

Virtue as Birth Control: An Examination of the Account of Rational Participation as a Component of Natural Law in *Humanae Vitae* and the Documents of the Papal Commission

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WHILE POPE PAUL VI'S 1968 encyclical *Humanae Vitae*'s confirmation of the Church's perennial teaching on birth control was and is still extremely controversial, its influence in the realm of moral theology extends beyond the teaching on contraception.¹ *Humanae Vitae* also served as a major influence on moral theology in general, questioning not just the application of principles, but the principles themselves.² Addressing a need for clarification of the Church's teaching in the debate concerning contraception,³ particular emphasis was given to the perception and status of natural law and its role in the articulation of moral theology and ethics.⁴ As Russell Hittinger asserts, *Humanae Vitae* was a catalyst in the post-conciliar renewal of Catholic moral theology in general and natural law in particular. The controversy surrounding the document and the use of natural law arguments by those for and against the document's conclusions revealed a fault line in moral theology.⁵ Part of *Humanae Vitae*'s effect on natural law

¹ F. Russell Hittinger, "Natural Law and Public Discourse: The Legacies of Joseph Ratzinger," *Loyola Law Review* 60 (2014): 255–257.

² See Janet Smith, *Humanae Vitae: A Generation Later* (Washington, DC: Catholic University of America Press, 1991), 9–10. Smith cites Edward MacKinnon, SJ, "Humanae Vitae and Doctrinal Development," *Continuum* 6 (1968) 269–75. Disagreement over principles is not categorical. For a thoughtful example of disagreement on the application, see Charles DeKoninck and Maurice Dionne, "The Question of Infertility," Memorandum, January 25, 1965.

³ Smith, *Humanae Vitae: A Generation Later*, 9.

⁴ See J. Bryan Hehir, "Bioethics and Natural Law: The Relationship in Catholic Teaching," *Kennedy Institute of Ethics Journal* 6, no. 4 (1996): 334–335, and Smith, *Humanae Vitae: A Generation Later*, 1.

⁵ Hittinger, "Natural Law and Public Discourse," 255. Hittinger argues that both the future Popes John Paul II and Benedict XVI saw this weakness and the end result was *Veritatis Splendor*. Hittinger traces the outlines of this in the referenced paper. The

teaching came from the papal commission that preceded its issuance, formally the Papal Commission for the Study of Problems of the Family, Population, and Birth Rate.⁶ The commission issued a report which proposed, on the foundation of natural law, the licitness of contraception as a reasonable method of responsible parenthood and, with it as appendices, a minority opinion that rejects this innovation in morality and a majority response, both making use of natural law. While not following the recommendation of the majority, Paul VI's argument from natural law did not follow the contours of the argument of the minority opinion either. In fact, all three documents display different versions of natural law.

The conflict over the meaning of natural law is not new; natural law has never been a univocal term with one common understanding. Though it has broadly included any system that holds objective moral norms, the structure and foundation has varied greatly among natural law proponents.⁷ In fact, in the debate about contraception, Janet Smith identifies at least six different versions of natural law arguments, three of which she finds in *Humanae Vitae* itself.⁸ What is peculiar about this particular debate is that, even though the documents differ in conclusions, many of the undergirding elements of natural law appear to be in agreement, dependent as they are on a traditional understanding of the nature of sexuality, marriage, and the authentic good of human persons. The crucial differences lie not in the definition of the goods involved, but in the more fundamental point of the definition of natural law itself. This foundational disagreement exposes the real weakness in Catholic natural law theory.

Thomas Aquinas, referenced in the majority paper of the papal commission and in *Humanae Vitae*, defines natural law as a person's rational participation in eternal law (ST I-II, q. 91, a. 2).⁹ As rational participation in the eternal law, natural law includes both a reference to the teleology inherent in created natures by which, through their natural acts, they reach their natural ends, and a reference to human beings' own ordering of their personal acts in a manner that is consistent with and ultimately facilitates the realization of their own

argument here is focused on the state of natural law in the discussion at that time, not the answer to the question of birth control, or the broader problems in moral theology.

⁶ Smith, *Humanae Vitae: A Generation Later*, 11.

⁷ Ernest Fortin, *Classical Christianity and the Political Order*, ed. J. Brian Benestad, (Lanham, MD: Rowman and Littlefield, 1996), 200; see Smith, *Humanae Vitae: A Generation Later*, 98–128.

⁸ Smith, *Humanae Vitae: A Generation Later*, 98–99. I am not completely convinced of this. Though many have found their own particular version of natural law, it is not clear that Paul VI is so inconsistent in his own view of natural law.

⁹ See Robert G. Hoyt, ed., "The Question Is Not Closed," in *The Birth Control Debate* (Kansas City: National Catholic Reporter, 1968), 70, 72 and *Humanae Vitae*, no. 10.

end. Because the documents in question seem to agree on both the rational nature of human beings and the nature and purpose of human sexuality and marriage, it is the account of rational participation in eternal law that is the central locus of divergence between the commission documents and the encyclical itself. The answer to the question concerning what it means for human beings to rationally participate in the eternal law is different in each of the documents. The minority's most prominent natural law position gives a somewhat passive role to reason and its involvement in morality, while the majority response permits reason a very active role, allowing persons to redirect the natural order.¹⁰ While *Humanae Vitae* does not provide a sustained account of natural law, what can be gleaned from the document's presentation suggests a balanced approach to rational participation, neither giving reason a passive role in natural law nor assigning it directing powers when it comes to the natural order. In this moderate approach, *Humanae Vitae* adequately supports the document's conclusion.

NATURAL LAW IN THE MINORITY OPINION

Despite the agreement with the consistent teaching of the Church, the minority position is unable to provide a substantive argument for continuing to support the traditional prohibition of the use of contraceptives. Three main arguments are used in the statement, two natural law arguments and an argument from Divine Law. Though the document asserts the domain of natural law in its consideration,¹¹ the stronger defense of the Church's traditional teaching seems to be the unanimity of the tradition itself and the immutable law of God. In fact, the minority opinion provides only the barest account of natural law, with a wavering assertion of how reason fits into the picture, leaving the account open to criticism from the majority position.¹²

The minority paper of the commission presents natural law most frequently as simply the order of creation established by God which human beings discern so that they can act in accord with it. In this account, the Church's magisterium and teaching are of assistance to human beings in their rational participation in eternal law, helping them discern the contents of the law. In the minority paper's affirmation of the constant teaching of the Church, it is not evident that the moral order discerned differs from the physical order and the

¹⁰ See Smith, *Humanae Vitae: A Generation Later*, 9. The main report from the commission will not be examined here, as its arguments are not as in depth as those in the major and minor report.

¹¹ Robert G. Hoyt, ed., "The State of the Question: A Conservative View," in *The Birth Control Debate*, 25–26.

¹² See Smith, *Humanae Vitae: A Generation Later*, 20.

laws the physical order follows. Further, the role of reason is simply discerning this order. The paper explains: "Theologians and the church have considered contraception as a violation not of an affirmative precept, but of a negative precept which obliges always and everywhere: 'Let no one impede human life in its proximate causes,' or 'let no one violate the ordination of this act and processes toward the good of the species.'" ¹³ The minority opinion thus concludes: "One may not deprive the conjugal act of its natural power for the procreation of new life." ¹⁴ Each of these statements is concerned with what is ultimately a physical ordering regarding the nature of acts and causes of generation.

Critiquing the majority's acceptance of artificial contraceptives, the paper affirms a deductive use of reason in natural law: "This view does not do justice to or protect either the competence which the Church has so many times vindicated for herself for the interpretation of the natural law, nor the Church's effective capacity of discerning the moral order established by God, which is so often obscure to fallen man." ¹⁵ In promoting this relatively passive view of rational participation, the paper criticizes those who say that rational participation in the eternal law might be understood in a more active manner, whereby the givens of the natural world can be used by human beings to assist them in their own development and the humanizing of culture. ¹⁶ The minority document adds to the earlier criticism of the majority conclusion: "Man's own psycho-physical parts are conceived of as having been entrusted to the embodied spirit which is man, so that he may humanize them through his culture in a given set of physical possibilities. Therefore he can frustrate his own biological, sexual function, even when voluntarily aroused, because it is subject to reason for the bettering of the human condition." ¹⁷ From the insistence that a person not manipulate the biological processes of his generative organs, the primary argument thus appears to be that contraception is a violation of the ordering of the laws of nature, which human beings are to discern and obey.

In asserting this, the minority document shows a deracinated view of nature, inherited from Francis Bacon. ¹⁸ Rather than accepting the

¹³ Hoyt, "The State of the Question: A Conservative View," 31.

¹⁴ Hoyt, "The State of the Question: A Conservative View," 32.

¹⁵ Hoyt, "The State of the Question: A Conservative View," 50.

¹⁶ This is one of the arguments given in the majority response. See Hoyt, "The Question Is Not Closed," 68.

¹⁷ Hoyt, "The State of the Question: A Conservative View," 51.

¹⁸ Francis Bacon, *Novum Organum*, ed. Joseph Devey (New York: P. F. Collier & Son, 1902), 119–120. Bacon separated knowledge into physics, which includes efficient causality, and metaphysics, which is almost everything else. Metaphysics, which included teleology, he called magic.

four causes of things—material, formal, efficient, and final—important for Aquinas’ account of natural law, the document, focusing on functionality, reduces causality to efficient causality, effectively excluding teleology from the conversation. Despite this line of argument, the document insists that it does not want to present a physicalist view of natural law.¹⁹ Perhaps recognizing the inadequacy of the approach, it guardedly explains: “In no way does [the teaching of the church] derive from any philosophy of nature (of the scholastics, stoics, or others) in which the natural physical order is the *general criterion* of the morality of man.”²⁰ This caution leads the drafters of the document to initiate a new line of reasoning, bifurcating the argument. It is not simply the naturalness of the ordering which demands respect: “It does attribute a special inviolability to this act and to the generative process precisely because they are generative of new *human life*, and life is not under man’s dominion. It is not because of some philosophy which would make the physical order of nature as such the criterion of the morality of human acts.”²¹ Human life in its generation is introduced as a value above the created order. While this approach correctly recognizes that the good of the physical order of creation is not reducible to functionality,²² this is another self-inflicted vulnerability. By presenting generation as an inviolable good, natural law itself is deracinated, by moving a good of the created natural order outside the realm of nature and limiting the scope of natural law to the human good, outside the context of the whole. Once such a view of nature limiting causality to functionality is adopted, appeals to natural law that wish to avoid being an appeal to mere functionality must bypass the ordering of nature and introduce further categories and terms. Language of this kind, protecting some particular and limited good, is a precursor of and shaped by the conversations that would lead to the full exposition of new natural law theories.²³

In striving to displace the physicalist error of using physical processes (efficient causality) as normative for morality, the new natural law theorists usually conceive of morality as abstracted from things, and instead dependent on what the agent intends. The language that affirms this thinking is present in the document, for example,

¹⁹ The Church has been accused of adopting this position. See Smith, *Humanae Vitae: A Generation Later*, 88, and Charles Curran, *Transition and Tradition in Moral Theology* (Notre Dame, IN: Notre Dame Press, 1979), 31.

²⁰ Hoyt, “The State of the Question: A Conservative View,” 34, emphasis in original.

²¹ Hoyt, “The State of the Question: A Conservative View,” 34.

²² See Smith, *Humanae Vitae: A Generation Later*, 74–75.

²³ See John Finnis, *Natural Law and Natural Rights* (Oxford: Oxford University Press, 2011), especially chapters 3 and 4. The proponents of New Natural Law were highly involved in the discussion leading up to and following *Humanae Vitae*, so it is no surprise that New Natural Law concepts made it into the reports.

where it asserts that “to have an intention, directly and actively contrary to a fundamental human good is something intrinsically evil.”²⁴ The new natural law tendency to focus on the intention as being intrinsically evil, rather than on the action that deviates from or distorts the normative moral order, is evident in this particular formulation, though it does not appear in the rest of the document.

Finally, in addition to the intentionalism present, in declaring the inviolability of the origin of human life, the minority effectively moves the consideration outside the framework of natural law. Instead these issues become directly dependent on the will of God and are not to be interfered with by human beings. Reference to Divine Law appears later in the document as well, attributing the real failure of accounts that would allow for the utilitarian manipulation of nature to an “insufficient place in human life for the action of the Holy Spirit and his mission of healing sin.”²⁵ While the subsequent reference to virtue leads back to nature and natural law, the condemnation of the technological manipulation of human generation in the context of virtue ethics is only secondary and inconclusive: “Neither is it evident what are the great demands on virtue which are often affirmed in this new tendency.”²⁶ Articulating the argument in such a way that virtue is secondary does not strengthen the natural law argument, but instead introduces a new argument dependent on grace and Divine Law.

The minority report indicates a weak conception of natural law and an insufficient understanding of its foundations. Because of this, the document equivocates on the locus of the malice in the natural law argument against contraception. While initially following a common conception of natural law which states that evil is found in disrespect for the biological laws of generation, the minority paper also places malice in the intention of the agent. By elaborating on the manner in which the created order is not normative and focusing attention on the inviolability of human life (either as a natural good or a separate Divinely-granted gift, subject to Divine Providence), the report calls into question the credibility of a natural law argument supporting Church teaching. As the document moves the evil in the act from the violation of a normative created order to the realm of intention against a human or divine good, the argument’s universality is weakened. While an intrinsically evil action is always wrong and can be judged according to a normative moral order, intention is not able to be judged in the same way. Intentions for employing contraceptive methods are not identical, and surely there are many times contraception is

²⁴ Hoyt, “The State of the Question: A Conservative View,” 36.

²⁵ Hoyt, “The State of the Question: A Conservative View,” 51.

²⁶ Hoyt, “The State of the Question: A Conservative View,” 51. Precisely how this statement relates to nature will become clear in the section on *Humanae Vitae* below.

employed without an intentional malice toward the good of human life.

The other weakness of the minority paper's natural law argument is the assertion that in matters of human life, the action of the Holy Spirit needs to be respected. While this is true, it is not a natural law argument, and placing it in such a context might lead readers to believe that there is no natural law argument properly speaking, thus leading to the conclusion that the teaching of the Church is a law only for her members, not to be universally applied. Both of these challenges leave room for the critique that the teaching of the Church is not based on a natural law argument at all, a critique that the majority (on the papal commission) makes. Despite its rejected conclusion, the majority correctly recognizes the profound connection between natural law and providence, and the necessity of the complementarity and compatibility of the realms of grace and nature.

THE REPORT OF THE MAJORITY AND NATURAL LAW

While the minority paper hinted at intentionalism, the majority's response hinges on an intentionalist view. In their paper, "The Question Is Not Closed," the larger consensus of the papal commission argued that the use of contraception within marriage is licit according to natural law. In its search to provide a natural law foundation for the proposed change to Church teaching on matters of contraception, the majority coalition in the birth control commission had two tasks. The first would be to show that accepting contraception did not represent a problematic change to Church teaching and natural law, and the second would be to give a different or corrected account of natural law that does not find the use of contraceptives intrinsically evil.²⁷

Despite the insistence of the minority that theirs was not a physicalist understanding of natural law, the unfounded sacralizing of the natural order, especially the claim of the "inviolability of the sources of human life,"²⁸ draws the most criticism, since it does not suggest a place for the use of human reason or satisfactorily consider the person's task before God to be a responsible and prudent steward of creation.²⁹ The majority explains: "An unconditional respect for nature in itself (as if nature in its physical existence were the expression of the will of God) pertains to a vision of man which sees something mysterious and sacred in nature and because of this fears that any human intervention tends to destroy rather than perfect this

²⁷ Smith, *Humanae Vitae: A Generation Later*, 15.

²⁸ Hoyt, "The Question Is Not Closed," 68; see 64–65.

²⁹ Hoyt, "The Question Is Not Closed," 64.

very nature.”³⁰ Accepting the purely functional view of nature put forward by the minority, the majority rejects the conclusion that this version of nature and the concomitant physicalist account of natural law can give any normative guidance.

Against this physicalist consideration of natural law, the majority proposes a version of natural law that gives human beings a more active participation. “The very dignity of man created to the image of God consists in this: that God wished man to share in his dominion. God has left man in the hands of his own counsel.”³¹ A person is not merely consigned in his moral life to respect nature because it is under Divine providence, but is asked to act according to the dictates of his own reason. He is responsible for discerning the good and acting appropriately. The document explains: “In the course of his life, man must attain his perfection in difficult and adverse conditions, he must accept the consequences of his responsibility, etc. Therefore, the dominion of God is exercised through man, who can use nature for his own perfection according to the dictates of right reason.”³² Nature and its physical laws become a tool of human perfection rather than the source of moral norms.

From a person’s rational use of nature for personal perfection, the majority opinion takes a further step: “[Man] feels that he is more conformed to his rational nature, created by God with liberty and responsibility, when he uses his skill to intervene in the biological processes of nature so that he can achieve the ends of the institutions of matrimony in the conditions of actual life than if he would abandon himself to chance.”³³ Instead of the inviolability of the created order proposed by the minority, the majority opinion proposes that the created order stands in need of perfection through the application of human reason.³⁴ It becomes clear that in the majority paper the formal content of natural law, the intelligibility of it, is from human reason, not from the order of biological processes.³⁵ The paper asserts: “Finalization toward fecundity can formally come only from man though this finality is found materially in the organs. Fecundation must be a personal human act. With the progress of knowledge, man can exercise this dominion and ought to exercise it responsibly.”³⁶ Human reasoning becomes the measure and guide for how to direct

³⁰ Hoyt, “The Question Is Not Closed,” 68.

³¹ Hoyt, “The Question Is Not Closed,” 69.

³² Hoyt, “The Question Is Not Closed,” 69.

³³ Hoyt, “The Question Is Not Closed,” 69.

³⁴ Hoyt, “The Question Is Not Closed,” 68.

³⁵ See Smith, *Humanae Vitae: A Generation Later*, 24.

³⁶ “The Question is Not Closed,” 71.

things to a particular end.³⁷

Despite the need to clarify the assertion that intention constitutes a truly human act, the document does not completely disregard the natural ordering of acts and organs related to this debate. This can be seen in the document's acknowledgement of the material ordering of sexual intercourse: "Intercourse materially considered carries with it some orientation toward fecundation, but this finality must be rationally directed by man according to the means and conditions of human love, size of family, educational needs, etc."³⁸ Here human beings, through the use of reason, determine whether or not the *natural material* ordering of the particular act should be permitted to reach finality or not, and thus participate in ordering things to their end by choosing to allow something to reach its end. Human reason, not nature, contains and gives final causality. Thus, in the case of the formal account of a particular act of sexual intercourse, a naturally fertile act must be a rational one: a person should intend fecundity. It is into this structure that the permission for contraception is said to fit. People are permitted to use contraceptive means to rationally control fecundity.

Even while asserting the priority of intention in a person's rational participation in the moral order, the majority opinion does not wish to be without some objective standards.³⁹ In the case of the licit use of contraception, the meaning of sexuality within marriage must be respected. Even in permitting contraception, marriage is always to be ordered to procreation, though there is also the good of mutual self-gift involved.⁴⁰ Using the moral teaching of St. Thomas Aquinas, the statement explains regarding love in the context of marriage that "this human act which has one moral specification can be composed of several particular acts if these partial acts do not have some object in itself already specified. And this is the case for matrimonial acts which are composed of several fertile and infertile acts; they constitute one totality because they refer to one deliberate choice."⁴¹ The document ties all these aspects together—the intention of the end, the formal and material ordering of the act—through the person and nature, to address specifically the case of a particular contraceptive act:

When man intervenes in the procreative process, he does this with the intention of regulating and not excluding fertility. Then he unites the

³⁷ See Hoyt, "The Question Is Not Closed," 71 and the discussion of this in Smith, *Humanae Vitae: A Generation Later*, 26.

³⁸ Hoyt, "The Question Is Not Closed," 71.

³⁹ Hoyt, "The Question Is Not Closed," 73.

⁴⁰ Hoyt, "The Question Is Not Closed," 74.

⁴¹ Hoyt, "The Question Is Not Closed," 72.

material finality toward fecundity which exists in intercourse with the formal finality of the person and renders the entire process “human.” Conjugal acts which by intention are infertile are ordered to the expression of the union of love; that love, however, reaches its culmination in fertility responsibly accepted.⁴²

Thus, the majority argues, because of its ordering to union, which itself is ordered to fecundity, a particular contraceptive act can be licit within the whole of a marriage open to life. The two standards for judging liceity are marriage and openness to life that is not completely excluded.

With its attention to finality and the ordering of a marriage as a whole, the majority opinion sees itself as having sufficient regard for the order of nature, which can rightly be used for the good of human beings. The argument is that conjugal acts rendered sterile through contraceptive means can still be ordered to the good of the unity of the couple, which is itself ordered to the good of procreation, even when a particular conjugal act is not.⁴³ The act in question does not then seem to violate the good of human life, as the specific intention against life through human generation is not present, but rather the act is ordered by a person’s intention to its remote finality to the good of conjugal procreation.

This argument, however, fails to take into consideration the importance of the natural species of the act which, while not identical with the moral species, is still included in determining the moral species. For the moral species cannot contradict or ignore the object of the act’s natural and *per se* components, it must instead include them to be judged properly by right reason. When determining the moral species of an act, the act itself—that is, what is actually happening—must be considered, along with the natural teleological ordering of the act. The intention of the agent cannot override natural ordering to change the natural or the moral species of an action. In this case, intentionally rendered infertility cannot be actually ordered to a remote procreative end. Intentional and deliberate infertility cannot, by the intention of the agent, be considered one and the same moral act as the sexual acts that are intentionally procreative, or at the very

⁴² Hoyt, “The Question Is Not Closed,” 72.

⁴³ See Hoyt, “The Question Is Not Closed,” 72. While this is an intentionalist argument, Germain Grisez himself, in *Contraception and the Natural Law* (Milwaukee, WI: Bruce, 1964) excludes the reasoning found in the majority report by explaining that “man and wife cannot express love in any genuine sense if they know they are cooperating in an evil act. Hence such cooperation renders the sexual act for those who practice contraception while knowing it to be evil an offense against marital love as well as an offense against procreation” (95).

least do not hinder procreation.⁴⁴ It is the type of action that is naturally incapable of this ordering, and thus to do so by intention would be to act against reason. To intentionally order a contraceptive act to the end of procreation is fundamentally irrational. To take a simpler example, it would be irrational to claim that taking poison could be, when considered in the context of a life spent eating real food, ordered overall to the good of nutrition. The type of act that taking poison is is intrinsically opposed to nutrition, even though the same organs are used. In the same way that the good of nutrition cannot be reached through taking poison, the good of procreation cannot be reached through contraceptive acts, no matter the context. They are inherently opposed.

HUMANAE VITAE'S ACCOUNT OF NATURAL LAW

In its own argument, *Humanae Vitae's* point of departure indicates that the very articulation of the natural law given by the majority response will be subject to close critique:

Could it not be admitted that the intention of a less abundant but more rationalized fecundity might transform a materializing intervention into a licit and wise control of birth? Could it not be admitted, that is, that the finality of procreation pertains to the ensemble of conjugal life, rather than to its single acts? It is also asked whether, in view of the increased sense of responsibility of modern man, the moment has not come for him to entrust his reason and his will, rather than to the biological rhythms of his organism, the task of regulating birth. (*Humanae Vitae*, no. 3)

⁴⁴ While this paper is about natural law and not primarily about birth control and the morality of various means of birth control, it seems appropriate to make a comment here about the contraceptive act mentioned in the above discussion and natural family planning's method of using the infertile times of a woman's cycle in such a way as to regulate births. First, it must be said that not having sex is not a sin, so avoiding intercourse during presumed fertility is not in itself sinful. Intercourse outside of the times thought to be fertile remains open to life as long as there are no obstacles placed in the way. These can be either physical obstacles in the case of various means of artificial contraceptives, or intentional obstacles, as in the case of those who would try to use a natural family planning method with a "contraceptive mentality." Both actual contraceptives and intentional contraceptives are morally wrong here, but in different ways. The unobstructed act is not deprived of its natural end. If fertility is miscalculated, conception is not prevented, the act can reach its end under the appropriate conditions. Having a "contraceptive mentality" would make this act that is not wrong in itself wrong through the intention. While the discussion of contraception and natural family planning is a sensitive issue, it is outside the scope of this paper to discuss its uses and abuses, or the situations that make natural family planning difficult. Moral reasoning cannot start with the difficult cases.

In framing the question this way, the specific arguments of the commission are taken into consideration: the need for humanizing the biological processes through a person's use of reason and will, the finality of the act through the overall intention, and the need to take responsibility for personal actions. Paul VI indicates that the answer to the moral question here is in principle founded on natural law and more fully explained in revelation: "Such questions required from the teaching authority of the Church a new and deeper reflection upon the principles of the moral teaching on marriage: a teaching founded on the natural law, illuminated and enriched by divine revelation" (*Humanae Vitae*, no. 4). With these words, he reaffirms the basis of the teaching of the Church in natural law even as he seeks to take on the task of explaining it more clearly.⁴⁵

Humanae Vitae begins its treatment with the question of the end, a decidedly Thomistic starting point, though Aquinas is only cited once. The encyclical states: "The problem of birth, like every other question regarding human life, is to be considered beyond partial perspectives—whether of the biological or psychological, demographic, or sociological orders—in the light of an integral vision of man and of his vocation, not only his natural and earthly, but also his supernatural and eternal vocation" (no. 7). In light of his nature and supernatural vocation the meaning of marriage becomes clear. Paul VI reiterates the ends of marriage which the other two documents had already affirmed and supported: procreation and conjugal love (no. 7). These two ends are inherent in marriage by nature and given supernatural significance in the elevation of the natural institution to a sacrament (no. 8). From these ends of marriage, the pope shows the character of marriage: fully human, total, faithful, exclusive, and fecund (no. 9). Because it is human, marriage demands free acts of the will, consciously chosen, fully-intended acts not based in "instinct and sentimentality." When acting in a properly human manner, human beings act with intention and goals in mind. Actions within a marriage require the full use of human reason, governing choices and intending ends. While passion plays a part, the conscious choice of the means and intention of the end humanize marital love, making it an occasion for virtue. *Humanae Vitae* points out that it is through their shared life that married couples "attain their human perfection" (no. 9).

With the characteristics and ends articulated, the pope shows the aspects of responsible parenthood. He begins: "In relation to the biological processes, responsible parenthood means the knowledge and respect of their functions; the human intellect discovers in the power of giving life biological laws which are part of the human

⁴⁵ See Smith, *Humanae Vitae: A Generation Later*, 73.

person” (no. 10). Pope Paul VI does not have a physicalist view of natural law in mind here, as the minority opinion tended to, but still holds the same teleological view. For Paul VI, the purpose of human sexuality is of primary importance and biological laws support this. Along with marriage, sexual acts and organs have a purpose, not just a function, and reason takes both of these into account. By paying attention to what is actually happening in fertility cycles, people are able to leave fewer procreative actions to chance, instead using reason to discover the order and finality of human reproduction. Given this knowledge, the person can then choose actions based on his or her goals. According to the document, then, appropriate, fully-human action would require abstinence during fertile times.

Reason is used in two ways here.⁴⁶ First in a scientific way, man discerns the order of creation, and second in the judgment of what should be done in the present moment, based on the desired outcome. The first sense is of science or knowledge, knowing the order of things. The second applies this to human action so that the judgment of reason guides instinct and passion. This second use of reason is moral reasoning, the reasoning of natural law. As Martin Rhonheimer explains the encyclical, human beings participate in the “Creator’s providence by his own acts of intelligent understanding. This *active, intelligent* participation in divine providence is what properly is called natural law. Man has to judge what is right or what is convenient to do. By simply following his instincts, he could not fulfill the will of his Creator.”⁴⁷ Active participation requires prudential judgment. Paul VI emphasizes this, asserting: “In relation to the tendencies of instinct or passion, responsible parenthood means that necessary dominion which reason and will must exercise over them” (no. 10). Instinct or passion cannot be allowed to undermine the course of action dictated by right reason. To allow reason to be subverted by instinct or desire for pleasure would be a transgression of the moral order.

The document next specifies what the considerations of reason might be in this regard: “In relations to physical, economic, psychological, and social conditions, responsible parenthood is exercised, either by the deliberate and generous decision to raise a numerous family, or by the decision, made for grave motives and with due respect for the moral law, to avoid for the time being or even an indeterminate period, a new birth” (no. 10). Thus reason must guide and control instinct and passion when it has been decided that now is an inopportune time to bring a child into the world. While the document has not yet excluded technical means of regulating birth, the

⁴⁶ Smith, *Humanae Vitae: A Generation Later*, 74–75.

⁴⁷ Martin Rhonheimer, “Contraception, Sexual Behavior, and Natural Law,” *Linacre Quarterly* 56, no. 2 (1989): 38.

force of the argument up to this point seems to indicate an emphasis on virtue—that is, the reasoned governance of the passions—as the proper form of birth control. If it is not reasonable to have a child at this time, the reasonable course of action would be to refrain from activity ordered to producing a child.⁴⁸

The document continues its consideration of responsible parenthood: “Responsible parenthood also and above all implies a more profound relationship to the objective moral order established by God, of which a right conscience is a faithful interpreter. The responsible exercise of parenthood implies, therefore, that the husband and wife recognize fully their own duties towards God, towards themselves, towards the family and towards society, in a correct hierarchy of values” (no. 10). Taken together, these points show the positive injunctions of natural law in the area of marriage. Human beings are to use reason to discover the moral ordering inherent in sexual intercourse and marriage, which bestows on a person a hierarchy of responsibilities. With a well-formed conscience, persons must prudently determine the moral course of action in light of marriage and other concrete circumstances. This discernment should never contradict the requirements of virtue, by which human beings order their passions according to reason, always keeping in mind the natural ordering of sexual acts and the generative organs.

In giving reason the role of governing action, Paul VI introduces a view of natural law that is neither physicalism nor intentionalism but is instead related to virtue. In his treatment of the topic, Rhonheimer explains, the encyclical’s “description of what responsible parenthood is, also provides a very precise characterization of the virtue of chastity. Chastity does not simply mean continence, but mastery of one’s own sexual drives so as to integrate them into the order of personal love.”⁴⁹ The sexual appetite requires the governance of prudence, through the virtue of chastity to live out the responsible parenthood envisioned in the encyclical.⁵⁰

The particular uses of reason proposed in the encyclical are different from what the documents of the commission had proposed as the place of reason in natural law. Taking into consideration the distinction between physical and moral ordering insisted on by both documents of the commission, *Humanae Vitae* emphasizes that human

⁴⁸ While it is not the main point of this paper, it does seem important to note that *Humanae Vitae* and the magisterium of the Church do not completely rule out sexual intercourse in these instances. Using virtue and science, couples avoiding conception refrain from intercourse during the fertile part of the woman’s cycle. Couples can track this using various methods; however, the virtue of self-control is still required.

⁴⁹ Rhonheimer, “Contraception, Sexual Behavior, and Natural Law,” 39.

⁵⁰ See Rhonheimer, “Contraception, Sexual Behavior, and Natural Law,” 40, and Thomas Aquinas, *Summa Theologiae* I-II, q. 65, a. 1.

beings are not simply reading an order from the laws of nature. The binding content of the order of creation is not limited to recognizing and respecting functionality, but rather recognizing and respecting natural teleology.⁵¹ Functionality would simply view the biological processes and avoid interfering. However, natural teleology has a broader scope, keeping in mind the whole person and the goal of human life. The functionality of the reproductive system is included but it cannot be separated from the bigger picture. The appropriate use of this functionality also helps the human person reach the goal of human life. On this view, however, functionality is a means to the goal, not the end. With natural teleology, then, something different than non-interference is required.⁵² Ultimately, human beings must order their actions to conform to their ends in particular circumstances and with specifying requirements, ruling passions through the use of reason in virtue. This includes sexual intercourse in marriage, so that the biological ordering of the reproductive system is seen in the context of human love, marriage, and ultimately the goal of human life. Reason is to guide the use of passion in ordering actions. But the work of reason does not override the ordering of nature or the functionality of nature as the majority of the commission would have it, either. The moral order established by God is still appealed to by the encyclical, and with this come particular ordinances to which human beings must conform. Rationality does not permit them to be their own standard or to bend or change teleology. The encyclical makes this clear:

In the task of transmitting life, therefore, they are not free to proceed completely at will, as if they could determine in a wholly autonomous way, the honest path to follow; but they must conform their activity to the creative intention of God, expressed in the very nature of marriage and of its acts, and manifested by the constant teaching of the Church. (no. 10)

Nature is still to be respected as reflecting the ordering of God, in

⁵¹ Smith, *Humanae Vitae: A Generation Later*, 74–75.

⁵² In fact, interference can be permitted. To discuss all the ways this might be the case and addressing biological abnormalities is outside the scope of this paper (the latter also is beyond the author's competence). However, as an example, hormone therapies that are effective contraceptives can licitly be used to treat disease, regulate cycles, and for other health reasons (see HV, no. 13). In this situation, infertility resulting from the hormonal therapies is neither willed nor intended, it is neither a means nor an end, and thus a valid use of the principle of double effect. The particular medical act does not aim at infertility, and it is not the infertility itself which is the means to healing. Infertility is instead a kind of side effect of the hormonal therapy used to treat disease.

marriage and in the acts that properly belong to marriage.

The two ends of marriage and of the conjugal act are written not only into the nature of marriage and human rationality, but into the biological functions of man and woman as well, and should not be separated on either of these levels (*Humanae Vitae*, no. 12). The document explains: “By safeguarding both these essential aspects, the unitive and the procreative, the conjugal act preserves in its fullness the sense of true mutual love and its ordination towards man’s most high calling to parenthood” (no. 12).

Biologically, there are natural periods of infertility, and the encyclical explains that performing the conjugal act during these periods is not a separation of the two ends:

These acts ... do not cease to be lawful if, for causes independent of the will of the husband and wife they are foreseen to be infecund, since they always remain ordained towards expressing and consolidating their union. In fact, as experience bears witness, not every conjugal act is followed by new life. God has wisely disposed natural laws and rhythms of fecundity which, of themselves, cause a separation in the succession of births. Nonetheless, the Church, calling men back to the observance of the norms of the natural law, as interpreted by its constant doctrine, teaches that each and every marriage act must remain open to the transmission of life. (no. 11)

The use of periods of infertility is what the document considers “respecting the laws of the generative process” and thereby acknowledging “oneself not to be the arbiter of the sources of human life, but rather the minister of the design established by the creator” (no. 13).⁵³ These conjugal acts which happen to be naturally infertile—whether this is known and intended or not—are not immoral or against reason because they have not been deliberately ordered by spouses in such a way as to prevent fecundity. They have not been intentionally and mechanically deprived of their natural end. Spouses are still acting in harmony with their biological and spiritual nature, and the order inherent to it. They are “ministers of the design,” rather than dominating it. Thus Paul VI concludes the document’s natural law reflection: “In fact, just as man does not have unlimited dominion

⁵³ While the use of periods of infertility for intercourse can still be used with a contraceptive mentality, it is important to note that the Church does not see the act of intentionally using this part of the cycle for intercourse as intrinsically evil. Abstaining from intercourse during periods of fertility still requires self-control and reason to control passions. If the intention to prevent contraception was illicit in a particular case, the evil in these cases would be in the intention, not in the act itself, as in the case of a contraceptive act.

over his body in general, so also, with particular reason, he has no such dominion over his generative faculties as such, because of their intrinsic ordination towards raising up life of which God is the principle” (no. 13).

The argument of the document is not fundamentally against artificiality or interference, and instead points to true humanization and excellence in action, which is not through technical means but through virtue. The licit method of regulating birth when this is acknowledged to be necessary involves abstaining from the procreative act entirely during periods of fertility, a course of action that the document acknowledges will “appear to many to be difficult or even impossible of actuation.” This is because “like all great beneficent realities, it demands serious engagement and much effort, individual, family, and social effort. More than that, it would not be practicable without the help of God, who upholds and strengthens the good will of men. Yet to anyone who reflects well, it cannot but be clear that such efforts ennoble man and are beneficial to the human community” (*Humanae Vitae*, no. 20). This statement again calls to mind St. Thomas’ teaching on virtue, which demands individual development of habits, cultivated not only through individual acts but also through law (ST I-II, q. 92, a. 1). Virtue “ennobles man” and brings him to his true human perfection, but not without benefit to the human community.⁵⁴

The moral method of regulation of birth thus comes to light as simply the practice of virtue. Virtue, which is the perfection of human beings in appetite and emotion as these are moved in accord with reason, requires that the person take stock of the situation and act reasonably and responsibly in light of the moral demands made on him. It is not acting in ignorance or despite what seems to be responsible but, rather, conforming one’s actions and passions to the situation. Contraceptive methods conquer the effects of passions by technology rather than through right reason.

While it is not usually recognized as such, Pope Paul VI offers a clearly Thomistic account of natural law and a reaffirmation of Church teaching against the positions offered in the papers that came out of the papal birth control commission. In his emphasis on virtue and natural teleology over functionality, he adeptly avoids physicalism and a more passive view of reason. Paul VI also escapes the account of human beings’ rational participation in eternal law in the majority report, whereby a person uses technology to control nature. Instead,

⁵⁴ See Aquinas, *Summa Theologiae*, I-II, q. 90, a. 2; q. 92, a. 1. In the first, Thomas explains that law is directed to the common good, in the second that law’s end is inculcating virtue. Thus virtue and the common good of the community are very closely connected.

he points to the traditional understanding of the necessity of virtue, the perfecter of human nature, while pointing out the problems, societal and moral, associated with mechanical methods of birth control.

Though he does not offer an expansive explanation of natural law, Pope Paul VI is able to situate married love in the realm of St. Thomas's entire teaching on virtue. The demand for the primacy of reason indicates that reason is to order and direct the lower appetites and emotions through virtue (ST I-II, q. 50 and 56). By drawing attention to the end of married life as the end of the person in human perfection, the document shows that the virtues necessary for human perfection are further specified in married life.⁵⁵ Virtue's all-encompassing role in human life, then, must not be excluded in the other characteristics and demands of marriage.

CONCLUSION

The picture of natural law formed through the reading of *Humanae Vitae* is clearly not equal to those given by the papers coming out of the papal commission that preceded its issuance. While all the documents upheld the goods of marriage, the conjugal act, and the generative organs and acknowledged these as having particular ends and purposes naturally and supernaturally, they were not in agreement on how these goods, especially the purpose of procreation, were normative. Though these purposes were seen to be of assistance in forming a natural law teaching concerning the licitness of contraceptive practices within marriage, the other facet of traditional natural law teaching—a person's rational participation—was not a matter of agreement between the documents, and instead led to differences in conclusion.

The minority paper was shown to suffer from bifocalism, at one and the same time wanting human beings to deduce natural law simply from the ordering of nature but also not wanting to equate natural law with mere physical laws of the universe and thus opening the way to intentionalism. The majority paper offered a more active view of human beings' rational participation in natural law, arguing that they should be able to use technology to participate responsibly in the moral order, and at times even reorder the natural order. In the end, *Humanae Vitae* rejected both of these accounts, steering a clear course between a moral law that is no more than physicalism and the position that the physical laws of the universe are to be dominated for a person's intended ends.

Instead, Pope Paul VI offers a remarkably traditional account of natural law, drawing on the thought of St. Thomas Aquinas. In doing

⁵⁵ See Aquinas, *Summa Theologiae*, I-II, q. 55, a. 1.

this, he refers to the moral ordering of the created universe, which is in some ways inseparable from its natural ordering. Natural law comes to sight as a person's rational participation in this order by the virtuous ordering of personal action to the end or perfection of the human person. Marriage, the acts that belong to marriage, and the generative organs used in those acts all have their own teleological purposes which in the case of sex and the procreative organs are not able to be separated from their biological ends without violating the moral ordering as well. Reason instead responds to these natural ends, by accepting them as integral to the acts performed. By rationally acknowledging the ends given by nature, a person shows understanding of the act being performed. The natural end of the action can licitly be ordered to further ends, provided the integral nature and effects are not ignored or discarded. Thus human beings are best able to order their actions virtuously only when they know the natural ordering of the particular acts and keep these in mind, ordering them intentionally. From this consideration, a person's participation in eternal law, is to use reason to discern the proper modes of acting, and that means acting in virtue. Through virtue, human beings order themselves to the end, and control their lower faculties, allowing them to be ordered by right reason for the good of themselves and their community.

While *Humanae Vitae* and the debates surrounding birth control in regard to the encyclical revealed a weakness in moral theology concerning natural law, *Humane Vitae*'s treatment of natural law sets a tone for future magisterial documents in the area of morality. While *Humanae Vitae*'s treatment of natural law, in which a balanced use of reason is presented where human reason is neither simply a passive reader of the order of nature nor the standard of the moral law is not commonly recognized, this formulation is found and clarified in later magisterial documents. *Veritatis Splendor* elucidates further the teleological character of the moral life,⁵⁶ and later magisterial pronouncements in many areas of moral reflection, including ecology, economy, and society demonstrate a similar outlook.⁵⁷ This view of natural law encourages persons to see all actions in the context of a life ordered to the true human good and judge whether or not individual actions can legitimately be ordered to this goal. While more work needs to be done with regard to natural law in Catholic moral theology, the magisterial documents seem to be in agreement on what

⁵⁶ See especially no. 73, on the teleological character of the moral life.

⁵⁷ Pope Francis's *Laudato Si'* condemns those who see human reason as the only standard or limit for the encounter with nature. The social encyclicals caution against economies and social ordering that does not strike this balance between passivity and domination.

version of natural law to use. **M**

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