

CONTRACEPTION AND THE INFALLIBILITY OF THE ORDINARY MAGISTERIUM

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I

IN A WORK published in 1963, one of the present authors and another collaborator considered the question whether the received Catholic teaching on contraception had been proposed infallibly.¹ In summing up theological opinion to 1962, they said the teaching that contraception is intrinsically and gravely immoral is "at least definable doctrine."² In using this expression, they did not intend to create a new category between infallibility and noninfallibility.³ Rather, by the words "at least definable doctrine" they intended to embrace the judgments of various groups of theologians. One group held that Pius XI defined the doctrine *ex cathedra* in *Casti connubii*; a second group held that he only reaffirmed there a teaching already proposed infallibly by the ordinary magisterium; a third group made various comments which seemed compatible with the view that the received teaching could be defined.

Like the second group, the collaborators in the 1963 publication judged that the received Catholic teaching on contraception had been infallibly proposed by the ordinary magisterium. This judgment was based on available evidence indicating that a world-wide survey of Catholic bishops would have shown that they all accepted and taught the received teaching.

In this same study its coauthors pointed out that Pius XI and Pius XII did not propose a new teaching on contraception but repeated a teaching reaching back through the centuries. Even those Anglicans who supported the approval of contraception in 1930 admitted the existence of a long Christian tradition, although they denied the power of this tradition to bind the judgment of Christians today. The coauthors argued that one could show that the tradition is normative for Catholics by considering

¹ John C. Ford, S.J., and Gerald Kelly, S.J., *Contemporary Moral Theology 2: Marriage Questions* (Westminster, Md.: Newman, 1964) 263-71.

² *Ibid.* 271.

³ Charles E. Curran, Robert E. Hunt, and the "Subject Professors" with John F. Hunt and Terrence R. Connelly, *Dissent in and for the Church: Theologians and Humanae vitae* (New York: Sheed & Ward, 1969) 177, misunderstood the intent in this way.

the implications of the fact that during the last century and one half—from 1816 to 1962—the Catholic Church constantly and emphatically taught that contraceptive acts are objectively grave violations of the law of God.

For, if the teaching of the Catholic Church on a point so profoundly and intimately connected with the salvation of millions of souls has been the same over such a long period of time, the inevitable conclusion must be that that teaching is true and unchangeable. Otherwise the Church which God has established to interpret the moral law and to guide souls on the way of salvation would be failing substantially in its divine mission.⁴

The collaborators in the 1963 publication did not clarify the relationship between this consideration—which bears upon the binding force of *the tradition* of Catholic teaching on contraception—and the infallibility with which they believed the ordinary magisterium *was proposing* the same teaching *in 1962*, when they were completing this work.

In the present article we argue that the received Catholic teaching on contraception has been proposed infallibly by the ordinary magisterium. The argument we now advance is intended to develop and complete the argument quoted above for the binding force of the tradition. Vatican Council II has articulated the conditions which must be met for the ordinary magisterium of the bishops dispersed throughout the world to proclaim the teaching of Christ infallibly. We shall try to show that in the course of the tradition these conditions have been met. If these conditions have been met, then the reason why the tradition is binding is clear: a divinely guaranteed teaching is involved. Such teachings, once given, cannot later be contradicted by the Church as a whole. Of course, such teachings and even defined doctrines are open to development by the Church and can be contradicted by the erroneous opinions of members of the Church, including members of the magisterium.

The argument we shall advance here has implications beyond the particular matter—the teaching on contraception—with which we are going to deal. Many received teachings in matters of faith and of morals are being questioned or denied today, and the possibility often is ignored that these teachings might have been proposed infallibly even if they have not been defined. We hope that our present essay will draw attention to this possibility, which ought to be taken into account whenever the status of any received teaching is discussed.

The possibility that the received Catholic teaching on the morality of contraception has been proposed infallibly by the ordinary magisterium was generally ignored in the debate which took place after the publication of *Humanae vitae*. Everyone agreed that Paul VI proposed no *ex cath-*

⁴ Ford-Kelly, *Contemporary Moral Theology* 2, 258.

edra definition, and the supposition that Pius XI might have proposed such a definition in *Casti connubii* was hardly mentioned in the debate. Thus those who dissented from the teaching reaffirmed in *Humanae vitae* and those who defended the legitimacy of such dissent proceeded directly from the nondefinitive character of Paul VI's pronouncement to the possibility of licit dissent from noninfallible teachings, ignoring the possibility that the nondefinitive pronouncement contained a reaffirmation of a teaching which, even if never defined, was already infallibly proposed by the ordinary magisterium.⁵ Those who supported the teaching reaffirmed in *Humanae vitae* and who questioned the legitimacy of dissent from it similarly argued that the teaching should be accepted as authoritative and binding, even if noninfallible.⁶ As evidence of the obligatory character of the teaching, they frequently cited Vatican II, *Lumen gentium* 25, regarding the religious allegiance of will and of intellect due authentic teaching of the bishops and especially of the pope even when the infallible exercise of the magisterium is not in question.⁷

⁵ See, e.g., Curran, Hunt, *et al.*, *Dissent* 25–26 and 63. An influential article—not dissenting but considering the possibility of doing so licitly—which exemplifies the same oversight is Karl Rahner, S.J., “Zur Enzyklika ‘Humanae vitae,’” originally published in *Stimmen der Zeit* 93 (1968), and widely republished in translation, e.g., “On the Encyclical ‘Humanae vitae,’” *Catholic Mind* 66 (November 1968) 28–45; Rahner goes directly from the nondefinitive character of the *document* to a discussion of the reformability and therefore the possible falsity of the *teaching*. Richard A. McCormick, S.J., “Notes on Moral Theology: January–June, 1968,” *TS* 29 (1968) 707–41, extends his coverage to include *Humanae vitae* and certain reactions to it; he assumes throughout that infallibility is not in question. In discussing relevant ecclesiological questions, Gustav Thils, “II, ‘Sentire cum ecclesia,’” in *Pour relire HUMANAÉ VITAE: Déclarations épiscopales du monde entier* (Gembloux: Duculot, 1970) 15*–22*, treats the infallibility of the extraordinary magisterium *in defining* and the infallibility of the whole Church *in believing*, but neglects to consider the infallibility of the ordinary magisterium (under certain conditions) *in teaching*.

⁶ E.g., Austin Vaughan, “Msgr. Vaughan Answers Critics,” *National Catholic Reporter*, Sept. 11, 1968, states such a case well and briefly; James J. Mulligan, *The Pope and the Theologians* (Emmitsburg, Md.: Mt. St. Mary's, 1968) 13–88, more fully develops this approach. Even those who suggested explicitly that the teaching on contraception might be infallible did not usually develop the argument by applying to the data of history the criteria for the infallible exercise of the ordinary magisterium articulated by Vatican II. See, e.g., Archdiocese of Washington, *Sex in Marriage: Love-giving, Life-giving* (Washington, D.C.: 1968) 4–5; Joseph F. Costanzo, S.J., “Papal Magisterium and ‘Humanae vitae,’” *Thought* 44 (1969) 377–412, especially 410 n. 9. But the argument was proposed, very briefly, by Marcelino Zalba, S.J., *La regulación de la natalidad* (Madrid: B.A.C., 1968) 133–40; “Applicatio encyclicae ‘Humanae vitae’ apud conferentias episcopales,” *Periodica de re morali, canonica, liturgica* 59 (1970) 390; *Las conferencias episcopales ante la HUMANAÉ VITAE (Presentación y comentario)* (Madrid: Editorial Cio, 1971) 63–65, 93, 124–26, 130–32, and 179; Zalba's writings since 1967 have been hardly noticed in the English-speaking world.

⁷ Curran, Hunt *et al.*, *Dissent* 113, suggest that Paul VI himself, in *Humanae vitae* 28, specified the assent he expected as that to an authoritative but noninfallible teaching. However, the official text of *Humanae vitae* (AAS 60 [1968] 481–503) refers (501 n. 39) to

To a great extent, the debate which took place after the publication of *Humanae vitae* was conducted within a framework established by the statements of Msgr. Ferdinando Lambruschini at the press conference at which *Humanae vitae* was released. Lambruschini's formal statement made clear that the encyclical contained no *ex cathedra* pronouncement and also seemed to rule out the possibility that it was a reaffirmation of a teaching already infallibly proposed; his reported answers to questions raised by reporters at the conference indicated that Lambruschini thought that contraception might eventually be accepted by the Church.⁸

The framework for response to *Humanae vitae* established by Lambruschini's remarks was readily adopted in the climate of opinion which had developed between 1964 and 1968. Because of the widespread controversy over the morality of contraception which unfolded within the Catholic Church and because of the prolonged study to which Pope Paul himself subjected certain questions related to this topic, many people assumed that the substance of the received Catholic teaching on contraception was itself in doubt, and that the eventual papal statement might change it. Even those who denied that the received teaching was in doubt rested their case on the authority of contemporary papal statements and of the teaching of Vatican II in *Gaudium et spes* 51, with its famous footnote 14.⁹ Thus, between 1964 and 1968 attention was diverted from the weight of the tradition of Catholic teaching on the morality of contraception and directed toward the expected papal reply to the questions which were raised in the course of the controversy.

Meanwhile, Vatican II in *Lumen gentium* 25 reaffirmed the possibility of infallibility in the exercise of the ordinary magisterium and articulated, more clearly than in any previous authoritative document, the conditions under which the bishops dispersed throughout the world proclaim the teaching of Christ infallibly. Moreover, the controversy over contraception stimulated historical studies which added much to previous knowledge about the tradition of Catholic teaching on this matter. But no one—so far as we know—applied the conditions for infallibility in the exercise of the ordinary magisterium to the facts of the tradition of Catholic teaching on contraception, and thus no one advanced the

the whole of *Lumen gentium* 25: "AAS, 57 (1965), pp. 29–31." Moreover, note 39 is placed in *Humanae vitae* 28 to include a reference to Vatican II's teaching on the light of the Spirit, which is mentioned in *Lumen gentium* 25, especially in respect to *infallible* teachings.

⁸ "Press Conference on Encyclical 'Humanae vitae,'" *L'Osservatore romano* (English edition), Aug. 8, 1968; Associated Press report, published in the *Washington Evening Star* (Washington, D.C.), July 29, 1968; the same and similar reports were widely disseminated in all the media the same evening and the following morning.

⁹ See, e.g., John C. Ford, S.J., and John J. Lynch, S.J., "Contraception: A Matter of Practical Doubt?" *Homiletic and Pastoral Review* 68 (1968) 563–74.

argument we are about to propose. Since no one advanced the argument, neither did anyone reply to an argument which clearly and fully put forward the case for the thesis that the received Catholic teaching on the morality of contraception has been proposed infallibly by the ordinary magisterium.¹⁰

Clearly, if this thesis is correct, the significance and legitimacy of many reactions against *Humanae vitae* should be re-evaluated. Thus the thesis we are about to defend is important; it at least deserves careful examination.

In the present article we prescind from several issues and we make certain assumptions. First, we prescind from the question whether the moral norm excluding contraception is divinely revealed. Second, we prescind from the question whether Pius XI made an *ex cathedra* definition in *Casti connubii*. Third, we prescind from the question of the extent and limits of the obligation to give religious allegiance of the will and of the intellect to teachings which are authoritative but noninfallible; thus we prescind from the question of the possibility and the limits of licit dissent from such teachings. Fourth, we prescind from the question whether Vatican II in *Gaudium et spes* 51, with footnote 14, reaffirmed the received teaching or refrained from reaffirming it.¹¹

We assume that the Catholic Church enjoys the charism of infallibility both in believing and in teaching, and that this divine gift extends to the acts by which certain particular truths—including certain moral norms in respect to specific kinds of human acts—are believed and handed on. We also assume that the ordinary magisterium of the bishops dispersed throughout the world is exercised infallibly under the conditions articulated by Vatican II in *Lumen gentium* 25.

We realize that some who reject the received Catholic teaching on the morality of contraception also reject what we assume with respect to the Church's infallibility.¹² However, we also are convinced that most Cath-

¹⁰ In section 5 we shall show how it happened that neither in the papal Commission before *Humanae vitae* nor in the debate on Hans Küng's book on infallibility afterward was the argument we are about to present articulated and criticized.

¹¹ While we prescind from the question of what Vatican II taught on the substantive issue, we will rely upon Vatican II's clear teaching regarding the competence of the magisterium to teach with respect to the morality of contraception a norm binding on conscience. Furthermore, we set aside here the substantive issue only because it is unnecessary for our present purpose to treat it. We would, if necessary, defend all but minor details of the position stated by John C. Ford, S.J., "State of the Question: More on the Council and Contraception," *America* 114 (April 16, 1966) 553-57.

¹² Only a few go to the extreme of rejecting infallibility in general, but some deny it to the extent that it guarantees the teaching of moral norms binding on conscience with respect to specific kinds of human acts; see, e.g., the authors cited by Richard A. McCormick, S.J., "Notes on Moral Theology: January-June, 1969," *TS* 30 (1969) 654-57. Others attempt to limit infallibility by adopting a relativistic theory of truth, especially of moral truth,

olics who accept what we assume in respect to infallibility and who, nevertheless, question or deny the received teaching on the morality of contraception have overlooked the possibility that this moral norm has been infallibly taught. Our argument is addressed to such Catholics, and we hope to show them that even if this teaching has not been defined, it has been infallibly taught by the ordinary magisterium.

In section 2 we examine the conditions articulated by Vatican II under which the bishops dispersed throughout the world proclaim the teaching of Christ infallibly. In section 3 we argue that the facts show that the received Catholic teaching on the morality of contraception has been proposed infallibly by this ordinary magisterium. In section 4 we offer some further considerations and answer some objections. In section 5 we clarify the relationship between our present argument and the argument based upon tradition proposed by some theologians in the pontifical Commission for the Study of Problems of Population, Family, and Birthrate. In section 6 we make some concluding remarks, with special reference to the statements of certain national hierarchies in response to *Humanae vitae*.

II

After treating the authoritative teaching office of the bishops and of the pope, even when he is not speaking *ex cathedra*, Vatican II in *Lumen gentium* 25 proceeds to articulate the conditions under which the bishops dispersed throughout the world participate in the infallible proclamation of Christ's teaching:

Although the bishops individually do not enjoy the prerogative of infallibility, they nevertheless proclaim the teaching of Christ infallibly, even when they are dispersed throughout the world, provided that they remain in communion with each other and with the successor of Peter and that in authoritatively teaching on a matter of faith and morals they agree in one judgment as that to be held definitively.¹³

Footnote 40, appended by the Council to this statement, refers to four previous documents.

according to which norms infallibly proposed until recently might suddenly have become false. The assumption we make in the present paper concerning the Church's infallibility is intended to exclude both the extreme position rejecting it altogether and such limited denials of it.

¹³ "Licet singuli praesules infallibilitatis praerogativa non polleant, quando tamen, etiam per orbem dispersi, sed communionis nexum inter se et cum Successore Petri servantes, authenticæ res fidei et morum docentes in unam sententiam tamquam definitive tenendam conveniunt, doctrinam Christi infallibiliter enunciant." The translation of this and other important texts we shall quote is our own; the sense of key expressions such as "to be held definitively" which will appear repeatedly in our discussion is intended to be the same as that of the corresponding Latin phrase, the meaning of which we will try to clarify.

To throw light upon this important text, we first follow its genesis in the proceedings of Vatican II. Second, we examine the texts to which footnote 40 refers. Third, we discuss the conditions articulated for the infallible exercise of the ordinary magisterium and how these conditions would be met, especially in the case of a teaching in a matter of morals.

The first schema of Vatican II on the Church was prepared before the Council opened. It was distributed at the first session, November 23, 1962; debate on it began December 1, 1962. Chapter 7 of this schema deals with the magisterium of the Church. Article 29 states that the object of the authoritative magisterium includes not only truths explicitly or implicitly revealed, but also matters connected with the deposit of faith, necessary for integrally guarding it and rightly explicating it. Also, as minister of salvation, the magisterium has the duty of interpreting and infallibly declaring not only the revealed law but also the natural law. Article 30 states that the primary holder of the authoritative teaching-office is the pope; by the very fact that he defines a doctrine, it is certain that it is contained in the revealed deposit or necessarily connected with it. The schema goes on to treat the teaching office of the bishops, and seems to limit the infallibility of the ordinary magisterium of the bishops dispersed throughout the world to cases in which they act as witnesses of faith in the handing on of *revealed doctrine*.¹⁴

The sharply negative comments of the Council fathers on this first schema on the Church hardly touched upon chapter 7. Constructive suggestions for a statement on the doctrinal authority of the college of bishops were made by Cardinal Feltin and the bishops of the province of Paris. They urged that the treatment begin with a quotation from St. Irenaeus, stressing the unity of the teaching of the Church dispersed throughout the world. In the object of infallible teaching they wanted included points *necessarily conjoined* with revelation; the exercise of the supreme and infallible authority of the bishops they said to be either by solemn definition or by ordinary and universal magisterium.¹⁵

The elaborate treatment of the magisterium of the Church in the first schema of Vatican II not only treated the magisterium of the pope and of the bishops, but also treated the participation of theologians, pastors, and the faithful at large in the Church's magisterium. The second schema makes an altogether fresh start. The teaching-office of the bishops is treated in article 19 in the context of a synthesis of teaching on the

¹⁴ *Acta synodalia sacrosancti Concilii Oecumenici Vaticani II* 1/4 (Typis Polyglottis Vaticanis, 1971) 48-51, with commentary, p. 55, and notes, pp. 57-59. A useful guide through the relevant documents of Vatican II is Umberto Betti, *La dottrina sull'episcopato nel capitolo III della costituzione dommatica Lumen gentium* (Roma: Città Nuova, 1968). His summary commentary (393-411) is very helpful for understanding *Lumen gentium* 25, and in what follows we rely upon his account for the development of the text between the sessions.

¹⁵ *Acta synodalia* 1/4, 405-7.

episcopacy, a synthesis the Council fathers had demanded.

The bishops authoritatively preach and teach, drawing from the treasury of revelation new things and old, making the faith fruitful, and defending their flocks against errors. The faithful must be responsive to such preaching and teaching. The schema goes on:

Indeed, although the bishops individually do not enjoy the prerogative of infallibility, they nevertheless proclaim the teaching of Christ with an infallible utterance, even when they are dispersed throughout the world, provided that they remain in a collegial bond and that in authoritatively teaching as witnesses of faith in union with the Roman pontiff they agree in one judgment in handing on the revealed faith.¹⁶

This second schema adds that infallibility in defining extends as far as Christ willed that his Church enjoy this gift in defining. But then the schema seems to limit the scope of infallibility by saying that when the pope or a council defines a proposition, they propose it to be *according to revelation itself*.¹⁷

This schema on the Church was prepared between the first and second sessions of Vatican II and was mailed to the Council fathers during the spring or summer of 1963. Written comments were received and so an extensive list of proposed amendments to the first version of the second schema was available even before discussion on it began, September 30, 1963.

Bishop Fidelis García Martínez carefully developed an argument to show that the proposed formula would be overly restrictive with respect to the object of infallible teaching. Referring to the documents of Vatican I, he pointed out that a phrase in the proposed formula of papal infallibility, which would have limited it to cases in which the pope defines a doctrine as to be held *of faith*, was amended in the final version to omit the restrictive words "of faith." García Martínez also pointed out that the magisterium does not usually use the formula "to be held *of faith*" in proposing definitions. He argued that although Vatican I was broken off before it was able to complete its work, its documents make clear that the bishops agreed that infallibility is not limited to truths formally revealed, but also extends to points which are implicitly or virtually revealed, or necessarily connected with revelation. He urged that the

¹⁶ *Acta synodalia sacrosancti Concilii Oecumenici Vaticani II* 2/1 (Typis Polyglottis Vaticanis, 1971) 238: "Imo, licet singuli praesules infallibilitatis praerogativa non polleant, quando tamen, etiam per orbem dispersi, sed collegialem nexum servantes, authentice docentes una cum Romano Pontifice ut testes fidei in revelata fide tradenda in unam sententiam conveniunt, doctrinam Christi infallibili oraculo enunciant." See also the notes, pp. 249-50.

¹⁷ *Ibid.*: "Cum autem sive Romanus Pontifex sive Concilium sententiam definiunt, eam proferunt secundum ipsam Revelationem, cui omnes conformari tenentur. . . ."

statement of the object of infallible teaching be clarified by express language saying that it extends as far as the deposit of divine revelation *and the office of guarding and explicating it*, so that the magisterium is infallible both in defining truths expressly contained in the deposit *and in defining truths necessarily connected with this deposit*, and in condemning opposed errors.¹⁸

Bishop Arturus Tabera Araoz also sought amendments to the schema to make clear that the object of infallible teaching is not restricted to what is formally revealed.¹⁹

Bishop Francis Simons, on the contrary, wished to restrict the infallibility of the ordinary magisterium to the really central and more important truths; other truths would be taught infallibly only if they were solemnly defined. He wished to leave room for the possibility of error, although not of really harmful error, in the teaching proposed by the ordinary and universal magisterium.²⁰

Discussion on the floor of the Council of the chapter on the episcopacy in the new schema focused upon collegiality and other topics. However, when debate on this chapter was cut off on October 16, 1963, written comments were invited. Some of these are relevant.

Cardinal Bea asked what was meant in the concrete by the "collegial bond" required in the formula, quoted above, of the infallibility of the bishops dispersed throughout the world. He also suggested that restricting infallible definition to matters proposed *according to revelation itself* would be restricting it too much, since not everything which belongs to the deposit of faith necessarily comes from revelation properly so called.²¹ Bishop Charles G. Maloney also wanted to avoid restricting the object of infallibility.²²

Bishop Antonius de Castro Mayer, on the contrary, objected that the teaching of the bishops dispersed throughout the world was not *strictly* a collegial act. From this he argued that their teaching as such would not be infallible, since the mere objective agreement of many fallible acts could not render them infallible. He wished the Council to say only that when the bishops agree *in handing on divine revelation*, the doctrine they propose must pertain to the revealed deposit, and for this reason such a doctrine should be believed by everyone.²³

An amended text of the second schema on the Church was presented September 15, 1964, as the third session began. Several of the amend-

¹⁸ Ibid. 317-18 with 664-68.

¹⁹ Ibid. 736-37.

²⁰ Ibid. 317 with 727.

²¹ *Acta synodalia sacrosancti Concilii Oecumenici Vaticani II 2/2* (Typis Polyglottis Vaticanis, 1972) 650.

²² Ibid. 803-4.

²³ Ibid 721-23; these remarks were entered in the name of eight other bishops as well.

ments made together with the official reasons given for making them deserve close attention for understanding the final text. Article 19 of the previous text became article 25 of the amended text, which is close to *Lumen gentium* 25, as we now have it.

“Collegial bond” is replaced with “bond of communion,” to avoid the disputed question whether there is verified a *strictly* collegial act in the ordinary and universal magisterium.²⁴ Thus the Council prescind from the requirement of collegiality when it teaches that the bishops dispersed throughout the world proclaim the doctrine of Christ infallibly—and in so teaching Vatican II overrides the argument articulated by Bishop de Castro Mayer.

“In handing on the revealed faith” is replaced with “teaching on matters of faith and morals,” to avoid restricting the infallibility of the episcopal body to those points which are proposed by it to be believed as divinely revealed. “As witnesses of faith” is also omitted, because this was already stressed enough. But a qualification is added: the infallibility of the bishops is in question only when they propose a judgment as one *to be held definitively*.²⁵ Thus the Council leaves the ambit of infallibility open to matters not divinely revealed, and so meets the objections of Bishop Martínez and the reservations of Cardinal Bea²⁶ and Bishop Maloney—while conceding nothing to the demand of Bishop Simons for greater restrictiveness.

Both the prior text and the amended one proceed from their statement of the infallibility of the bishops dispersed throughout the world to a statement on the more manifest case of infallible teaching: when the bishops in council define. The prior text says that such definitions ought to be accepted “with a sincere mind.” The amended text substitutes “with the allegiance of faith,” in order to distinguish the assent due to infallible teaching from that due to authoritative but noninfallible teaching. But since the allegiance of faith admits various degrees of adhesion,

²⁴ *Acta synodalia sacrosancti Concilii Oecumenici Vaticani II* 3/1 (Typis Polyglottis Vaticanis, 1973) 250–51: “Loco ‘sed collegialem nexum servantes’ (T.P., p. 67, l. 39 s.), ponitur ‘*communio*is nexum servantes’, ad vitandam quaestionem disputatam utrum in magisterio ordinario et universali verificetur actus stricte collegialis, prouti in Concilio Oecumenico habetur.”

²⁵ *Ibid.* 251: “Pro verbis: ‘in revelata fide tradenda’ (T.P., pp. 67–68, l. 41–1), ponuntur verba ‘*res fidei et morum* docentes’, ne videatur infallibilitas corporis episcopalis coarctari tantum ad ea quae ab eodem ut divinitus revelata credenda proponuntur. Additur tamen quod agitur de casu quo proponunt sententiam *tamquam definitive tenendam*. Pariter, in eadem linea, omittuntur verba *ut testes fidei*, cum illa qualitas Episcoporum in eorum magisterio authentico sat superque includatur.”

²⁶ The phrase to which Cardinal Bea took exception (see n. 17 above) remains in the final paragraph of *Lumen gentium* 25, but the amendments make clear that “secundum” should not be understood in a restrictive sense; what is required to guard revelation as inviolable and expound it with fidelity also is “secundum ipsam Revelationem.”

a generic formula, "allegiance of faith," rather than "allegiance of *divine* faith" is adopted.²⁷ Thus the Council carefully makes room for cases in which the assent with which an infallible teaching is held definitively is an act of faith, but not an act of divine faith—that is, cases in which a truth not divinely revealed is infallibly taught.

The prior text was not clear and complete with respect to the object of infallibility, since it simply said that it extends as far as Christ willed his Church to be infallible in defining doctrine concerning faith or morals. The amended text puts the statement of the extent of the object of infallibility in better order and completes it. This statement is located immediately after the statement of the infallibility of the bishops whether dispersed throughout the world or gathered in council: "Now this infallibility, with which the divine Redeemer willed his Church to be endowed in defining doctrine of faith or morals, extends as far as extends the deposit of divine revelation, which must be guarded as inviolable and expounded with fidelity."²⁸ The explanation of this amendment makes two important points. The infallibility with which Christ wished his Church to be endowed is identified with the infallibility of the teaching Church. The object of the infallibility of the Church has the same extent as the revealed deposit, and so it extends to all things and only to things "which either directly belong to the revealed deposit itself, or which are required to guard as inviolable and expound with fidelity this same deposit."²⁹

²⁷ Ibid.: "Loco antiquioris formulae (T.P., p. 68, l. 7): 'sincero animo accipi debent' haec ponitur, quo melius urgeatur adhaesio definitionibus Concilii debita. Quae talis est, ut *sinceram animi adhaesionem superet*, quippe quae, ubi de definitionibus agitur, obsequium fidei penitus attingat: quod quidem fidei obsequium gradus diversos admittit iuxta maiorem vel minorem relationem veritatis definitae cum divina Revelatione. Ad hunc disparem adhaesionis gradum, adhibetur formula generica '*fidei obsequio*', non autem: '*fidei divinae obsequio*.'" This explanation bears directly upon the assent due to a *conciliar definition*, but it nevertheless makes clear that the Council leaves room for a case in which a truth not formally revealed is infallibly taught, and if there is room for such a case when the bishops in council define, there obviously also is room for such a case when they exercise their ordinary magisterium infallibly.

²⁸ Ibid. 221: "Haec autem infallibilitas, qua Divinus Redemptor Ecclesiam suam in definienda doctrina de fide vel moribus instructam esse voluit, tantum patet quantum divinae Revelationis patet depositum, sancte custodiendum et fideliter exponendum." The relationship between the last clause and the one which precedes it is almost impossible to capture in English, but the official explanation makes clear that what is meant is: the deposit of divine revelation *and* what is required to guard it as inviolable and expound it with fidelity.

²⁹ Ibid. 251: "Verba 'In definitionibus suis . . . esse voluit' (T.P., lin. 8–11) aliter ordinantur et notabiliter *complentur*, ut haec duo indubitanter affirmantur: a) Infallibilitas qua Christus Ecclesiam instructam esse voluit prorsus *identificatur* cum infallibilitate Ecclesiae docentis; et quidem: sive totius Episcopatus, sive singulariter Romani Pontificis. b) *Obiectum infallibilitatis* Ecclesiae, ita explicatae, eandem habet extensionem ac depositum revelatum;

Having received this amended text together with the explanations we have been discussing, the Fathers of Vatican II cast many separate votes on chapter 3 of the amended text. The text of the paragraph on the infallible teaching office of the bishops, whether dispersed throughout the world or united in council, was the subject of their twenty-fifth ballot; the single sentence, quoted above, regarding the extent of infallibility, was the subject of their twenty-sixth ballot. The former was approved by a vote of 2,134 to 63 with 1 null ballot; the latter was approved by a vote of 2,159 to 32 with 1 null ballot.³⁰

In these votes amendments were proposed. However, none of them was accepted; the text voted upon is that of *Lumen gentium*. Nevertheless, the disposition of two of the proposed amendments is of interest. One of them, although proposed for a different reason—to avoid any implication that a strictly collegial act was required for the infallible teaching of the bishops dispersed throughout the world—would have restored “to be held of faith” in place of the amended text’s “to be held definitively.” This amendment was rejected with the explanation that the approved text in no way suggests that the teaching act in question is strictly collegial.³¹

Another proposed amendment sought a statement concerning the infallibility of the Church in matters *connected* with the deposit of divine revelation. This demand was rejected with the explanation that what was sought is stated equivalently in the lines which state that infallibility “extends as far as the deposit of divine revelation, which must be guarded as inviolable and expounded with fidelity.”³² This response confirmed the previous interpretation of the language adopted, which admits within the scope of infallibility points which do not directly belong to the revealed deposit but which are necessary to guard and expound this deposit.

Our examination of the development of the text of *Lumen gentium* 25 makes two things clear. First, Vatican II purposely avoided saying that a strictly collegial act is required for the infallibility of the ordinary magisterium of the bishops. Second, the Council also studiously avoided limiting the infallibility of such teaching to cases in which a point divinely revealed is proposed for acceptance with the assent of divine faith.

We now proceed to consider four previous documents to which Vatican II refers in its footnote 40, appended to *Lumen gentium* 25, regarding the infallibility with which the bishops dispersed throughout the world pro-

ideoque extenditur ad ea omnia, et ad ea tantum, quae vel directe ad ipsum depositum revelatum spectant, vel quae ad idem depositum sancte custodiendum et fideliter exponendum requiruntur, ut habetur in Conc. Vat. I: Denz. 1836 (3070), ubi de infallibilitate Romani Pontificis.”

³⁰ Ibid. 406; *Acta synodalia sacrosancti Concilii Oecumenici Vaticani II* 3/8 (Typis Polyglottis Vaticanis, 1976) 53.

³¹ Ibid. 89.

³² Ibid.

claim the doctrine of Christ. The note first refers to Vatican I, *Dei Filius*, chapter 3: "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 her ordinary and universal magisterium proposes for belief as divinely revealed."³³ Since *Dei Filius* is concerned with divine revelation, this solemn teaching is limited to what is proposed as revealed and to be believed with divine faith. However, it is relevant to the teaching of Vatican II insofar as it definitively teaches that the scope of what must be believed is not restricted to what is defined, but extends to points proposed by the universal and ordinary magisterium.

The note of Vatican II goes on to refer to a passage added to Vatican I's first schema *De ecclesia*; this passage, as Vatican II notes, is drawn from Bellarmine, who in rejecting Protestant qualifications of the Church's infallibility writes:

Therefore, our view is that the Church *absolutely* cannot err, either in things absolutely necessary [for salvation] or in other matters which she proposes to us to be believed or to be done, whether expressly included in the Scriptures or not. And when we say "The Church cannot err," we understand this to apply both to the faithful as a whole and to the bishops as a whole, so that the sense of the proposition *The Church cannot err* is this: that what all the faithful hold as of faith, necessarily is true and of faith, and similarly what all the bishops teach as pertaining to faith, necessarily is true and of faith.³⁴

Bellarmino's statement refers explicitly not only to things which are to be *believed* but also to things which are to be *done*. He also excludes limiting the scope of infallibility to matters treated explicitly in Scripture or to matters which are absolutely essential for salvation.

The quotation from Bellarmine, although drawn from a schema of Vatican I which was never completed, attains a status which it would not have of itself, because it is cited by Vatican II as expressing a teaching comparable with its own. The same is true of the third document to

³³ DS (ed. 34) 1792 (3011): "Porro fide divina et catholica ea omnia credenda sunt, quae in verbo Dei scripto vel tradito continentur et ab Ecclesia sive solemnii iudicio sive ordinario et universali magisterio tamquam divinitus revelata credenda proponuntur." In Vatican II's official note, a typographical error makes the reference read "1712 (3011)."

³⁴ J. D. Mansi *et al.*, *Sacrorum conciliorum nova et amplissima collectio* 51 (Arnhem & Leipzig: H. Welter, 1926) 579C: "Nostra igitur sententia est, ecclesiam *absolute* non posse errare, nec in rebus absolute necessariis, nec in aliis quae credenda vel facienda nobis proponit, sive habeantur expresse in Scripturis sive non. Et cum dicimus, ecclesiam non posse errare, id intelligimus tam de universitate fidelium quam de universitate episcoporum, ita ut sensus sit eius propositionis, *ecclesia non potest errare*, id est, id quod tenent omnes fideles tanquam de fide, necessario est verum et de fide, et similiter id, quod docent omnes episcopi tanquam ad fidem pertinens, necessario est verum et de fide." Italics in Mansi.

which Vatican II refers in its note, Vatican I's revised schema of Constitution 2, *De ecclesia Christi*, together with Kleutgen's commentary:

And so we now define that this very high gift, by which *the Church of the living God is the pillar and bulwark of truth* [1 Tim 3:15], is placed in it so that neither the faithful as a whole in believing nor those who are appointed with the power of teaching the whole Church in exercising this office can fall into error. Therefore, all those points which in matters of faith and morals are everywhere held or handed down as undoubted under bishops in communion with the Apostolic See, as well as all those points which are defined, either by those same bishops together with the Roman pontiff or by the Roman pontiff speaking *ex cathedra*, are to be held as infallibly true.³⁵

This formulation of the Church's infallibility, including the infallibility of the bishops dispersed throughout the world, is very close to that finally adopted by Vatican II, especially in avoiding the limitation of infallibility to points divinely revealed and proposed for acceptance with an assent of divine faith. The parallel to Vatican II's "to be held *definitively*" in Vatican I's schema is "held or handed down as *undoubted*."

This mode of expression supports the position that truths required to preserve and unfold the deposit of faith can be taught infallibly by the ordinary magisterium even if they are not divinely revealed. The commentary of Kleutgen expands at length on this point, enlarging rather than delimiting the scope of the ordinary magisterium, and making a case for the position that the Church can teach infallibly on moral questions with respect to which revelation says nothing either explicitly or implicitly.³⁶

³⁵ Mansi 53, 313AB: "Iam vero praeelsum hoc donum, quo *ecclesia Dei vivi columna et firmamentum veritatis est* [reference to 1 Tim 3:15], in eo positum esse definimus, ut neque fideles universi credendo, nec ii, qui potestate docendi totam ecclesiam praediti sunt, cum hoc munere funguntur, in errorem labi possint. Quaecumque igitur in rebus fidei et morum ubique locorum sub episcopis apostolicae sedi adhaerentibus tanquam indubitata tenentur vel traduntur, necnon quae sive ab iisdem episcopis, accedente Romani pontificis confirmatione, sive ab ipso Romano pontifice ex cathedra loquente ab omnibus tenenda et tradenda definiuntur, ea pro infallibiliter veris habenda sunt."

³⁶ Mansi 53, 324–31. The final text of Vatican II's footnote does not provide page numbers in the reference to Kleutgen's commentary; the first text of the second schema misidentifies the proposed conciliar *text* as pertaining to the commentary, and then refers to a very brief statement at the beginning of the commentary proper (*Acta synodalia* 2/1, 249–50). On this basis, it does not seem that Vatican II's final reference ought to be read as an endorsement of Kleutgen's entire commentary, yet the commentary remains a very authoritative guide to what the proposed text of Vatican I meant. Moreover, it cannot be ruled out altogether that the note of Vatican II does refer to the entire commentary; all of it is relevant to the passage of the schema which is specifically cited. In recent years, it has often been said that Bishop Gasser, the *relator* of Vatican I's chapter on papal infallibility in *Pastor aeternus*, limited the extent of infallibility to *formally revealed* truths. But his explanation (Mansi 52, 1221–27 and 1316–17) clearly says that there is a secondary object of infallible teaching; Gasser held the affirmation of such a secondary object to be theologically certain, though not *de fide*.

The final document to which Vatican II refers in footnote 40 is Pius IX's letter *Tuas libenter*.³⁷ Pope Pius especially stresses in the passage cited that the submission of the act of divine faith cannot be limited to defined dogmas; this is the position which Vatican I subsequently incorporated in *Dei Filius*. The only interesting point which the papal letter makes which is not touched upon in the other documents is that the universal and constant consensus of Catholic theologians holding a point as pertaining to faith is evidence that the matter is one handed on by the ordinary magisterium of the Church dispersed throughout the world.

We are now in a position to comment upon the conditions, articulated by Vatican II, under which the bishops, dispersed throughout the world, proclaim the doctrine of Christ infallibly. There are four conditions: first, that the bishops remain in communion with one another and with the pope; second, that they teach authoritatively on a matter of faith or morals; third, that they agree in one judgment; and fourth, that they propose this judgment as one to be held definitively.

The first condition, as the evolution of the text shows, does not demand that the bishops act in a strictly collegial manner. No single act making explicit the intent to teach together is required. As Irenaeus says in the passage quoted by Cardinal Feltin: "The Church, although scattered throughout the whole world, diligently guards [the faith] as if she lived in one house; and similarly she believes these [truths], just as if she had one mind and one heart, and she harmoniously preaches and teaches and hands on these [truths], as if she possessed one mouth."³⁸ The bond of communion by which bishops remain in the Catholic Church—a bond broken by separated brethren—is necessary and sufficient for the bishops to share in the Church's united guarding, preaching, teaching, and handing on of the faith. By the same token, dissident judgments by bishops who do not maintain the bond of communion do not detract from the unity of judgment which is also required—the third of the conditions listed above—for the bishops to teach infallibly.

The second condition, that the bishops teach authoritatively on a matter of faith or morals, makes explicit the requirement that the bishops be teaching in their official capacity, not merely expressing views as personal opinions or in their capacity as private theologians. The expression "faith and morals" used to refer to the subject matter in which the magisterium is competent is a formula with a long history.³⁹ But nothing in the documentation we have examined warrants restricting the scope of "morals" as used by Vatican II to exclude specific moral norms, such as that on contraception. Moreover, Vatican II itself, in *Gaudium et spes* 51, at least affirmed the competency of the magisterium in this very

³⁷ DS 1683 (2879).

³⁸ *Against Heresies* 1, 10, 2 (PG 7, 552).

³⁹ See M. Bévenot, "Faith and Morals in Vatican I and in the Council of Trent," *Heythrop Journal* 3 (1962) 15–30.

matter when it stated: "Relying on these principles, it is not allowed that children of the Church in regulating procreation should use methods which are disapproved of by the magisterium in its explaining of the divine law."⁴⁰ The recognition of the proposal of a *moral* teaching as one to be held definitively has certain special features which we shall discuss at the end of the present section.

The third condition for infallibility in the teaching of the bishops dispersed throughout the world is that they agree in one judgment. The ordinary magisterium must be *universal* if it is to be infallible; this is explicit in the solemn teaching of Vatican I in *Dei Filius* as well as in Pius IX's letter *Tuas libenter*. According to the note of Bellarmine and the second schema *De ecclesia Christi* of Vatican I, the infallibility of the Church is present in the believing of the faithful *as a whole* and in the teaching of the bishops united with the pope *as a whole*.

The first thing to note about this required universality is that it is the moral unity of the whole body of bishops in communion with each other and with the pope, not the mathematical unanimity of the bishops which would be broken by the dissenting voice of any one individual. This point is made abundantly clear by an example used by Bishop Martin of Paderborn, when he explained in a speech at Vatican I what the Deputation of Faith intended in the paragraph—cited by Vatican II and quoted above—in which it formulated the point that the ordinary and universal magisterium determines an object of faith when it proposes something to be believed even without defining it. Martin's example was this: All Catholic bishops believed in the divinity of Christ before the Council of Nicaea, but this doctrine was not openly defined and openly declared until that Council; therefore, in the time before the Council of Nicaea, this dogma was taught by the ordinary magisterium.⁴¹ As everyone knows, there was mathematical unanimity among Catholic bishops on this doctrine neither before the definition of Nicaea nor even after it, except insofar as those who dissented from the definitive teaching of Nicaea may have ceased to be Catholic bishops.

Another point about the required universality is that if this condition has been met for some period in the past, it is not nullified by lack of present consensus among Catholic bishops. Each future bishop until the end of time will in his day share in the magisterium; the consensus of future bishops is not required for the Church to teach infallibly today. Just so, the present consensus of Catholic bishops was not required for the Church to teach infallibly in times past. A judgment once proposed by a body of teachers who could not err in proposing it and accepted by

⁴⁰ *Gaudium et spes* 51: "Filiis Ecclesiae, his principiis innixis, in procreatione regulanda, vias inire non licet, quae a Magisterio, in lege divina explicanda, improbantur."

⁴¹ Mansi 51, 224-25.

a body of believers who could not err in accepting it cannot subsequently be thrown into doubt because it is questioned or denied by some of the members of that body of teachers and believers; for each of these teachers can become a false prophet and each of these believers can be misled. What is once infallibly proposed must always afterward be accepted with absolute assurance of its truth. Once the truth about what Christ commanded has been proclaimed infallibly, every opinion incompatible with it must always afterward be excluded from gaining true normative force for the faith and life of the Church with which Christ remains forever.

It is only because the normative force of the teaching acts of present members of the magisterium is conditioned by the consensus of the past that Christian teachers who have found themselves in disagreement about what is essential to Christian faith and life have always appealed to tradition—that is, to what all *received* in common because all *were taught* the same things by a universal magisterium previously of one mind, a single mind formed by the saving truths and moral norms of Christ's teaching, all of which spring from the one font of his gospel.⁴² In appealing to tradition, Christian teachers always have assumed that what is universally received cannot be contradicted and abandoned, although it can be unfolded and explained in new ways.

What sort of evidence of the required universality can we expect and should we demand? The evidence must be this: that a certain point of teaching has been proposed by bishops repeatedly, in different times, in different places, in response to different challenges, that the bishops have articulated and defended this point of teaching in different intellectual frameworks, perhaps reinforcing it with varying disciplinary measures. Moreover, there must be no evidence that the point of teaching has ever been questioned or denied by any bishop or by anyone else authorized to participate in the Church's teaching mission without eliciting an admonition and a reaffirmation of what had been universally taught. Obviously, one cannot expect or demand positive evidence that every bishop has proposed the same teaching; available historical sources always will fall short of establishing so extensive a set of factual conclusions. To demand such evidence would be to set up an arbitrary barrier against every appeal to tradition.

In considering the evidence for the universality of a particular teaching in times past, the statements of Christians who were not bishops can be regarded as providing some evidence for universality. As Pius IX made clear, members of the Church who are not members of the hierarchical magisterium can participate in and bear witness to the infallible teaching of the ordinary magisterium. For example, theologians authorized by the

⁴² Vatican II, *Dei verbum* 7; cf. Council of Trent, DS 783 (1501).

bishops to teach and teaching in harmony with them share in their role.

Further, corresponding to the infallibility of the ordinary magisterium in teaching is the infallibility of the whole body of the faithful in believing.⁴³ Indeed, infallibility in teaching and infallibility in believing—like giving a gift and receiving the same gift—are two aspects of one reality, considered from relationally opposite points of view. Consequently, even the “last of the faithful” who receives the word of God and keeps it can contribute to the handing on of Christian faith and morals through his words, his religious and devotional acts, and his living a life suitable to one called with a vocation such as his.⁴⁴ Hence, evidence of the faith and practice of Christians generally, to the extent that their beliefs and lives were in harmony with what we know of the teaching of the ordinary magisterium, can supply evidence in support of the universality of the teaching of that magisterium.

The fourth condition for infallibility in the exercise of the ordinary magisterium is that the bishops agree in proposing one judgment to be held *definitively*. “To be held definitively” does not seem to be an expression with a previous theological history.⁴⁵ It cannot mean that the infallible teaching of the ordinary magisterium must be expressed in the language of solemn definition. The bishops dispersed throughout the world do not define and do not use the language of solemn definition, except when they quote some solemn definition previously made by the Church.

The genesis of the text makes clear that what is demanded if the exercise of the ordinary magisterium is to be infallible is that a judgment be proposed for acceptance with an assent of certitude, similar to the assent of divine faith, but not necessarily having the same motive as has the latter assent. The formula in the second schema *De ecclesia Christi* of Vatican I, which Vatican II cites as comparable with its own teaching, refers to points held or handed down *as undoubted*. Thus, “to be held

⁴³ A point which was expressly stated by Bellarmine (see n. 34 above) and included in Vatican I's schema *De ecclesia* (see n. 35 above) and taught by Vatican II, *Lumen gentium* 12.

⁴⁴ Cf. *Lumen gentium* 35; *Apostolicam actuositatem* 6.

⁴⁵ The important distinction between “to be believed” and “to be held” was made by Vatican I in defining papal infallibility; see J. Salaverri, S.J., *De ecclesia Christi* 3, nos. 909–10, in M. Nicolau, S.J., and J. Salaverri, S.J., *Sacrae theologiae summa 1: Theologia fundamentalis* (Madrid: B.A.C., 1962) 801–3. “Definitive” was not necessary in *Pastor aeternus*, because Vatican I is concerned there precisely with *definitions*. “Definitive” has irrelevant technical uses in medieval authors such as St. Thomas. However, in a submission by the Universitas Catholica “Sophia” to the preparatory commission for Vatican II, “tamquam definitive ab omnibus fidelibus tenenda tradantur” does appear in a proposal that the forthcoming Council teach that the ordinary magisterium can be exercised infallibly: *Acta et documenta Concilio Oecumenico Vaticano II apparando*, ser. 1, Vol. 4, pars 2 (Typis Polyglottis Vaticanis, 1961) 567.

definitively" clearly excludes cases in which a bishop proposes a view as a safe and probable opinion, but only as such.

A point of teaching surely is proposed as one to be held definitively if a bishop proposes it in the following way: not at his option but as part of his duty to hand on the teaching he has received; not as doubtful or even as very probable but as certainly true; and not as one which the faithful are free to accept or to reject but as one which every Catholic must accept.

When teachings on matters of morality are proposed, it would be a mistake to give an exclusively intellectualist sense to the expression "to be held definitively." The Church often proposes what Christians must do to be saved by exhortation and preaching which calls more directly for action than for intellectual assent. Intellectual assent is required, of course. But moral precepts demand something more: a sincere effort, at least, to fulfil the demand. Thus one who proposes a moral teaching as a point to be held definitively is not likely to say explicitly that this point deserves assent as a truth. Rather, he is likely to say that the teaching should be received as the will of God, which followers of Christ will try to live up to.

At the same time, one must distinguish the teaching of moral truths from the making of ecclesiastical laws which are necessary for the good order of the Church. The distinction is not always easy to keep in view, since the same language often is used in carrying out the two quite different functions of the bishops. However, moral teachings are characterized by the fact that they are proposed as norms which are received by the magisterium and which cannot be altered by ecclesiastical authority. The expressions "divine law" and "natural law" and "divine and natural law" often are used in recent documents of the magisterium in reference to moral teachings. Such expressions are never used to refer to ecclesiastical laws; these latter are proposed as practical dictates which are laid down and which can be changed as necessary by the governing authority of the pope and/or the bishops.

The teaching of Vatican II concerning the infallibility of the universal and ordinary magisterium is not in substance new. Christians always have believed that the apostles and their successors in proclaiming the doctrine of Christ, although dispersed throughout the world and the centuries, enjoy an unfailling charism of truth. St. Vincent of Lérins already attempted to formulate the conditions for the infallible exercise of the ordinary magisterium, and he insisted at the same time upon the possibility of genuine development of doctrine.⁴⁶ Vatican II's more precise articulation of the conditions under which the ordinary magisterium is exercised infallibly seems to us to have a providential timeliness.

⁴⁶ *Commonitorium primum* 2 and 23 (PL 50, 639-40 and 667-69).

In recent years those questioning received Catholic teachings frequently have adopted a method of dividing the sources from which the Church has her assurance of the truth of these teachings. Can the point of teaching be established with certitude from Sacred Scripture? If not, can the point of teaching be established with certitude to have its historical origin in apostolic preaching? If not, can the point of teaching be established with certitude by an authoritative but admittedly nondefinitive pronouncement of the contemporary magisterium? If not, can the point of teaching be established with certitude by rational arguments to the satisfaction of philosophers who do not even agree upon the proper method of philosophical argumentation? If the point of teaching can be established in none of these ways, surely it is open to question and perhaps false. The received teaching must be rethought; a substitute more acceptable to men and women of today must be admitted.

The universal and ordinary magisterium reintegrates what this method divides. The ordinary magisterium guards and expounds the deposit of divine revelation, and guides the faithful in reading Scripture so that they hear in it the saving word of God. The ordinary magisterium is the living voice of tradition, universally repeating as if with one mouth the common patrimony of faith. The universal and ordinary magisterium of the past provides the sure foundation upon which the pope and the bishops today can confidently proclaim the constant and very firm teaching of the Church. And the consensus of Catholic bishops in one judgment enlightens the mind even in those matters to which its power naturally extends, so that the sophistries which are at odds with faith are exposed and the Christian philosophies which promote understanding of saving truth are confirmed and commended.

III

In this section we show that the received Catholic teaching on the morality of contraception meets the conditions set down by Vatican II, and thus is an infallible teaching. We first show that the received teaching was *universally proposed by Catholic bishops* up to 1962. Then we show that this *moral norm was authoritatively proposed as one to be held definitively*. Finally, we look at the great papal statements of Pius XI, Pius XII, and Paul VI in the light of the Church's previous teaching and belief.

Although the historical study of contraception by John T. Noonan, Jr., is defective in certain respects, it does offer substantial evidence for the universality of the Catholic Church's teaching on contraception up to 1962. This evidence is summed up by Noonan himself:

The propositions constituting a condemnation of contraception are, it will be seen, recurrent. Since the first clear mention of contraception by a Christian

theologian, when a harsh third-century moralist accused a pope of encouraging it, the articulated judgment has been the same. In the world of the late Empire known to St. Jerome and St. Augustine, in the Ostrogothic Arles of Bishop Caesarius and the Suevian Braga of Bishop Martin, in the Paris of St. Albert and St. Thomas, in the Renaissance Rome of Sixtus V and the Renaissance Milan of St. Charles Borromeo, in the Naples of St. Alphonsus Liguori and the Liège of Charles Billuart, in the Philadelphia of Bishop Kenrick, and in the Bombay of Cardinal Gracias, the teachers of the Church have taught without hesitation or variation that certain acts preventing procreation are gravely sinful. No Catholic theologian has ever taught, "Contraception is a good act." The teaching on contraception is clear and apparently fixed forever.⁴⁷

Noonan's book was published in 1965. Since that time a great number of theologians and other scholars, including many who think that contraception could be accepted as moral by the Church, have interested themselves in the subject. Collectively these scholars certainly have a very thorough acquaintance with the data; they surely would have published any evidence that the universality of the Church's teaching was interrupted by the contrary teaching of any bishop or of any other competent spokesman of Catholic thought. But no such evidence has come to light, and so there is a compelling reason to think that no such evidence exists.

We conclude that the historical evidence shows that Catholic bishops dispersed throughout the world agreed in one judgment on the morality of contraception, a judgment which remained substantially the same and which was universally proposed at least until 1962. The weight of this uniform teaching can be gauged more accurately if one considers certain facts, most of which are recorded by Noonan in his work.

First, not only Jerome and Augustine but also certain Eastern Fathers such as Epiphanius and Chrysostom condemned contraception.⁴⁸ Second, many of those who taught that acts intended to prevent procreation are gravely evil were bishops; many who were not bishops are canonized saints, including several who were Doctors of the Church. Third, the canon law of the universal Church from the thirteenth century until 1917 included the canon *Si aliquis*: "If anyone for the sake of fulfilling sexual desire or with premeditated hatred does something to a man or to a woman, or gives something to drink, so that he cannot generate, or she cannot conceive, or offspring be born, let it be held as homicide."⁴⁹ Of

⁴⁷ John T. Noonan, Jr., *Contraception: A History of Its Treatment by the Catholic Theologians and Canonists* (Cambridge, Mass.: Harvard Univ., 1965) 6. Noonan immediately proceeds to call the apparent fixity into question, and suggests that there might be room for a development of doctrine which would contradict the received teaching. We consider this suggestion in section 4.

⁴⁸ *Ibid.* 96-99; Ambrose also is mentioned (99) as perhaps condemning contraception.

⁴⁹ *Corpus iuris canonici*, ed. A. L. Richter and A. Friedberg (Leipzig: Tauchnitz, 1881) 2, 794: "Si aliquis causa explendae libidinis vel odii meditatione homini aut mulieri aliquid

course, the old canon law included many disciplinary rules which were subject to change and were recognized to be such. But this canon was placed in a book on crimes, and nothing was classed as a crime unless it was considered to be a grave sin. It might be objected that this canon was null, since there is little if any historical evidence that persons who practiced contraception were treated as murderers. But this objection overlooks the teaching function of canon law, which functioned in moral formation analogously to the way in which creeds function in the handing on of the essentials of doctrine: as creeds summarize saving truth, canon law from the Middle Ages until 1917 codified moral formation. The *Roman Catechism* of 1566, authorized by the Council of Trent and prepared under St. Pius V, incorporated the teaching of *Si aliquis* as to the use of medicines to impede procreation.⁵⁰

Fourth, there is a constant consensus of Catholic theologians in modern times. This consensus is important because any indefiniteness in the tradition regarding methods of contraception, its sinfulness in every single act, and other matters was eliminated either by the explicit statements of the modern theologians or by the general principles which they shared in common. This is especially true of the works in moral theology generally in use in the nineteenth and twentieth centuries.⁵¹

fecerit, vel ad potandum dederit, ut non possit generare, aut concipere, vel nasci soboles, ut homicida teneatur." Noonan (178) translates "causa explendae libidinis," which is broad enough to cover all motivation by sexual impulse, "to satisfy his lust," which unnecessarily limits the motive to habitual vice.

⁵⁰ Noonan, *Contraception* 361.

⁵¹ This point can be verified by an examination of some of the most used manuals (we include a few in canon law and pastoral medicine): (1) J. Aertnys, C.Ss.R., and C. A. Damen, C.Ss.R., *Theologia moralis* 2 (17th ed.; Turin: Marietti, 1956-58) nos. 893-95; (2) G. d'Annibale (Cardinal), *Summula theologiae moralis* 2 (5th ed.; Rome: Desclée, 1908) n. 65; 3, n. 469; (3) J. Antonelli, *Medicina pastoralis in usum confessoriorum* 2 (5th ed.; Rome: Pustet, 1932) 192-93; (4) A. M. Arregui, S.J., *Summarium theologiae moralis* (20th ed.; Bilbao: Mesajero del Corazón de Jesús, 1952) nos. 813-14; (5) A. Ballerini, S.J., *Opus theologicum morale in Busenbaum Medullam*, ed. D. Palmieri, S.J., 6 (Prati: Giachetti, 1889-93) nos. 439-51; (6) J. de Becker, *De matrimonio* (9th ed.; Louvain: Ceuterick, 1931) 125; (7) A. Berardi, *Praxis confessoriorum seu moralis theologiae theoretico-practica* 1 (3rd ed.; Faenza: Novelli, 1898-99) nos. 957-61; (8) G. Bucceroni, S.J., *Institutiones theologiae moralis* 4 (6th ed.; Rome: Pont. Inst. Pii IX, 1914-15) no. 1067; (9) C. F. N. Capellmann, *Pastoralmedizin*, ed. W. Bergmann (17th ed.; Paderborn: Bonifacius, 1914) 260; (10) F. M. Cappello, S.J., *Tractatus canonico-moralis de sacramentis* 5 (7th ed.; Turin: Marietti, 1911) no. 816; (11) H. Davis, S.J., *Moral and Pastoral Theology*, ed. L. W. Geddes, S.J., 4 (7th ed.; London: Sheed & Ward, 1958) 260-61; (12) J. Ferreres, S.J., *Compendium theologiae moralis*, ed. A. Mondria, S.J., 2 (17th ed.; Barcelona: Subirana, 1949-50) nos. 1078-79; (13) E. Génicot, S.J., and J. Salsmans, S.J., *Institutiones theologiae moralis*, ed. A. Gortebecke, S.J., 2 (17th ed.; Brussels: L'Ed. Universelle, 1951) no. 665; (14) T. M. J. Gousset (Cardinal), *Théologie morale à l'usage des curés et des confesseurs* 2 (5th ed.; Paris: Lecoffre, 1848) nos. 892-93; (15) J. P. Gury, S.J., *Compendium theologiae moralis*, ed. A. Ballerini, S.J., 2 (12th ed.; Prati: Giachetti, 1894) nos. 730 and 733-34; (16) A. Haïne,

We are not saying that all of the principles shared by moral theologians during this period deserve the same respect as the Church's substantive moral teaching. We are only saying that their shared principles preclude suggestions that they did not all mean the same thing when they agreed, for example, that acts intended to impede procreation are intrinsically and gravely evil.

The consensus of modern theologians supports the thesis that the received teaching was universally proposed by Catholic bishops, because the works of the theologians were authorized by the bishops for use in seminaries, and thus for the training of confessors who communicated Catholic moral teaching to the faithful in the confessional, in premarital instructions, in the preaching of missions, and so on. As authorized agents of the bishops—during centuries in which the bishops were careful not to share their teaching authority with theologians whose views they did not accept—these *approved authors* teaching in their manuals exercised in

Theologiae moralis elementa 4 (Louvain: Fonteyn, 1882–84) 206; (17) F. Hürth, S.J., *De statibus* (Rome: Gregorian Univ., 1946) no. 702; (18) T. A. Iorio, S.J., *Theologia moralis* 3 (3rd ed.; Naples, d'Auria, 1947) nos. 1202–6; (19) H. Jone, O.F.M.Cap., *Moral Theology* (Westminster, Md.: Newman, 1945) nos. 757–59; (20) F. P. Kenrick (Bishop), *Theologia moralis* 2 (Mechlin: Dessain, 1861) 300; (21) A. Koch, *A Handbook of Moral Theology*, ed. A. Preuss, 5 (St. Louis: Herder, 1918–24) 473; (22) A. Konings, C.Ss.R., *Theologia moralis s. Alphonsi in compendium redacta* 1 (7th ed.; New York: Benziger, 1888) nos. 1649–53; (23) A. Lanza and P. Palazzini, *Theologia moralis: Appendix de castitate et luxuria* (Turin: Marietti, 1953) 107–12; (24) A. Lehmkuhl, S.J., *Theologia moralis* 2 (12th ed.; Freiburg: Herder, 1914) 1093–96; (25) S. A. Loiano, O.F.M.Cap., *Institutiones theologiae moralis* 5 (Turin: Marietti, 1950–52) nos. 156–59; (26) C. Marc, C.Ss.R., and X. Gester mann, C.Ss.R., *Institutiones morales alphonsianae* 2 (20th ed.; Lyons: Lutetiae, 1946) nos. 2114–15; (27) J. A. McHugh, O.P., and C. J. Callan, O.P., *Moral Theology: A Complete Course* 2 (New York: Wagner, 1958) no. 2620; (28) B. H. Merkelbach, O.P., *Summa theologiae moralis* 3 (8th ed.; Bruges: Desclée, 1949) nos. 954–55; (29) E. M. Müller (Bishop), *Theologia moralis*, ed. A. Schmukenschlaeger, 2 (8th ed.; Vienna: Mayer, 1899) 525–26; (30) A. Niedermeyer, *Handbuch der speziellen Pastoralmedizin* 1 (Vienna: Herder, 1949) 272–320; (31) H. Noldin, S.J., *Summa theologiae moralis*, ed. A. Schmitt, S.J., and G. Heinzl, S.J. (35th ed.; Innsbruck: F. Rauch, 1956), *Complementum de castitate*, nos. 72–73; (32) G. B. Pighi, *Cursus theologiae moralis* 4 (3rd ed.; Verona: Cinquetti, 1921) nos. 608–9; (33) A. Piscetta, S.S., and A. Gennaro, S.S., *Elementa theologiae moralis* 7 (2nd ed.; Turin: Internazionale, 1934) nos. 233–35; (34) D. M. Prümmer, O.P., *Manuale theologiae moralis*, ed. E. M. Münch, O.P., 3 (10th ed.; Barielem: Herder, 1945–46) nos. 699–700; (35) A. Sabetti, S.J., *Compendium theologiae moralis*, ed. T. Barrett, S.J. (31st ed. of Gury; New York: Pustet, 1926) nos. 937–41; (36) T. Slater, S.J., *A Manual of Moral Theology* 2 (5th ed.; New York: Benziger, 1925) 249; (37) A. de Smet, *De sponsalibus et matrimonio* (4th ed.; Bruges: Beyaert, 1927) nos. 239–40; (38) A. Tanqueray, *Synopsis theologiae moralis et pastoralis*, ed. J. B. Bird and F. Cimetier, 1 (14th ed.; Paris: Desclée, 1955) supp., nos. 38–42; (39) A. Vermeersch, S.J., *Theologia moralis* 4 (3rd ed.; Rome: Gregorian Univ., 1933–37) no. 76; (40) G. J. Waffelaert (Bishop), *Tractatus theologici de virtutibus cardinalibus* 1 (Bruges: Vandenberghe-Denaux, 1885–89) 267–68; (41) L. Wouters, C.Ss.R., *De virtute castitatis et de vitiis oppositis* (Bruges: Beyaert, 1932) nos. 111–12; (42) M. Zalba, S.J., *Theologiae moralis summa* 3 (Madrid: B.A.C., 1958) nos. 1514–18.

a real though mediate way the teaching authority of each and every bishop who sent his seminarians to seminaries in which these manuals were required textbooks.

Fifth, both the Holy See and many individual bishops and groups of bishops in the nineteenth and twentieth centuries insisted upon the received Catholic teaching. Of these acts Noonan says:

The instructions from Rome from 1816 to 1930 had interacted with the acts of the national hierarchies. It would be a mistake, I believe, to see the national statements against contraception as dictated from Rome, or the Roman interventions as brought about by national demands. A common tradition and theological training, supervised from Rome, suffices to explain the harmony of action.⁵²

We think this opinion is correct. Moreover, some decisions of the Holy See and some statements of national hierarchies both refer to the approved authors of the theological manuals and subsequently are referred to in later editions of the manuals. This situation is a paradigm case of the ordinary magisterium of the Church, dispersed throughout the world, agreeing in one judgment and universally proposing it as if with one voice.

Sixth, when the statements of Pius XI and Pius XII summed up and reaffirmed this existing consensus, there was no significant negative reaction within the Catholic Church. Not only did the bishops readily accept the teaching of *Casti connubii* but many actively took part in an effort to carry out its program by encouraging family-life movements, by instructing and directing their own clergy, and by making public statements repeating the teaching when such statements seemed called for.

These considerations, we believe, make clear that the received Catholic teaching on the morality of contraception was *universally* proposed by Catholic bishops in communion with one another and with the successor of Peter. Bishops and popes personally repeated the teaching in official acts, and by their authority they guided, supported, and endorsed the teaching by way of the seminaries in its direct application in pastoral practice.

But if the teaching was universal and even authoritative, was it proposed authoritatively as a point *to be held definitively*? The following considerations show that it was. First, a negative point. We know of no evidence—and Noonan points to none—that anyone handed on the received teaching as if it were a private opinion, a merely probable

⁵² Noonan, *Contraception* 431–32. Noonan's analyses (397–405 and 415–19) of the responses of the Holy See emphasize their incidental differences with respect to co-operation, interrogation, and so on, thus obscuring the central point that every one of these responses says or takes for granted that the contraceptive acts in question are objectively grave matter (see Ford-Kelly, *Contemporary Moral Theology* 2, 258–60).

judgment, or a commendable ideal which the faithful might nevertheless blamelessly choose to leave unrealized. The teaching always was proposed as a received and certain part of the obligatory moral teaching of the Church.

Second, the teaching is that acts intended to impede procreation are in species gravely evil—that is, are the matter of mortal sin. This fact—which was pivotal in the argument for the binding force of the tradition which we quoted in section 1—makes clear the unqualified character of the intellectual assent demanded for the teaching.⁵³ When the Church proposes a moral teaching as one which Christians must try to follow if they are to be saved, she a fortiori presents the teaching as one which must be accepted as certain. The magisterium permitted no differing opinions about the morality of contraception, and so probabilism was inapplicable. Thus the conditions under which the teaching was proposed left no room for doubt in the matter.

Third, the insistent repetition of the received teaching in recent times when it was called into question outside the Catholic Church often included and always implied the proposition that this is an obligatory teaching, one which every Catholic must hold even though it is denied by other Christians.

Fourth, the teaching on the morality of contraception often was proposed as a moral norm divinely revealed. Since it was proposed as revealed, a fortiori it was proposed as a teaching *to be held definitively*. We prescind from the question whether the evidence alleged to show that the condemnation of contraception is divinely revealed does or does not show this. The point we wish to make is simply this: when one who is proposing a teaching appeals to divine revelation to confirm the truth of what he proposes, he implicitly calls for an assent of divine faith, and thus proposes the teaching as one to be held definitively.

Very often those who proposed the received Catholic teaching on contraception explicitly appealed to Sacred Scripture. In making this explicit appeal—when both those who were teaching and those who were taught regarded the passage cited as the revealed word of God—those who made it clearly implied that the teaching proposed was divinely revealed.

The passage most often explicitly cited was Gen 38:9–10, concerning Onan. As we have said, we prescind from the question of what this passage shows. Whatever one thinks it shows, the fact is that this passage

⁵³ In section 2 we pointed out that Kleutgen's commentary on Vatican I's second schema *De ecclesia* makes a case for infallibility in the moral teaching of the magisterium, even assuming such teaching extends to points in no way contained in revelation. One of Kleutgen's arguments (Mansi 53, 327C) turns upon the precise point of the gravity of the Church's judgments in her moral teaching.

was often cited to support the teaching that contraception is gravely evil. Those who used the passage often clearly proposed the teaching for belief as divinely revealed.

In a symposium conducted after the publication of *Humanae vitae*, Msgr. Joseph Coppens, an Old Testament scholar, made the point we are making:

The role of the personal authority of the pope seems to be sometimes exaggerated. As I see it the pope's main argument is not based in first instance upon the guidance of the Spirit in his personal case, but upon the position that the teaching of the encyclical is *constans ecclesiae doctrina*. All moral textbooks, theological and philosophical, from the earliest centuries on, speak of Onan's sin as contraception. (Whether this agrees with contemporary scholarship, which sees Onan's sin as a refusal to obey the levirate law, is not at issue here.) Onan's sin has been constantly and universally condemned; this is the constant teaching referred to in the encyclical.⁵⁴

Undoubtedly, Coppens overstated the extent to which appeal was made to the text on Onan.⁵⁵ But it was very widely used, especially during the nineteenth and twentieth centuries, when "onanism" and "conjugal onanism" became the standard expressions in the theological literature for contraception as such. Many authors used Gen 38:9-10 as a proof-text for the teaching condemning all positive acts intended to impede procreation; some authors explicitly stated that this text showed that God Himself, as author of nature and supreme lawgiver, condemned the sin as mortal.⁵⁶ Several other authors simply note that the sin of contraception is named from Onan's act and refer to the passage, leaving the reader to draw his own conclusions.⁵⁷

Authors who do not cite the text almost always fall into one of two categories: either they set forth moral norms briefly with no theological arguments to support them, or they systematically use only certain theological loci, such as statements by other theologians or statements of the magisterium. Only a few theologians mention the text on Onan and forbear to use it because of doubts about its relevance; while they agree

⁵⁴ Joseph Coppens, in "A Symposium on 'Humanae vitae' and the Natural Law," *Louvain Studies* 2 (Spring 1969) 224.

⁵⁵ But it was appealed to very frequently; see Noonan, *Contraception* 97-98, 101, 137-38, 139 (n. 35), 161-62, 225-26, 234, 298, 343, 359, 360, 361 (n. 38), 364, 367, 374, 403, 405, 420, 423, and 427. See also our next two footnotes.

⁵⁶ Of the authors listed in our n. 51, those numbered as follows in one way or another invoke the authority of Gen 38:9-10: 1, 2, 3, 4, 5, 8, 10, 11, 12, 14, 15, 17, 18, 20, 22, 25, 26, 27, 29, 30, 31, 32, 35, 36, 37, and 40. The following, while they reject contraception as gravely evil regardless of the method, take "onanism" in a narrow sense, and so perhaps only regard the passage as relevant to *coitus interruptus*: 2, 5, 14, 15, 22, 29, 31, 32, and 40.

⁵⁷ The following refer to Gen 38:9-10 for the *name* of the sin: 13, 28, 33, 34, and 42.

in condemning all contraceptive acts as gravely evil, they offer other grounds for the condemnation.⁵⁸

In the same symposium from which we have quoted, Coppens also referred to Rom 1:26–27 as a source of the constant teaching. Again we prescind from the question of what this passage shows. Moreover, in this case the text was not often *explicitly* appealed to in support of the condemnation of contraception. However, contraception often was condemned as a sin against nature; it was rejected as evil inasmuch as it is contrary to the natural use of marriage.⁵⁹ This characterization of contraception, by those who believed it revealed in Rom 1:26–27 that it is gravely sinful to exchange the natural for an unnatural use, implied that it is revealed that contraception is gravely sinful.

Two other ways of categorizing acts intended to impede procreation also imply that it is revealed that such acts are gravely evil—namely, the characterization of contraceptive acts as homicide⁶⁰ and as adultery.⁶¹ From the Sermon on the Mount and the *Didache* down to today, Christians have used the Ten Commandments as a framework to be authentically developed by expansion and deepening for their own moral formation. To call contraceptive acts “homicide” or “anticipated homicide” or “quasi homicide” or “interpretively homicide” was to assimilate them to a species of acts everyone believed to be condemned by divinely-given moral law, and so was implicitly to propose the condemnation of contraception as revealed. The same is true when contraceptive acts were characterized as adulterous.

If one considers the explicit appeals made to Gen 38:9–10 together with the implicit appeals made to the same passage, to Rom 1:26–27, and to the Ten Commandments, one realizes that most who handed on the Catholic teaching on contraception claimed the authority of Scripture, which they believed to be the authority of divine revelation, in support of this teaching. Whether one thinks this claim was valid or not—a

⁵⁸ The following refer to Gen 38:9–10 but forbear to rely on its authority: 23, 38, and 39.

⁵⁹ See Noonan, *Contraception* 131, 172–73, 215, 223–27, 242, 260–61, 357, and 366–68. It also seems to us that the widespread use of the “perverted-faculty argument” is explained less by its contribution to rational clarification of the received teaching than by its evocation of the perversity of contraception as against the natural use of marriage.

⁶⁰ *Ibid.* 91–94, 98–99, 100–101, 146, 155, 160, 167, 168, 172–78, 232–37, and 360–65. It must be recalled that *Si aliquis* stipulated that contraceptive acts be held as homicide. We regard the assimilation of contraception to homicide as a sound insight. Contraception does not attack an existing human life, indeed, but it is an expression of a heart set against the beginning of a new life; for the contraceptive act in and of itself does nothing but intervene against human life in the moment in which it would be passed on. See Germain Grisez, “A New Formulation of a Natural-Law Argument against Contraception,” *Thomist* 30 (1966) 343–61.

⁶¹ See Noonan, *Contraception* 136–37, 174–77, and 372; this interpretation of the malice of contraception was spread by the use of *Aliquando* by both Gratian and Peter Lombard.

question we are not considering here—no one can deny that those who made it proposed the teaching on behalf of which they made it as a moral norm *to be held definitively*.

The great papal statements of Pius XI, Pius XII, and Paul VI are best understood in the light of the previous teaching of the magisterium. These papal statements repeat, articulate, share in, and contribute to the handing on of the teaching by the ordinary magisterium. When the popes dealt with the question of contraception, it already was an old question, not a new one. They reaffirmed an established Christian moral norm.

Pius XI condemns contraception as a sin against nature. He claims that Holy Writ bears witness that God pursues with the greatest detestation this abominable crime; having made this claim, he uses St. Augustine's exegesis of Gen 38:9–10 to support it.⁶² He also invokes the constancy of the tradition, saying that the Christian doctrine on contraception was handed down without interruption from the very beginning. He speaks on behalf of the Catholic Church, as God's ambassador, and thus claims to restate nothing other than the demand of God's will, which must be accepted as a condition of salvation.⁶³

Pius XII officially summarizes the teaching of Pius XI. In doing so, he asserts that his predecessor solemnly proclaimed *anew*—thus making reference to tradition—the fundamental law governing the marital act. Pius XII also articulates the definitive character of the received teaching in a most emphatic way: "This teaching is as valid today as it was yesterday; and it will be the same tomorrow and always," thus applying to this point of moral teaching the unalterability which Heb 13:8 ascribes to Jesus Christ himself.⁶⁴

Paul VI in *Humanae vitae* uses more cautious language. But his stance is the same as that of his two predecessors insofar as he also confirms the prior teaching of the ordinary and universal magisterium. He states that the principles of the moral teaching on matrimony are "based on the natural law, illuminated and enriched by divine revelation" (section 4); some of the conclusions of the papal Commission for the Study of Problems of Population, Family, and Birthrate *could not* be accepted as final *mainly* because they diverged from "the moral doctrine on matrimony, proposed by the magisterium of the Church with constant firmness" (section 6); married persons must conform to the creative plan of

⁶² It is important to note that Pius XI's appeal to the authority of Scripture is complete *before* his reference to Augustine and the latter's exegesis of Gen 38:9–10. The reference itself is a summoning of a witness and is hardly incidental, as was mistakenly alleged by some theological *periti* of the pontifical Commission for the Study of Problems of Population, Family, and Birthrate (Robert G. Hoyt, ed., *The Birth Control Debate* [Kansas City, Mo.: National Catholic Reporter, 1968] 63).

⁶³ *Casti connubii* (AAS 22 [1930] 559–60).

⁶⁴ "Address to the Midwives" (AAS 43 [1951] 843).

God which "the constant teaching of the Church declares" (10); the relevant norms of natural law are interpreted by the constant teaching of the Church (11); the Church did not make and cannot change these norms, of which she is only the guardian and interpreter (18); the Church's teaching on contraception "promulgates the divine law" (20); the Church *hands down* these inviolable requirements of divine law (25); the received teaching on contraception is part of the "saving teaching of Christ" (29).

None of these popes says that the teaching he reaffirms has been proposed infallibly by the ordinary magisterium. But their statements are not merely compatible with this position; they supply very important evidence in support of it; and, indeed, the substance and the manner of their statements is difficult to explain unless one supposes that these three popes implicitly supposed—though not necessarily explicitly thought—that the position they reaffirmed is infallibly taught, and hence is one to which the Catholic Church is unalterably committed.

We think the facts show as clearly as anyone could reasonably demand that the conditions articulated by Vatican II for infallibility in the exercise of the ordinary magisterium of the bishops dispersed throughout the world have been met in the case of the Catholic Church's teaching on contraception. At least until 1962, Catholic bishops in communion with one another and with the pope agreed in and authoritatively proposed one judgment to be held definitively on the morality of contraception: acts of this kind are objectively, intrinsically and gravely evil. Since this teaching has been proposed infallibly, the controversy since 1963 takes nothing away from its objectively certain truth. It is not the received Catholic teaching on contraception which needs to be rethought. It is the assumption that this teaching could be abandoned as false which needs to be rethought.

IV

The preceding argument raises a number of questions and is bound to draw certain objections. In this section we deal with a few of the more likely and the more important of these questions and objections.

The conditions for infallible teaching articulated by Vatican II make clear that if the Catholic teaching on contraception has been proposed infallibly, then this moral norm either is contained in divine revelation itself or has been proposed by the teaching Church because this was required for the magisterium to fulfil its responsibility to guard as inviolable and expound with fidelity the deposit of divine revelation. This raises the question: Is the norm contained in divine revelation, and, if it is not, how is it connected with revelation?

We do not assert that the norm is divinely revealed. This question is

one from which we have prescinded. Our position rather is this: if the norm is not contained in revelation, it is at least connected with it as a truth required to guard the deposit as inviolable and to expound it with fidelity. In support of this position, we first point out that no one has seriously tried to show that anything in revelation is *incompatible* with the Church's teaching on the morality of contraception. Admittedly, it does not seem there is any way to establish *conclusively* that this teaching either pertains to revelation or is connected with it apart from the fact that the ordinary magisterium has proposed the teaching in the manner in which it has, and the faithful as a whole until recently have accepted the norm as binding. But a similar state of affairs has been used as a basis for solemnly defining at least one dogma: that of the Assumption of the Blessed Virgin Mary.⁶⁵

The next point we wish to make is that while we ourselves do not assert that the condemnation of contraception is revealed, it still is significant that most of those who handed down this teaching, in one way or another, more or less explicitly, *proposed* it as revealed.

Few today assert that there is an explicit condemnation of contraception in Gen 38:9-10 or Rom 1:26-27, or that there is an implicit condemnation of it in the Ten Commandments. However, those who invoked these texts when they taught that contraceptive practices are forbidden by God did not interpret them in isolation from the whole body of Christian teaching. Christians grounded their moral insights more upon their meditation upon the whole of divine revelation—contained both in Scripture and in the concrete reality of Christian life—than upon an exact reading of isolated texts. Once in possession of these moral insights, and convinced that they formulated demands of God's will for Christian life, Christians implicitly or explicitly relied upon particular texts, using them as authoritative witnesses to the truth and the obligatory character of the moral norms which seemed to them to belong to the law of Christ.

Thus, exegetical arguments can go on forever, but the fact remains that a great many Christian teachers and scholars who firmly believed that contraception is contrary to the will of God also were convinced that they could use Gen 38:9-10 or some other text *as an illustration* of this moral norm. Perhaps those who used such a text as an illustration were mistaken in doing so. But if one bears in mind what they were doing, how can one be *certain* that they were mistaken? Even if the moral truth which was illustrated by such an appeal to Scripture is not itself revealed, still the use of Scripture to illustrate a teaching closely connected with revelation would not be inappropriate.

⁶⁵ In defining the dogma of the Assumption, Pius XII argues—"Munificentissimus Deus" (AAS 42 [1950] 757-69)—from the universality of the acceptance of the doctrine as a matter of faith to its objective status as a truth pertaining to divine revelation.

Furthermore, apart from the texts which are commonly used as illustrations, there are certain scriptural and historical data which suggest that contraception might have been rejected from the very beginning of Christianity. There are explicit rejections of *pharmakeia* in Gal 5:20 and in Rev 9:21, 21:8, and 22:15. *Pharmakeia*, often translated "sorcery" or "witchcraft," refers to the use of potions, including abortifacient and sterilizing drugs.⁶⁶ As Noonan points out, it is possible that these passages reflect the primitive Christian judgment on contraception. They might have been understood by their first readers as easily as the statement that the Church's teaching excludes use of the "pill" is understood today, even without mention of what the "pill" is and what it is used for.

There also is evidence in ancient Jewish writings which shows that Jews at the time of Christ rejected at least some methods of contraception.⁶⁷ Jesus did not abolish Jewish morality; he purified and restored it, deepened and transformed it into a new morality suited to those called to be children of God. If Scripture does not record the judgment of the primitive Church upon contraception, still such a judgment may well have been made, appropriating and refining an existing Jewish moral norm. In this way the received Catholic teaching on the morality of contraception could have been included in the earliest Christian moral instruction. There is no need to assume that all the details of moral instruction dating from apostolic times are mentioned explicitly in the New Testament.

The preceding considerations could be used to argue that the condemnation of contraception might be included in revelation. But we prescind from the question of what is or might be revealed, and we use these considerations only to show how the norm excluding contraception might at least be connected with divine revelation.

⁶⁶ See Noonan, *Contraception* 44-45. Cf. *Didache* 2, 2a, and 5, 1c, where the context more clearly suggests that contraception is in question. Concerning the *Didache*, its antiquity and importance, see Robert M. Grant, ed., *The Apostolic Fathers 3: Barnabas and the Didache*, tr. Robert A. Kraft (New York: Nelson, 1965); the passages cited are annotated pp. 144 and 157.

⁶⁷ Noonan, *Contraception* 49-54. Cf. David M. Feldman, *Birth Control in Jewish Law* (New York and London: N.Y.U. Press and Univ. of London Press, 1968) 109-93. Although Feldman is pro-contraception, he carefully cites many basic and secondary sources which are anti-contraception. The basic Talmudic texts, which record an earlier oral tradition, are *Yebamoth* 34b, *Niddah* 13a, and *Shabbath* 110b. These texts indicate there was near unanimity among the rabbis that male diversion of semen from procreation is forbidden (Gen 38:9-10 is understood in this sense); no one approved sterilization for either sex. The debate was whether women could use birth-control devices. Feldman's discussion of the Baraita of the "Three Women" (169-75), which specifies cases in which a married woman may (or must) use a *mokh*, shows that not all Jews maintained an *unqualified* condemnation of female protective devices, but this also indicates that a prima-facie exclusion of contraception was taken for granted, since otherwise there would be no occasion to discuss exceptional cases.

A further consideration, we think, makes the connection even clearer. But this explanation must not be separated from the conclusion already reached: that the received Catholic teaching on contraception has been proposed infallibly by the ordinary magisterium. We are here only answering a question raised by this conclusion, not trying to prove it again.

There is historical evidence of the explicit Christian condemnation of contraception in the face of Gnostic, Manichean, and pagan attitudes toward procreation, sex, marriage, and human life.⁶⁸ Noonan sets out this evidence, taking it to show that the "formation of the early Christian doctrine on contraception" was a *response* to these alien attitudes.⁶⁹

But Noonan seems to forget that Christians were exposed to many conflicting stimuli, and their responses were not mere reflexes. The selective and differentiating responses which Christians worked out and put forth against alien morals should be understood as effects of their effort to be both creative and faithful. Christ promised his followers that they would be taught by the Spirit to understand the fulness of the gospel; their responses must be evaluated in the light of this promise.

When all Christians reached and maintained one judgment upon some non-Christian attitude or practice, the principle of their response is manifest. It is their Christian heritage held in common. In other words, the Christian consensus on contraception is no accident, but a properly Christian judgment, clarified by the light of the Spirit teaching inwardly, and grasped by a sense of faith already shaped by Christian teaching on the creative activity of God, on the value of human life, on the divine design of marriage, on the meaning of Christian parenthood, and on sexual morality. If the condemnation of contraception by the Fathers of the Church was not a restatement of primitive teaching, but was a fresh initiative, as Noonan urges, then the formation of this teaching ought to be viewed as a *creative response faithfully developing* Christian moral teaching.

In preaching the gospel of Christ, the apostles promulgated in the pagan world a morality truly new to it in respect to creation and life, sin and death, sex and marriage, virginity and parenthood. Elements of this morality already existed in the pagan world, but the balanced and tightly integrated ensemble was truly new and distinctively Christian. Reflecting upon this new morality of Christ—which excludes homosexual acts, incest, fornication, and adultery—the Fathers of the Church were forced by advocates of contraception whom Noonan discusses to take a stand on the matter. Does contraception pertain to the new morality of Christ or does it pertain to the old *porneia* of the pagans? Christians took their stand on this matter, and the stand was so appropriate that they contin-

⁶⁸ Noonan, *Contraception* 56-139.

⁶⁹ *Ibid.* 56.

ued to agree in the judgment which was their initial response centuries after the stimulus had ceased. Moreover, despite their divisions, Orthodox and Protestant as well as Catholic Christians proposed the same teaching until the present century.

If this account of the formation of the early Christian doctrine on contraception is correct, then this doctrine must be regarded as an authentic development of prior Christian moral teaching which was directly rooted in revelation. Some theologians have held that in such a development what is implicitly revealed becomes explicit. But in prescind- ing from the question of what is revealed, we also have prescinded from this view. We hold that a judgment reached by such a development certainly is closely connected with revelation, inasmuch as it is a response required to guard the deposit as inviolable and to expound it with fidelity. This is the conclusion we draw from the foregoing account of the formation of the early Christian doctrine on contraception, as Noonan himself describes it. By no mere accident, the Fathers of the Church shared a common insight that only a rejection of contraception would be consonant with the maintenance and unfolding of the beliefs and practices which already had flowed from the gospel of Christ.⁷⁰

Someone might object that the received Catholic teaching on contra- ception has been proposed as a matter of natural law, that as such this moral norm falls within the province of human reason, and that it thus can have no such close connection with divine revelation. In support of this argument they might point out that the popes themselves distinguish and contrast the law of the gospel and natural law. For example, in *Humanae vitae* 4, Paul VI asserts the competence of the magisterium in the matter of birth regulation, insofar as the Church is the guardian and interpreter of the moral law, "not only of the evangelical law, but also of the natural."

This objection is based upon a misunderstanding. "Natural law" has been referred to in the documents of the magisterium mainly during the nineteenth and twentieth centuries; the principal use of the expression is to emphasize the objectivity of moral law in contrast with all positive law, even positive divine legislation.⁷¹ Moreover, the popes who have

⁷⁰ Although we make no attempt to show that the immorality of contraception is revealed—we prescind carefully and consistently from this question—it must be confessed that if we were asked to show from the sources of revelation that this moral norm is somehow revealed, we would consider this an easier task than to show from the same sources that the doctrines of the Immaculate Conception and the Assumption are revealed. That these latter are revealed has been defined as a matter of faith. Perhaps only such a definition would ever settle the question whether the norm forbidding contraception is revealed (as against "connected with revelation").

⁷¹ Josef Fuchs, S.J., *Natural Law: A Theological Investigation* (New York: Sheed & Ward, 1965) 10–13.

talked most about "natural law" have made it clear that human knowledge of such moral norms in fact depends very heavily upon divine revelation; for many of these norms are revealed, while those which are not still fall within the competence of the magisterium precisely insofar as it has the responsibility to teach mankind all that is necessary for salvation.⁷²

Thus recent theories of natural law have no bearing upon the substance of the Catholic teaching on contraception or upon the status of any teaching as one which has been proposed as revealed or as closely connected with revelation. It is farfetched at best to try to argue from the magisterium's use of the language of natural law to the conclusion that the magisterium cannot be exercised infallibly in teaching on moral issues such as contraception.

It also is worth noting that the language used both by Vatican II and by Paul VI is consonant with and even strongly suggests that the Church's teaching on contraception belongs properly to what is required to guard the deposit of revelation as inviolable and to expound it with fidelity. Paul VI, as we noted above, refers in *Humanae vitae* 4 to the principles of the Church's moral teaching on matrimony as "based on the natural law, illuminated and enriched by divine revelation." Vatican II states in *Gaudium et spes* 50, specifically in reference to birth regulation, that couples must conform their consciences to the divine law, "docile to the magisterium of the Church, which authoritatively interprets that law under the light of the gospel." And, as we noted above, in article 51 of the same constitution, the Council states that children of the Church may not use methods of regulating birth "which are disapproved of by the magisterium of the Church in its explaining of the divine law."

This brings us to another important question. Since we admit that the Catholic teaching on contraception might have been a development from more basic Christian teachings, how can one be sure that the controversy within the Church since 1963 does not portend a further development, which might safeguard the same goods which Christians have always prized, while permitting particular contraceptive acts within the context of a marriage on the whole open to responsible parenthood?

Immediately after the paragraph which we quoted near the beginning of section 3 concerning the universality of the received Catholic teaching on contraception, Noonan goes on to suggest that the apparent fixity of the teaching might not be real. He introduces this suggestion as follows:

The teaching, however, has not been proposed without reasons. It has not been

⁷² See *Humanae vitae* 4, and the documents cited in its n. 1, especially *Magnificate dominum* (AAS 46 [1954] 671-72); see also Thomas Aquinas, *Summa theologiae* 1-2, q. 99, a. 2; q. 100, a. 1; 106, a. 1; Fuchs, *Natural Law* 144-62; John J. Reed, S.J., "Natural Law, Theology, and the Church," *TS* 26 (1965) 47-56.

unrelated to other doctrinal propositions. It has not been isolated from the environment in which Christians live. If the teaching were constant while the reasons, related doctrine, and environment changed, it would not be the same teaching that these reasons, doctrine, and environment now supported.⁷³

One of the documents of the pontifical Commission for the Study of Problems of Population, Family, and Birthrate suggested that a papal document on responsible parenthood should embrace the theory of development which Noonan had proposed. The real position proposed by the magisterium until now would not be abandoned, this schema claimed, if the Church were to approve the use of *some* contraceptive means—ones “human and decent, ordered to favoring fecundity in the totality of married life and toward the realization of the authentic values of a fruitful matrimonial community.” For what the tradition always upheld, it was argued, were two values: procreation and the rectitude of marital intercourse. And what the tradition always condemned was a contraceptive intervention with motives spoiled by egoism and hedonism.⁷⁴

Formally, Noonan’s statement “If the teaching were constant . . . it would not be the same teaching” appears to be a contradiction in terms. Even if the sentence is interpreted in a way which permits it to be coherent, it is neither obvious in itself nor justified by what precedes it. In his book as a whole, Noonan does not even try to show that the Catholic Church’s teaching *on contraception* was not the same in the early 1960’s as in the previous decades and centuries. Rather, he shows that reasons for the Church’s teaching, related doctrines, and the environment have changed, and thus he tries to show that the teaching itself

⁷³ Noonan, *Contraception* 6. While we disagree with Noonan’s conclusion that the Catholic Church today can contradict what Catholics universally believed and taught concerning the morality of contraception until the present controversy, we give Noonan full credit for establishing what was believed and taught and for showing what various documents meant in their concrete historical contexts. Apart from a few points, we do not disagree with Noonan about facts and interpretations. We do disagree with him about the truth of the received teaching. Someone might suppose that we could not deny Noonan’s conclusion without carrying out a work similar to his, establishing a history incompatible with his, and thus refuting Noonan’s premises. But this supposition would be sound only if Noonan’s conclusion were entailed deductively by the premises. It is not; it follows as a hypothesis from an inductive argument. The *addition* (to the premises Noonan himself establishes) of a proposition he did not consider—the proposition affirmed by Vatican II concerning the infallibility of the ordinary magisterium under certain conditions—leads us to a conclusion contradictory to Noonan’s. His own work provides the evidence, including the indispensable interpretation of texts in historical contexts, that the conditions specified by Vatican II did obtain in the case of the Church’s teaching on contraception. If anyone should simply reassert Noonan’s conclusion in reply to our argument, without offering fresh support for Noonan’s thesis and directly rebutting our argument, he would simply beg the question against us.

⁷⁴ An English translation of this document is in Hoyt, *Birth Control Debate* 88–90.

need not be regarded as fixed forever, but rather as a changeable expression of fundamental values.

The problem of the development of doctrine is a complex one. We certainly do not wish to deny that there can be and has been genuine development of Catholic teaching on many subjects, including marital morality. We do not claim that genuine development must be limited to the mere explication of consequences already entailed by truths always believed. However, we do maintain that no genuine development in the Church's teaching, once it has been infallibly proposed, can *contradict* what was previously proposed, properly understood in the sense in which it was proposed. If the Church infallibly proposed a teaching at one time and later proposed a contradictory teaching as an authentic development of its basic doctrine, then the Church's teaching would lose its meaning. An incoherent succession of statements cannot form a unified process in which identity is maintained through progress; contradiction would end the tradition of faith, not guard it as inviolable and expound it with fidelity.⁷⁵

Catholic teaching on marital morality always has upheld the values of procreation and the rectitude of marital intercourse, and it has rejected egoistic and hedonistic motives for engaging in sexual intercourse. However, we deny that this is the whole sum and substance of the teaching proposed by the ordinary and universal magisterium on the morality of contraception. The position proposed universally as an obligatory norm involved certain recurrent propositions: "The teachers of the Church have taught without hesitation or variation that certain acts preventing procreation are gravely sinful," as Noonan sums up the matter in the paragraph in which he outlines the universality of the received teaching. To exclude ambiguity, we need only add that the teachers of the Church have never taught that *any* acts intended to prevent procreation are permissible or in themselves only venially sinful.

⁷⁵ Cf. DS 1797-1800, 1817-18 (3017-20, 3042-43). We are aware of more radical conceptions of development which have been advanced; see Nicholas Lash, *Change in Focus: A Study of Doctrinal Change and Continuity* (London: Sheed & Ward, 1973) 143-82. The inevitable difficulty with any theory which allows a *proposition* (not the verbal formula but the meaning of the language used) once infallibly taught to be contradicted is that there is no objective criterion remaining by which to limit such "development." Once the objective conditions of incarnational Christianity are set aside, one must fall back upon some sort of subjective gnosis, e.g., "religious experience" and its interpretation by a consensus of contemporary theologians. But while there is some consensus about what is to be abandoned, there is little consensus about what is to be retained. Even where there is some consensus, the ordinary Christian who once admits "developments" which contradict received teachings is hardly likely to be impressed by an esoteric clique of professional interpreters of contemporary awareness. Thus, to admit a teaching contradictory to one infallibly proposed, even on a matter of comparatively low status in the hierarchy of truths of faith, is to end the handing on of the deposit, not to guard it as inviolable and expound it with fidelity.

Apart from the recurrent *propositions* condemning the use of contraceptives as such, it would be difficult, if possible at all, to discern the *values* which the tradition has always upheld and the attitudes it has always condemned. Certainly, no teacher of the Church prior to 1963 ever said that contraceptive acts are gravely sinful *insofar as* or *on condition that* they do not favor fecundity in the totality of married life and are not directed to the values of fruitful matrimonial community. Furthermore, while it was considered blameworthy to engage in intercourse with egoistic or hedonistic motives—for example, having intercourse for pleasure *alone*—such defects in motivation were not considered to vitiate marital intercourse to the extent of making it gravely sinful, unless the person wishing to satisfy his sexual desire *did something*—such as giving a drink or doing something else so that a man could not generate or a woman conceive or offspring be born, as *Si aliquis* puts it.

Moreover, the consensus of approved theological authors of modern times makes unmistakably clear what an unbiased reading of the tradition already indicates: contraceptive acts are condemned as intrinsically evil. The teaching of the magisterium did not condemn contraceptive acts for the motives with which or the circumstances in which they were done. In fact, even the contraceptive acts of a poor woman motivated by the difficulty of feeding her children were explicitly condemned as grave sins—though not as grave as similar acts of one in other circumstances and with other motives—by Burchard of Worms in his *Decretum* (around 1010).⁷⁶ It is pure fantasy to suppose that the Church's moral teaching was based upon a weighing and balancing of values; for such a consequentialist calculus is altogether alien to the Christian tradition, which always has been absolutist with respect to fundamental moral norms, such as those bearing upon sexual behavior and the killing of the innocent.

In his book Noonan organizes and interprets the data of history, working out a many-stranded case in favor of his view that the Church could develop her perennial teaching on marital morality by accepting contraception as moral. Among the many strands in this case, one is especially crucial: Noonan argues that the positive requirement of procreative purpose was an important part of the underpinning of the doctrine against contraception.⁷⁷ No one today supposes that marital intercourse without the intent to procreate is always sinful. Thus, Noonan thinks, the condemnation of contraception might also be reversed.

From our present vantage point, the first question is: Did the requirement of positive procreative purpose ever meet the conditions for the infallible exercise of the ordinary magisterium articulated by Vatican II? The answer is clearly negative for the following reasons.

Some Fathers of the Church, including Augustine, Caesarius of Arles,

⁷⁶ Noonan, *Contraception* 160.

⁷⁷ *Ibid.* 329 and *passim*.

and Gregory the Great, did teach that marital intercourse without intent to procreate is venially sinful.⁷⁸ But this teaching, although accepted and passed on by some other Catholic teachers, certainly never had the universality of the teaching against contraception. Moreover, even those who held that procreative purpose is necessary to render marital intercourse wholly blameless did not claim that violation of the requirement imperiled one's salvation.

To propose a norm excluding some kind of act as mortally sinful is to propose a teaching to be held definitively. To say that an act is venially sinful is not to say that a norm excluding it from Christian life is to be held definitively. This is especially true in respect to the Fathers of the Church, whose notion of the *venial* seems in many contexts to be broad enough to include much we would regard today not as a sin, but only as a mistake or an imperfection or something in one way or another falling short of the ideal.

Noonan points to the use of certain Scripture texts, but the texts he adduces do not show that *procreative purpose* was alleged to be a divinely revealed requirement to free marital intercourse of sin; if they show anything, they show that some thought it divinely revealed that *marital intercourse*, even with procreative purpose, could not be free of sin.⁷⁹

The second question to ask about the requirement of procreative purpose is whether Noonan is correct in thinking that this teaching, which is today considered erroneously narrow, goes far in explaining the origin and persistence of the Catholic teaching that contraception is always wrong. Several considerations show that Noonan's argument on this matter fails.

First, he claims that the teaching of Gregory the Great would have rendered contraception unthinkable, although Gregory himself says nothing on the subject of contraception.⁸⁰ Second, Noonan offers no support at all for his intrinsically implausible supposition that the condemnation of contraception as a grave sin somehow followed from the exclusion as venial of intercourse without procreative intent. Third, to set up his

⁷⁸ Ibid. 130–31 and 150. Noonan also shows (76–77) that Clement of Alexandria and certain other Fathers set down as the Christian ideal that husbands should seek intercourse “only for the raising up of children,” without showing what guilt attached to failure to meet this ideal. Noonan also claims (79–81) Ambrose and Jerome as proponents of exclusive procreative purpose, but in the evidence he produces it is not clear that they are proposing a *moral norm* to be held definitively.

⁷⁹ Thus Ps 50:7, “Behold I was conceived in sins, and in delights my mother bore me,” in the quotation from Gregory cited by Noonan (151), hardly supports exclusive procreative purpose as the justification for intercourse. If Noonan's account (80–81) of Jerome's handling of the text of Tobias is correct, it does not show that Jerome appealed to Scripture to establish exclusive procreative intent as a divinely revealed norm, but rather that he tampered with the text of Scripture while purporting to translate it.

⁸⁰ Ibid. 150.

argument about procreative purpose, Noonan relies upon a questionable analysis of what was meant by "rendering the debt." According to Noonan, "One spouse seeking and the other spouse returning was the model of marital relations accepted for analysis. That the theory of procreative purpose made one spouse a sinner, while the other fulfilled his duty, did not appear to the theologians as a weakness in theory."⁸¹ On this analysis, Noonan argues that the great scholastic theologians, such as St. Thomas and St. Bonaventure, did not recognize that marital intercourse without procreative purpose can be good and holy for both partners.⁸²

As a matter of fact, however, St. Thomas explicitly states that marital intercourse in which the spouses render the debt *to each other* is totally excused from sin:

Just as the goods of matrimony, insofar as they are present habitually [implicit in the consent], make marriage upright and holy, so also insofar as they are present in the actual intention, with regard to those two goods relevant to the act of marriage, they make the marital act upright. Accordingly, when spouses come together for the sake of procreating offspring, or so they may render the debt to each other, which pertains to fidelity, they are totally excused from sin.⁸³

Aquinas' use of the plural throughout this passage shows that he is speaking of both spouses together; they are *totally* excused from sin when they *render the debt to each other*.⁸⁴ St. Bonaventure similarly holds that marital affection is sufficient to excuse unbelievers from sin in their conjugal relations; in believers it not only excuses from sin but brings grace with the act.⁸⁵

Noonan ignores such statements because he is diverted by a different question which is usually treated in commentaries on the *Sentences*: whether conjugal intercourse *to avoid fornication* is wholly without sin. Noonan refers to St. Thomas' and St. Bonaventure's treatments of this

⁸¹ *Ibid.* 284.

⁸² *Ibid.* 193–99, 246–57, and 284–86.

⁸³ *In Sent.* 4, dist. 31, q. 2, a. 2; cf. *In 1 ad Corinthios*, c. 7, lect. 1, a late work, in which Aquinas still distinguishes intercourse to render the debt from that to satisfy a desire which does not arise from concern about a marital good, but nevertheless respects the limits of the marital bond.

⁸⁴ Noonan's interpretation of St. Thomas' teaching on marital sex has been criticized in two studies: Germain G. Grisez, "Marriage: Reflections Based on St. Thomas and Vatican Council II," *Catholic Mind* 64 (June 1966) 4–19; Fabian Parmisano, O.P., "Love and Marriage in the Middle Ages, II," *New Blackfriars* 50 (1969) 649–60. In "Love and Marriage in the Middle Ages, I," *New Blackfriars* 50 (1969) 599–608, Parmisano shows that the "new" theory which Noonan credits (306–12) to Martin le Maistre (1432–81) was anticipated by Nicole Oresme (ca. 1320–82) without eliciting the reaction one would expect if a novel view were being put forward, especially since Oresme wrote in the vernacular and was a cleric—in fact, a bishop during the last few years of his life.

⁸⁵ Bonaventure, *In Sent.* 4, dist. 39, a. 1, q. 1; cf. q. 3; also dist. 26, a. 2, q. 3.

question when he alleges that they require procreative purpose on the part of spouses to clear both of them of sin.⁸⁶ Aquinas and Bonaventure do maintain that in this case only the partner who responds is blameless. There is something a bit excessive in the sexual desire of a Christian who demands intercourse of a spouse because the alternative is to succumb to the temptation to seek sexual satisfaction elsewhere. But neither Aquinas nor Bonaventure supposes that this case is typical of marital intercourse in which spouses faithfully give each other what is due in marriage, acting with marital affection.

Thus the argument that a now discarded requirement of conscious procreative purpose explains the persistence of the condemnation of contraception among the great scholastic theologians fails, for they simply did not hold this requirement.

After he published his book on contraception, Noonan went on to publish articles arguing as follows: the Church once condemned the taking of interest (usury) just as severely as it condemned contraception; but the Church now approves the taking of interest; hence the Church also can change its teaching on the morality of contraception.⁸⁷ Many others have articulated a similar argument. Once more the question is whether the condemnation of the taking of interest, insofar as this teaching has been changed, ever met the conditions for the infallible exercise of the ordinary magisterium articulated by Vatican II. The answer is clearly negative for the following reasons.

As has often been argued by Catholic students of the matter, the teaching of Scripture and of the Fathers forbids charging interest on loans to the poor and condemns the greed and avarice of usurers, but this teaching does not deal with the taking of interest as such and does not envisage a situation in which moderate rates of interest are established by money markets. The decrees of the councils and popes up to 1450 are aimed at the same evils attacked in Scripture and by the Fathers.⁸⁸

In his study of scholastic theories of usury, published prior to the beginning of the debate among Catholics on contraception, Noonan himself rejected the view that the central Catholic teaching on the morality of the taking of interest had changed:

Moreover, as far as dogma in the technical Catholic sense is concerned, there

⁸⁶ Noonan, *Contraception* 248, with n. 20. We have not examined other authors Noonan claims in support of his thesis, but it might be worth-while to check all of them, bearing in mind that "fidelity" has a positive aspect and that "rendering the debt" can be mutual.

⁸⁷ The version on which our summary is based is John T. Noonan, Jr., "Authority, Usury and Contraception," *Cross Currents* 16 (Winter 1966) 71-75.

⁸⁸ See A. Vermeersch, S.J., "Usury," *Catholic Encyclopedia* 15 (New York: Appleton, 1912) 235-38, and the works cited by him; Thomas F. Divine, S.J., *Interest: An Historical and Analytical Study in Economics and Modern Ethics* (Milwaukee: Marquette Univ., 1959) 5-11, 24-35, and 45-64.

is only one dogma at stake. Dogma is not to be loosely used as synonymous with every papal rule or theological verdict. Dogma is a defined, revealed doctrine taught by the Church at all times and places. Nothing here meets the test of dogma except this assertion, that usury, the act of taking profit on a loan without a just title, is sinful. Even this dogma is not specifically, formally defined by any pope or council. It is, however, taught by the tradition of the Church, as witnessed by papal bulls and briefs, conciliar acts, and theological opinion. This dogmatic teaching remains unchanged. What is a just title, what is technically to be treated as a loan, are matters of debate, positive law, and changing evaluation. The development on these points is great. But the pure and narrow dogma is the same today as in 1200.⁸⁹

Although Noonan's formulation of his point here is neither completely satisfactory nor precise, his idea is clear: the moral teaching on the taking of interest proposed infallibly by the ordinary magisterium has not changed.

The key to clarity in this matter is precision with respect to the concept of that usury which the Church condemns. The sin of usury is not simply the charging of interest on a loan, but the charging of interest on a loan *in virtue of the loan itself*, rather than in virtue of some factor related to the loan which provides a basis for demanding fair compensation. Thus, the Fifth Lateran Council (1515) explained what is forbidden: "For this is the proper interpretation of usury: when one seeks to acquire gain from the use of a thing which is not fruitful, with no labor, no expense, and no risk on the part of the lender."⁹⁰ Undoubtedly, there were many weighty statements by Catholic teachers, some of which shared in the authority of the magisterium, which lacked the precision of the Fifth Lateran Council's definition of "usury." However, even if we grant that such statements were more or less seriously mistaken, such errors would not argue for the mutability of the received Catholic teaching on contraception, since the latter teaching is what is constant and universal amidst changes in the arguments given for it, teachings incidentally related to it (such as the view that intercourse without procreative purpose is venially sinful), and the cultural conditions in which Christians have lived.⁹¹

We expect that many other objections based upon alleged changes in the Church's moral teachings will be educed by critics of our argument.

⁸⁹ John T. Noonan, Jr., *The Scholastic Analysis of Usury* (Cambridge, Mass.: Harvard Univ., 1957) 399-400.

⁹⁰ DS 738 (1442).

⁹¹ Also, Christian morality emphasizes goods which are intrinsic to persons, e.g., life and its beginnings, truth, justice, and holiness. By virtue of the Incarnation, such goods somehow take on a divine worth in respect to every human person, and these goods of our nature are destined for eternity, as Vatican II teaches (*Gaudium et spes* 22, 27, and 39). The very nature of instrumental goods such as money can change, but the goods intrinsic to persons are not mutable as instrumental goods are. Money is a human institution; sex is a divine institution.

Many such objections have been put forward over and over again by those who denied, questioned, or sought to restrict as much as possible the Church's infallibility, and these objections have been answered over and over again by Catholic apologists. As we said above in section 1, we assume the infallibility of the Church here, both in general and in the particular case of the ordinary magisterium under the conditions articulated by Vatican II. Still, it might be worth while to recall in outline the strategy which the apologist will use in dealing with all such objections, whether they are intended to attack the infallibility of the teaching Church in defining doctrines or in universally proposing a matter of faith or morals as a point to be held definitively.

In some cases it appears that a teaching infallibly proposed has subsequently been changed. But whatever change is authoritatively admitted by the Church does not go so far as to contradict what was formerly infallibly proposed, understood in the precise sense in which it was proposed. In other cases a teaching was proposed with some authority by the ordinary magisterium and was later contradicted; but the teaching contradicted was never proposed infallibly, since it was neither solemnly defined nor proposed by the ordinary magisterium in a manner which fulfilled the conditions articulated by Vatican Council II. For example, some members of the magisterium might have proposed something to be held definitively, but at no time did the bishops dispersed throughout the world agree in their judgment. Or again, all of the members of the magisterium might have agreed in one judgment and proposed it to the faithful, but not as a point to be held definitively, as happens at times in purely disciplinary matters or in the commending of some devotion.

In reviewing the history of Christian moral teaching, it is very important not to read the history backwards. It is possible for Christians today to see clearly that certain practices, attitudes, and institutions are incompatible with the law of Christ, although Christians in earlier centuries lacked insight into these matters. Looking back, it might appear that the magisterium taught that these practices, attitudes, and institutions were upright and holy; considering them within their historical context, one sees that the situation was not so clear. The magisterium presupposed and tacitly accepted in the past much which Christian sensitivity, stimulated both by exterior conditions and by the inner teaching of the Spirit, now can recognize as unacceptable. This fact does not show that the teaching Church earlier provided false guidance, but only that the Church is now able to provide guidance on matters regarding which it was not prepared to make a judgment in earlier times.

In the controversy over contraception and in the reaction to *Humanae vitae*, much was made of the dissenting views of those outside the Catholic Church who nevertheless hold fast to the gospel of Christ, and

also of the sense of the Catholic faithful who think that the use of contraceptives is morally permissible and even holy. What is to be said about these data if, as we have argued, the condemnation of contraception has been infallibly proposed by the ordinary magisterium?

The first thing to be said is that the opinions of those who are not in communion with the See of Peter do not count in determining the universality which is a criterion for the Church's infallibility in teaching. If the opinions of other Christians were to count, then every heretical opinion on every point of Christian teaching would become an element in the normative tradition, and the incoherence of such a collection of opinions would reduce Catholic teaching to babble. This is neither to deny that Christians separated from the unity of the Catholic Church share in revealed truth, nor to say that their opinions should be regarded as worthless. However, a Catholic will evaluate such opinions by the standard of the Church's teaching and learn from other Christians only what comports with Catholic teaching and contributes to its authentic development.

Moreover, it is important to recall that both Orthodox and Protestant Christians, although not in communion with Rome, did accept and hand on the same teaching on the morality of contraception, as well as on most other moral questions, which we still receive in the Catholic Church. Many such separated Christians still hold fast to the same moral principles even today. The handing on of the common Christian moral tradition for many centuries after the authority of the magisterium was rejected argues very strongly for the judgment that this teaching is integral to the Christian tradition. Hence, when Catholic theologians who argue for the approval of contraception characterize as "Christian" the opinions of those who today abandon the common Christian tradition in this matter—and often in many others—and invoke the authority of these opinions, they beg the question as to what is Christian, and do so in favor of an opinion universally rejected by Christians until the present century.

The sense of the Catholic faithful, correctly understood, is a genuine witness to the faith of the Church. *Sensus fidelium* refers to a reality sometimes also called *sensus fidei*, *sensus ecclesiae*, and so on. This reality is the subjective and conscious side of living, Christian tradition, by which Christians discern as if by instinct the beliefs and practices proper to Christian life and distinguish them from those which are alien. But this Christian sense is not independent of revelation, tradition, and the magisterium—the objective means God has chosen to communicate His truth and life to all nations until the end of time. The sense of faith provides no mystical and privileged access to divine things which would permit the opinions of the faithful at a given time *insofar as these opinions conflict with received teaching* to become a criterion by which

to measure the truth of that teaching.⁹²

Thus the opinions of Catholics who regard the use of contraceptives as morally permissible should not be considered an expression of the *sensus fidelium*. The *sensus fidelium* remains a strong and effective witness in the Church, but it is to be found in those many other Catholics, including married couples, who remain firmly convinced that their salvation depends upon their doing their best to live up to Catholic moral teaching on this as on other matters. In this conviction they remain in solidarity with the faithful down through the ages who have accepted this norm for their conduct in marriage, struggled to live up to it, and accused themselves of grave sin when they failed to do so.

One final point is well worth noting in respect to the sense of the faithful. Ordinary Catholics have shown and continue to show a genuine Catholic sense by the manner in which they talk about the controversy over contraception. Whether inclined to one or to the other side of the controversy, ordinary Catholics spontaneously refer to the received teaching as "the teaching of the Church" and they refer to any acceptance of methods of birth regulation forbidden up to now as "a change in the Church's teaching."⁹³ Only those who are intellectually subtle and who are careful how they speak say that the received teaching is the "Roman principle" or the "papal teaching" or the "rule laid down in *Casti connubii*," and suggest that the acceptance of contraceptive methods of birth control by the Church would be a "genuine development" of the Church's teaching on marital morality and a "deepening" of the understanding of Christian faith.

Moreover, many of those Catholics who have decided to act contrary to the teaching of the Church on contraception remain deeply troubled about what they regard as Paul VI's failure to approve this practice. While such Catholics very often rely upon dissenting theological opinion in shaping their conduct, their consciences are not wholly at rest. Their *sensus fidei* persists in making its dissonant claim. One motive of theologians who publicly dissented from *Humanae vitae* was the laudable desire to try to help Catholics who in the course of the controversy had committed themselves wholeheartedly to the use of contraceptives. The

⁹² On a right understanding of *sensus fidelium*, see Yves M.-J. Congar, O.P., *Tradition and Traditions: An Historical and Theological Essay* (New York: Macmillan, 1967) 314-21; *The Meaning of Tradition* (New York: Hawthorn, 1964) 74-78; J. R. Geiselman, *The Meaning of Tradition* (Freiburg: Herder, 1966) 19-23; J. P. Mackey, *The Modern Theology of Tradition* (New York: Herder and Herder, 1963) 95-122.

⁹³ To consider how the faithful speak, not what they want, as evidence of the *sensus fidelium* is in line with the view of John Henry Newman, who insists (*On Consulting the Faithful in Matters of Doctrine*, ed. John Coulson [New York: Sheed & Ward, 1961] 54-5, 63, and 102-3) that by "consulting" the faithful he does not mean asking their advice but rather ascertaining the *fact* of their belief as a witness to the traditional teaching.

still-troubled consciences of Catholics who practice contraception and even their drifting away from the Church provide testimony—testimony at once paradoxical, powerful, and sad—of their genuine *sensus ecclesiae*, which the dissenting opinion of theologians has failed either to alter or reduce to silence.

V

In this section we clarify the relationship between the argument we propose and defend in the present paper and the argument which was proposed in the pontifical Commission for the Study of Problems of Population, Family, and Birthrate by those theologians who believed that the constant teaching of the Church on the morality of contraception could not be changed. The first point we wish to make is that the argument we are proposing now is compatible with the argument which one of the present authors together with other theological *periti* of the papal Commission proposed in 1966.

In May 1966 the theological *periti* of the Commission were asked by its secretary to draw up two summary documents, one briefly articulating the view of those who regarded the received teaching as unchangeable, and the other briefly articulating the opposite view. These documents were intended for the internal use of the Commission, whose members—a group of sixteen cardinals and other bishops—were to meet in June. One of the present authors helped draw up the former of these documents, *Status quaestionis: Doctrina ecclesiae ejusque auctoritas*, which included an argument meant to show why the Church cannot change its answer to the question whether contraception always is gravely evil.

This argument developed the consideration, quoted in section 1 of the present paper, with respect to the binding force of the tradition:

The Church cannot change the answer *since this answer is true*. Whatever may be the possibility of a more perfect formulation of the teaching or perhaps of its genuine development, there is no possibility that the teaching itself is other than substantially true. It is true because the Catholic Church, instituted by Christ to show men the sure road to eternal life, could not err so atrociously through all the centuries of its history. The Church cannot substantially err in teaching a very serious doctrine of faith or morals through all the centuries—even through one century—a doctrine constantly and insistently proposed as one necessarily to be followed in order to attain eternal salvation. The Church could not substantially err through so many centuries—even through one century—in imposing very heavy burdens under grave obligation in the name of Jesus Christ as it would have erred if Jesus Christ does not in fact impose these burdens. The Catholic Church could not in the name of Jesus Christ offer to the vast multitude of the faithful, everywhere in the world, for so many centuries an occasion of formal sin and spiritual ruin on account of a false doctrine promulgated in the name of Jesus Christ.

If the Church could err as atrociously as this, the authority of the ordinary magisterium in moral matters would be stultified; and the faithful henceforth could have no confidence in moral teaching handed down by the magisterium, especially in sexual questions.

The argument went on to emphasize that the question at issue was the *truth* of the Church's teaching, not the *irreformability* of Pius XI's proclamation of this teaching in *Casti connubii*. Finally, the argument attempted to set aside, as irrelevant to the central issue, technical questions of fundamental theology. In particular, "In our discussion it is completely superfluous to argue subtly whether this teaching is technically 'infallibilis ex iugi magisterio.'" The reason given is that if this teaching is not substantially true, then in moral matters the magisterium itself will be seen to be completely superfluous.⁹⁴

The main argument in the passage quoted above can be reformulated more briefly. No teaching which the Church proposes as a serious doctrine of faith or morals, necessarily to be followed in order to attain eternal salvation, and proposes universally through even one century, can be substantially in error. But the Church has proposed its moral teaching on contraception as an obligatory norm and a grave one, in the name of Christ, everywhere in the world, through many centuries. Therefore the Church could not err substantially in its teaching on contraception, and so the answer is true. Since the answer is true, the Church cannot change it.

Reformulated in this way, this argument clearly is an inadequately articulated version of the argument we have developed more adequately in sections 2 and 3 of the present paper. The 1966 argument uses the expression "the Church cannot err," but shies away from saying that the Church is infallible. It seemed, then, that to claim infallibility in the technical sense would be to invite a great deal of inconclusive argumentation about questions of fundamental theology and ecclesiology. In the present paper we have addressed ourselves to several of these questions.

Still, an inadequate articulation of a line of argument is not incompatible with a more adequate articulation of the same line of argument. Thus the argument we propose now is not incompatible with the main argument proposed in 1966. However, the 1966 document also contained an attempt to set aside as not worth-while in the circumstances the question whether the Church's teaching on contraception is infallibly taught by the ordinary magisterium. We are now convinced it would have been better, if it had been possible, to attack this question; we are attempting by means of the present article to rectify the omission.

⁹⁴ An English translation, which varies slightly from ours, appears in Hoyt, *Birth Control Debate* 37-9.

This brings us to our second point. Since the argument we are now proposing was not articulated in 1966, it was not considered and squarely answered by the theological *periti* of the papal Commission who believed change to be possible. Their theological working paper was entitled *Documentum syntheticum de moralitate regulationis nativitatum*. There are two passages in this document which are relevant to our present purpose.

First, its authors consider *Casti connubii*, rightly emphasizing that it should be considered in the context of the tradition:

The encyclical *Casti connubii* is of greater importance if it is considered as a particular contribution, a solemn one indeed, to the whole tradition, including the explicit official teaching of the past two centuries. For in this tradition contraceptive intervention never is approved, but always when the question arises it is reproved; this has occurred very often in recent centuries. But this tradition is in no way an apostolic tradition or an attestation of faith; rather, it is merely the tradition of a particular teaching formulated in diverse ways in diverse centuries.⁹⁵

The theologians who wrote this document admit the existence of the tradition. But in the absence of a clear and explicit argument showing the relevance of the facts, they simply assert without any argument at all that the tradition is not a witness of faith. A possibility is ignored: that the tradition, even if not an apostolic one, is a witness to faith in a truth closely connected with revelation, a truth infallibly proposed by the ordinary magisterium. The theologians go on to summarize very compactly the main lines of Noonan's argument, emphasizing that changes had occurred in related teachings, in arguments for the received teaching, and in the situation.

The authors of *Documentum syntheticum* also answer the main argument put forward in *Status quaestionis*, which we quoted and discussed above. The answer formulated by the theologians who regard change as possible begins as follows:

Not a few theologians and faithful fear that the very trust of the faithful in the magisterium in general could undergo damage on account of a changed teaching of the magisterium. For, they ask, how could the Holy Spirit permit in the Church such an error through so many centuries, even in these recent centuries, with so many consequences? However, the criteria for discerning what the Spirit can permit or not permit in the Church can hardly be determined a priori. We know a posteriori that there have been errors in the doctrine of the magisterium and of tradition. . . .

The argument goes on to use the example of the teaching on procreative purpose, along the lines this example was proposed by Noonan. The

⁹⁵ Ibid. 64.

authors then note that there has been a tendency in recent decades to regard the noninfallible magisterium as infallible in practice, while it must rather be expected that some mistakes occur in noninfallible teaching. They hold that in the matter of contraception there are very good reasons for doubt and reconsideration, and so change should not undermine confidence in the magisterium; for this "change is really a step in a more mature grasp of the whole doctrine of the Church."⁹⁶

Obviously, those who drafted this reply to the central argument of *Status quaestionis* missed what was intended to be the main thrust of the argument they wished to answer. The thrust of the argument in *Status quaestionis* was meant to be that the received Catholic teaching cannot be changed because it is true, and that one can be sure of its truth because the "Church could not substantially err" in proposing this moral norm, *considering the manner in which* the Church proposed it: to the whole world, as a serious teaching, acceptance of which is required for salvation. The reply in *Documentum syntheticum* shifted the focus to the concern about confidence of the faithful in the magisterium, which the authors of *Status quaestionis* mentioned in a separate paragraph in what they meant to be a secondary argument.

Having shifted the focus of the argument, the authors of *Documentum syntheticum* beg the question at issue by assuming that the Church could be in substantial error on the morality of contraception. That this assumption is question-begging is shown by the fact that no reply is given to the contention of the argument in *Status quaestionis* that the *manner* of the Church's previous teaching on the particular matter in question precluded the possibility of error. Instead of coming to grips with this argument against the possibility of error in the particular case under consideration, the authors of *Documentum syntheticum* respond with the generality that one cannot tell in advance what the Spirit might permit, and that He has permitted the Church to make mistakes before.

Had the authors of *Status quaestionis* articulated more adequately their argument that the Church is irrevocably committed to the received moral teaching on contraception and made explicit the case for thinking that this teaching had been proposed infallibly by the ordinary magisterium, then the generality with which the authors of *Documentum syntheticum* responded would have been patently question-begging. For if a teaching has been proposed infallibly, whether it is defined or not, then there is a criterion determined a priori by Christ's promises as to what the Spirit will and will not permit: the Spirit will never permit the Church to contradict such a teaching.

As we have admitted, the authors of *Status quaestionis* can be faulted

⁹⁶ Ibid. 67-68.

for not having made their argument more adequate and explicit, and also for the distraction of the secondary argument in respect to the probable effect of a change upon confidence of the faithful in the magisterium. Even so, a subsequent commentator—one by no means a partisan of the received teaching—easily set aside the distracting corollary, which he called a “political argument,” and summarized with reasonable accuracy the main argument of *Status quaestionis*. He points out that one reason why the Pope rejected the argument for change surely is that the reply to the central argument of *Status quaestionis* in *Documentum syntheticum* simply “does not begin to look like a response to things as they are.” If the argument in *Documentum syntheticum* for change “was to be accepted, it had to establish that such a thing was compatible with our faith in the Church; and it had also to recognize the consequences of admitting that it had in fact happened.”⁹⁷

Hans Küng, in his book on infallibility, interprets the argument of *Status quaestionis* as an attempt to show that the received teaching was infallibly proposed by the ordinary magisterium. This interpretation, as we have shown, goes beyond the explicit intent of the authors of the 1966 document, but in the direction of the tendency implicit in the argument they proposed. Küng also observes, correctly we believe, that the authors of *Documentum syntheticum* did not come to grips with the argument against change:

We can see now the real reason why the progressive majority of the commission were not able to convince the Pope. To judge from their own progressive report and the progressive official reaction of the commission, they had plainly not grasped sufficiently the full weight of the argument of the conservative group: the moral inadmissibility of contraception has been taught as a matter of course and even emphatically by all bishops everywhere in the world, in moral unity, unanimously, for centuries and then—against opposition—in the present century up to the Council (and the confusion which arose in this connection), as Catholic moral teaching to be observed on pain of eternal damnation: it is therefore to be understood in the light of the ordinary magisterium of pope and bishops as a factually *infallible* truth of morals, even though it has not been *defined* as such.⁹⁸

Although much of the argument in Küng’s book has been demolished by his critics,⁹⁹ they were dispensed from dealing in depth with the point he

⁹⁷ Michael Dummett, “The Documents of the Papal Commission on Birth Control,” *New Blackfriars* 50 (1969) 243.

⁹⁸ Hans Küng, *Infallible? An Inquiry* (Garden City, N.Y.: Doubleday, 1971) 57–58. Although Küng proposes to replace infallibility with indefectibility (181), he does not explain how errors in moral teaching on the scale he assumes to have occurred can be reconciled with indefectibility without this concept losing all meaning not only theoretically but also for the living of Christian life.

⁹⁹ See esp. Walter Brandmüller, “Hans Küng und die Kirchengeschichte: Kritische

makes in the paragraph just quoted, since Küng fails to provide exactly what the 1966 document itself failed to provide: an adequate statement of the argument that the received teaching has been proposed infallibly by the ordinary magisterium according to the criteria articulated by Vatican II.

In the documents of the papal Commission, besides the statements of the theological *periti* which we have been examining, there also was a schema drawn up by certain theologians, discussed by the cardinals and other bishops who were members of the Commission, amended to reflect this discussion, and included in the final report of the Secretary of the Commission. This document is titled *Schema documenti de responsabili paternitate*. No response to the argument of *Status quaestionis* appears in this schema. Rather, it embraces the position, which we criticized in section 4, that the use of contraceptives could be approved today without really changing the traditional teaching.¹⁰⁰

It is possible that the cardinals and bishops did not come to grips with the argument of *Status quaestionis* because they were unaware of the document. Cardinal Heenan, in an article published in May 1968, wrote that he had not seen the "minority report"—by which he meant *Status quaestionis*—until it was published in the *Tablet*, although Heenan presided over many meetings of the Commission in his capacity as one of its vice-presidents.¹⁰¹ The members of the Commission did seem familiar with the document prepared favoring change. By contrast, it seems at least possible that *Status quaestionis* was never sent to the cardinals and bishops who were members of the Commission, or perhaps they did not have time to read to the bottom of the pile of documents sent to them.

What we have said should be enough to establish our point: the argument in sections 2 and 3 of the present article was not considered and answered by the theological *periti* who favored change in the papal Commission in 1966. They did consider the less adequate and less explicit formulation of this line of argument, but they did not squarely meet the argument even as it was then formulated. And there is some possibility that the bishops and cardinals who were members of the Commission did not even know about the argument as it was proposed in *Status quaestionis*.

The final point we wish to make in respect to the relationship between the position we are defending in the present article and the work of the

Anmerkungen zu seinem Buch *Unfehlbar?* in Karl Rahner, S.J., ed., *Zum Problem Unfehlbarkeit: Antworten auf die Anfrage von Hans Küng* (Freiburg: Herder, 1971) 117-33, whose critique seriously calls into question Küng's competence as a scholar.

¹⁰⁰ Hoyt, *Birth Control Debate* 88-91.

¹⁰¹ John Cardinal Heenan, "The Authority of the Church," *Tablet* 222 (May 18, 1968) 489.

papal Commission is that nothing in Paul VI's judgment upon the work of the Commission would have to be changed if the thesis we defend here were accepted. Of course, this point is obvious with respect to the Pope's refusal to accept the recommendation to approve the use of contraceptives, and his reaffirmation of the traditional teaching in *Humanae vitae*. But there are other important aspects of the Commission's work which are less well known.

When the large group of experts who then constituted the Commission met in plenary session in March 1965, the theologians who considered change impossible were part of an important majority, among which there was consensus—although not on the substantive issue—at least upon the competence of the magisterium to teach with authority on the matter of contraception. There was an important and substantial minority who maintained from the outset the a priori conviction that the received Catholic teaching was not infallible because it could not be so; they held that the magisterium can at most give only prudential guidance on specific moral questions.¹⁰² Paul VI's judgment on this theory is obvious from the style of teaching in *Humanae vitae* as well as from its substance. And this judgment is consistent with our conclusion that the received Catholic teaching has been proposed infallibly.

Again, in June 1964 the Commission was asked to consider the precise question of the "pill"; eventually all but one or two of the theological *periti* voted negatively on the question: "Whether in the moral consideration of methods the use of the 'pill' constitutes a special problem?"¹⁰³ *Humanae vitae* does not treat the contraceptive use of oral contraceptives as a special problem. The Pope finally became convinced that the possible opening he felt obliged to examine in 1964 was only apparent, not real. In this judgment also, Paul VI's conclusions are consistent with the thesis that the received Catholic teaching was proposed infallibly by the ordinary magisterium, since oral contraceptives were always condemned, often specifically, as in *Si aliquis*.

VI

If the received Catholic teaching on the morality of contraception has been proposed infallibly by the ordinary magisterium, as we have argued, what is one to make of the reactions of Catholic bishops to *Humanae vitae*?

There were very many statements issued by individual bishops, partic-

¹⁰² Henri de Riedmatten, O.P., "Report on the 4th Session of the Commission Set up by the Holy See to Study the Problems of Population, Family, and Birth-rate (Rome; 25th to 28th March 1965)," mimeograph, English-language version, 39-40 and 45-46.

¹⁰³ Henri de Riedmatten, O.P., "Rapport Final," mimeograph with a covering letter dated June 27, 1966, pp. 8 and 18.

ularly immediately after the publication of *Humanae vitae*. We know of no collection of this vast body of material. However, reports at the time in *L'Osservatore romano* and in various news services indicated that almost all of these statements affirmed and many of them defended the teaching reaffirmed by the encyclical. Only a very few of these statements by individual Catholic bishops contained negative reactions, and even fewer went so far as to contradict what *Humanae vitae* reaffirmed.¹⁰⁴ Statements also were issued by or on behalf of various national hierarchies, and these statements have been collected.¹⁰⁵

If one reviews the collective episcopal statements, it becomes clear that most of this body of teaching is consonant with the teaching of *Humanae vitae*. However, each of the documents has a unique character; all were composed as thoughtful responses both to the encyclical and to the pastoral problems raised by its reaffirmation of the received teaching.¹⁰⁶

It is a mistake to speak of these episcopal statements as if they contributed a chorus of episcopal dissent to the dissent of some theologians, who criticized the encyclical and rejected its reaffirmation of the received teaching on contraception. None of the episcopal statements denied the competence of the magisterium to propose specific moral norms, norms in themselves obligatory, on the morality of contraception. Moreover, none of the episcopal statements explicitly rejects the norms restated in *Humanae vitae*.¹⁰⁷

The agreement between the bishops and Pope Paul was not merely tacit. Many of the hierarchies strongly and clearly affirm the competence of the magisterium to propose norms and explicitly support the norms

¹⁰⁴ The scantness of negative episcopal reaction can be seen by examining the *New York Times*, the *National Catholic Reporter*, and *NC News Service* from July 29 through Aug. 31, 1968; not more than a half-dozen negative reactions by individual bishops are reported. The media did not give equal attention to bishops who affirmed the teaching as their own and defended it against dissent. E.g., the booklet, *Sex in Marriage: Love-giving, Life-giving*, originally published by Patrick Cardinal O'Boyle to instruct the faithful of his archdiocese, was reprinted with a personal commendation to their own faithful by the ordinaries of St. Louis, Philadelphia, Lafayette (Louisiana), St. Cloud, Sioux City, and Scranton. Many other ordinaries in the U.S. and Canada authorized the distribution of the booklet, and ordered copies especially for the use of priests and teachers. The booklet also was published in New Zealand by the hierarchy of that country collectively. But the negative remarks of one retired archbishop received more publicity than did this extensive effort to explain and defend *Humanae vitae*.

¹⁰⁵ E.g., by John Horgan, ed., *Humanae vitae and the Bishops: The Encyclical and the Statements of the National Hierarchies* (Shannon: Irish Univ., 1972). Even this collection is not complete. Cf. the list given by Martin Brugarola, S.J., "Presentación," in Zalba, *Las conferencias episcopales* 5-7.

¹⁰⁶ Cf. E. Hamel, S.J., "Conferentiae episcopales et encyclica 'Humanae vitae,'" in *De matrimonio coniunctanea* (Rome: Gregorian Univ., 1970) 323-40.

¹⁰⁷ *Ibid.* 340.

proposed in the encyclical. Almost all the rest make statements which—assuming as one should that they are sincere and are to be read in a straightforward sense—at least imply the competence of the magisterium and imply that the bishops themselves agree with the received teaching. Thus Austin Flannery, O.P., observes:

Two important points need to be emphasized about the divergences between the bishops' statements. The first is that no hierarchy fails to accept the encyclical. All of them accept it and all of them commend it to their people's acceptance. The second is that such divergences as there are, exist within the broader context of wholehearted acceptance of the main thrust of the encyclical's teaching on marriage.¹⁰⁸

This observation seems to us correct. At the same time, we must also agree with Flannery that certain of the collective statements qualify the teaching in such a manner as implicitly to contradict it.¹⁰⁹

These qualifications appear in the attempts of certain hierarchies to mitigate pastorally the impact of the reaffirmation of the traditional teaching. Most of the collective statements do this in ways which neither contradict *Humanae vitae* nor distort common Catholic moral teaching upon the obligation of individuals to follow even an erroneous conscience and upon the possibility that subjective factors can and often do mitigate culpability for acts which are objectively grave. But a few of the statements try to go further, and if they do not implicitly deny that contraception always is gravely evil, they must be taken to imply the truly strange notion that what is objectively gravely evil might nevertheless be correctly judged to be permissible or even obligatory.

If there had *always* been teachings by Catholic bishops along these lines, the universality required for evidence of the infallible exercise of the ordinary magisterium would never have been manifest. However, the implicit contradiction in 1968 by some bishops of a teaching already infallibly proposed through many centuries takes nothing away from the objective certitude of this teaching.

Moreover, just to the extent that some—and by far the minority—of the episcopal statements must be read as implying a view on the objective immorality of contraception different from the teaching reaffirmed in *Humanae vitae*, to the same extent these statements disagree with one

¹⁰⁸ Austin Flannery, O.P., "Commentary or Qualification?" in Horgan, *Humanae vitae and the Bishops* 355.

¹⁰⁹ *Ibid.*, p. 366. See also Zalba, *Las conferencias episcopales*, chapters on the statements of Belgium (59–72), Austria (90–100), Canada (112–21), Scandinavia (122–34), and France (141–59), as well as his "Conclusión" (182–93). Readers seeking a more adequate commentary on the collective statements than we are able to give here, yet consonant with the position we are defending, may study the whole of Zalba's detailed and balanced commentary.

another as well as with the majority of the episcopal statements which do not raise any problems. The statements which are not fully consonant with *Humanae vitae* and with the majority of the episcopal statements harmoniously responding to it also conflict with each other and tend to cancel each other out.

Some of the episcopal statements, while by no means stating or even implying that the bishops who joined in them dissented from the teaching of *Humanae vitae*, discuss the possibility and the limits of licit dissent from authoritative teachings of the magisterium. In several cases such statements proceed directly from the nondefinitive character of *Humanae vitae* to the possibility of dissent. No hierarchy raises the question whether the received Catholic teaching has been proposed infallibly by the ordinary magisterium, and so no hierarchy takes a position on this question. Hence, although what some of the hierarchies say about dissent seems to assume that the received teaching is not itself infallible, we see no warrant for supposing that bishops meant to take a position on this question to which they simply did not address themselves.

What should one make of the discussions of dissent in some of these episcopal statements? There are two possibilities. In some cases the discussion seems to be intended to point out that even if—an assumption but not a concession—the received teaching is only an authoritative, noninfallible one, still there are limits of dissent which must not be violated.¹¹⁰ In other cases hierarchies which argued directly from the nondefinitive character of *Humanae vitae* to the legitimacy of dissent obviously overlooked the possibility that the teaching is infallible even if the encyclical is not *ex cathedra*. In overlooking this possibility, these bishops shared in an erroneous assumption which prevailed at the time.

Since 1968, the magisterium has continued to propose the received Catholic teaching on the morality of contraception and also has reaffirmed other moral teachings which have been called into question. Members of the pontifical Commission for the Study of Problems of Population, Family, and Birthrate who favored change in the received teaching concerning contraception believed that approval of contraception would not lead to the approval of other kinds of acts condemned until now by the Church as intrinsically evil. However, since 1968, many theologians who dissented from *Humanae vitae* have embraced positions in moral theory and in fundamental theology which seemed to them to justify their dissent, and then have gone on to question or deny a wide

¹¹⁰ The collective pastoral of the U.S. hierarchy, *Human Life in Our Day*, Nov. 15, 1968, seems to us to require this interpretation. The discussion of dissent is headed "Norms of Licit *Theological* Dissent" (italics added); the bishops seem primarily concerned to criticize the dissent then occurring, even if the assumption of those dissenting that the teaching itself is noninfallible were granted.

range of received Catholic moral teachings. Uncertainty, confusion, and discouragement at the pastoral level seem to be increasing from year to year.

Our final conclusion is this. We think there is an extremely strong case for the position that the received Catholic teaching on the immorality of contraception has been infallibly proposed by the ordinary magisterium. If the substantive issue were not so controversial, we think anyone who accepts what Vatican II has clearly articulated on the infallible exercise of the ordinary magisterium would also admit that the history of the way in which the Church has proposed the teaching on contraception clearly shows that the criteria for infallibility have been met in this case.

What are the consequences if this thesis is admitted to be correct? Certain of the episcopal statements issued in response to *Humanae vitae* ought to be reconsidered. Much theological discussion of the past decade—not only concerning the received Catholic teaching on contraception but also concerning other teachings which perhaps have been proposed infallibly by the ordinary magisterium—ought to be re-evaluated. Perhaps most important, pastoral practice ought to be reviewed and reformed to the extent necessary in order to bring it into better harmony with the Church's moral teaching.

But the concern of bishops to mitigate as much as possible the impact at the pastoral level of received moral teaching perhaps points to the need and the possibility of authentic development with respect to the subjective factors which limit culpability. Recent theological discussion, in its abundance and diversity, perhaps contains the seminal ideas required for such development. Moreover, if pastoral practice were reviewed and reformed to bring practice into conformity with irreformable teaching, still it would be impossible to go too far in understanding and in genuinely Christlike compassion toward the faithful who have suffered so much and in so many ways in the confusion since 1963.