the less certain one can be of one's conclusions, applies not only to individuals and to moral theologians, but also to bishops, to the whole body of bishops, and to the pope. This need not mean that either moralists or magisterium must or should restrict themselves to general principles; but it does mean that the authority with which they may speak lessens as their prescriptions become more specific and more distant from the general principles. This principle is commonly applied with regard to the "social teaching" of the Church; it is less commonly applied with respect to matters of individual morality, particularly in matters sexual.⁷⁷

Any interpretation of the universal magisterium, especially with regard to moral issues, must, then, take into account (1) the concrete matter taught, (2) the circumstances in and for which it is taught, (3) the connection established between this concrete matter and revelation, and, should this connection be considered necessary to defend and expound the revelation, (4) the relation between this "necessity" and the concrete circumstances. The first three of these might provide evidence for a "material" continuity or unanimity across different sets of circumstances; but the fourth element must be considered if this continuity or unanimity

becoming an area where the birth rate is falling very quickly. The encyclical contains a warning to nations against self-destruction. Certainly those who see in it a prophetic light are correct. This light is especially needed by the nations of the white race" (ibid. 215).

⁷⁷ It is sometimes said that only the magisterium can determine the extent of its competence and even that the issue can be settled simply by observing the magisterium in action. This is a great oversimplification. The competence of the magisterium is regulated by prior and general truths about revelation, the Church, the Scriptures and tradition, etc. "Only," one sometimes thinks, should be dropped from theologians' vocabularies.

is to be "formal" and therefore ecclesiologically or criteriologically significant.

Exercise of Universal Ordinary Magisterium

For an instance of the universal ordinary magisterium to constitute an infallible exercise, not simply any presentation of a doctrine suffices. In the case of the "primary object," the bishops must present the teaching *tamquam divinitus revelata*; in the case of the "secondary object," they must present it *tamquam definitive tenenda*. The latter phrase is used to avoid the suggestion that the motive for the assent required is the *auctoritas Dei revelantis* to which "divine faith" responds. The phrase does not seem to intend an exercise of episcopal authority inferior to that employed in matters taught as "having been divinely revealed."

Since there does not seem to be anything else to be learned from official documents on the matter, perhaps I may be permitted to refer to an *auctor probatus* for an interpretation of the phrase *tamquam definitive tenenda*. Salaverri describes the pertinent exercise as one which obliges the faithful to an "utterly free and irrevocable assent"; it therefore occurs on "the highest level of [episcopal] authority."⁷⁸ Teachings proposed with such authority he regards as *de fide catholica*, while those proposed with less authority (*mere authentice*) he considers to be *doctrinae catholicae* in the strict sense.⁷⁹ Salaverri's interpretation can, of course, make no claim to be authoritative; but it is helpful in indicating that an element of interpretation must enter into the question whether an exercise of the universal ordinary magisterium constitutes an infallible instance.

Let us take it, then, that such an exercise means that the bishops intend to place their people under the severest obligation to assent. The difficulty in determining whether this has been realized, of course, is chiefly the fact that bishops seldom use the *tamquam definitive tenenda* formula or its equivalents. It is no easy task to discriminate in their teaching between what is fundamentally asserted under such serious obligation and what may serve merely as premise, argument, illustration, etc., not to mention what is simply taken for granted. This difficulty has long been acknowledged with regard to teaching *de rebus fidei*;⁸⁰ it would seem to be even greater with regard to teaching *de moribus*.⁸¹

⁷⁸ I. Salaverri, *De ecclesia Christi*, in *Sacrae theologiae summa* 1: *Theologia fundamentalis* (3rd ed.; Madrid: BAC, 1954) 674-75.

⁷⁹ *Ibid.* 804-6.

⁸⁰ See J. M.-A. Vacant, *Etudes théologiques sur les constitutions du Concile du Vatican d'après les actes du Concile: La Constitution Dei Filius* 2 (Paris: Delhomme et Brigue, 1895) 110-23; and Magnus Löhrer in *Mysterium salutis* 1, 569-73.

⁸¹ I would agree, e.g., with Rahner against Küng that the *definitive tenenda* intention is "something completely different from the assertion that such a theoretical teaching implies a serious moral obligation before God" ("Reply to Hans Küng," *Homiletic and Pastoral Review* 71 [1971/72] 20).

Conclusion

I have attempted an application to the universal ordinary magisterium of the three conditions which have been found useful in describing the limits within which the papal magisterium is infallible. It remains simply to indicate that *all three* of the conditions must be fulfilled for a teaching universally proposed by the episcopal body to be considered infallibly proposed. It must concern a matter of faith or morals which, if not divinely revealed, is necessary to defend and explain what has been revealed. It must be proposed by a moral unanimity of the body of bishops in communion with one another and with the pope. It must be proposed by them as having to be held definitively. If any one of these conditions is not met, the teaching does not constitute an infallible exercise of the magisterium. If it cannot be established that any one of them has been met, then the canonical rule applies and the theologian may proceed on the assumption that he is not dealing with an infallibly proposed teaching.

It may be objected that this view is "maximalistic" in the conditions it requires and therefore "minimalistic" in its conclusions. The objection can be granted, and with good reason. Besides recalling the principles noted at the beginning of this section, one may note that the view here defended supposes that for the magisterium to fulfil its pastoral task it need not often exercise its authority at its highest level. We are emerging from an age marked by an exaggerated fascination with infallibility,⁸² which argued, on logically and theologically very dubious grounds, to the necessity of a frequently active *iudex controversiarum infallibilis*. But the magisterium need not be infallible to have a genuine authority; in fact, it could be argued that the emphasis on infallibility has hindered the development of a more adequate theory and more effective exercise of the "ordinary" magisterium. It tended to abstract the magisterium out from the complex of "authorities" by which the Christian message is borne from generation to generation; and it encouraged the notion that authoritative teaching need not rely on reasoned argument. Where the claim to infallibility is made more modestly, the role of the magisterium in the Church can be understood more realistically, and the Church can display its many "norms of Christian identity and allegiance" in all their distinctive variety and power. The conclusions reached, then, are "mini-

⁸² "Il a aussi existé une véritable inflation de la catégorie d'infailibilité comme si, entre l'infailiblement vrai et l'erreur, il n'existait pas un immense domaine de vérité partielle, de certitude probable, de recherches ou d'approximations, voire de très précieuse vérité non garantie des risques de la finitude humaine. Le professeur A. Vergote a raison d'écrire: 'L'abus théologique de l'infailibilité relève de la pathologie de la vérité, tout comme le légalisme est une pathologie de la morale'" (Y. Congar, "Infailibilité et infectibilité," *RSPT* 54 [1970] 608).

malizing." Specifically with regard to the universal ordinary magisterium, I agree with Magnus Löhrer when he concludes: "The true importance of this organ of the Church's teaching office does not seem to lie in its criteriological function so much as in the fact that it constitutes the ordinary way in which the Catholic faith is proposed."⁸³

With regard to the constant and universal condemnation of artificial contraception, it may be remarked, first, that to make a case that this represents an infallible exercise of the ordinary magisterium requires interpretation and evaluation. In other words, it is not enough to heap up texts; for texts have meanings in contexts, and the contexts of moral questions are concrete. Without knowing the situations, one cannot understand the contexts, and without understanding the contexts, one cannot understand the meaning of the prescriptions nor evaluate its relevance to or continuity with other meanings in other contexts in other situations. John Noonan's history of Catholic attitudes towards contraception was such an interpretative and evaluative study; it concluded that the tradition was not of such a weight as to preclude development or change. One does not have to canonize the study or its conclusion to urge that a contrary assessment of the tradition must appear to be simply dogmatic if it does not engage in a similar interpretative and evaluative work.

Until such an effort is made, one must be content with an assessment of the role this claim played in the discussions before and after *HV*. While the "majority" of the Papal Commission did not believe the tradition was of such force as to settle the issue, the "minority" did.⁸⁴ A year before *HV* was issued, Zalba, a member of this minority, reviewed the teaching of the world-wide episcopate, prefacing his study with a reference to *Lumen gentium* 25.⁸⁵ His survey, which he at least did not say was selective, reviewed only eight statements from seven countries, dating from 1909 to 1961. This is something less than the whole body of bishops and, besides, Zalba made no effort to investigate whether the statements meet the conditions necessary for them to be considered an infallible exercise of the magisterium.

In *HV* itself Pope Paul referred to the Church's tradition several times. In *HV* 4 there is a reference to the Church's fulfilment of Christ's mandate "at all times, but more fully in recent times"; but this concerns general

⁸³ *Mysterium salutis* 1, 573.

⁸⁴ "Our question is a question of the *truth* of this proposition: contraception is always seriously evil. The truth of this teaching stems from the fact that it has been proposed with such constancy, with such universality, with such obligatory force, always and everywhere, as something to be held and followed by the faithful" (*The Birth Control Debate*, ed. R. G. Hoyt [Kansas City: National Catholic Reporter, 1968] 38).

⁸⁵ Zalba, "Circa ordinem rectum" 61-78.

teachings on the nature of marriage, on the right use of married rights, and on the duties of marriage. In *HV* 6 the Pope explained that he could not grant that the Papal Commission's report had settled the issue, both because it had not been unanimous and especially because some of its recommendations departed from "the moral teaching on marriage proposed with firm constancy by the magisterium of the Church," a criticism left unspecified. *HV* 10 mentions that the "constant teaching of the Church" has declared what the plan of God the Creator is, and the footnote refers to *Gaudium et spes* 50–51. The interpretation of the natural law by the Church's "constant teaching" is mentioned in *HV* 11, with a footnote to Pius XI and to Pius XII. In *HV* 12 the conclusion of the preceding paragraph ("every use of marriage must remain of itself destined to procreate a human life") is described as a teaching "which has often been propounded by the Church's magisterium." In *HV* 14 the condemnation of sterilization is introduced with the words "as the Church's magisterium has several times taught," and the footnote refers to four statements by Pius XI and Pius XII. The footnote in the next sentence's condemnation of artificial contraception refers to the *Roman Catechism* and to four statements by Pope Paul's three predecessors.

Apart from the *Roman Catechism*, none of the documents to which Pope Paul referred directly in these passages dates from before *Casti connubii*, and none of them refers to the universal ordinary magisterium. It may be, of course, that Hans Küng was correct in maintaining that a belief that the condemnation of contraception was taught by the universal ordinary magisterium led Pope Paul to conclude that the teaching could not be changed. It may be true, but the Pope certainly does not say this in *HV* or (as far as I know) anywhere else; and his surprisingly modest references to previous magisterial pronouncements lend no support to Küng's theory.⁸⁶

In the episcopal statements issued in response to *HV*,⁸⁷ I have found

⁸⁶ It may be, of course, that Rome was simply reluctant to buttress papal statements with episcopal teachings; in any case, it is remarkable that *HV* did not make use of an argument already proposed in defence of the tradition.

⁸⁷ The most accessible collections of these statements are *Humanae vitae and the Bishops* and *Pour relire Humanae vitae: Déclarations épiscopales du monde entier* (Gembloux: Duculot, 1970), neither of which, however, is complete. For the variety of interpretations the responses have received, see A. Flannery, "Commentary or Qualification?" in *Humanae vitae and the Bishops* 351–67; E. Hamel, "Conferentiae episcopales et encyclica 'Humanae vitae,'" *Periodica* 58 (1969) 243–349; P. F. Palmer, "Conscience, the National Hierarchies, and the Encyclical," in *Conscience: Its Freedom and Limitations* 297–305; M. Zalba, "Applicatio encyclicae 'Humanae vitae' apud conferentias episcopales," *Periodica* 59 (1970) 371–413; and most completely, J. Selling, *The Reaction to Humanae vitae*. Selling concludes (132–37) that there were three kinds of responses: "clear acceptance" in twenty-five documents from eighteen countries, "clear mitigation" in sixteen documents from thirteen countries, and an "uncertain" position taken in eleven documents from ten

only eleven references to the Church's traditional condemnation. Three of these are rather general, the others more specific.⁸⁸ Of the eleven references, nine are found in documents which Selling interprets as displaying a "clear acceptance" of *HV*; one (West Germany) appears in a document which "mitigates" the encyclical's teaching, and the other (Brazil) in a document Selling regards as "unclear." None of the eleven references invokes the thesis that the tradition is infallible.⁸⁹ Many of the episcopal statements, of course, specifically say that *HV* is "authoritative," not infallible, teaching, and the frequent discussions of the rights and responsibilities of conscience do not favor the thesis.

Finally, there is something like a *consensus theologorum* that the magisterial tradition behind *HV*'s condemnation does not constitute an infallible exercise of the teaching office.

I do not see, then, how one can reply to the question of the infallibility of the magisterial condemnation of artificial contraception with anything but a *non constat*. Until it has been manifestly established, the general rule should hold that we are not dealing with a matter definitively settled.

ARGUMENT OF THE ENCYCLICAL

The first two sections have argued that the validity of the papal teaching in *HV* is not settled simply on the formal grounds in papal or traditional authority. In this section the internal argument of the encyclical will be reviewed; for it was, at least in part, an assessment of this that generated the movement from the possibility of dissent to the fact.

The general structure of the encyclical is familiar enough. After brief introductory paragraphs on the contemporary problematic, on the competence of the Church to speak on the issues, and on the work of the Papal Commission (2-6), a central section outlined the doctrinal principles which apply, concluded to the immorality of artificial contraception, replied to objections, and anticipated consequences should the conclusion be neglected (7-18). The last part gave pastoral directives to husbands and wives, educators, public authorities, scientists, medical personnel, priests, and bishops (19-31).

The central section is obviously the most important. Here Pope Paul

countries. How significant the "mitigation" is depends in part on whether one believes that the encyclical itself left room for such interpretations; my own view is that it did not.

⁸⁸ The general references are found in the statements from Brazil, the Philippines, and West Germany; the more specific ones, from Ireland (twice), New Zealand, Poland, Portugal, Spain, Yugoslavia, and Mexico.

⁸⁹ The Spanish bishops seemed to locate the "nonprovisional" character of *HV*'s teaching in the Pope's "new and more solemn testimony" (*Humanae vitae and the Bishops* 247). The West Germans noted the disagreement on the weight to be assigned to the tradition, but abstained from taking a position (*ibid.* 306, 309-10).

first extolled the human and religious value of married love, which he characterized as fully human, total, faithful and exclusive, and fertile (7-9). The Pope then discussed the meaning of "conscious parenthood" in relation to the biological processes, functions, and laws of human reproduction, to sexual instinct and passion, to the physical, economic, psychological, and social conditions in which couples decide about having children, and finally to the demands of the objective moral order (10).

With that as preface, the Pope then taught that marriage acts are "noble and worthy" and legitimate even when known to be naturally infertile; still, the Church continues to assert "that it is necessary that every single marriage act remain of itself destined to procreate human life" (11). That conclusion was then derived from "the inseparable link" between the unitive and procreative meanings (*significationes*) which God has established in the marriage act (12). To be faithful to God's plan, no act of marriage can contradict either of these intentions (13). From that it follows that any direct interruption of an already begun generation, and especially abortion, is to be absolutely excluded, as also are direct sterilization and any effort before, during, or after intercourse that seeks to prevent procreation (14). The Pope then noted that the Church permits contraceptive interventions for therapeutic purposes, provided they are not directly intended (15), and that it sees a moral difference between artificial and natural means of family-planning (16). Should the use of artificial contraceptives become common, the Pope foresaw very unfortunate consequences (17). In the course of these considerations, the Pope also briefly responded to objections drawn from the claim that man has dominion over his body (13) and from the principle of totality (14).

Some remarks, first, about the character of the Pope's argument. The first is simply to note that it is not drawn from the Scriptures. There are, it is true, sixteen references to New Testament texts, but none of them is employed to found or support the central argument and conclusion. Pope Paul does not mention the story of Onan, which still was cited in *Casti connubii*.

Secondly, a larger role is played by the argument from tradition, references to which occur some six times. In the notes there are references to the *Roman Catechism*, the Code of Canon Law, Vatican II, Pius IX, Leo XIII, Pius X, Pius XI, Pius XII, John XXIII, and to previous statements of Paul VI.⁹⁰ These are employed in a variety of contexts, but

⁹⁰ The references are conveniently set out in P. Delhaye, "L'Encyclique *Humanae vitae* et l'enseignement de Vatican II sur le mariage et la famille (*Gaudium et spes*)," *Bijdragen* 29 (1968) 351-68. Some sense of the basic differences that underlie the different reactions to *HV* may be gained by comparing this article with Cardinal Felici's, "The Unity of the Teachings of the Council and the Pope," in *Crisis in Morality: The Vatican Speaks Out* (Washington: USCC, 1969) 27-34.

it is not unfair to say that the argument from tradition remains rather undeveloped.

Thirdly, there is not much strict argument at all. That the tradition precludes a change is less argued than assumed. The central affirmation that every marriage act must remain open to the transmission of life is simply asserted, as is the supporting argument that there is an inseparable link between the procreative and unitive meanings of the marriage act. The Pope asserts his belief "that the men of our day are most able to perceive how much this teaching is in conformity with human reason" (12), but he supplies them no assistance apart from the parallel drawn in the following paragraph. Again, the encyclical contains simple assertions about the limits on man's dominion over his body and about the likely consequences of artificial contraception. There is, however, an attempt to argue a moral difference between artificial and natural family-planning.

Evaluations of this method of teaching vary considerably. It has been vigorously defended on the grounds that the Pope was not writing a philosophical or theological treatise and that, besides, his teaching-authority is independent of the reasons he offers.⁹¹ Others, however, have pointed to the psychological effects upon readers of this failure to try to convince or even to facilitate understanding, particularly in a context in which major objections were known to have been addressed against the traditional condemnation.⁹² Disagreements here, of course, depend finally on differences in views about the relationship between authority and reason and between magisterium and theology.⁹³

Fourthly, the encyclical attempts to state what conclusions are implied in the Christian doctrine about sex and marriage and particularly in the intrinsic relationship between sexuality and procreation. There was, I believe, no disagreement on this doctrine in the Papal Commission. The most common disagreements before *HV* and since have lain in the implications of this doctrine for a moral assessment of particular means of birth control. No direct resolution of this question can be found in the Scriptures, and so it remains either that the tradition requires the stated conclusion or that theological reasoning can discern the conclusion in the

⁹¹ For example: "... when the Church teaches authoritatively matters of natural morality, it does not do so as a master metaphysician any more than did Peter and the apostles. . . . [The obedience of the faithful] is not proportioned to the intrinsic merits of the encyclical as a philosophical argumentation, as a scientific treatise, as a sociological tract" (J. Costanzo, "Papal Magisterium" 396).

⁹² So, e.g., K. Rahner, "On the Encyclical 'Humanae vitae,'" *Theological Investigations* 11 (New York: Seabury, 1974) 263-87.

⁹³ When Church authority is asked to supply reasons for what it teaches, it should be noted, that request need not be coming from rationalist presuppositions. *Ratio fide illustrata* also naturally desires reasons.

principle, or both. But in assessing the conclusion, it is important to keep in mind that it is one thing to say that both sexuality and marriage are intrinsically ordered towards procreation and that this must, therefore, be respected in a marriage; it is another thing to say that this provides a principle which must govern *every* marriage act; and it is still a third thing to say that it provides a means for discriminating among various kinds of contraceptive procedures. With the successive steps in this process of reasoning, the clarity of revelation's guidance decreases, as does also the degree of authority with which the magisterium may teach. And one may legitimately expect that where those two decrease, the responsibility of the magisterium to supply reasoned argument increases.

Finally, the encyclical builds heavily upon moral principles believed to derive from the natural law. Before considering the papal argument more closely, two general remarks may be made. First, I do not myself quarrel with arguments from natural law, and I wish to abstain here from a judgment about the notion of natural law implied in *HV*. Secondly, however, there seems to be a general agreement that natural-law arguments derive from an exercise of reason which discerns moral responsibilities in the nature and condition of man. Such reasoning is *constitutive* of natural-law obligations. Two conclusions follow from this. The first Karl Rahner expresses in his comment that "in a question of the natural law it is far from being a matter of indifference whether we realize the *intrinsic* basis in reality for a norm of the *natural law* or not."⁹⁴ In other words, the failure to have or to give "reasons" for a conclusion differs considerably in significance when one is dealing with the rule of *recta ratio* rather than with revealed mystery. Secondly, it is difficult to understand how a position can be *said* to derive from the natural law if no reasons can be adduced to ground it. The conclusion may be urged for other reasons; but it remains simply an assertion to say that something is of the natural law if no reasons can be given in defense of the proposed conclusion.

Besides these general observations, something may be said about the quality of the encyclical's argument from natural law. Presupposing that what the Pope calls the *ordo generationis* (*HV* 16) has moral significance, I want to draw attention to a certain abstractness in his argument that I think considerably weakens his case. The encyclical focuses on the single marriage act (*quilibet matrimonii usus*), which is assigned the two inseparable *significationes* in itself, so that therefore the exclusion of the procreative intentionality cannot be legitimated on the grounds of the principle of totality. I am less concerned with this isolating of the single

⁹⁴ Rahner, "On the Encyclical 'Humanae vitae'" 276.

act than with the fact that it is also considered in abstraction from the full, concrete reality that is the *ordo generationis*.

This is, in fact, the intelligible relationships among the multiple constituents of the process of human reproduction. The *ordo generationis* is not a simple per se relationship between single acts of intercourse and instances of conception. In what one might call the natural case (or even the *opus naturae*), acts of intercourse occur randomly and for a variety of reasons and motives, so that, as the Pope acknowledges, even when they are naturally infertile, they serve to express and strengthen the marriage bond. If one may speak of the "intention" of nature, one may say that it intends such acts to occur often enough that some of them will occur during the relatively brief periods in which the woman can conceive. In this way "nature" fulfils both purposes, assuring the continuation of the race through the same series of acts by which the family community necessary for the child's "education" is preserved and strengthened. The *ordo generationis* is understood when this total complex—hormonal and biological, instinctual and reflective, interpersonal and cultural, social and religious—is understood; and part of what is understood is the intelligibility that resides in the statistical relationship between randomly posited acts of intercourse and instances of conception.

If that is the concrete intelligibility of the natural "order of generation," then one interferes directly in its operation whenever one introduces "system" into the relationship between acts of intercourse and instances of conception. Artificial contraception does this, of course, by excluding the procreative possibilities of some or all acts of intercourse. But that same "systematizing" occurs when one knowingly restricts one's acts of intercourse to the infertile periods. When such acts are no longer randomly posited, but intelligently, reasonably, and responsibly chosen to occur only at certain times, the *ordo generationis* loses its "natural" character and is brought in under the rule of reason and freedom: it becomes an *opus hominis*. If the natural procreative order is understood in its full concreteness, it is difficult to see a morally significant difference between frustrating single acts of intercourse and frustrating the general *ordo generationis*. It is difficult to see how the use of only the infertile periods "respects the laws of the generative process," or how it does not constitute that "dominion over his generative faculties" which Pope John and Pope Paul denied to man (*HV* 13).

A similar difficulty attends some recent efforts to articulate an argument in defense of the encyclical from the *significationes* of the marriage act. Joseph Dolan and William May, for example, speak of human sexual activity as a language: husband and wife are not only *doing* something, they are *saying* something, when they engage in intercourse. Intercourse

bespeaks their love, of course; but it also bespeaks something else: the good of procreation.⁹⁵ But when acts of intercourse are deliberately deprived of their power to procreate, that native "speech" of intercourse is contradicted, and this is as wrong as it would be to contradict the "love-bespeaking" intentionality through violence.

This argument is certainly stronger than that from the physical teleology of the act of intercourse. But it has the same weakness in that it assigns procreative meaning to the single act of intercourse outside of the complete context within which alone acts of intercourse are procreative. It places its defenders in the paradoxical position of maintaining that acts which are certainly *known* to be infertile can nevertheless be considered and perhaps even be intended to have procreative meaning. Such a position simply moves from the older view, which spoke of a per se causality in each act of intercourse, to a newer view, which speaks of a per se "signification" in each act, and that does not seem much progress. How do acts of intercourse deliberately restricted to periods of infertility continue to "bespeak" or signify "the procreative good of human sexuality and marriage or their own procreative powers"?⁹⁶ This, it seems, can be considered possible only if the "signification" of single acts is obtained in abstraction from the "signifying" structure of the total *ordo generationis* or by assigning the unimpeded spilling of semen in the vagina a special but still abstract value.⁹⁷

The problem with the argument from natural law, then, does not consist primarily in the effort to derive a moral imperative from an understanding of the physical structure of the reproductive process, but in the inadequacy of that understanding and in the consequent incoherence in application. If an argument were to be drawn that what God has established for the reproduction of the race must always be respected, then the resulting moral imperative would have to be that the total process (and not simply "every single marriage act") must remain open to the transmission of life. And that imperative is as directly contravened by systematic abstinence during fertile periods as it is by other artificial procedures. If, however, the restriction of intercourse to infertile periods is permissible, it is difficult to see why other measures may not also be permitted.

A brief word, finally, on the consequences Pope Paul warned would follow from an accepted use of artificial contraception: an increase in

⁹⁵ See J. V. Dolan, "'Humanae vitae' and Nature," *Thought* 44 (1969) 358-76; W. E. May, *Human Existence, Medicine and Ethics: Reflections on Human Life* (Chicago: Franciscan Herald Press, 1977) 120-25.

⁹⁶ May, *ibid.* 124.

⁹⁷ See the emphasis which Dolan ("'Humanae vitae' and Nature" 368) places on the moment of insemination.

marital infidelity and the weakening of morality, a loss of respect for women, and the placing of a dangerous instrument into the hands of governments. There are a good number of people who are of the view that these consequences have in fact been realized and who see in this a confirmation of the Pope's position.

I do not intend to challenge the view that any or all of these consequences have been realized, nor even that in some fashion they derive from the separation of sexuality from procreation (I do think, however, that more nuance is desirable both in describing the consequences and in determining their causes). I wish only to point out that a certain separation is built into the physical, biological, and interpersonal dynamics of human sexuality, that this separation is also exploited when the use of the infertile periods is countenanced, and that a response to the undesirable situation believed to follow from this separation will only be effective, both practically and theoretically, if it proceeds from a more accurate, a more coherent, and a more comprehensive approach to marriage and sexuality than was bequeathed to us by the moral theology of the past. I have no doubt that many of the consequences the Pope feared are only possible because of the availability of contraceptive techniques; but if the use of some of these means is to be proscribed and if this proscription is to be concretely intelligible and effective, it will have to be on more coherent grounds than those proposed in *HV* and, above all, by means of a teaching-authority that authenticates itself both by the manner of its exercise and by the persuasiveness of its teaching.

CONCLUSION

Although by no means the last one, the controversy over *HV* is the most dramatic instance since the Second Vatican Council of what is often called "the crisis of authority" in the Roman Catholic Church. That this is the most adequate description of postconciliar Catholicism can be seriously questioned; but few would dispute that something critical has been going on or that it at least in part concerns the nature and role of authority in the Church. The nature, causes, and implications of this "crisis," of course, receive differing, indeed contradictory, interpretations and evaluations.

This essay has made no attempt to enter that dark thicket; it does not even claim to have exhausted all the issues involved in the particular case of *HV*. The first two sections have argued that the controversy over the encyclical cannot be settled simply on the grounds of "formal" authority, whether of *HV* itself or of the tradition behind it. The last section has outlined one fundamental criticism of the argument employed and the conclusion reached by Pope Paul. All three sections have sought

chiefly to communicate an understanding, if not an acceptance, of the widespread dissent *HV* has occasioned.

If there is a basic assumption that has guided this essay, it has been the conviction that questions about authority cannot be answered without asking questions about community and about the relationship between community and authority. The intrinsic relationship between these questions is not always recognized, and not just in ecclesiology, although that has naturally been the focus here. No great progress can be expected in resolving the practical problems in the life of the Church today until, both in practice and in theory, churchmen and theologians succeed in overcoming the assumption of some that authority can be understood and exercised without reference to community, and the view of others that community and authority are antithetical. That is a task long overdue, and if the controversy over *HV* accelerates commitment to it, it may prove to have been worth whatever pain and confusion it has caused.