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Humanae Vitae and the Natural Law

VITALIANO R. GOROSPE, S.J.

POPE Paul VI's encyclical, *Humanae Vitae*, argues against artificial contraception on the basis of "...the norms of the natural law, as interpreted by her constant doctrine..." (HV, 11). The moral teaching of the Church on marriage, according to the encyclical, is "founded on the natural law, illuminated and enriched by divine Revelation" (HV, 4). Natural law morality falls within the Church's competence because the natural law, in the words of the encyclical, "is also an expression of the will of God, the faithful fulfillment of which is equally necessary for salvation" (HV, 4). Furthermore, we are told, "the creative intention of God" is expressed "in the very nature of marriage and of its acts, and manifested by the constant teaching of the Church" (HV, 10).¹

One of the main reasons for the negative criticism of the encyclical has been that it presupposes a particular understanding of the natural law recognized by Catholic theologians as defective and inadequate because of the changed theological thinking of Vatican II. The philosophical underpinning of the Council's new theology has confirmed the shift in contemporary thought from the traditional, static, abstract, and ahistorical concept of human nature and of the natural

¹ As this article will show, the crucial point at issue is precisely the claim of *Humanae Vitae* that its particular understanding of the natural law has been the "constant teaching of the Church".

law to a dynamic, concrete, and historical one.² *Humanae Vitae*, one critic has pointed out, does not move in this direction and consequently stands in opposition to the spirit of Vatican II.³ It is interesting to note that both the Majority Report of the Papal Birth Control Commission, which favored change in the Church's doctrine on contraception, and the Minority Report which reflects the position taken by *Humanae Vitae* against change, invoked the natural law in support of their respective arguments. Obviously there must be at least two radically different Catholic approaches to, or interpretations of, the natural law.

The rising ferment in recent Catholic writing on the natural law manifests both a dissatisfaction with the traditional approach to Catholic morality and a positive attempt to re-think and reformulate natural law theory according to findings of contemporary Christian theology and philosophy. Since this new thinking has far-reaching consequences apropos those moral teachings of the Church based on the natural law, it merits serious consideration. The purpose of this article is, first, to present a summary survey of modern Catholic views on the natural law; second, to review recent Catholic critiques of the natural law theory presupposed and employed by *Humanae Vitae*; and finally, to discuss the problem in terms of the Philippine situation.

CRITICISM OF TRADITIONAL NATURAL LAW

The Thomistic theory of the natural law adopted in *Humanae Vitae* (Footnote 9, Art. 10 is derived from the

² Vatican II accepts, among other profound changes in the modern world, the fact that "thus, the human race has passed from a rather static concept of reality to a more dynamic, evolutionary one. In consequence, there has arisen a new series of problems, a series as important as can be, calling for new efforts of analysis and synthesis." (Pastoral Constitution on the Church in the Modern World, Preface, 5). The text of the conciliar documents used in this article is that edited by W. M. Abbott, S.J., and J. Gallagher, *Documents of Vatican II* (New York: America Press, 1966).

³ H. Paul Le Maire, S.J., "Humanae Vitae and the Spirit of Vatican II," *Philippine Studies*, 17 (January 1969), 133-145.

teaching found in *Summa Theologica*, I-II, Q. 94, a. 2), has been the commonly accepted traditional view at least among Catholics. Some, however, are quick to point out that the contemporary attack is directed not so much against the authentic teaching of St. Thomas or against the rich scholastic thought of the 13th and 16th centuries as against the 18th century rationalistic concept of the natural law. M. B. Crowe, for instance, argues that although the concept of the natural law as a fixed and detailed moral code may no longer be defended today, the Thomistic concept is flexible and nuanced enough to accomodate modern moral problems; it, therefore, remains as valid today as ever.⁴ Other Catholic authors, however, have indicated the need for a more radical revision and renewal of natural law theory, a going beyond the traditional framework and terminology, according to the exigencies of modern thought. It may be useful, therefore, to distinguish clearly between the traditional and the contemporary understanding of the Thomistic theory of the natural law, since it is precisely the former view, endorsed by *Humanæ Vitæ*, that is under fire from many Catholic writers.

The traditional Thomistic theory of the natural law presupposes both a teleological view of man and the world and a theological foundation. By creation, God has ordered all beings, rational and non-rational, to their natural ends. God has set up ordinances in accord with the nature of various beings; by obeying these ordinances each creature can fulfill its purpose and achieve its corresponding perfection. Since human nature is a rational nature, man can, by reason, discover the norms of human conduct originally embedded in his nature and he can explicitly formulate them into the precepts of the natural moral law. Hence St. Thomas defined the natural law as the participation of human reason in the eternal law of God (*Summa Theologica*. I-II, Q. 31, a.2). Two consequences follow: first, since the norms of the natural law are identified with the will of God whose fulfillment is required for salvation,

⁴ M. B. Crowe, "Natural Law Theory Today," *The Future of Ethics and Moral Theology* (Chicago: Argus Communications Co., 1968), 78-102.

the Church becomes the authoritative interpreter of the natural law; second, since the natural law participates in the eternal law of God, it is immutable. This view has been criticized as conservative rather than progressive, biologicistic rather than personalistic, static rather than dynamic and evolutionary.

Two underlying central issues constitute the battleground: first, should the moral teaching of the Church on contraception be tied down to a particular understanding of the natural law? second, is the static viewpoint of man presupposed by the encyclical still valid in and appropriate to our world in view of the contemporary understanding of reality?⁵

TWO DIFFERENT WORLD-VIEWS

It has lately been observed, and rightly so, that man's view of the world has radically changed: it is more historical than classical.⁶ The transition from the classicist-static to the historical-dynamic world view has resulted in a different apprehension of man. The classicist world view starts with an abstract, universal concept of human nature, unchanging precisely because it has been abstracted from all the differences existing in individual men. From this universal concept of man a fixed natural law and unchanging moral principles are deduced, applicable to particular situations. This view does not consequently need a structure for change. All change occurs in the concrete and particular.

⁵ Although *Humanae Vitae's* total vision of man (HV, 7) refers to Vatican II's teaching on marriage and the family (Pastoral Constitution on the Church in the Modern World, Pt. II, Ch. 1), it is not faithful to the changed dynamic and evolutionary view of reality adopted by Vatican II (Cf. footnote 2). Vatican II's personalistic emphasis on conjugal love (Cf. Donald R. Campion, S.J., "The Church Today", *Documents of Vatican II*, 189) stands in contrast to *Humanae Vitae's* biologicistic emphasis (HV, 10) on responsible parenthood. It is clear that the Encyclical's argumentation implies a static view of man, as this essay will make more evident.

⁶ Bernard Lonergan, S.J., "The Transition from a Classicist World View to Historical Mindedness," *Law For Liberty*, edited by James E. Biechler, (Baltimore: Helicon, 1967), 126-131.

By contrast, the historical world view begins with concrete existing man, experiencing, understanding and forming ideas, reflecting and judging, deciding and making commitments, involved, that is, in meaning-giving acts. It is consequently human meaning that gives significance to human living and to the world in which man lives. What constitutes the human community is common meaning, that is, common experience, common understanding, common judgments, and common commitments. Common meanings are not pre-existing immutable forms in some Platonic world; they result from man's advancing knowledge of reality and from the gradual evolution of his social and cultural achievements.⁷ Human meaning, therefore, is not something fixed, eternal and immutable; it changes, develops, and may even go astray; it is also capable of redemption. On this level and through this medium of changing meaning, the history of salvation takes place, and into it divine revelation has entered, of which the Church in the modern world is the witness.

Charles Curran suggests that from two world views follow two different methodologies, resulting in different conceptions of human nature, the natural law, and Christian morality:

A classicist approach emphasizes the eternal, the immutable, and the unchanging. A more historically minded approach stresses the individual, the particular, the temporal, the changing. The classicist view gives great importance to rationality, objectivity, order, and substances viewed in themselves. The historically conscious view sees rationality as only part of man and appreciates the importance of the subjective and the intersubjective in its understanding of man and his world. A classicist methodology tends to be more *a priori* and deductive: whereas the historically conscious methodology employs a more *a posteriori* and inductive approach. The different methodologies also have different understandings of truth and certitude which of necessity color one's understanding of the moral life.⁸

⁷ According to Lonergan, this historically minded world view apprehends "mankind as a concrete aggregate developing over time where the locus of development and, so to speak, the synthetic bond is the emergence, expansion, differentiation, dialectic of meaning and of meaningful performance". *Art. cit.*, 130.

⁸ Charles E. Curran, "Natural Law and Contemporary Moral Theology," *Contraception*, edited by C. E. Curran, (New York: Herder & Herder, 1969), pp. 151-175. Quote is on pp. 169-170.

Robert Johann has contrasted the ethical consequences of the two opposed views of human nature.⁹ Within the classical perspective, the norm of morality is conformity to human nature conceived as fixed, self-enclosed, and something complete. Human reason is given a largely passive role and its task is to become aware of an order which is already constituted. Being reasonable means conforming to the known patterns of nature, to physical and biological processes. The resulting morality stresses the role of nature, law, and obligation. Within the historical and evolutionary perspective, the norm of morality is the dynamic relationship of the responsible self to Being itself. Reason plays a very active role and its task is to discover what actually constitutes an adequate response to Being in any particular human situation, a matter of discerning intelligence and love. The morally good is not simply what is in accord with nature, but what presents itself as reasonable in any given situation. Human nature becomes a task, a project, a vocation to promote Being. The morality that results stresses personality, freedom, and love; in short, creative responsibility.

CONTEMPORARY VIEWS ON NATURAL LAW

Even among modern Catholic writers, the spectrum of contemporary views on the natural law is so wide that classification into distinct categories would be difficult if not misleading. Despite varying expositions, at least three current ethical trends in the re-examination of natural law may be discerned: the first, towards a more dynamic concept of human nature as the ideal of human existence; the second, towards a personalistic and relational ethics; and the third, towards a transcendental ethics. We shall treat these three ethical approaches in that order.

I. A Dynamic Human Nature

In a concise treatment of human freedom, Piet Fransen offers a very helpful distinction between human nature and

⁹ Robert O. Johann, S.J., "Reason, Nature and Morality," *Building the Human* (New York: Herder & Herder, 1968), pp. 26-28.

person.¹⁰ Human nature is changeable, but change implies a fundamental identity which evolves. The fundamental identity and central source of human existence is the unique person defined as "spontaneous and self-possessing relatedness in love". Human nature means whatever human existence may imply as a concretely given fullness and framework of possible actualization. It delineates the fundamental coordinates of human existence—the self, others, and God—as a determined amplitude of life. Within the polarity of belonging to God and to the world man must exercise his freedom and develop his own personality. Whereas in God, nature and person are identical, in man, this is not the case. No single human person can ever achieve all the possibilities of human nature. Because every person is limited, many human possibilities are definitely closed to an individual.¹¹ In Fransen's view then, the natural law would indicate the given fullness of possible human actualization which is limited by the existential situation in which a person can exercise his situated freedom in relation to others. In this sense, human nature is not the same for every individual person.

Some contemporary Thomists, who prefer to discuss the basis of natural law within the traditional framework, stress the immutability of human nature taken in its metaphysical sense, even as they admit concrete historical modifications actually existing in individual men. They therefore leave room for the dynamism of human nature.

Josef Fuchs, for example, in a comprehensive theological treatment of the natural law, points out that a proper and adequate understanding of human nature must take into

¹⁰ Piet F. Fransen, "Man and Freedom," *Man Before God* (New York: P. J. Kennedy & Sons, 1966), 68-89.

¹¹ As Heidegger puts it man is a being whose possibilities become narrower as he approaches death so that in the end man has only one possibility which he can call his own and which constitutes him as a unique person. For a summary of Heidegger's thought, see John Macquarrie, *Martin Heidegger* (Richmond, Va.: John Knox Press, 1968). Heidegger's concept of death as "one's ownmost possibility" is on p. 30.

account both its natural and supernatural context.¹² Man must be understood as God's image and son in the context of salvation-history. Any affirmation about man that is valid alike in his natural and supernatural dimension must be independent of his various historical and cultural settings. Though the historicity of human nature must be given full weight, Fuchs insists that there is a metaphysical, immutable nature incarnated in these diverse historical and cultural environments. Fuchs repeatedly distinguishes between man's metaphysical, absolute, and fixed nature, and his physical, existential, accidentally changeable nature. In his discussion of the historicity of the natural law, he allows for the dynamism of human nature by showing that the immutable natural law and the variable situations of history can be reconciled by a more adequate formulation of natural law precepts. It would not be fair to say that Fuchs' exposition of the natural law minimizes the importance of concrete historical circumstances. Rather, in his view, the concrete judgment of natural law relates to "the totality of man's being", that is, man's being as it exists here and now in its concrete reality.

In an earlier philosophical work, Fuchs defines human nature as "the essence of man, either according to his metaphysical Being ('rational animal', with all the consequences which necessarily flow from this) or according to his physical Being, by which from the Creator's will the metaphysical Being is actually real, together with any additional relations."¹³ On the basis of this distinction, Fuchs considers human nature as both immutable and mutable depending on whether it is viewed as such or as realized in a particular man, including all the historical, external, and internal conditions of his existing. Fuchs, moreover, maintains that changes in the concrete historical circumstances of man may lead to changes in natural moral law obligations. For instance, although the obligation to pay a just wage is an absolute duty, the obligation to pay an

¹² Josef Fuchs, S.J., *Natural Law: A Theological Approach* (Dublin: Gill & Son, 1965), esp. Ch. 5 & 6.

¹³ *Theologica Moralis Generalis* (Rome: Gregorian University, 1963), 67-69, 77-83.

adequate family income is a duty that is relative to modern social and economic conditions.

As a response to criticism from representatives of sociological or cultural relativism, Charles Fay, a philosopher-anthropologist, tries to shew that St. Thomas' concept of human nature and of the natural law may be applied with analogical flexibility to fit varying cultural contexts.¹⁴ "Human morality," he says, "has universal and invariable features and at the same time is relative to culture". Human nature may be understood either abstractly and universally as a univocal concept applicable to all men or concretely and realistically as actualized differently in individual men. Consequently, Natural law, as an abstract and universal concept, is judged to be absolute and immutable, and, as a concrete and realistic concept, to be variable within limits and subject to bio-cultural evolution. Bio-cultural modifications of human nature are not merely accidental moral determinants, for what is ontologically an accident may make a big difference in the field of morals. For instance, the relationship of "being married", though ontologically accidental to human nature, is the origin of the essential moral difference between virtuous marriage relations and fornication, or between fornication and adultery. Fay's evolutionary view of the natural law and of man's moral life shows that a proper understanding of human nature can accommodate both bio-cultural evolution and a framework of moral invariables.

Fay's concluding remark that "the value orientation of a people is necessarily relative to their culture" prompts us to make the following observations. Perhaps, too often in the past, traditional natural law moralists have in too facile a fashion deduced moral norms from man's metaphysical nature. Today suspicion is growing that these norms have more often than not been derived from man's physico-biological structure and has consequently led to a kind of "physicalism" or "bio-

¹⁴ Charles Fay, "Human Evolution: A Challenge to Thomistic Ethics," *International Philosophical Quarterly*, 2 (February 1962), 50-80.

logism" in moral matters. The findings of the empirical sciences about man provide a healthy caution not to speak too hastily about permanent forms of human existence. A case in point: although the relationship between the sexes has not been left to the whim of individuals in any society, monogamy has not been the permanent form of human sexual relationship. Two permanent features, however, have obtained: the existence of the family as a distinct social unit, and the prohibition of incest, but not of polygamy. In the moral progress of mankind, it has been suggested that monogamy has become the permanent form or ideal of Christian marriage.¹⁵ Today it is more relevant and meaningful to speak of human nature as already constituted by a particular historical culture and it is the function of ethics to show values for human nature in this or that particular historical culture. This is far from saying that moral norms are purely arbitrary. Morality is not entirely subjective and relative, but the emphasis today on the dynamic and developing nature of man accords more with the historical moral consciousness of mankind. It consequently will have greater weight in our contemporary pluralistic world.

Louis Monden makes a distinct and valuable contribution to the renewal of natural law theory.¹⁶ In his view, man's deepest nature is his relationship to God, which must affect his whole unfolding self-realization towards the fullness of possible human fulfillment. His central insight is that human nature is open; it is evolving as "a dynamically inviting possibility". He distinguishes three levels of human development: the instinctive, the moral, and the religious. On the moral level, the inner law of human growth is best expressed by the existential imperative: "Become what thou art". This is the fundamental law by which the authenticity or inauthenticity of human development and of the moral actions by which that development takes shape, may be measured. The natural law then is

¹⁵ Helmut Thielicke, *Ethics of Sex*, Trans. by J. W. Doberstein, (New York: Harper & Row, 1964), 79-98.

¹⁶ Louis Monden, *Sin, Liberty and Law* (New York: Sheed & Ward, 1965), 81-94; quote is on p. 89.

"a dynamic existing reality, an ordering of man towards his self-perfection and his self-realization, through all the concrete situations of his life and in intersubjective dialogue with his fellow man and with God". The norm of morality is not so much what man *is* as what he is to *become*. Monden does not believe that a dynamic concept of the natural law will lead to ethical relativism. On the contrary, the growing moral consciousness of mankind, in the Teilhardian sense, inevitably leads to a greater reverence for human life and to a more authentic human love.

II. *Natural Law as the Ideal of Human Existence*

The possibility of interpreting the natural law as a comprehensive human ideal rather than as an absolute norm of moral conduct has led some commentators to suggest that the teaching in *Humanae Vitae* proscribing contraception is proposing an *ideal* of marital love and life.¹⁷ Since this interpretation cannot simply be dismissed and ruled out in principle, perhaps an examination of its philosophical basis may prove enlightening and helpful.

The notion of the natural law as an "ideal" of human existence has been proposed by contemporary existential phenomenology. According to A. Dondeyne, natural law is an open and dynamic idea and hence there are two ways of conceiving it.¹⁸ First, the natural law may be taken as a whole of abstract, ever-present rules that are found among all peoples. This "greatest common denominator" constantly decreases in content as ethnology progresses. Secondly, the natural law may be understood as the standard, the ideal which positive legislation must pursue in relation to a particular development of civilization, in order that its laws may be just and worthy of man. Inasmuch as man is a historical being, human nature

¹⁷ Robert A. McCormick, S.J., "Notes on Moral Theology," *Theological Studies*, 29 (December 1968), 736-737, is not saying that this is the interpretation in *Humanae Vitae* but he is merely exploring the possibility of applying the hermeneutic method to the Papal Encyclical.

¹⁸ Albert Dondeyne, *Faith in the World* (Pittsburgh: Duquesne Univ. Press, 1963), pp. 231-233.

is not something perfectly finished; it is potentially a never completed task. In the first sense of natural law the right to work and to education can hardly be considered part of the natural law; but in the second sense, in view of the present development of civilization, they have become fundamental values of human life to which every man has a right because they have become a possibility for everyone.

The "central point of reference" of existential phenomenology is that the essence of human existence is "coexistence". The theme commonly developed among recent phenomenologists is that the natural law is nothing but the truth of human living together. William Luijpen, in a lengthy phenomenological study of the natural law, proposes justice, the anthropological form of human co-existence, as the essence of the natural law.¹⁹ What he means is that man's existence is already a certain fundamental moral "ought". To be human is already to owe a minimum "yes" to our fellow men.

If knowledge of the natural law is equivalently knowledge of the essence of justice, then two questions must be asked: What is just or right? Who determines what is just? Apropos the first question, Luijpen distinguishes between the explicit knowledge of what must be done here and now to make a society just, and the knowledge of the essence of justice which is implied in whatever practical answer is given. The implicit, pre-philosophical knowledge of justice is the human subject himself in whom the truth of human togetherness becomes manifest. The reality, truth, and objectivity of justice or the natural law is neither the scientific objectivity of the physical sciences nor the traditional Thomistic objectivity of "truth-in-itself-for-nobody"; rather it is the phenomenological objectivity of "truth-for-somebody". Since human existence is already an implicit affirmation of co-existence, the truth that we live together with others becomes an objective truth for the human person. In other words, there would be no natural law without a human knower.

¹⁹ William A. Luijpen, *Phenomenology of Natural Law* (Pittsburgh: Duquesne Univ. Press, 1967), Ch. 6 esp. 154-158, 159-161, 180-182, 190-198.

With regard to the second question, Luijpen answers that the best of a particular society determine what is just, for who else but the best may judge who and what is best. Therefore the reality, truth, and objectivity of justice or the natural law is "brought about" by the mediation of the "ethical genius" who "sees" the essence of existence as co-existence and this ethical insight is gained "in behalf of all". The minimum demand of living may also be known and determined by those who, through the intermediary of the ethical genius, are able to "see" what he "sees". The history of man is an evolutionary transition from barbarism to humanity, from injustice to justice. Humanity is established when representatives who have authority and power realize the minimum exigencies of co-existence. If *de facto* the truth of the minimum "yes" we owe to our fellow men is not brought about, then in practice there is no natural law.

Luijpen sheds new light on the properties of the natural law conceived as the truth of human co-existence.²⁰ In one sense, the natural law is temporal, historical, and mutable. The moment of discovery by the individual of the truth of co-existence is datable and temporal. Man's awareness of what is demanded by the truth of human togetherness, however, is never finished; it grows with the progress of history. The history of discovery means that this truth has already in the past been taken up into the present and continues to open up to the future. In another sense, the natural law is eternal, transhistorical, and immutable. For whatever in any phase of man's common history has ever forced the subject to affirm the truth of human togetherness will demand the same affirmation from everyone in every subsequent period of man's history. Finally, the truth of the natural law is intersubjective, that is, every affirmation of the truth of co-existence is made in behalf of all and is valid for all.

Luijpen's notion of the natural law as the ideal of human existence necessarily flows from an understanding of the correlate of justice which is love. Whereas justice demands a minimum "yes" to our fellowmen, love which knows no limits demands the

²⁰ *Ibid.*, Ch. 7, pp. 199-205.

maximum of human togetherness.²¹ The task of love or living together is never finished but takes part in an endless history. Although the ideal of human co-existence can never be attained perfectly and completely, mankind and any particular society can always achieve an ever higher and greater level of humanness and justice. Being human or co-existing with others is a "dizzying enterprise" since insight into the essence of justice and the ideal of love is never guaranteed to anyone once and for all. Luijpen's concluding remarks on the relationship between the moral and juridical order are quite illuminating.²² By showing that the ethical form of human existence, i.e., justice and love, is the ontological basis of its sociological form, e.g., the family and civil society, he establishes the natural law as the justifying ground and critical norm of the legal order which of itself alone can never guarantee justice and humanity. To sum up Luijpen's view, the natural law, as the essence of justice, points to the human ideal of co-existence which is love.

A similar position on the natural law as the ideal of human existence is developed by Martin Plattel.²³ He distinguishes between the natural law as "doctrine" and the natural law as "idea". Plattel criticizes the traditional *univocal* concept of the natural law as a *doctrine* of absolute immutable principles derived from human nature and society, which is then applied to the historical situation. Instead Plattel proposes the contemporary *analogous* concept of the natural law as a *concrete-universal ideal* of being human which is progressively realized in love. An individual becomes the kind of person he freely chooses to become by the way he takes up human nature into his personal existence, i.e., the universal human condition consisting of biological, psychological and sociological determining factors. Thus, like Fransen, Plattel distinguishes between human nature and person. The natural law then is an analogous ideal-concept which, in the course of time and varying with each person, is realized again and again in a different and yet similar manner.

²¹ *Ibid.*, pp. 227-235.

²² *Ibid.*, pp. 158-159, 205-227.

²³ Martin Plattel, *Social Philosophy* (Pittsburgh: Duquesne University Press, 1965), pp. 163-172; 187-190.

Plattel explains the properties of the natural law in terms of the twofold dimension of the human person. Man as an embodied spirit is temporal and historical and therefore changeable; man as a transcendent spirit is trans-temporal and trans-historical and therefore unchangeable. The natural law as an objective totality of rules and norms is mutable and relative. But the changeability of the natural law does not necessarily mean ethical relativism because man's historicity is based on the trans-historical reality of "being-man". The moral ideal of becoming fully human is of such a transcendent value that man can search for and grow towards it through the centuries. A truly ethical man will not view natural law norms in their objective aspects as something fixed but rather as existent symbolic actualizations or historical realizations of the "concrete-universal ideal" of human togetherness.

There is also a personalistic emphasis in Plattel's exposition of the natural law. The natural law cannot be known objectively and scientifically. It demands a believing and loving attitude in terms of a personal response to other persons. Furthermore, a well balanced personalistic ethics is necessarily theistic, for the more authentically and ethically a person lives, the more he experiences his freedom as a loving answer to the person of another and ultimately to the "Absolute Other One"—God.

In discussing the wealth and poverty of the maxims of the natural law, Plattel stresses the inadequacy and tentative character of natural law formulations. Any formulation of a natural law precept cannot possibly exhaust the richness of the reality of human togetherness. There must be a continual, dynamic dialogue between moral principles and "lived" moral experience. On the one hand, implicit, intuitive, and spontaneous moral knowledge must be rendered explicit, reflexive, and thematic in order that the wealth of the ethical reality may be grasped; on the other hand, explicit rational knowledge of natural law precepts must continually be in touch with the implicit spontaneous consciousness of the demands of human co-existence in order that the poverty of concepts and principles may be counteracted. A traditional and abstractive ethics, according

to Plattel, takes what is valid for everyone on the level of common denominator as the essential natural law. It is hard put to resolve a case of conflicting principles, as for example, between common and private ownership. In a personalistic ethics, however, which takes the natural law as something developing with the increase of moral sense, no conflict arises between private property and social responsibility. Rather there is an integrating tendency towards identity with the moral ideal: "Do what is right for the other person in this world for the sake of the Absolute Other One."

Finally, in Plattel's view, law, ethics, and religion are phases of human development toward the ideal of the natural law, an integrating process toward the human ideal of love. A personalistic ethics does not take for its point of departure a general and uniform image of man from which fixed rules are deduced. It appeals to the authentic choice of man who must fashion a concrete-universal image of himself more in the manner of a creator than a conformist. In contemporary phenomenology the natural law is understood as the comprehensive *ideal* of human co-existence.

III. *Ethical Personalism*

Humanae Vitae argues against artificial contraception chiefly on the basis of the inseparability of the unitive and procreative functions of the marital act (HV, 12). Bernard Häring has shown how a personalistic approach to the unitive-procreative meaning of marriage does not necessarily condemn contraception as immoral in every case.²⁴ Robert Johann and W.H.M. van der Marck have also employed a personalistic

²⁴ Bernard Häring, "The Inseparability of the Unitive-Procreative Functions of the Marital Act," *Contraception*, pp. 176-192, appeals to Vatican II's moral criteria "based on the nature of the human person" and the meaning of the acts of persons (Pastoral Constitution on the Church in the Modern World, 51). He states that in some cases the absolute respect for the natural biological "laws and rhythms" carries greater risks for conjugal fidelity and generous fecundity than a moderate and responsible use of some artificial means of birth regulation (p. 191).

approach to argue for the liceity of contraception in certain circumstances.²⁵

The starting point of a personalistic ethics is the unique, ineffable, and incommunicable mystery of the individual human person. The individual person is not classified merely as one realization or contingent modification of "human nature". On the contrary, the human person's unique value becomes the starting point of ethical inquiry. Max Scheler in his classic ethics of value focuses on the human person at the source and unity of moral acts.²⁶ The moral act is the personal act of the whole man. The carrier of moral value is primarily the person himself and, only secondarily, his ability, dispositions, and his acts. For Scheler, love as the fundamental spiritual act of the person is an immediate mode of personal response to value. Moral conduct is essentially a matter of inter-personal human relationships, whose ground and condition is a transcendent and personal Absolute. Ethical personalism thus views the human person as the focal point and norm of morality. In the words of Vatican II, the morality of the marital act depends on objective standards which are taken "...from the nature of the human person and his acts..." (Pastoral Constitution on the Church in the Modern World, 51).

Personalistic ethics has also been called "relational" or "communitarian" ethics and it is based on the philosophy of

²⁵ Robert O. Johann, S.J., "Responsible Parenthood: A Philosophical View," *Proceedings of the Catholic Theological Society of America*, 20 (1965), pp. 115-128, considers the case of the couple who, for serious reasons, should not have any more children, but feel the need for continuing sexual manifestations of their conjugal love. In such a case Johann concludes that modifying the physical process would be a rationally demanded conception-prevention which, far from being irresponsible and reprehensible, can be obligatory. William H. van der Marck, *Toward a Christian Ethics* (Westminster: Newman Press, 1967), pp. 48-60, argues that from the viewpoint of intersubjectivity, human, not physical, reality is what is morally significant. Such a view would justify the use of the pill in some cases where the mere physical process is violated in order to preserve the human meaning of conjugal love.

²⁶ For a summary of Scheler's philosophy, see Manfred S. Frings, *Max Scheler* (Pittsburgh: Duquesne Univ. Press, 1965), esp. Ch. 6 & 7.

intersubjectivity. Recent Catholic critics of traditional natural law theory and of conventional ethics view man not as a substantial entity existing in himself and discovering in his own nature the intrinsic guiding principle of his life, but rather as a person existing as a "being-with-others" in a network of personal relationships. John MacMurray defines the essence of man as a "community of persons in relation" and so grounds his ethics in direct relation to the concrete human person in his interpersonal human relationships.²⁷ A morally right action, according to MacMurray, is an action that intends "community" or the unity of persons in fellowship. As an antidote to the individualistic ethics of the past, Remy C. Kwant develops a social ethics for contemporary man which is based on the phenomenology of social existence, i.e., human existence is essentially social in everything; it is an existence through and for others.²⁸ With regard to the communitarian approach to ethics, Bishop Francis Simons of India proposes a "consensus ethics" based on the common "welfare of mankind" as the criterion and goal of brotherly love.²⁹

One of the dominant themes that characterize the continuing renewal in Christian morality today is that morality is a basic personal orientation and a matter of personal response. J. Lotz begins his ontology of existence with the human person and sets up a system of values through the communication of existence to the person.³⁰ In this perspective, even the positively individual factors of the person's existence belong to concrete moral judgments, not merely as an application of a general law nor even as an instance of a typical "case", but as an individual mediation of God's call demanding a personal response. Karl Rahner maintains that concrete moral "impe-

²⁷ John MacMurray, *Persons in Relation* (London: Faber & Faber, 1961). MacMurray's central thesis both in this book and in an earlier work, *The Self as Agent*, is that persons are constituted by their mutual relation to one another.

²⁸ Remy C. Kwant, O.S.A., *Phenomenology of Social Existence* (Pittsburgh: Duquesne Univ. Press, 1965).

²⁹ Francis Simons, "The Catholic Church and the New Morality," *Cross Currents*, 16 (Fall, 1966), pp. 429-445.

³⁰ Cf. Franz Bockle, *Law and Conscience*, 5 (1966), pp. 107-109.

ratives" cannot be achieved on the basis of formal general principles but have to be addressed to each age and each individual.³¹ Enda MacDonagh develops the theme that morality is a matter of living out of our fundamental relationship to God through our personal relationships with our fellowmen.³² Furthermore, he maintains that the Christian ethic "was given to man in community, can be understood only by man in community and is directed towards the building of the true human community founded on man's sonship of the Father and brotherhood with one another, both of which derive from and are manifest in Jesus Christ."³³

Common to all these Catholic writers is an "ethics of process" within which man's moral life is viewed as a way of becoming, and morality as matter of personal growth. Under the influence of "personalism", the traditional categories of human nature, law, and moral obligation have been transcended by the more existential and personalistic categories of person, freedom, and love. The primacy given to law in traditional ethics has been replaced by the primacy of love or charity.

One of the most inspiring and pragmatic personalists of today is Robert O. Johann who has developed an "ethics of creative responsibility."³⁴ Following H. R. Niebuhr, Johann builds his personalistic ethics on the human person as a "responsible self". To be responsible means to be able to respond to given situations, i.e., to give a fitting answer to the demands of Being according to the exigencies of the human situation within the context of the dialogal community. The way a man thinks about his situation will determine the

³¹ Karl Rahner, S.J., *Theological Investigations*, Vol. II (Baltimore: Helicon, 1963), pp. 212-234.

³² Enda MacDonagh, "An Approach to Morality," *The Furrow*, 5 (1968), 308-317.

³³ Enda McDonagh, "The Christian Ethic: A Community Ethic," *Theology of Renewal*, Vol. II (New York: Herder & Herder, 1968), pp. 307-327. Quote is on p. 327.

³⁴ Robert O. Johann, S.J., *Building the Human*. Cf. also "Love and Justice," *Ethics and Society*, edited by R. T. DeGeorge, (Garden City: Anchor Books, 1966), pp. 25-47. For Johann's philosophical view on contraception and responsible parenthood, cf. footnote 25.

kind of response he will give to the challenge of becoming fully human. Hence, three elements must be taken into account in building the human responsible self. First, man must take thought because what he believes about himself, the world, and God will determine the quality of his life, its richness or poverty. Secondly, man must take the human situation as a continuing process or dialogue which looks backward to the past and forward to the open future; human life is not something ready-made, static and complete. Thirdly, man must give the kind of response that merits the name of creative responsibility. Creative responsibility means responding to things not simply as they are but in the light of their concrete possibilities for integration in the human work of love which reason discovers in the presence of Being.

The ultimate context and unifying ground of man's creative responsibility is Being itself or the whole of reality. Thus the dynamic relation of the responsible self to Being is the foundation of man's moral life. What actually constitutes an adequate moral response to Being in any particular situation is a matter of discerning intelligence and love. In this perspective, the morally good is not simply what is in conformity with nature, but what presents itself as reasonable in the particular circumstances according to man's fundamental vocation to promote Being. Man's promotive response to Being must necessarily be embodied in his personal relationships with other persons and ultimately with God Who is the absolute correlative of the responsible self. The order of physical nature is there merely to mediate the universal interpersonal community. The significance of natural processes is not in their brute facticity but in the contribution they can make, by being what they are, to the growth and enrichment of human life. Today the forms of creative responsibility the modern world needs so much are wholeheartedness, hope, love, and faith. These dispositions of mind and heart are an antidote to the climate of inauthenticity, despair, hate, and disbelief so prevalent today. The comprehensive human ideal all men seek and intend is universal interpersonal community, the source and ground of which is a personal Transcendent. The

pragmatic meaning of God is seen in terms of man's responsibility for his life and that of the world.

Johann's personalistic ethics transforms the static concept of human nature and of the natural law into the dynamic reality of the responsible self whose ethical task is one of creative responsibility. On the basis of this philosophical view and in terms of creative responsibility, it is difficult to show that every contraceptive act is irresponsible and immoral. On the contrary, in some cases, contraception may be an exercise of responsible parenthood.

IV. *Transcendental Ethics*

A current philosophical approach to man is that initiated by Joseph Marechal and held today in different forms by Emerich Coreth, Karl Rahner, and Bernard Lonergan. It is characterized by its method: the transcendental method,³⁵ which is intended to *transcend* particular objects of knowledge and to discover the conditions which must always and everywhere be fulfilled in the knowing process. The performance or activity of knowing always reveals the basic structure of intentionality, i.e., it always transcends every finite object known and is itself already a dynamism towards the infinite and Absolute. Whereas an abstract, ahistorical approach to man by means of the deductive method provides abstract ethical foundations upon which moral absolutes may be established, the transcendental method which is concrete and historical, finds its concrete ethical foundations in the unchanging structural features of the conscious, performing, meaning-giving human knower. Karl Rahner defines the natural law as "those structures of his being [man's] which he implicitly reaffirms (by setting

³⁵ For a succinct exposition of transcendental philosophy, see Kenneth Baker, *A Synopsis of the Transcendental Philosophy of Emerich Coreth and Karl Rahner* (Spokane: Gonzaga Univ. Press, 1965). For a re-evaluation of Transcendental Thomism, see J. Donceel, S.J., "On Transcendental Thomism," *Continuum*, 7 (Winter-Spring, 1969), 164-168. Donceel suggests that the term Thomism be dropped altogether in contemporary philosophy.

them in operation) even when he denies them. . . .³⁶” Thus the transcendental understanding of a dynamic human nature and of a developing natural law succeeds in avoiding ethical relativism or situationism precisely because it is grounded in the invariant structure of human knowing.

Bernard Lonergan's ethics is an extension of his theory of cognitional structure in the field of morals.³⁷ Moral value is not an intrinsic property of external acts or objects; it is an aspect of certain consciously posited free acts in relation to man's search for meaning in the world. Knowing what is of moral value is a matter of experiencing, understanding, reflecting, deciding. Ethics deals with one of the basic horizons of man's knowing and deciding activity. This basic horizon or maximum field of vision from a determined standpoint in man is always open to development and conversion. Lonergan posits four conversions which should be progressively realized from an understanding of the conditions for the possibility of human knowing and deciding: the intellectual, the moral, the religious, and the Christian. The moral horizon of man is only a phase of development towards Christian conversion. Thus the function of Christian ethics is to make an authentic Christian aware of how he makes ethical decisions and how he carries them out in life. Although transcendental ethics is normative, it is less likely to posit moral absolutes independently of the data of "lived" moral experience.

A transcendental ethics offers the best prospect for a personalistic and Christian approach to morality. Karl Rahner points out that the human person is a transcendent "spirit-in-the-world" who remains open to a personal absolute. If man is to hear the Word of God he must encounter this personal

³⁶ Karl Rahner, *Theological Dictionary*, Trans. by Richard Strachan, (New York: Herder & Herder, 1965), pp. 305 & 465.

³⁷ Bernard Lonergan, *Insight* (New York: Philosophical Library, 1964); *Collection*, edited by F. E. Crowe, S.J., (New York: Herder & Herder, 1967); also Donald H. Johnson, "Lonergan and the Redoing of Ethics," *Continuum*, 5 (Summer, 1967), 211-220.

Transcendent in history and be spoken to in human terms.³⁸ Moral theologians have yet to work out the implications of a transcendental ethics toward clarifying the attitudes involved in man's personal response in faith to the loving invitation of God Who has revealed Himself in Christ. To sum up, a transcendental ethics which stresses the knowing and deciding structures of the Christian human person would tend to reject the philosophical anthropology in *Humanae Vitae* and, consequently, its natural law theory.

THE CHURCH AND THE NATURAL LAW

Another central issue in the present controversy on *Humanae Vitae* is whether or not the Church's moral teaching on marriage and contraception should be based on a particular understanding of the natural law. George M. Regan, C. M., in his study, "Natural Law in the Church Today," shows that no single systematic Church doctrine on the natural law exists in the entire history of the Church.³⁹ Natural law theory in the Church has evolved only in recent times, a principal reason being the Church's recent involvement in the social question. Although some theologians hold that the Church's doctrine on the natural law, at least in its substance, is a matter of faith, Regan maintains that no certain ecclesiastical document dealing with the existence, essence, or application of the natural law exists, which in itself constitutes an infallible definition. In his opinion, only the core of the Church's teaching on the natural law which actually expresses the belief of the College of Bishops and of the Christian faithful would constitute infallible doctrine. All other statements of the Church on the natural law come under the category of authentic non-infallible teaching. It follows that a Catholic is not always obliged to show "religious submission of

³⁸ Gerald A. McCool, S.J., "The Philosophy of the Human Person in Karl Rahner's Theology," *Theological Studies*, 22 (1961), 537-562. Karl Rahner's theological reflections on *Humanae Vitae* (*Stimmen der Zeit*, September 1968) is reviewed by Avery Dulles, S.J., in *America*, September 28, 1968.

³⁹ George M. Regan, C. M., "Natural Law in the Church Today," *The Catholic Lawyer* (Winter, 1967), 21-41.

will and of mind" or assent to *all* Church statements on the natural law. Regan holds that most Church statements about the derivation of specific natural law obligations and about the philosophical explanations of the natural law are not obligatory, since they do not professedly intend to teach the doctrine as a matter of Catholic faith. A Catholic may express dissent with a particular non-infallible Papal teaching without necessarily rejecting the teaching authority of the Church. Regan's view would question the claim in *Humanae Vitae* that the understanding of the natural law presupposed there relative to contraception has been the "constant doctrine" of the Church (HV, 6 & 11).

Charles E. Curran also maintains that historical investigation shows that the Church's moral teaching has not relied solely on the theory of the natural law nor can moral absolutes in Catholic theology be blamed on the Church's sole reliance on natural law theory.⁴⁰ The Church's moral doctrine existed from the beginning, long before St. Thomas proposed his natural law theory. Only recently has natural law in the Church gained prominence due to Leo XIII's insistence on Thomism and to Pius XI and Pius XII's concern with social and medico-moral problems. Curran asserts that the sources of the Church's moral teaching have been Scripture, tradition, and Christian experience. He concludes that the Catholic Church and Catholic theology are not irreparably committed to one understanding of the natural law. To claim otherwise is to assume falsely that, in the Church's history, a monolithic natural law theory with an accepted body of concepts existed.

In a more recent article, Curran sums up very well the status today of natural law theory in the Church.⁴¹ Perhaps the greatest criticism against natural law theory as proposed by Catholic theologians in the past has centered on its absolute

⁴⁰ C. E. Curran, "Natural Law and Contemporary Moral Theology," See also Curran's "Absolute Norms in Moral Theology," *A New Look at Christian Morality* (Notre Dame: Fides, 1968), pp. 73-123.

⁴¹ "Social Ethics and Method in Moral Theology," *Continuum*, 1 (Winter-Spring, 1969), 50-62.

character. Today there is a definite tendency to stress its more relative character. Curran attributes this development to several factors. First, to the emphasis today on history rather than on nature. Whereas nature tends to stress the static and unchanging, history emphasizes the dynamic changing, and evolving. Second, to the fact of sin. Either what was originally proposed as a necessary accommodation because of human sinfulness, as in the case of private property, becomes an absolute in itself and stifles further growth and development; or one fails to see the necessity for some accommodation here and now because of human sinfulness. Third, to the Christian understanding of the history of salvation, of Jesus as the Lord of history, of the doctrines of redemption and resurrection,—which render relative whatever is existing at the present time. Finally, to the changed understanding of truth and certitude. Man's search for truth and certitude calls for a continuing dialogue with the human community. In short, the Church's moral teaching can never be tied to any one philosophical understanding of man and his world.

NATURAL LAW IN CATHOLIC THEOLOGY

Why does the Church or Catholic theology have anything to say about the natural law, if the natural law is a source of ethical wisdom independent from Christian revelation? In answer to this question, Robert A. McCormick gives a rapid survey of natural law discussion among contemporary Catholic theologians.⁴² J. Ratzinger thinks that Christian social teaching should not be based on natural law but on empirical social data submitted to the "gospel as value-measure". However, Bruno Schüller gives three reasons why natural law is important for theology: (1) natural law is a reality recognized by scripture; (2) natural law thinking and argumentation is one medium through which the law of Christ is communicated to men in human terms; (3) natural law reasoning is the only basis whereby one can determine whether a revealed

⁴² Robert A. McCormick, S.J., "Notes on Moral Theology," *Theological Studies*, 28 (December 1967), 760-769.

duty is trans-temporal or time-conditioned. In short, the commands of Christ must be experienced as genuine human values, specifically as possible realizations of love of one's neighbor.

Humanae Vitae reaffirms the competency of the Church to speak authoritatively on the natural law. The competency of the magisterium, Hans Rotter explains, is due to the relationship between Christian revelation and the natural law. Natural and revealed morality are related to one another as implicit faith is to explicit faith. The New Testament morality is really a deepening and "radicalization" of natural law morality. It is one thing to affirm the existence of the natural law which is grounded in the being of man as man, and quite another to determine its content. That is why the contemporary theologian should be wary in claiming that the natural law prohibits artificial insemination or contraception in much the same way as the natural law commands the love of one's neighbor.

Recent Catholic literature on the natural law shows a variety of attempts to formulate natural law on the basis of the being of man and its historicity. For instance, Joseph Th. C. Arntz, from a historical study of natural law theory in scholastic thought, reveals that St. Thomas understood the natural law to be applicable only to the primary precepts or self-evident moral principles, but later scholastics extended natural law to include also the secondary or derived precepts. Frederick S. Carney sheds light on natural law procedure for developing Christian ethics by introducing a three-fold clarification: (1) the area of love, (2) the meaning of human nature, and (3) the relation of human nature to law. First, natural law theory has suffered from an association with universal physical laws and with civil laws established by the will of men. Law should not be considered as a body of norms but rather as a process of reflection upon the preservation and fulfillment of human life. Second, human nature means "the full dimensions of man's being" and consequently in filling out this nature, moral norms should take into account the social dimension of human existence. Third, human nature

is related to law by fact that the primordial perception of reality is not merely a factual-perception but a value-perception. Man becomes aware of a "built-in presence of felt obligation" or an "ought" that is due to a personal "thou". J. Etienne views natural law as man's essential dignity which is his rationality. Man is beckoned to answer the call of the Spirit in his life in the given. Man's answer to this call is his fundamental responsibility.

For a proper understanding of the natural law, Franz Bockle suggests two senses of the natural law. The primary and basic sense refers to the unconditioned "oughtness" towards self-realization which lies at the center of man's being. Natural law in this sense is the primary insight into man's responsibility, grounded in his reason, whereby he participates in God's providence or eternal law. The primary dictate of the natural law is: "take up one's existence", "become what thou art". In the secondary or derived sense, natural law consists of the sum total of timeless and universally valid demands based on the transcendental structures of man, e.g., his freedom and social dimension. In this sense natural law is formulated law. Bockle is saying something similar to what Josef Fuchs holds, namely, that "the natural law must be considered, not as the sum of external universal laws, but as *internal* law comprising the totality of that moral norm which corresponds to the totality of man's being". What is of interest in Bockle's treatment of the natural law is the way he shows how one can build a natural law argument against pre-marital intercourse on the basis of the metaphysical or intelligible structure of sexual intercourse. If coitus is the sign of a mutual and total gift of the person, then the persons must actually be in this total personal relationship. Any genuinely human love would demand that sexual intercourse be a marital act in order to be moral. To say that pre-marital intercourse is immoral is to specify by natural law reasoning the internal law of man's self-realization. Bockle's notion of the metaphysical structure of the human act itself is insufficient for grounding or explaining natural law; it has to be qualified in the light of Vatican

II's criteria for marital sexuality based on the nature of the human person and his acts.

Summing up, R. A. McCormick indicates the direction of contemporary natural law discussion by enumerating the following characteristics:

(1) There is an increasing tendency to approach natural law more as a thought-structure than as a normative content. The basic assertion of this thought-structure would be: man's obligation is founded on man's being. (2) This thought-structure emphasizes, above all, rational creativity in human conduct. (3) It tends to recognize formal rather than material norms as universally valid principles of natural law. This last tendency undoubtedly stems from a renewed awareness of man's historicity, and reflects a desire to relate natural law more obviously to the totality of man's being.⁴³

NATURAL LAW BASIS OF HUMANAE VITAE

Recent Catholic critics of the natural law argumentation in *Humanae Vitae* commonly agree that the encyclical's understanding of the natural law is insufficient, defective, and no longer tenable today. The validity and strength of their criticism lies not so much in its negative value as in its positive contribution towards the proper development of the Church's moral teaching on human life, love, and the regulation of birth. The criticism of the natural law theory in the encyclical is also significant because it brings into focus the problem of the magisterium, that is, an understanding of the exercise of the teaching authority within the Church.⁴⁴

Humanae Vitae argues against contraception on the basis of "the creative intention of God, expressed in the very nature of marriage and its acts" (HV, 10). John L. Russell, in criticizing this argument in the encyclical, explains that the "in-

⁴³ *Ibid.*, 768.

⁴⁴ Vatican II has shifted from a static view of the magisterium to a historical view, but *Humanae Vitae* seems not to have advanced in this direction. On this point see Joseph A. Komonchak, "Ordinary Papal Magisterium and Religious Assent," and Daniel C. Maguire, "Moral Inquiry and Religious Assent," *Contraception*, edited by C. E. Curran, pp. 101-148.

tention of nature" is not so simple and easy to determine because it is multipurposeful.⁴⁵ He mentions at least six purposes intended by the nature of marriage, and these are reducible to the good of a particular biological function, the good of the human person, the good of the family, and the good of society. In case of conflict among these various goods or intentions of nature, the relevant question is: Which has priority and should consequently prevail? Doubtlessly, the good of persons must not give way to that of a biological function, and that the unitive meaning of marriage has priority over the procreative. Thus Russell assigns two different intentions of nature in marriage. The primary intention of marriage is that a family of appropriate size should be generated and that the children be brought up in an atmosphere of unity and harmony in which they may develop into happy interrelated adults. The secondary or reproductive intention of marriage is subordinate to the human intention of marriage. In other words, physiological processes are for the good of persons, and not vice-versa.

Although Russell's argument has the advantage of touching on the "biologism" in *Humanae Vitae*, it suffers the disadvantage of claiming that nature intends the average family size to be less than three in modern society. Russell arrives at this number by considering the present rate of world population increase, and by assuming first, that nature intends a low child mortality rate, and second, that nature at least encourages most people to marry and have children. He seems certain that the *average* reproducing family size cannot, in the long run, exceed two, since it is a basic fact inherent in the nature of reproduction and the laws of mathematics. Whatever the merits or demerits of Russell's evidence, it is extremely hazardous for a theologian to make such a claim. Vatican II has taught that in the last analysis parents themselves must decide on the size of their family, even granting that their judgment should be made in view of the good of the whole human society. With regard to the different meaning attached

⁴⁵ John L. Russell, S.J., "Contraception and the Natural Law," *The Heythrop Journal*, 10 (April 1969), 121-134.

by Russell to the primary and secondary intentions of marriage, it must be pointed out that Vatican II deliberately refrained from using this traditional distinction.⁴⁶

Another sharp criticism of the natural law argument in *Humanae Vitae* has been elaborated by Lionel Keane.⁴⁷ According to Keane, the criterion of revelation, namely "the constant teaching of the Church", is valid for the Church's revealed doctrine on marriage and sexuality, but not for St. Thomas' particular understanding of the natural law. The collection of self-evident principles or common notions which St. Thomas formulated and incorporated into Christian teaching as natural law and to which he gave the status of the "law of God" is not "the creative intention of God, expressed in the very nature of marriage" (*HV*, 10); it is a man-made estimate of natural law theory current in the 13th century.

To extend the Church's God-given mandate to teach revealed faith and morals to a non-revealed theological synthesis is to be guilty of what Gregory Baum has called the fallacy of "creeping infallibility". Keane mentions three effects of this fallacy on the teaching in *Humanae Vitae*. First, the "constant teaching" referred to in the encyclical has been deduced as evidence that St. Thomas' formulation of natural law morality falls within the competence of the Church's magisterium. Secondly, the notions of human sexuality "common" in St. Thomas' day and erroneously derived from biological processes, having

⁴⁶ In section 50 of the Pastoral Constitution on the Church in the Modern World, the phrase, "not making the other purposes of matrimony of less account" was one of the most hotly debated points of the conciliar document. John Noonan, Jr., *The Church and Contraception* (New York: Paulist Press, 1967), pp. 32f. builds up a very strong case from the history of the the Council debate for taking the phrase to mean Vatican II's rejection of the old distinction between primary and secondary ends of marriage. The commentary in *The Documents of Vatican II*, p. 254, footnote 168, states that the Council did not wish to settle the question of the hierarchy of ends.

⁴⁷ Lionel Keane, "Natural Law and Birth Control," *On Human Life: An Examination of Humanae Vitae*, eds. Peter Harris, Adrian Hastings, John Horgan, Lionel Keane, and Robert Nowell (London: Burns & Oates, 1968), pp. 27-44.

become part of the "constant teaching", are now made the basis of the Pope's decision on birth control. Thirdly, the Church's teaching on marital sexuality is based exclusively on reasoning from common notions formulated in the 13th century rather than on an observation of the law created in man's being. The Church has treated St. Thomas' teaching on human sexuality as if it were revealed truth, and in *Humanae Vitae* she has uncritically continued to do so. That is why the encyclical rejected the Birth Control Commission's criteria for discovering the natural law norms on contraception; they were thought observational rather than theological.⁴⁸

Keane attributes the fallacious "biologistic" argument in *Humanae Vitae* to the old theology from which the new theology of the Birth Control Commission is a departure. First, whereas the old theology finds the "creative intention for marriage" within the "intimate structure of the conjugal act considered as a biological function (*HV*, 10, 11, 12), the new theology (Theological Report, II, 2), locates the "creative intention" of the marriage act within the "nature of human sexuality and its place in a fruitful married life". Secondly, with regard to the inseparability of the unitive and procreative aspects of marriage, both the Pope and the Commission first agree and then disagree. Both accept the priority of the unitive meaning of marriage to its procreative function (*HV*, 10). In section 11 of the encyclical, however, the old criterion for regulating the use of marriage, namely, the priority of the procreative aspect, gives way to a new criterion, namely, the biological processes initiated by the marriage act. On this the two theologies disagree. The encyclical argues that by divine design the unitive and procreative aspects of the marital act are inseparable so that contraception is equally an attack on the unitive aspect (*HV*, 12, 13, & 14). Keane points out that this argument is based on a false biology. The fact that

⁴⁸ John G. Milhaven, S.J. "Towards an Epistemology of Ethics," *Theological Studies*, 27 (1966) 228-241, maintains that the morality of contraception cannot be determined solely from the specific purpose of the marital act but also from the empirical norm of good experienced consequences. These are observational criteria.

the couple do not transmit life at intercourse, and that life is begun later when the egg is fertilized by the sperm, reveals that the unitive and procreative meanings of the marriage act are as separable as the unitive and procreative acts themselves. Keane concludes that so long as the Church approaches the problem of birth control in a notional way, as in *Humanae Vitae* by the notional Thomistic theory of the natural law, she will become more and more remote from the world which she wishes to influence.

Two remarks apropos Keane's critique of *Humanae Vitae* are in order. First, Keane fails to distinguish between the traditional-static interpretation of St. Thomas' natural law theory and the more contemporary, dynamic one. Consequently some Catholic theologians today may not agree entirely with Keane. Second, his critique is weakest in its reliance solely on the Commission's Majority Report and in its silence about the Minority Report which the Pope followed. This is tantamount to giving greater weight to the judgment of the Commission than to that of the ecumenical council.

Charles E. Curran has constantly criticized the natural law theory in *Humanae Vitae* but he has recognized the positive value of the natural law in Catholic moral thought.⁴⁹ Traditional natural law theory has always upheld two values: the existence of a source of ethical wisdom and knowledge apart from Christian revelation, which the Christian shares with all mankind; and the fact that morality is objective and cannot be merely the subjective whim of an individual or a group of individuals. However, according to Curran, these two important and permanent values may be defended without necessarily endorsing the particular understanding of natural law presupposed in *Humanae Vitae*. The concept of natural law in the encyclical tends to absolutize what the total Christian vision sees as relative and provisional in the light of the history of salvation.

Curran closely examines the texts dealing with the difference between illicit and licit means of birth regulation, and

⁴⁹ Charles E. Curran, *art. cit.*, 151-175.

treating God's design as expressed in the very nature of the conjugal act, to which man as the minister of God's plan must conform, (HV, 12, 13, 14, 16). He concludes that the natural law theory assumed in the encyclical identifies the moral and human action with the physical structure of the conjugal act. While he does not deny that the moral aspect of the act may correspond to its physical structure, Curran nevertheless attributes the weakness of the encyclical to its "physicalism" or "biologism". In the opinion of this writer, Curran would have made a stronger case regarding the encyclical's "physicalism" by referring instead to the text which treats of "biological processes" or "biological laws which are part of the human person" (HV, 10). There, reference is made to St. Thomas in the footnote. According to Curran, today the primary area of debate in Christian morality concerns the existence of negative moral absolutes in which the moral act is described in physical terms. It is not surprising then that the biologicistic natural law theory in *Humane Vitae*, one based on an outmoded philosophical anthropology, will find less and less acceptance among contemporary Catholic and Protestant theologians. In view of all these, Curran takes exception to the absolute condemnation of contraception. Moreover, he draws the practical conclusion that artificial contraception may be a licit and even necessary means for the regulation of birth within the context of responsible parenthood.

Finally, Fred E. Flynn gives a more incisive criticism of natural law as presented by *Humane Vitae*; this critique, for our purposes, serves as a neat summary of the contemporary view on the natural law.⁵⁰ First Flynn distinguishes between two philosophical senses of nature — nature-as-primitive, or what is given to us at birth, and nature-as-perfected, or the prior nature as improved by man and therefore artificial. His example is from St. Thomas who calls both polygamy and

⁵⁰ Fred E. Flynn, "Humane Vitae and Natural Law," *The Priest*, 25 (February 1969), 81-88. For the most recent survey to date and a criticism of *Humane Vitae* within the context of the American Church, see Robert H. Springer, S.J., "Notes on Moral Theology: July-December 1967," *Theological Studies*, 30 (June 1968), 264-284.

monogamy "natural" in the sense that man's spontaneous inclinations dispose him to be polygamous but that man's reason directs him to improve primitive nature and make marriage monogamous. Flynn points out that a fundamental error crept into ethics when nature-as-primitive became the norm of the good while nature as perfected, the artificial, was considered evil. The same error infected the traditional concept of natural law which confused moral laws with the laws of nature, physics, and biology. "To reduce the human to the merely animal, as *Humanae Vitae* seems to do," states Flynn, "is to confuse two wholly different orders and meanings of 'nature'." To call the "rhythm method" natural is to confuse two different things: the ovular cycle, which is natural in the biological sense, and the method, which is man-made and hence artificial. Flynn concludes that "responsible parenthood, seems to call less for 'respect for biological processes and their functions,' as the Encyclical demands, and more for an intelligent modification of those brute processes in the interest of human welfare."

In the past, moralists of the scholastic tradition justified the excision of a diseased limb, even though it was against a natural function (nature-as-primitive), because it was in accord with right reason (nature-as-perfected by reason). But unfortunately the reasoning in *Humanae Vitae*, which is supposedly based on the traditional scholastic and Thomist norm of morality (right reason), judges artificial or man-improved contraception as evil because it is unnatural. We know that an act against nature is in the physical order; it does not become moral until reason decides whether it is right or wrong to place such an act. The practical conclusion in *Humanae Vitae* is clearly inconsistent even with the constant teaching of traditional Thomistic ethics which is its philosophical underpinning.

SUMMARY

What critics of *Humanae Vitae* seem to have rejected is the specifically Thomistic understanding of the natural law as traditionally presented, i.e., the notion of a fixed natural law

based on an unchanging human nature. The inadequacy of this natural law theory is a result of the contemporary shift in perspective from a classicist-static to a historical-dynamic world view.

Recent Catholic views on the natural law run along three ethical currents: (1) an ethics based on a dynamic human nature as the ideal of human existence; (2) a personalistic, relational or communication ethics; and (3) an ethics structured according to the transcendental method. These contemporary approaches to Christian ethics tend to reject the natural law argumentation in *Humanae Vitae*. Historical investigation shows, first, that there exists no single systematic Church doctrine on the natural law throughout the entire history of the Church; and second, that the greater part of the Church's moral teaching, based on scripture, tradition, and Christian human experience, came into existence long before even St. Thomas formulated his natural law theory. In contemporary Catholic theology, natural law is considered not in terms of an absolute norm of moral conduct but in terms of the process of reflection on the preservation and fulfillment of human life.

Finally, Catholic criticism against the natural law arguments in *Humanae Vitae* may be reduced to three: (1) the ambiguity of the intention of nature for marriage in the context of the modern population problem; (2) the fallacy of "creeping infallibility", or the extension of the criterion of revelation to St. Thomas' 13th century understanding of the natural law; and (3) "physicalism" or "biologism", which would identify the moral act with the biological structure of the marital act. The conclusion has been that the understanding of natural law in *Humanae Vitae* is faulty and untenable; that therefore, its teaching that every contraceptive act is always intrinsically immoral, is seriously questionable.

THE PHILIPPINE SITUATION

What is the practical relevance of this whole discussion which calls into question and serious doubt the natural law

argument in *Humanae Vitae* to the Philippine situation? First, the Philippine Catholic Bishops in their pastoral letter on October 12, 1968 have supported *Humanae Vitae* and have argued that even if its teaching against artificial contraception is not infallible, it must be sincerely adhered to by every Catholic with the "religious submission of will and mind" demanded by Vatican II (Dogmatic Constitution on the Church, 25). There is, however, a growing consensus among bishops and theologians that it is possible for a mature and well-informed Catholic, after careful study, to decide that the Pope's ban on artificial contraception is not binding on him, and, as a result, in accordance with the teaching of Vatican II, he should follow his conscience (Declaration on Religious Freedom, 3).⁵¹ It has been shown that the dubious natural law argument in the Encyclical is a solid and valid reason for forming a mature and well-informed conscience and for arriving at the practical conclusion that the encyclical's prohibition is not morally binding under certain circumstances.

Secondly, there seems to be a justifying ground and critical norm for a broader consensus and a wider option of means for regulating birth besides the "natural rhythms" allowed in *Humanae Vitae* or in the Pastoral Letter of the Philippine Hierarchy. That ground and norm is a new understanding of the natural law, which, at the same time that it allows a wider choice of means of birth control, recognizes the basic concern in *Humanae Vitae*, namely, that there are some limits

⁵¹ For the response of Bishops and theologians to *Humanae Vitae*, cf. the author's survey, "The Church and the Regulation of Birth: After *Humanae Vitae*," *Philippine Studies*, 17 (July 1969). A study of the statements of the various national Hierarchies shows the mildest form of disagreement with the Encyclical. The Belgian Hierarchy's Statement on *Humanae Vitae*, sec. 2, paragraph 4, says: "Someone, however, who is competent in the matter under consideration and capable of forming a personal and well-founded judgment—which necessarily presupposes a sufficient amount of knowledge—may after serious examination before God, come to other conclusions on certain points. In such a case he has the right to follow his conviction provided that he remains sincerely disposed to continue his inquiry." Cf. also the moral case presented in *Boletín Ecclesiástico de Filipinas*, No. 478 (January 1969), p. 81.

to the dominion which man can acquire over his own body and its functions, limits which it will not be licit to exceed (HV, 17).

The Philippines is faced with a very serious socio-economic and overpopulation problem.⁵² The option this country may consider toward solving its problems must be based both on a full realization of the real situation in the Philippines and on a moral ground and norm that is valid for all. Although the majority of Filipinos are Catholic, government policy must respect the conscience of all its citizens, including the minority who are not Catholic. The only moral basis for policy and action which a Catholic shares with the rest of mankind is the natural law. If the natural law argument in *Humanae Vitae* is *controvertible*, then its practical teaching against artificial contraception cannot be the decisive norm for the individual conscience nor will it be an effective determinant of the individual's moral attitude and conduct.

⁵² For the serious implications of this twin national problem see Mercedes B. Concepcion (ed.), *Philippine Population in the Seventies* (Manila: Community Publishers, 1969). For a discussion of the Catholic Hierarchy's statement on the population problem, see "Notes and Comments" below, pp. 806-810.