

## Order of Nature–Order of Love: Arguments against a Naturalistic (Mis-)Interpretation of *Humanae Vitae*

ANDRZEJ KUCIŃSKI  
*Rome, Italy*

### The Problem: Naturalistic (Mis-)Interpretation

ON MAY 13, 2010, during the second Ecumenical Church Convention in Munich, Margot Käßmann, the former Chair of the Protestant Church in Germany, praised the “birth control pill” as a “gift from God” while speaking at the Catholic Cathedral of Our Lady in Munich. Her rationale was that “it is about the preservation of life, of freedom, which doesn’t have to immediately degenerate into pornography, as much as the sexualization of our society is, of course, a problem.”<sup>1</sup> In contrast, the encyclical letter *Humanae Vitae*, authored by Paul VI, states: “Similarly excluded is any action which, either before, or at the moment of, or after sexual intercourse, is specifically intended to prevent procreation—whether as an end or as a means.”<sup>2</sup> This conclusion is based on the natural law and the Church’s teaching that “each and every marital act must of necessity retain its intrinsic relationship to the procreation of human life.”<sup>3</sup> These positions represent two contradictory views: On the one hand “life and freedom,” which claims to reflect the attitude toward life of today’s European mainstream, and on the other hand, supposedly restrictive and moralizing rules and judgments, which appear out of step with reality.

The serious challenge the encyclical letter was to the mainstream attitude

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<sup>1</sup> *Die Welt*, Käßmann preist Pille im Dom als Geschenk Gottes, November 13, 2010, <https://www.welt.de/politik/deutschland/article7615440/Kaessmann-preist-Pille-im-Dom-als-Geschenk-Gottes.html> (translation mine).

<sup>2</sup> Paul VI, Encyclical on the Regulation of Birth, *Humanae Vitae* (1968), §14.

<sup>3</sup> Paul VI, *Humanae Vitae*, §11; see also Pius XI, Encyclical on Christian Marriage, *Casti Connubii*.

toward life, was demonstrated by the sharp protests which followed with unprecedented vehemence the publication of the papal letter, particularly in northern European countries. The encyclical letter became a genuine symbol of contradiction. One allegation that stood out among the various points of criticism was that of naturalism or biologism, according to which the Pope had translated biological laws into moral imperatives. In German-language literature, the opposition to the encyclical letter was seen as, among other things, a symptom of a departure from the neo-Scholastic approach to natural law theory with its focus on objective beings. The precepts of natural law in matters relating to contraception were criticized for defending a reactionary concept of nature, which had allegedly been adopted from times gone by, irrespective of later developments in science and society.<sup>4</sup>

In addition, general doubts were expressed with regard to the competence of the magisterium in matters relating to sexual morality. It was therefore argued that: “The encyclical *Humanae vitae*, which is based on a crude, to some extent virtually biologicistic concept of nature, has contributed to discrediting the precepts of natural law in the Catholic sphere, as well.”<sup>5</sup> The Pope’s reference to the physiological processes relating to the transmission of human life led to the fixation on the biological perspective: “If reference is made to the ‘laws written into the actual nature of man and of woman’ (Paragraph 12) and to something ‘repugnant to the nature of man and of woman’ (Paragraph 13) or to the ‘natural cycles immanent in the reproductive system’ (Paragraph 16), this is clearly of a biological

<sup>4</sup> See Andrzej Kuciński, *Naturrecht in der Gegenwart: Anstöße zur Erneuerung naturrechtlichen Denkens im Anschluss an Robert Spaemann* (Paderborn: Ferdinand Schöningh, 2017), 115–16.

<sup>5</sup> Franz-Xaver Kaufmann, “Wissenssoziologische Überlegungen zu Renaissance und Niedergang des katholischen Naturrechtsdenkens im 19. und 20. Jahrhundert,” in *Naturrecht in der Kritik*, ed. Ernst-Wolfgang Böckenforde and Franz Böckle (Mainz: Matthias-Grünwald, 1973), 126–64, at 133. Other criticism along these lines is, for example, that the tendency of the new natural law reasoning to consider not only the historicity of human beings but also their progressive development “however, does not fit in with the encyclical *Humanae Vitae*, with its neo-scholastically confined concept of nature” (Alexander Hollerback, “Christliches Naturrecht im Zusammenhang des allgemeinen Naturrechtsdenkens,” in Böckenforde and Böckle, *Naturrecht in der Kritik*, 9–38, at 36). The redirection of the criticism of the magisterial concept of natural law toward sexual morality also became clear, for instance, at the conference of German-speaking moral theologians held in 1965 at Bensberg in Germany (see Wolfgang Waldstein, *Ins Herz geschrieben: Das Naturrecht als Fundament einer menschlichen Gesellschaft* [Augsburg: Sankt Ulrich, 2010], 9).

nature; on this basis, birth control through artificial means is condemned as an intrinsically immoral act.”<sup>6</sup> However, if a conclusion deduced from biology is applied to ethics, the encyclical letter can be criticized for using the naturalistic fallacy that an “is” necessarily leads directly to an “ought.”

However, suggestions that the content of the encyclical is naturalistic, which consequently leads to a rejection of the precepts of natural law on which the encyclical hinges, must be emphatically rejected in the name of common sense (and all the more if the Church’s teachings are to be dealt with in good faith). If something which had previously been incorrectly defined is later rejected, then this is an inevitable consequence of this erroneous premise. This would mean attributing an interpretation to the positions of the Church’s teachings that the Church itself, in fact, does not advocate, simply for the sake of questioning said positions and eliminating them as legitimate courses of action.

The fallacy of biologism, I would argue, results from a flawed analysis of the concept of nature on which *Humanae Vitae* is based. This essay will therefore begin by analyzing this concept and will then provide underpinnings in terms of moral philosophy.

### **The Dual Dimensionality of Conjugal Acts**

With reference to the encyclical’s precepts of natural law, the statement in §12 is of paramount importance: “This particular doctrine, often expounded by the magisterium of the Church, is based on the inseparable connection, established by God, . . . between the unitive significance and the procreative significance, which are both inherent to the marriage act.”<sup>7</sup> Only if both of these essential qualities are taken into consideration at the same time, will sexual intercourse in marriage “fully retain its sense of true mutual love,” the Pope continued. In other words, it is not some sort of biological order that needs to be respected simply because it exists; instead, the conditions of true love—the order of love—are what constitutes the meaning of the conjugal act in the first place. The final sentence of this entire section provides the key to this statement: “We believe that our contemporaries are particularly capable of seeing that this teaching is in harmony with human reason.” Appealing to reason opens up a broader perspective, something that transcends mere biology.

The reasons for this harmony with human reason are cited in §13.

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<sup>6</sup> Friedo Ricken, “Art, Naturrecht I.: Altkirchliche, mittelalterliche und römisch-katholische Interpretationen, in: *Theological Real Encyclopedia* 24 (2000): 132–53, at 150.

<sup>7</sup> Paul VI, *Humanae Vitae*, §12.

Imposing a conjugal act without regard to one's partner is "no true act of love." Furthermore, an act of mutual love frustrates God's design if it impairs the capacity to transmit life ("qui facultati vitam propagandi detrimento sit"). Last but not least, respecting the laws of conception means acknowledging one's own status, that is, as the minister of the design established by the Creator and not as its master. It is only on this basis that, in §14, Paul VI rejects certain practices which undermine the connection between the unitive significance and the procreative significance of the marriage act.

In light of these statements, it is clear why a moral dimension is inherent to the conjugal act in the first place, why the marriage act must be subject to a morally relevant order because sexuality embraces the entire human being, the fullness of body and soul, as the Pope argues elsewhere (§9), referring to love which is "fully human," love "which is total." In this case, the human being must not be regarded as a mere object, but as a subject participating in an action. In fact, the encounter between a male subject and a female subject suggests that there is a deeper dimension than a temporary (biological) experience of pleasure given to each other without the participation of the totality of one's own person. This dimension of depth rests on the transmission of human life, where two subjects (need to) interact. However, the procreative dimension contains the spiritual aspect of mutual recognition, which the Bible uses as a synonym for sexually "becoming one flesh."<sup>8</sup> The law of nature which governs the human order of love cannot be interpreted as a law of biology, but as a rational structural law of moral virtue, which combines *unio* and *procreatio* to create a new level of significance.<sup>9</sup>

However, if it is a virtue, an *attitude* and not merely a specific *action*, the unitive and procreative dimensions of the conjugal act may form a unity even when not directly realized, providing that the two dimensions are not deliberately separated, which implies the possibility of using natural birth control. This possibility is based on a perception of sexuality as dynamics of love, where behavior is modified over time (e.g., sometimes abstaining

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<sup>8</sup> Vincent Twomey refers to "mutual bodily recognition" as the beginning of the conjugal act and the source of its morality ("Verantwortliche Elternschaft in der Lehre der Kirche," paper presented at a conference on *Humanae Vitae*, November 10, 2008, Seminary of Rolduc, Netherlands, p. 16).

<sup>9</sup> This is according to Martin Rhonheimer, *Natur als Grundlage der Moral: Die personale Struktur des Naturgesetzes bei Thomas von Aquin, eine Auseinandersetzung mit autonomer und teleologischer Ethik* (Innsbruck: Tyrolia, 1987), esp. 136–39 (cited in Twomey, "Verantwortliche Elternschaft," 17).

from conjugal acts during fertile periods).<sup>10</sup> This also shows that marital relations are not solely aimed at the transmission of human life, an often voiced criticism of the Church's sexual morality (which, under certain circumstances, might by all means be tantamount to disregard for one's partner), but that marital relations are aimed at the empowerment for action based on mutual bodily recognition, which implies the possibility of transmitting new life.

In contrast to the preservation of the concept of the unitive significance and the procreative significance in natural conception, contraception is based on a dualism, according to Andreas Laun,<sup>11</sup> where the human being is split into a disturbing part (fertility) and a welcome part (desire). The total gift of self, which is assumed in conjugal union, is thus degraded to a partial gift of self because one spouse tells the other, "I love you only in part because your femininity or masculinity might lead to a pregnancy, which I do not want," and encourages him or her to manipulate his or her own nature in order to eliminate this effect. This cannot be qualified as genuine love because the other person is not unconditionally accepted in his or her suchness.

The rejection of contraception in *Humanae Vitae* is therefore not motivated by biological laws, but by the equality of the two aspects of human sexuality, understood as a domain of personal choices based on freedom and reason. "What is at stake is not the integrity of the 'order of nature,' but that of human love, which is an *ordo rationis* and an *ordo virtutis*."<sup>12</sup>

In §14 of his encyclical letter, the Pope also states that it is not admissible to argue that the allegedly lesser evil is to be preferred to a greater one or that fertility must be seen in the context of the totality of procreative acts of past and future which form a single entity, instead of leaving the outcome of each conjugal act open-ended. The Pope reminds us that the end never justifies the means. Even an isolated immoral action can therefore not be justified by drawing attention to good intentions or positive consequences expected for others.

It has therefore become clear that the principle of the equivalence of the two aspects of human sexuality as stipulated in the encyclical letter is justified by the nature of love, which is born anew in every conjugal act. This love, in turn, is founded on the nature of humans, who are physical and spiritual beings in their relations to other beings. The task now is to

<sup>10</sup> See Twomey, "Verantwortliche Elternschaft," 17.

<sup>11</sup> See Andreas Laun, *Aktuelle Probleme der Moralthologie* (Vienna: Herder, 1991), 92–93.

<sup>12</sup> Rhonheimer, *Natur als Grundlage der Moral*, 118.

examine this nature in greater detail in order to rebut the accusation of biologism.

### The Binding Naturalness of Nature

Paul VI did not reject contraception because of its artificiality, but because contraception disregards the dignity of the human person. In the context of this essay, “natural” does not mean “ecological” or “environmentally friendly,” although this might be put forward as an argument against the use of chemicals in contraception. Natural birth control does not mean abstaining from the use of technical expedients (because natural birth control also involves, for instance, the use of thermometers and keeping records), but is a question of respecting the nature of sexual union. Furthermore, the difference is of a moral and anthropological nature because natural methods of birth control require a genuine dialogue and mutual respect of the subjects, which is necessary simply due to the differences in the respective rhythms of life of men and women. Momentarily refraining from union will strengthen the desire for union, while the potentially constant availability resulting from the use of contraceptives may, in the long run, destroy the allure of sexual encounter. According to Martin Rhonheimer, the difference between contraception and the calendar method of birth control can therefore not be described as the contrast between the artificial and the natural, but between the technical and the virtuous.<sup>13</sup>

This distinction helps us to understand the kind of nature that characterizes two sexually interacting subjects and to shed light on the natural order underpinning their love. In this context, the thoughts of the philosopher Robert Spaemann—who analyzed in detail the multidimensional nature of the human individual from a philosophical perspective—are groundbreaking.

What is crucial for the description of human nature, according to Spaemann, is a key distinction which is pertinent, not least, to human sexuality. The specific nature of the human being as a composite of body and soul, consists of instinctive nature and reason, “which cultivates” the instincts. Neither the instinctive nor the rational elements of human nature are the sole yardstick of human actions; instead, it is only their interaction that permits a dignified human existence in all its facets. In this context, the benefit of reason is that it identifies the instincts and integrates them into the context of human life because: “Action begins . . . when we respond to our instincts, instead of simply being at their mercy.”<sup>14</sup> This implies

<sup>13</sup> See Twomey, “Verantwortliche Elternschaft,” 17.

<sup>14</sup> Robert Spaemann, *Glück und Wohlwollen* (Stuttgart: Klett-Cotta, 1989), 213.

that the human being's humanization achieves its goal precisely because various elements of being human are not at odds with each other, but are merged to form an integral wholeness. In other words: "The primordial character of nature becomes the natural integral of the human person due to the power of reason."<sup>15</sup> Sexuality can therefore be referred to as a human singularity only through the amalgamation of survival of the species (progeny) and individual pleasure. Seen from this perspective, instinctive nature is not a mere instrument of freedom, but the representation of the person. The consequences are obvious: The normativity of nature cannot arise merely from its factuality (biological laws). Instead, one needs to rely on the power of recognition of a secular rationality which is to humanize the instinctive: "Only where [nature] is distanced through reflection, can it be both recognized in freedom and become a source of moral insights."<sup>16</sup> However, if one wants to understand the precise content of nature shaped and recognized through reason, one is well advised—in the tradition of Aristotle—to consider the perfection of the species that corresponds to the specific living being, and not a snapshot of the being's behavior. This is what requires the use of reason.

The determination of "what is right by nature" by applying reason to the human being's bodily and instinctive nature correlates with another pair of concepts that expresses said interdependence in a somewhat different manner. The two concepts are "primordialism" (*Naturwüchsigkeit*; meaning a concept of genetic origin) and "naturalness" (*Naturngemäßheit*; a factor that is again determined by reason). Only the second type of nature has ethical relevance. It involves the challenge to acknowledge—instead of objectify—the other. This provides the opportunity to overcome the naturalistic fallacy: While the "is" implies the "ought," it does not do so in the form of the respective factuality, but only in its form that has normative relevance, which comes about for human beings through the reason which determines naturalness. Not everything that human beings want *at a given moment* is part of their true nature; instead, it is what they *normally* want.

When applied to the issue of birth control, this means that only a holistic reflection on the singularity of the sexuality of the human species allows conclusions to be drawn about objective and universally binding behavioral norms (such as the inseparability of the unitive and procreative significances) which would then no longer be available for arbitrary manipulation. Since human identity always manifests itself in the interaction between body and soul, rejection of the human being's bodily nature as

<sup>15</sup> Kuciński, *Naturrecht*, 322.

<sup>16</sup> Spaemann, *Glück und Wohlbefinden*, 218–19.

an ethical roadmap, in the final analysis, leads to the disintegration of the entire human being. There is a particular risk that such disintegration may occur when human beings define themselves exclusively as a spirit *vis-à-vis* a nature which is to be dominated. Due to the uncontrolled domination of nature, the individual in the end becomes the victim of his or her own desires and falls back into pure primordialism. This fact underpins the finding that, if dissociated from the rational order of love, sexual activity in the end destroys the sexuality itself and results in the opposite of what it originally promised. Human beings find perfection in a symbiosis both with surrounding nature and with the material substrate of their individuality, which also includes their sexuality. In this context, Spaemann speaks of using “remembrance to preserve” nature through actions.<sup>17</sup>

All in all, the reflection on the differentiated nature which underlies human sexuality proves to be a plea for respecting the foundations of human existence. What is needed, however, is an act of will recognizing that all of this does not constitute a compilation of random data describing reality, but a logical matter which has something to tell us. Anyone who is not prepared to perform this reflection will have to rely on empirical findings which, however, may lead to painful experiences if natural conditions of nature are ignored. Contrary to what one might think, these precepts of natural law—freed from the suspicion of naturalism—by no means prove to be an erratic monolith of unalterable norms outside the human person; instead, they turn out to be an *ordinatio rationis*<sup>18</sup>—an order of reason, which obtains objectivity through its participation in the divine *lex aeterna*. It is not mere naturalness, but only its order through reason that gives certain phenomena a moral character. Within this notion of objectivity, there is also room for subjectivity, which can be further defined by looking at the concept of personhood.

Thus, it becomes clear that this integral view also preserves from neglecting the biological dimension of human nature. It gets its place as morally relevant within the natural teleology which people share with other living beings. The natural teleology means the inherent “directedness” of our faculties toward certain ends<sup>19</sup> which are based on biological processes and regularities but are at the same time identified and interpreted by reason.

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<sup>17</sup> Robert Spaemann, “Art: Natur,” in *Handbuch philosophischer Grundbegriffe*, ed. Hermann Krings, Michael Baumgartner, and Christoph Wild, vol. 2 (Munich: Kösel, 1973), 956–69, at 965.

<sup>18</sup> See Thomas Aquinas, *Summa theologiae* [ST] I-II, q. 90, a. 4.

<sup>19</sup> See Edward Feser, “In Defense of the Perverted Faculty Argument,” in *Neo-Scholastic Essays* (South Bend, IN: St. Augustine’s Press, 2015), 378–415, at 383.

### Moral determination of relationality through the ontology of the person

Probably no other author has explained and elucidated *Humanae Vitae* from the perspective of a personalistic approach more intensively than John Paul II / Karol Wojtyła. In a memorandum which was composed by a group of moral theologians under his leadership as archbishop of Cracow prior to the encyclical and which encouraged Paul VI to publish *Humanae Vitae*, he made clear that the biological laws of human sexuality drew their ethical relevance from being part of the wholeness of the person, the unity of body and soul.<sup>20</sup> Hence, an intervention in the structure of the sexual act is tantamount to an intervention into the essence of the person, and it is this very fact that makes contraceptive manipulation an ethically relevant matter.<sup>21</sup> Moreover, the identity of the person includes his relationality, so that the individual is obliged to respect the rights of the other.<sup>22</sup>

In particular, the distinctive quality of the human being as a person with relations to others involves certain obligations, which underlines and explains the moral character of conjugal acts. However, these obligations apply, first of all, to the person himself or herself because he or she is called to strive for self-perfection using their own exclusive characteristics: reason and freedom. According to this view, the human being's own dignity consists not only in rights claimed from others but also in obligations that must be integrated into the human being's responsible actions.<sup>23</sup> This includes self-control instead of being at the mercy of blind impulses. Laun therefore explains the obligation for a human design of one's own sexuality by referring to Paul's instructions addressed to married couples that they

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<sup>20</sup> "The power of transmitting life is a gift of God, and it forms part of the totality of the human person. It is precisely in terms of this nature, taken as a whole, that man must reckon with this power and its specific structure. Therein his intellect discovers a biological law, which, although biological, is related to the human person as a unity of body and soul." (Karol Wojtyła et al., "The Foundations of the Church's Doctrine Concerning the Principles of Conjugal Life: A memorandum composed by a group of moral theologians from Kraków," trans. Janet E. Smith as "The Krakow Document," *Nova et Vetera* (English) 10, no. 2 [2012]: 321–59, at 329).

<sup>21</sup> See Wojtyła et al., "Krakow Document," 329–30: "The use of contraceptives constitutes an active intervention into the structure of the sexual act, and therefore of the action of the person; in this way, it is a violation of the person as a being gifted by sexuality, and of his biological laws."

<sup>22</sup> See Wojtyła et al., "Krakow Document," 330: "Moreover, the structure of the person includes his relations to others: namely, relations between persons and relations between the individual and society. In all these relations there is a binding obligation to respect the rights and dignity of the person."

<sup>23</sup> See Wojtyła et al., "Krakow Document," 330.

must not depart from one another. According to Laun, however, this is a norm of love, and not a licence for sexual licentiousness.<sup>24</sup>

The normative, personal design of a person's own sexuality is also expressed by the distinction between *uti* and *frui* in the proclamation of John Paul II / Karol Wojtyła on moral theology in the tradition of Augustine. While *uti* refers to mutual use, *frui* means reciprocal self-giving.<sup>25</sup> According to this model, contraception is regarded as an infringement on unconditional self-giving, which means loving the other for his or her own sake and not merely and not solely for the sake of the good one expects of the other.<sup>26</sup>

One of the key statements of Spaemann in his ontology of the person dovetails with this perspective: Persons in fact only exist in the plural.<sup>27</sup> This constitutive relationality is based on metaphysical realism: The person is always more than what is perceived of him or her and must be respected in terms of his or her selfhood.<sup>28</sup> The valorization of the individual goes so far that the person advances to become the paradigm of being. For this reason, the natural law must not be seen as an abstract set of rules but as universal ethics that remain open for the freedom of the subject determined by the person, and hence, the relations to others. Such a holistic approach to the reality of the person can help to prevent solipsistic confinement to individual subjectivity, while at the same time validating its ties to objective normativity in sexually determined interactions with another person.

In summary: If one wonders how to respond to the objection of naturalism in the context of the precepts of natural law in *Humanae Vitae*, one needs to refer to the analysis of the concept of nature which underlies this doctrine. What is referred to as "nature" is neither the factual behavior nor the biological laws that govern human sexuality per se, but the singularity of the human person in his or her relation to others, which can only be understood using reason. The corresponding ontology of the person, which integrates sexuality into the holistic view of the person consisting of body and soul, illustrates the ethical character of sexual activity, which

<sup>24</sup> See Laun, *Aktuelle Probleme*, 91.

<sup>25</sup> See Twomey, "Verantwortliche Elternschaft," 19; see also John Paul II, Apostolic Exhortation on the Role of the Christian Family in the Modern World, *Familiaris Consortio* (1981), §32.

<sup>26</sup> See John Paul II, *Familiaris Consortio*, §32; see also Twomey, "Verantwortliche Elternschaft," 19–21.

<sup>27</sup> Cf. Consider the title of Spaemann's book: *Personen: Versuche über den Unterschied zwischen "etwas" und "jemand"* (Stuttgart: Klett-Cotta, 1996).

<sup>28</sup> Spaemann, *Personen*, 79.

always encompasses the entire human being and must therefore be guided by a certain order that corresponds to human nature. The alternative is the disintegration, and hence degradation, of the person who disregards his or her own premises. Where human dignity is affected—and in the realm of sexuality, human dignity is eminently affected—the human being is deprived of his or her own discretionary power of disposal and called upon to accept—for the sake of his or her self-fulfilment—certain obligations, both to himself or herself and to others. In this way, the intangible order of personal human nature can be translated into the given order of love.

N. V