



FAITH & REASON

THE JOURNAL OF CHRISTENDOM COLLEGE

Spring 2004 | Vol. XXIX, No. 1

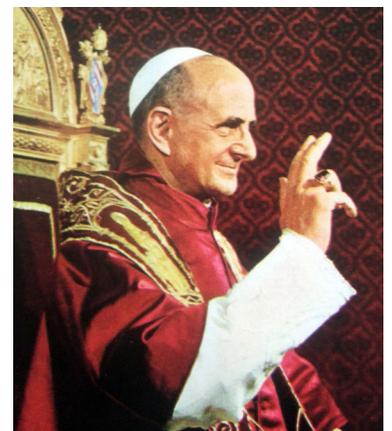
ARGUMENTS FOR A DEVELOPMENTAL CHANGE IN CHURCH TEACHING ON CONTRACEPTION: AN EXAMINATION

David Paul Deavel

INTRODUCTION



IF ANY SINGLE EVENT SEEMS TO EPITOMIZE THE DIVIDED STATE OF THE POST-Vatican II Catholic Church, it is the promulgation of the encyclical *Humanae Vitae* (hereafter *HV*). Paul VI's condemnation of contraception flew in the face of a great percentage of Catholics using and approving of it; thirty-five years of official Protestant decisions in opposition, beginning with the Lambeth Conference's cautious 1930 approval for married couples; and the majority opinion of his own commission set up to deal with such questions involving marriage. Of course, Paul VI must have had some reasons for renewing this condemnation of contraception even though aware of such great opposition. Many have suggested that the teaching was ripe for a change, either in the form of a complete reversal or at least a development which might have approved some, though not all, forms of contraception. Some commentators then and now have suggested that Paul's decision was basically made because of his fear of admitting any error, no matter how slight, on the part of the magisterium, thus leaving room for more challenges to papal authority.² Some argue that Paul's decision was only a continuation of the failure at Vatican II to actually admit that *Dignitatis Humanae's* teaching on religious freedom was a development that was a reversal: if only they had told the truth, then perhaps Paul VI would have felt freer to admit the change that was necessary.³ Arguments like these presume that the case for a development in doctrine allowing for contraception has been made decisively, allowing for speculation of an *ad hominem* variety to explain why Paul VI and his heir John Paul II have not revised the teaching. The assumption that the substantive debate on contraception is over and that the conversation can simply go on under the aegis of papal politics would seem to be premature. Luke Timothy Johnson has recently decided to argue against John Paul II's and Paul VI's teachings in the pages of *Commonweal* and has promised that more may come.⁴ *First Things* held a symposium on the topic, yielding a surprising agreement with Paul VI's logic on the part of some Protestants.⁵ George Weigel's biography of John Paul II emphasized the lack of a personalist context in *HV's* arguments, but assumed the correctness of their conclusions.⁶ In short, not only are the questions surrounding contraception still alive, Paul VI has even won over some highly-placed admirers.⁷ Given that this topic is still



Pope Paul VI

alive, it is useful to review again those arguments (made in the sixties and since) advocating change in the Catholic teaching. This essay will examine those arguments for change that assume a continuity in Catholic teaching and thus view changes through the lenses of development and not reversal. The arguments that I examine will not be limited to those made before the promulgation of *HV* but will include criticisms of it as a failure to incorporate doctrinal development that had already been accomplished by the time of Paul's encyclical. The arguments analyzed will be grouped under six different types: I. claims of an ambiguous tradition; II. arguments from a separation of sex and procreancy already present in the allowance of periodic continence; III. arguments about the type or nature of the act; IV. arguments from a development already made in the concept of marriage; V. claims that the traditional teaching was only a prudential argument whose time of appropriateness had already elapsed; and VI. arguments from the *sensus fidelium*. This examination cannot claim to be exhaustive. It will cover only what I feel to be the best or most prominent arguments and it will examine them only through the narrow lens of development (though necessarily with some discussion of the philosophical and theological coherence of the arguments themselves). My goal in each case will be to present the arguments for a development and then make a defense of the official teaching of the Church.

I. AMBIGUITY ABOUT THE TEACHING

This argument for change is perhaps only a preliminary argument for the rather modest claim that it is possible for the Church to change its teaching on the subject of contraception. It follows along the lines of introducing doubt about the clear witness of the Church over time. It has three forms: (A) a doubt as to whether the teaching is really part of Church law; (B) a doubt about whether the teaching has been consistently proposed; and (C) a doubt as to whether the teaching has been simply theoretically consistent with a particular theological viewpoint or has been the practical, though changeable, response to the Church's need to protect other, deeper values.


“No believer will wish to deny that the teaching authority of the Church is competent to interpret even the natural moral law”

-Paul VI, *Humanae Vitae*, 4



A. Doubts about the law. This kind of argument was popular before the promulgation of *HV*. Both then and now it seems to have been the weakest type of argument. It claims that there really has been no consistent teaching on the illicitness of contraception. John Noonan, though arguing for change, identified it as an invalid argument in 1967, citing *Gaudium et Spes* 51: “it is not lawful for children of the Church to use means reprobated by the teaching authority ii explicating the divine law.”⁸ Though *GS* 51 avoids saying what that law is, Noonan's book, *Contraception: A History of its Treatment by the Theologians and Canonists*, was a massive demonstration of the indubitability of what the law had always been (see Noonan's conclusion below). The law was not in doubt then, and it is not in doubt now.

B. Doubts about the teaching itself. This argument might seem more plausible from a Protestant perspective, since its main argument comes from the fact that Scripture has no explicit, unanimously recognized condemnation of the practice of contraception.⁹ Though this is true objectively, it seems a poor argument since there exists no condemnation of polygamy in Scripture either. Noonan again is the prime witness against this argument, having written the definitive history of the treatment of the topic by theologians and canonists. It is worth citing in full one of the last paragraphs of his introduction to his book:

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 Liege 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.¹⁰

Since 1965, of course, there have been many Catholic theologians who have taught the goodness (or at least the possibility of its permissibility in a proportionalist schema) of contraception. Yet there is still something powerful about Noonan’s recounting of such a powerful consistency. If it is possible to argue on an ambiguity about what has been taught, then it will only have to be on the basis that this powerful witness was itself part of a developing tradition.

C. *The teaching’s consistency in the abstract meaning that the ban was simply a practical response to changing social dynamics.* This question might allow for change in the teaching. **If it has been clear always and everywhere that contraception has been condemned, it is perhaps not clear that it has been condemned for the same reasons.** Thus, the argument goes, it may not have been the same teaching. One proponent of this approach is Gerald Egner, who argues that there has been a tension in the tradition due to the fact that Augustine’s view of marital sexuality was that its sole purpose is generation. It might also be enjoyed for the sake of the motive of avoiding fornication or even for sexual pleasure, but these actions were venial faults.¹¹ Conversely, the tradition of the Church at least since Pius XII (and perhaps Pius XI) has allowed for marital sexual expression during periods of natural infertility, an allowance for sexual expression in which the procreative intent is not present. Egner’s point is that the contemporary position has in fact changed from that of Augustine’s. If we really followed Augustine in the belief that sex is “justified” only by procreation, then we would have to admit that truly permissible sexual behavior would be limited to those times when conception is possible (and certainly not after the female’s menopause).¹²

To appeal to Aquinas is to run into the same problem. While he holds on to the main lines of Augustine’s argument, he allows also for the payment of the marriage debt (sexual relations with one’s partner for the sake of avoiding adultery), yet he does not allow for sexual pleasure as the motive for sexual intercourse.¹³ This is something that the current teaching does allow for (at least as a secondary end), which Egner claims makes a

disjunction in the teaching. But it is not clear that allowing sexual pleasure as a motive for sexual intercourse makes any such disjunction in the teaching. As long as the couple is open to the possibility of procreation in the act there is no violation of the teaching. And neither Augustine nor Aquinas forbade women beyond the age of normal conception from engaging in sexual intercourse.

II. DOES PERIODIC CONTINENCE ALREADY ALLOW FOR THE SEPARATION OF SEX AND PROCREATION?

The claim I have just listed by Egner is widespread. The basic problem which is raised by the use of periodic abstinence during the fertile periods is that while the traditional ban on contraception is justified by the demand that each and every act of marital sexuality is supposed to be open to new life, the use of abstinence during those periods means that sexuality during the rest of the month will be under the assumption, and thus with the intent, that sexual relations will not be procreative. In other words, James Arraj writes, “Once we clearly intend the act to be non-procreative, we have in some fashion gone against its procreative nature.”¹⁴ The appeal to the tradition on this point seems rather weak as well. While some have assumed that the knowledge of fertility cycles has only been gained in the last few centuries, it is clear that at least some rudimentary knowledge of them has been around since the fourth century when the use of them to avoid conception was condemned by Augustine.¹⁵ Noonan comments that it is, no doubt, piquant that the first pronouncement on contraception by the most influential theologian teaching on such matters should be a vigorous attack on the one method of avoiding procreation accepted by Catholic theologians as morally lawful.¹⁶

Yet, two responses might be given to such objections. First, Noonan himself admits that this condemnation is part of Augustine’s main criticism of the Manichees’ own hatred of conception at all costs. It can thus be reasoned that perhaps Augustine’s criticisms might be toned down if they were not dealing with the peculiarities of Manichee beliefs on sexual partnership. Yet this response seems to strike a false note, if Augustine’s belief is that procreation alone truly justifies marital sexuality.¹⁷



The second response comes from a later time, since the topic seemed to lie fallow until the nineteenth century. The science making possible a relatively accurate counting of the fertile and infertile periods was beginning to develop in the 1870's and a case of use of the sterile periods went to the Roman Penitentiary in 1880, with the decision made that any couple using the sterile period should not be disturbed in their practice. It is not clear whether this decision meant that the practice was sinful though permitted only so that the couple might not resort to contraception, or was permitted as lawful.¹⁸ Noonan makes much of the reserve that accompanied the use of the sterile period for at least the first half of the twentieth century, ending with its approval. His conclusion is that procreation was thus officially separated from sex.¹⁹ The official teaching of the Church is that procreation is still somehow the end or goal of sexuality. What then of the defense of sexual intercourse during the "safe" periods?

A variety of arguments defending the use of the sterile method (or Natural Family Planning, abbreviated as NFP) as intrinsically different from contraception can be found in various published positions.²⁰ But they all hinge around one point: namely, that NFP involves a not doing something, which does not have any sort of moral content at all, while contraception involves an interference with the "generative structure" of the act of marital union. Elizabeth Anscombe perhaps explains this best when she distinguishes between contraception and periodic continence by noting that there are two types of intention involved. With regard to the further intention, avoiding conception, it is true that both the contraceptors and the abstainers desire to do the same thing and in this may be in fact justified. But, she adds, the other intention which is important is that of the act involved: "The action is not left by you as the kind of act by which life is transmitted, but is purposely rendered infertile, so changed to another sort of act altogether."²¹ Her claim is that not having sex next week does nothing to make this week's sex infertile; it is instead simply an ordinary act of marital intercourse. Even with reference to the Manichees, Anscombe claims that their problem was not merely that they practiced continence on occasion, but made this the condition for their marriages. This is indeed a false further intention, according to Anscombe.²²



NFP Logo

It is not clear that Anscombe is correct about Augustine's condemnation, though she may be. It does not seem to be the case that Augustine or anybody else in the tradition absolutely condemned marital sexuality after the age of childbearing. Yet it is not clear that Augustine does not think that such sexual relations are not in some way sinful as well, if only venially.

What constitutes the crux of the argument for change in the teaching is that although defenders of the traditional ban on contraception have been working with the notion that all marital sexuality is somehow procreative, their intent in using abstinence to avoid children is itself a way of saying that even if sexuality is procreative in general, not every specific act must be so. Does Anscombe's claim - that sexual relations during the infertile period are simply normal marital acts and not intentionally violating the structure of the act - work? Thinkers like Egner believe that the modern ban on contraception relies most heavily on an Augustinian apologetic but really abandons its heart by not making procreation the sole justifying motive for sexual relations, instead simply keeping the criterion of physiological union.²³ In his opinion, to call into question Augustine's defense of every instance of marital sexuality as justified by procreation is to call into question the ban on contraception. In essence, what Egner and Arraj are arguing is that the reasons given for the ban on contraception are somehow more primary than the actual ban itself. While this is one permissible way of looking at moral teaching, it is not the only way.

III. ARGUMENTS REGARDING THE TYPE OR NATURE OF THE ACT

Anscombe herself does not locate the significance of the moral teaching in its reasoning. Instead, she describes two types of virtues: those which are utilitarian and those which are "supra-utilitarian" or "mystical."²⁴ Utilitarian virtues like honesty about property and sobriety clearly have as their goal "the obvious material well-ordering of human life that is promoted if people have these virtues," while supra-utilitarian virtues can be argued to through utilitarian arguments. Such arguments tend to be "highly comic" and do not hit the foundations of the virtue's importance. Anscombe lists respect for the prohibition on murder as one such case. An argument against murder might make the case that it makes life better for those around, but this does not seem to get at what is the problem with murder, since the one who

who is murdered is beyond the point of complaining. The careful treatment of the bodies of the dead marks another case where utilitarian arguments seem to miss the point. And sexual chastity, including the ban against contraception, falls into this category as well. Thus, **for the defender of the ban on contraception, the ban itself is what is primary in the tradition and the reasons behind it might be important, but are not decisive.** Presumably, though his arguments could not be said to be “utilitarian,” even Augustine’s arguments then do not have the prescriptive power which Egner and others attribute to them.

Anscombe’s argument might be read as simply a way of saying that the teaching cannot be changed because it has not changed. If this is the case, then it might be said that the naked authority of the tradition is indeed the reason for the continuing ban. But if one emphasizes the sacredness of intercourse, as Anscombe has done, one runs into certain problems as well. Noonan says that if this view, which “depends on a kind of religious belief, perception, and emotion,” and which “is not verifiable or refutable by reason alone,” is to be held as the Catholic belief, then one must reckon with the allowance in the Catholic tradition for the “voluntary castration of choirboys for economic benefit, the sterilization of the cancerous for health’s sake, and the consumption of anaphrodisiacs by the neurotically libidinous.”²⁵ It is interesting that none of these examples which Noonan cites does interfere with the act of marital union itself. This would seem to insinuate that at least direct intervention in the act has never been countenanced. But he seems to imply that tampering with fertility or the libido might be countenanced. In the first case, that of the choirboys, Noonan might have a point, though it should be noted that the intent of the castration was not infertility, but instead the effect on the voices of the choirboys. And indeed Noonan acknowledges the weakness of the example when, in his treatment of the topic in his larger work, he notes that it presented only a “minor challenge” to the teaching on contraception since only “a few theologians” defended it, while most merely noted that the Church “tolerated” it.²⁶ His second example seems to be one that could clearly be defended under the principle of double effect. There would seem to be no more problem for the tradition than the removal of a gangrenous limb. His third example has to do with the suppression of sexual desire.²⁷ This seems to be a rather tenuous connection, since one would through the use of

anaphrodisiacs presumably not interfere with the power of sexual relations, but instead subdue desires so as to make them subject to reason. Thus, in none of Noonan’s examples of problems has he really shown any precedent for interference with the act of union itself, or even for sterilization.²⁸

If the preceding analysis is correct, it may indeed be logical to hold that the traditional ban on contraception is susceptible to a development with regard to the use of infertile periods, but not with regard to a use of means designed to make sexual relations infertile by rendering either the act or the body sterile. The assumption by some is that such arguments simply make biology dictate the terms of sexual morality. This “biologism” is assumed to be the only reason behind the analysis of the act as inviolable. This biologism is also rather inconsistent, for it leaves out the fact that animals do not follow the pattern of the inviolability of the natural act of sex.²⁹ Even if one says that this appeal to nature is not an appeal to a strict biological pattern of nature, but rather to the divine order which applies to all humans, one must then somehow show that what the traditional ban on contraception asserts is that divine order. The original objection noted in Egner’s work was that placing the natural meaning of sexual acts in procreation proves too much. Egner also argues that the whole method of argument from nature suffers from an analysis which is not consistent. He claims that the scholastic tradition, which birthed the defense of the inviolability of the marital sexual act, suffers from the same problem as the empiricist tradition in general in the sense that it derives significance, evidence, and causality from the mental processes of examination of particular objects and events - a sort of “peep show” which ignores the context of the action.³⁰ This kind of “peep show” analysis is then merged with a method of analysis which derives significance from the whole context of marriage, a completely different move altogether.³¹ To summarize the argument, Egner is saying that the supporter of the tradition examines the sexual act and finds its physiological pattern inviolable on the basis of its procreative end. The supporter then shifts gears and talks about the possibility of use of the sterile period on the basis of the marriage as a whole and its general orientation toward procreation. Thus, the only true criterion for the ban on contraceptive acts is the “peep show” analysis of the action in the abstract.

The minority report of the Papal Commission on Birth Control does not seem to disagree with this view in substance.³² Their point is that this analysis of sexual relations derives not from the fact that such acts and processes are biological but from the fact that they are human. They explain that the traditional teaching is based on an analogy which operates between the inviolability of “human life already existing” (*in facto esse*) and the “proximate causes” of this life (*vita in fieri*). They claim that “just as already existing human life is removed from the dominion of man, so also in some similar way is human life as it comes to be; that is, the act and the generative process, inasmuch as they are generative, are removed from his dominion.”³³ What we have returned to is the argument from Anscombe at the beginning of this section. The analogy between the sacredness of life and sexuality as the proximate cause of it is seen as determinative. Is it possible for this argument to be rationally sustained? It depends on what one does with the broader topic which Egner has broached: whether one can determine significance in individual acts or whether in all cases one must be prepared to see a moral action in a broader scope which includes further ends which can somehow justify any means. Edward L. Krasevac, O.P, writes that this is one of the unresolved issues for the third millennium. The unresolved issue as he sees it is how does one analyze what he calls the “core moral meaning” or, more traditionally, the “object” of a human action. Should it be defined and evaluated in terms of all the circumstances surrounding it, in itself without regard to circumstances or consequences, or with reference to “certain, particularly relevant circumstances or effects that can pretty well be circumscribed in advance?”³⁴ The logic of the traditional ban on contraception seems to hold that some human actions are able to be defined simply in terms of themselves or at least with a few predetermined consequences (contraception), while other actions are only able to be defined by their total consequences (family planning in general which allows for the sterile period).³⁵ That human actions seem to be split along these lines makes a certain problem for those who hold that the mere allowance of a sterile period, with its further intention of avoiding procreation, means that the ban on contraception is inconsistent. If it


“Married love particularly reveals its true nature and nobility when we realize that it takes its origin from God, who “is love,” the Father “from whom every family in heaven and on earth is named.”
 -Paul VI, *HV*, 8

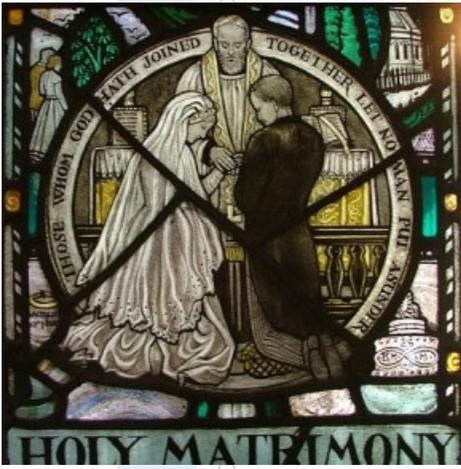

is the case that what Egner calls the “peep show” analysis can be correct, then it is not logically necessary to allow for forms of family planning other than the use of the sterile period. Noonan claims that *Gaudium et Spes* settled

the matter by deciding on the objective criteria for family planning by using the phrase “based on the nature of the human person and his acts” (*GS*, No. 51) rather than “by the nature of the act of intercourse.”³⁶ Again, this is not necessarily to decide the matter if one believes that the diagnosis of the act is based on an analysis of the nature of the person himself within the context of marriage. Principles of “totality,” which wish to measure the morality of actions within a pattern of dispositions and behaviors, by themselves do not mean anything to the tradition if they do not counter the claim that every act of contraception is wrong. One method of arguing that every act is not wrong is to claim

that developments in Catholic teaching on marriage have displaced the primacy of procreation from marriage and thus limit its importance within marital conjugal relations.

IV. ARGUMENTS MADE FROM AN EXISTING DEVELOPMENT ON MARRIAGE

Arguments like this are essentially the more explicit form of the claim that acts must be judged in terms of all the circumstances which surround an action. The arguments are prefaced by the traditional declaration, expressed in the 1917 Code of Canon Law, that marriage’s primary end is procreation and the secondary end is the mutual aid and quieting of concupiscence of the spouses.³⁷ Pius XI in *Casti Connubii* spoke of the hierarchy of ends with reference to marriage and emphasized the importance of the secondary ends, while maintaining that the purpose of the marital act is still propagation.³⁸ Pius XI was perhaps not satisfied with this label of secondary ends and appears to have resorted at times to a language of two primacies.³⁹ Pius XII did not speak of the meaning or purpose of the marital act, but instead spoke of the duty of propagation within marriage.⁴⁰ So far, so good. What J. A. Selling and John Noonan claim happens next is that *Gaudium et Spes* changed everything. They argue that because the Council Fathers rejected the use of the



mutual service, the procreation and education of children had somehow been subordinated or at least put on an equal plane as a co-primary end. Even if procreation were subordinated as an end of marriage, it would not follow that procreation is subordinated as an end of intercourse during the fertile period.⁴² But it is not clear that this interpretation really does justice to *GS*'s content with regard to marriage in any case. **Certainly *GS* affirms that marriage, though “endowed as it is with various benefits and purposes,” is itself with “conjugal love ordained for the procreation and education of children and find in them their ultimate crown” (48).** If marriage and conjugal love are ordered toward children, this does not seem to make any sort of development that would be opposed to seeing a primary and secondary end in marriage. In fact, it seems that *GS* has no problem in affirming this ordering and simultaneously claiming that marriage “persists as a whole manner and communion of life, maintaining value and indissolubility even without children” (50).

Thus what one can see here is not the abandonment of a notion of primary and secondary ends of marriage or of conjugal love, but instead a more pastoral language of ordering. John Gallagher observes that this handling reflects Pius XI's discomfort regarding how to make clear the ordination of marriage toward procreation while at the same time not de-emphasizing mutual aid or mutual love. The Roman Rota's 1944 rejection of the assertion of Herbert Doms that there were two primary ends in marriage which are equal (and thus not having one end subordinated to the other) was a defense against the notion that these two primary ends would be somehow only accidentally and not essentially linked, thus leaving room for a deliberate suppression of the

procreative function.⁴³ Gallagher's explanation of *GS*'s reticence was that it wanted to leave open the nature of the intrinsic relationship between the unitive and procreative.⁴⁴ That this interpretation is the correct one may be supported by the observation of the Congregation for the Doctrine of the Faith (CDF) on the book *Human Sexuality*, which makes the very same claim that *GS* rejected the hierarchy of ends:

On the contrary, in responding to the suggestion of numerous Fathers that the hierarchic distinction of ends be included in the *Pastoral Constitution* No. 48, the Commission on Emendations explicitly declared: “In a text that is to be pastoral in character and aims at fostering a dialogue with the world, there is no need of introducing juridical elements.... In any case, the primordial importance of procreation and education is pointed out at least 10 times in the text.” (see Nos. 48 and 50)⁴⁵

The Roman Rota's fear that having two primary ends might lead to a suppression of the procreative was apparently prescient, for Noonan's use of this denial of primacy of ends leads him to comment that one “might not be observed while another is suppressed.”⁴⁶

If this claim that Vatican II effectively abandoned the hierarchy of ends or purposes of marriage is false, then the mileage Selling gets out of using it to criticize *HV* is quite small. Selling claims that Paul VI's use of two “meanings” for the conjugal act thus took up a tack Pius XII and Vatican II left behind.⁴⁷ Yet, if Vatican II did indeed assert the ordination of marriage and conjugal love toward the procreation and education of children, then Paul VI was not making a radical shift at all. Selling claims that Paul VI additionally radically changed Pius XII's criteria for the use of the safe period from “serious reasons” to what the Council called “responsible parenthood.”⁴⁸ This might be a development but it is hard to see how it is a radical development, considering the attention Paul had given to the problems of population and resources in *Populorum Progressio*. Again, the problem seems to be not that there is disjunction in the development on marriage, but a disagreement about which circumstances are relevant to what kinds of actions. Marriage as an “action” (it would seem that marriage is only analogically considered as an action) has many circumstances which would allow a couple autonomy (within the limits of divine providence) as to how many children to have. Sexual expression within marriage is a rather

more defined action which has been analyzed according to its position within marriage and thus judged more easily from an external position.

V. CLAIMS FOR THE PRUDENTIAL NATURE OF THE TEACHING

Claims of this sort are fairly easy to categorize with all the others that try to make the lawfulness of contraception dependent upon some “higher” or more comprehensive view of the action than that of an analysis of the act of marital sexuality which the traditional condemnations have always taken. This attempt at harmony can take as its basis the reading of Vatican II which I argued against in the last section, or it can take a broader, more consequentialist reading.

An example of the first type is that which is found in the Papal Commission on Birth Control’s Final Report.⁴⁹ The argument attempts to adhere to the traditional unity of procreative and unitive purposes by declaring that a couple’s conjugal love is “only perfectable if their love does not end in a merely egotistic union, but according to the condition of each is made truly fruitful in the creation of a new life.”⁵⁰ It further says “responsible parenthood (that is, generous and prudent parenthood) is a fundamental requirement of a married couple’s true mission.”⁵¹ It even quotes *GS* to the extent that marriage is ordained toward begetting and educating children.⁵² Thus, it would seem that the Commission’s reading of the tradition is fully in line with the reasoning of the popes and of Vatican II.

Yet the Commission attempts to explain their thought in a way that goes beyond it. **The Commission interprets the condemnation of contraception as simply the opposition to a “contraceptive mentality,” which they define as “a mentality and way of married life which in its totality is egotistically and irrationally opposed to fruitfulness.”** The ban on contraception up till this point has been for the sake of the protection of two values: the goodness of procreation and the rightness of marital intercourse.⁵³ In other words, the ban on contraception itself did not have as its basis an analysis of the act of contraception but instead was a prudential judgment to ward off the possibility of escaping “responsible parenthood.” The claim here is that this interpretation is not a contradiction of doctrine

but a deepening of it.⁵⁴ Again, the presupposition behind this change is that to take the step further a couple must postulate an equivalency between the intention of the couple using the naturally infertile times to avoid conception and the one who either creates infertile periods or prevents conception some other way.⁵⁵ Thus, the way to change the teaching and still claim continuity is simply to maintain that the teaching was a prudential measure which can now be changed due to our new understanding of biology, sexuality, psychology, demography, our lower mortality rate, improved estimation of marital sexuality, and better grasp on the human duties to “humanize and to bring to perfection what is given in nature.”⁵⁶ What is clear then is that the notion of achieving a greater good of responsible parenting is the criterion which commands not only the attempted regulation of fertility, but its means as well. While the Commission reports that there are objective criteria, they list them as (1) corresponding to the nature of the human and his acts, (2) a proportionate means to avoiding conception (apparently contrasting permanent sterilization with temporary measures), (3) choosing that option which has the least necessary physical evil (of biological, hygienic, and psychological variety),⁵⁷ and (4) what is available at what economic cost.⁵⁸ What this description of criteria leaves out is what methods correspond to the nature of the human person and his acts. If the traditional condemnation is correct, then only one method fits this first criterion. Egnér thinks the sort of developmental argument used by the Commission is possibly correct in that it would develop the Augustinian notion of procreation as the justification of sexual intercourse but broaden it according to the continuing developments of marriage in the twentieth century; yet he admits that the traditional condemnation has the weight of tradition on its side.⁵⁹

Noonan’s broader prudential development argument is against the notion that the condemnation of contraception is the linchpin of Catholic morality. He notes the claims by many opponents of change that abandonment of this position will lead to fornication, abortion,



adultery, and an even more general disrespect for life, especially on part of social planners who think contraception too slow in halting population growth. Noonan's position is that there is enough Scriptural warrant out there to condemn fornication and adultery, while abortion is just an obvious case of wrong which would not be affected by contraception. Catholics have come of age and the age-old condemnation no longer does its job. Instead, it forces a crisis of conscience whereby "educated Catholics" now must find themselves opposed to the Church or pay a penalty for their conscientiousness in obedience to the Church's hierarchy.⁶⁰ Egner suggests that the monitoring of the predicted consequences of abandonment of the traditional position (many of which were listed by Paul VI in *HV* 17) could provide a way around the problem of those who are not convinced by the natural law arguments but who are impressed by the consistency of the Church's condemnation of the ban.⁶¹ In the light of the last thirty-five years, the results of the abandonment of the precept seem to have matched the predictions of Paul VI and others more than those of Noonan or the Papal Birth Control Commission.⁶² Even then, however, Noonan was able to note that Japan's experiment with the promotion of contraception and tolerance of abortion had led to "the highest recorded rate of abortion known to man (over 1,000,000 per year for the last dozen years)."⁶³ In other words, **contraception does not stem the tide of abortion logically or in reality; and it may in fact push it on.** If one of Newman's notes of authentic development was "chronic vigor," a quality of growth and life and a more Catholic vision of the topic at hand, then it seems the weight of vigor has not been on the side of those favoring a development including contraception.⁶⁴

VI. THE ARGUMENT FROM THE *SENSUS FIDELIUM*

VI. THE ARGUMENT FROM THE *SENSUS FIDELIUM*

The Papal Commission's final report claims that, according to the *sensus fidelium* of the Church, "condemnation of a couple to a long and often heroic abstinence as the means to regulate conception, cannot be founded

on the truth."⁶⁵ Any kind of claim on the basis of the *sensus fidelium* is rather tricky. Charles Meyer notes that the claims by theologians opposing *HV* that Paul VI ignored the witness of the faithful are rather unilateral. Such theologians ignore the fact that there were others who believed that the teaching of the Church needed to stay the same.⁶⁶ Pope Paul VI chose to go with the *sensus fidelium* as it had been expressed for two thousand years. One could only truly make the argument that the *sensus fidelium* had spoken if one were to consider it by an absolute majority at one or other periods in history. This does not define the *sensus fidelium* according to the standards of Vatican II, which make agreement with the bishops under and with the guidance of the pope the criterion of the faithful's infallibility.⁶⁷ One could also question who exactly one means when one is talking about "the faithful."

CONCLUSION

Of the arguments for a change in the teaching on contraception, it seems that all but the argument from the *sensus fidelium* attempt to make their case for development by getting behind the condemnations themselves and trying to trace out a fundamental principle or set of principles which might be seen to be the "real" teaching which is affirmed in the ages-long ban on contraceptive acts. Some arguments rely on the

claim that the natural-law arguments the Church has used to support the teaching have been wrong but had some measure of truth behind them in the abstract principles that grounded them. Most of these explanations have behind them some notion of "parenthood," or prudent use of marital sexuality in the service of mutual communion, that supposedly provides a larger context in which one can then abandon the specific condemnation of contraceptive acts.⁶⁸ What all of them want to abandon is the notion that one can judge either sexual acts specifically or any acts generally by virtue of an analysis of the object of the act.

If there were to be a development of doctrine on this topic, the question of which moral acts demand a more comprehensive set of circumstances to effectively describe them would have to be resolved. So far,

"It can be foreseen that this teaching will perhaps not be easily received by all: Too numerous are those voices-amplified by the modern means of propaganda-which are contrary to the voice of the Church."

-Paul VI, *HV*, 18

magisterial teaching has not changed on this topic, if one looks at *Veritatis Splendor* or *Evangelium Vitae*. Sexual acts may seem predominant in the current list of narrowly defined actions, but those which refer to the inviolability of life itself seem not far behind if one looks at current teaching in those encyclicals on abortion and the death penalty. In the meantime, one might note that the evidence of better marital sexuality and better marriages which was to have helped undergird the argument for change has not materialized. If anything, the opposite has happened. Divorce rates for Catholics are nearly as

high as the general population, general sexual morality is lower, and governments such as China do use coercive measures to sterilize their citizens or abort their children. Not all of this has been due to the use of contraceptives, but contraception has undeniably been a factor. Likewise, it is not evident that the *sensus fidelium* has changed. Recently, many younger Catholics who did not experience the turbulence of the debates of the sixties have found their own way to the teaching of the Church on this topic. Perhaps they will have their own voices to contribute to the *sensus fidelium*.



NOTES

1 For the domino effect evidenced in Protestant circles, see John T. Noonan, Jr., *Contraception: A History of Its Treatment by the Catholic Theologians and Canonists* (Cambridge, Mass.: Belknap, 1965, 1986), 490. Noonan's list, taken from Richard M. Fagley, *The Population Explosion and Christian Responsibility* (New York: 1960), 195-208, begins with the Congregational Christian General Council's decision to change the prohibition on contraception in 1931 and ends with the World Council of Churches' change in 1959. Noonan concludes that a "substantial consensus of Christian thought in the West outside the Catholic Church now approved of some form of contraception."

2 Robert Blair Kaiser, *The Politics of Sex and Religion* (Kansas City, MO: Leaven, 1985), 221, makes the claim, central to the theme of his book, that the real issue was not contraception itself, but papal authority.

3 Charles E. Curran, "Evangelium Vitae and its Broader Context," in *John Paul II and Moral Theology*, Charles E. Curran and Richard A. McCormick, S.J. eds. (New York: Paulist, 1998), 120-33, at 132. For an argument against the position that *Dignitatis Humanae* embodied a reversal in Catholic teaching see Brian W. Harrison, *Religious Liberty and Contraception* (Melbourne, Australia: John XXIII Fellowship Coop Ltd., 1988).

4 Luke Timothy Johnson, "A Disembodied 'Theology of the Body': John Paul II on love, sex, and pleasure," *Commonweal* 128:2 (January 26, 2001): 11-17. Johnson has not really addressed the issue since, though his "Sex, Women, and the Church: The need for prophetic change," *Commonweal* 130:12 (June 20, 2003): 11-17, at 16, glances at the topic and simply apodictically asserts that *HV* was an act of "papal authoritarianism" based on "patently poor logic" that revealed that the issue was really about "keeping women in their place and maintaining the aura of papal authority."

5 "Contraception: A Symposium," *First Things* 88 (December 1998): 17-29. The symposium included articles against contraception by two Protestants (Reformed thinkers Harold O. J. Brown and J. Budziszewski, the latter of whom has recently been received into the Catholic Church) and three Catholics (Archbishop Charles Chaput of Denver, Janet E. Smith, and Alicia Mosier) against contraception. Episcopalian Philip Turner and Lutherans Gilbert Meilaender and Sarah Hinlicky argued against *Humanae Vitae*, along with Eric Chevlen (Jewish). R. Albert Mohler, Jr. (Southern Baptist) seemed to admit some of the force of Paul VI's arguments, but demanded more talk on the subject, especially on the part of Protestants who have, for the most part, not even been aware of contraception as a moral question.

6 George Weigel, *Witness to Hope* (New York: Cliff Street Books, 1999), 206-10.

7 Michael Novak, "Michael Novak Replies," *First Things* 95 (August/September 1999): 7, has come around to the Church's position, he says, mostly because he has learned to "think theologically" about sex with John Paul II, but also because of his perception that Paul VI's prophecies about the use of contraceptives made him "more accurate than I."

8 John T. Noonan, Jr., *The Church and Contraception: The Issues at Stake* (New York: Paulist, 1967), 9.

9 Ibid., 3; Noonan, *Contraception*, 44, notes that the condemnation of *pharmakeia* in Galatians 5: 20, Revelation 9:21, 21:8, and 22:15 presents an ambiguous witness since it condemns such use of drugs associated with magic, but does not specifically say which ones. That many were known to have contraceptive effect is beyond doubt. A Lutheran, Charles D. Provan, *The Bible and Birth Control* (Monongahela, Penn.: Zimmer, 1989), sets out to show among other things that traditional readings of the sin of Onan in Genesis 38, including those of the major Protestant Reformers and the Wesleys, took it for granted that contraception was thereby prohibited and that this reading was fairly unanimous.

10 Noonan, *Contraception*, 6.

11 Gerald Egner, *Contraception vs. Tradition* (New York: Herder and Herder, 1967), 148.

12 Ibid., 44.

13 Ibid., 144.

14 James Arraj, *Is There a Solution to the Catholic Debate on Contraception?* (Chiloquin, OR: Inner Growth Books, 1989), 32.

15 Noonan, *Contraception*, 120 cites Augustine's rebuke of the Manichees (from *The Morals of the Manichees* 18.65, PL 32:1373) for attempting to avoid conception by use of the sterile period as making the wife "no more than a harlot."

16 Ibid.

17 In the passage cited in n.13 it is clear that Augustine believes that "if there is no motherhood, there is no matrimony."

18 Arraj, *Solution*, 36.

19 Noonan, *Contraception*, 447.

20 One might start with *HV* 16. Defenses of NFP include: Brian Shanley, "The Moral Difference Between Natural Family Planning and Contraception," *Linacre Quarterly* 54:1 (1987): 48-60; Joseph M. Boyle, Jr., "Contraception and Natural Family Planning," *International Review of Natural Family Planning* 4:4 (Winter 1980): 309-15.

21 G. E. M. Anscombe, "Contraception and Chastity," in *Why Humanae Vitae was Right: A Reader*, Janet E. Smith ed. (San Francisco: Ignatius, 1993), 119-46, at 135.

22 Ibid., 137. Almost all the defenders of NFP are willing to claim that the use of the sterile period can itself be "contraceptive" in intention or part of the "contraceptive mentality" if done without any serious reason (that is, though the object of the act is not contraceptive, what Anscombe calls the "further intention" is). Matthews Grant has pointed out to me that such a usage of language is perhaps unwise given the critics' attempts to deny any difference between contraception and NFP

23 Egner, *Contraception vs. Tradition*, 157-58.

24 Anscombe, "Contraception and Chastity," 140-4 1.

25 Noonan, *Church and Contraception*, 4.

26 Noonan, *Contraception*, 339.

27 Ibid., esp. 299.

28 Ibid. 339, where he cites Liguori as saying castration was only "probably" not a mortal sin, but that it "more probably" was mortal sin.

29 Egner, *Contraception vs. Tradition*, 46.

30 Ibid., 54-55.

31 Ibid., 58-59.

32 "The State of the Question," the working paper of those who opposed the majority of the Commission, is published in *The Birth Control Debate*, Robert G. Hoyt ed. (Kansas City, MO: National Catholic Reporter, 1968), 25-61.

33 Ibid., 35. This approach of the minority report is not the only one that can be taken, but it is certainly a cogent one and fits nicely with Anscombe's approach.

34 Edward L. Krasevac, O.P., "Two Unresolved Issues for the Third Millennium," *New Blackfriars* 92 (April 2001): 177-81, at 178.

35 I say with a few predetermined consequences in the case of contraception because of the licitness of anovulant pills to correct certain health problems. If we take the inviolability of human life itself, we find a few

predetermined circumstances which allow the violating of it, including self-defense, capital punishment, and just wars.

36 Noonan, *Church and Contraception*, 35.

37 J. A. Selling, "Magisterial Teaching on Marriage 1880-1986: Historical Constancy or Radical Development," in *Readings in Moral Theology No. 8: Dialogue About Catholic Sexual Teaching*, Charles E. Curran and Richard A. McCormick, S.J. (New York: Paulist, 1993), 93-97, at 94.

38 John Gallagher, C.S.B., "Magisterial Teaching From 1918 to the Present," in *Human Sexuality and Personhood* (Braintree, Mass.: Pope John Center, 1981), 191-210, at 194.

39 *Ibid.*, 195.

40 Pius XII, *Address to Italian Midwives*, October 29, 1951, in *Official Catholic Teachings: Love and Sexuality*, ed. Odile M. Liebard (Wilmington, NC: Consortium, 1978), 101-122, at 112.

41 Noonan, *Church and Contraception*, 2, 32-33; Selling, "Magisterial Teaching," 96.

42 My thanks to Matthews Grant for this point.

43 Gallagher, "Magisterial Teaching," 198.

44 *Ibid.*, 202.

45 CDF, "Morality in Sexual Matters: Observations of the Sacred Congregation for the Doctrine of the Faith on the book "Human Sexuality" (July 13, 1979), in *The Pope Speaks* 25:2 (Summer 1980): 97-102, at 100.

46 Noonan, *Church and Contraception*, 2.

47 Selling, "Magisterial Teaching," 97.

48 *Ibid.*

49 "The Theological Report of the Papal Commission on Birth Control, June 26, 1966," in *Official Catholic Teachings*, Liebard ed., 296-314.

50 *Ibid.*, 299.

51 *Ibid.*, 300.

52 *Ibid.*, 302.

53 *Ibid.*, 303.

54 *Ibid.*, 304.

55 *Ibid.*, 305: "The acceptance of a lawful application of the calculation of the infertile periods of the woman - that the application is legitimate presupposes right motives - makes a separation between the sexual act which is explicitly intended and its reproductive effect which is intentionally excluded."

56 *Ibid.*, 304. It is interesting that the question of demography has changed radically since the late 1960s. Many demographers now acknowledge that although world population has increased and will go on increasing for approximately fifty years, much of the world's birthrate has fallen well below replacement level and will lead not to a population boom, but to a steep aging and then a precipitous drop. See for instance, Sanghan Yea, "Are We Prepared for World Population Implosion?" *Futures* 36:5 (June 2004): 583-601.

57 All methods including abstinence have some physical evil attached to them.

58 *Ibid.*, 308.

59 Egner, *Contraception vs. Tradition*, 158.

60 Noonan, *Church and Contraception*, 4-6.

61 Egner, *Contraception vs. Tradition*, 27.

62 See note 6 regarding Michael Novak's own turnaround because of the accuracy of Paul VI's predictions. Luke Timothy Johnson, in "A Disembodied Theology of the Body," 16, admits that Paul VI's predictions came true particularly with regard to abortion and then blames him for it by claiming, rather strangely, that he was "equating contraception and abortion," thus "trivializing abortion."

63 Noonan, *Church and Contraception*, 5.

64 John Henry Newman, *An Essay on the Development of Christian Doctrine* (Notre Dame, Ind.: University of Notre Dame Press, 1989; reprinting the 1878 edition), 203, where Newman describes the opposite of vigor: "While ideas live in men's minds, they are ever enlarging into fuller development: they will not be stationary in their corruption any more than before it; and dissolution is the further state to which corruption tends."

65 "Theological Report of the Papal Commission," 304. One might ask when "condemnation of a couple

to a heroic abstinence” might be according to the truth. What if a husband or wife were incapacitated in such a way that sexual relations were impossible? Would other forms of sexual activity be permissible? The claim that a relaxation of the ban would lead to an inability to make any judgments about the morality of sexual acts now seems more persuasive.

66 Quoted in *The Birth Control Debate*, ed. Robert Hoyt, 192.

67 *Lumen Gentium*, No. 12.

68 Luke Timothy Johnson, “A Disembodied ‘Theology of the Body,’” 16, complains that Paul VI’s and John Paul II’s logic suggests that ultimately one could collapse the unitive meaning into the procreative meaning because he declares that if procreation is blocked, not only has that end been canceled but also the unitive end as well. He has thereby, despite his protestations to the contrary, simply reduced the two ends to one. This can be shown clearly by applying the logic in reverse, by insisting that sexual intercourse that is not a manifestation of intimacy or unity also cancels the procreative end. Johnson’s conclusion only follows if one understands the ends as two autonomous primary ends, a position that, as noted, does not stand up to scrutiny in the tradition. The two ends are linked together, with the unitive ordered to the procreative.

