Extramarital Contraception in the Catholic Faith: A Call to Action from a Physician and Ethicist

Cara Buskmiller
Baylor College of Medicine
Houston, TX

Introduction

Definitions

Before proceeding to a discussion of extramarital contraception, it is relevant to lay a foundation of definitions and limitations of this essay. Here, "sex" and "sexual act" will refer to acts of penile–vaginal intercourse and acts meant to lead to such intercourse, respectively. Other acts which are rightly called "sexual" are not relevant to this essay, as the focus here is on encounters that could result in fertilization.

The traditional natural law theory with its analysis of object, intention, and circumstances is at play in this essay, with a hylomorphic understanding of nature and ethics. In this understanding of ethics, the names of many acts include not only an object but an intention and circumstances (e.g., murder specifies an illegal type of killing with premeditation). Likewise, "contraception" here refers to the use of any drug or device which temporarily lowers fertility (object), to prevent fertilization (intention) due to presumed-fertile sex (circumstance). Such drugs or devices are called "contraceptives" in this essay. In this essay, "contraception" is not committed solely by intending to avoid fertilization, so acts such as trying to avoid fertilization by timing sex during infertile parts of a menstrual cycle are not contraception, and the pastoral term "contraceptive mindset" does not apply. "Contraception" is also not solely defined by the use of particular medical products, since the intention to avoid fertilization is part of the definition in this essay. Thus,

prescribing or taking a birth control pill for polycystic ovarian syndrome, in the words of Pope St. Paul VI in his 1968 landmark encyclical *Humanae Vitae* (*HV*), is not at all illicit, here because such treatment is *not* contraception, and the problems of contraception do not apply (§15).

"Marriage" in this essay refers principally to sacramental matrimony, made by the consent of a baptized man and a baptized woman.[1] Civil marriage, cohabitation, long-term affairs, sex in dating, short-term hookups, prostitution, and sexual assault represent a spectrum of falling away from matrimony. This essay assumes that matrimony is God's one true plan for sex, fertilization, and childrearing. This essay also makes heavy use of the Scholastic-personalist perspective of *HV* on the unitive and procreative dimensions of sex. As sexual relationships "fall away" from matrimony, they lose resemblance to these dimensions.

"Consent" is here defined as a free act in which a person agrees to do, accept, or reject something.[2] Consent is an act of the will, and it may be partial or total. Only when consent is total is a person held fully responsible for his or her actions; for example, only when consent is total can a person commit a mortal sin. Consent is different from assent, which is not of the will, but of the mind.[3] In this paper, sex without consent is termed "sexual assault"—the status of the act as an *assault* is solely determined by consent. These definitions allow for a sexual assault in which a victim withholds consent and yet does not resist an attack,[4] which is different from past legal and colloquial definitions.[5] This definition also allows for assault victims that have positive emotional responses to or physical arousal from an attack. These responses from a victim do not make the assault consensual or desired,

---

1 *The Code of Canon Law: English Translation* [*CIC*] (Grand Rapids, MI: Eerdmans, 1984), can. 1057, §1.

2 John A. Hardon, *Modern Catholic Dictionary* (Garden City, NY: Doubleday, 1999), s.v. "Consent."

3 Hardon, *Modern Catholic Dictionary*, s.v. "Assent."

4 See, for example, Mary Adkins, "The Misguided Definition of Sexual assault as 'Force,'" *The Atlantic*, May 21, 2014; James Hopper, "Why Many Sexual Assault Victims Don't Fight or Yell," *Washington Post*, June 23, 2015; Shaila Dewan, "She Didn't Fight Back: 5 (Misguided) Reasons People Doubt Sexual Misconduct Victims," *New York Times*, Nov 3, 2017.

5 See, for example, Hukm Chand, "Consent Implied by Non-Resistance," in *Principles of the Law of Consent with Special Reference to Criminal Law: Including the Doctrines of Mistake, Duress, and Waiver* (Bombay: Bombay Education Society's Press, 1897); Jed Rubenfield, "Campus Sexual Assault," *Time*, May 15, 2014; James D. O'Neill, "Consent (in Canon Law)," in *The Catholic Encyclopedia* (New York: Robert Appleton, 1908).

and in fact make post-traumatic recovery more difficult.[6] Simply put, consent is of the will, and this is not diminished by whether the body follows suit; this differs from some legal definitions of consent in canon law, where the will of the person agreeing to a contract is signified by externals, even if there was no intention to fulfill the duties of the contract.[7] Consent will be central to this essay, since it helps make the spectrum of relationships that "fall away" from marriage intelligible in two sets: one with consent, and one without.

"Intellectual disability" in medical and ethical literature refers to a large spectrum of differences in mental and behavioral performance, but this essay is only considering intellectually disabled persons who would be unable to contract marriage according to the Catholic *Code of Canon Law*, meaning incapable of understanding "that marriage is a permanent partnership between a man and a woman ordered to the procreation of offspring by means of some sexual cooperation."[8]

Finally, since this inquiry is about preventing *fertilization*, the words "woman" or "girl" will be used throughout, although sexual assault of males is sadly prevalent as well. With this foundation laid, we must examine the most important part of the background on this topic: *Humanae Vitae* (*HV*). Summarizing nineteen hundred years of Church teaching, *HV* has also defined the fifty years since its promulgation.

The Focus of Humanae Vitae *Is Marriage*

Pope St. Paul VI made clear for his readers that *HV* is about contraception in marriage. Marriage is mentioned twenty-two times in the thirty-one sections. The words "conjugal" and "marital" are used eight times to describe "the conjugal act" and the rights and love of married people. As a brief illustration of this focus, the below is an excerpt from the introduction, which can be trusted to define the scope of the work.

> The transmission of human life is a most serious role in which *married people* collaborate . . . with God. . . . The fulfillment of this duty has

---

6 See Roy J. Levin and Willy van Berlo, "Sexual Arousal and Orgasm in Subjects Who Experience Forced or Non-Consensual Sexual Stimulation—a Review," *Journal of Clinical and Forensic Medicine* 11, no. 2 (2004): 82–88; Tiffany M. Artime and Zoe D. Peterson, "Feelings of Wantedness and Consent during Nonconsensual Sex: Implications for Posttraumatic Cognitions," *Psychological Trauma: Theory, Research, Practice and Policy* 7, no. 6 (2015): 570–77.

7 J. D. O'Neill, "Consent (in Canon Law)," in *The Catholic Encyclopedia*, vol. 4 (New York: Robert Appleton, 1908); also at newadvent.org/cathen/04283a.htm.

8 *CIC*, can. 1096, §1.

> always posed problems to the conscience of *married people*. . . . Also noteworthy is a new understanding of . . . the value of *conjugal love in marriage* and the relationship of *conjugal acts* to this love. . . . Taking into account the relevance of *married love* to the harmony and mutual fidelity of *husband and wife*, . . . could it not be admitted, in other words, that procreative finality applies to the totality of *married life* rather than to each single act? This kind of question requires . . . a new and deeper reflection on the principles of the *moral teaching on marriage*. . . . In carrying out this mandate, the Church has always issued appropriate documents on the nature of *marriage*, the correct use of *conjugal rights*, and the *duties of spouses*. This commission included *married couples*. . . . Its task was to examine views and opinions concerning *married life*. . . . Certain approaches and criteria for a solution to this question had emerged which were at variance with the *moral doctrine on marriage* constantly taught by the magisterium of the Church. (*HV* §§1–6; emphasis added)

This excerpt alone demonstrates that Pope St. Paul VI, while certainly having a view to the whole human person and natural law, focused this letter on sex in marriage, not sex in general.

The Pope does not specify whether *HV* applies to extramarital sex or not; however, he does repeatedly ground his arguments in marriage throughout the encyclical. For example, he writes that "some people today raise the objection . . . concerning the *moral laws governing marriage*" *(HV* §16; emphasis added). Or, when discussing exclusion of the procreative aspect of sex, he writes: "The Church . . . teaches that each and every *marital act* must of necessity retain its intrinsic relationship to the procreation of human life" *(HV* §11; emphasis added).

Many Catholic writers are uncomfortable with this presentation of *HV* as specific to marriage, arguing that *HV* demonstrates that "contraception is in itself always gravely evil," with at least one writer believing these words are in *HV*, placing them in brackets as part of §14.[9] But these words do not appear in *HV* §14, which describes acts like withdrawal and contraception *in marriage*:

> We base Our words on the first principles of a human and Christian doctrine of *marriage* when We are obliged once more to declare that

---

[9] Anthony Zimmerman, "The Angelic Doctor and the Birth Control Pill: Why Aquinas Was Kept out of *Humanae Vitae*," *Fidelity* 8, no. 11 (1989).

> the direct interruption of the generative process already begun . . . [is] to be absolutely excluded as lawful. . . . Similarly excluded is every action that [renders procreation impossible before the] *conjugal act*." (*HV* §14; emphasis added)

Later in the same section, the Pope does write about how deliberate contraception can make *sex* intrinsically wrong, again within the context of marriage: "It is a serious error to think that a whole married life of [fertile sex] can justify sexual intercourse which is deliberately contraceptive and so intrinsically wrong." Here, the Pope says contraception can bankrupt sex in marriage. But nowhere does he say contraception is gravely evil in itself, or intrinsically wrong. The Pope rejects contraception in *HV* because of what marriage is; he never makes an argument that applies to all contraception or even all sex. One such argument, a physicalist understanding of the natural law, is explicitly addressed in *HV*, but without using it to show that contraception is always gravely evil.

A physicalist understanding of the natural law implies that only the physical structure of an act matters for its moral analysis, ignoring or diminishing the intention behind the act. Detractors and supporters have both identified physicalism in *HV*, and the history of the discussion on this topic is beyond the scope of this essay.[10] To those Catholics who imagine that *HV* rejects contraception because it regulates or obstructs a natural process, *HV* itself responds that the "Church is the first to praise and commend the application of human intelligence to [sex]" (§16), and argues that "controlling birth" can be perfectly licit when done without exerting control on God's will. To those detractors who accuse *HV* of being grounded in conservative, traditional natural law theory, this author admits that it can sound overly attached to the order of animal nature; however, the same teachings were already being articulated from personalist perspectives, and have since flowered into documents like Pope St. John Paul II's 1981 encyclical *Familiaris Consortio* and his "theology of the body" and the 1997 *Vademecum* for Confessors concerning Some Aspects of the Morality of Conjugal Life by the Pontifical Council for the Family. Fundamentally, all readers must understand Pope St. Paul VI in the context of the whole of Church teaching, and see that his opposition to contraception was because contraception removes spouses' opportunity for co-creation with God (procreative aspect) and it subtracts

---

[10] See, for instance, Mark S. Latkovic, "Is the Teaching of *Humanae Vitae* Physicalist? A Critique of the View of Joseph A. Selling," *Linacre Quarterly* 62, no. 4 (1995): 39–58.

from their total self-gift to each other (unitive aspect), not because it uses technology to regulate a natural process (licit use of reason).

Further, when the Pope mentions the natural law, he specifically references marriage in the same breath: "In urging men to the observance of the precepts of the natural law, [the Church] teaches that each and every marital act must of necessity retain its intrinsic relationship to the procreation of human life" (*HV* §11). If there are arguments about the natural law regarding extramarital sex, and the contradiction that contraception represents against *all* sex, the Pope does not make them.[11] Rather, he relies on the natural law surrounding marriage to reject contraception in *HV.*

This relationship between *HV* and marriage also means that later pronouncements about *HV* are related to marriage. For example, Pope St. John Paul II stated in one address that, "when Paul VI defined the contraceptive act as intrinsically illicit, he meant that the moral norm does not admit exceptions: no personal or social circumstance has ever been able, is able, or will ever be able in itself to ordain such an act."[12] Even if the language is absolutist and general, the context of *HV* limits it to marriage. In fact, John Paul II described his understanding of *HV* as related to marriage, saying in a 1968 letter that "*Humanae vitae* . . . concluded a period dedicated to the in-depth study of the theme of the transmission of life *in marriage*."[13] Later in the letter, then-Cardinal Karol Wojtyła outlines instruction to help implement *HV*, part of which "should, following the encyclical *Humanae vitae*, set out the doctrine on *marriage* [and] *marital love*."[14]

Paul VI and John Paul II did not specifically address extramarital contraception, probably because marriage is the only setting in which *sex* is permitted. Before *HV*, many denominations and other religions already permitted contraception in marriage (e.g., the Anglican Church at the Lambeth Conference in 1930), based on persuasive arguments. Two such arguments are relevant to review here. The first, called the "reason argument" in this essay, uses Christian teaching on the nature of man as a rational animal and his call to use reason to order nature for the sake of greater goods. This argument concludes that married people should use reason to regulate their licitly used fertility for the good of their family, and can do so using contraception. The second, called "the totality argument," argues that a married

---

11 See replies to objections, below, for a discussion of the perverted-faculty argument.

12 The Associated Press, "Pope Says Conscience Not Enough in Birth Control Decisions," *AP News*, November 12, 1988.

13 Diana Montagna, "Never before Published Letter of Cardinal Wojtyła to Paul VI on *Humanae Vitae*," *LifeSite*, July 25, 2018 (emphasis added).

14 Montagna, "Never before Published Letter of Cardinal Wojtyła."

couple can intermittently use contraception as long as they have a mindset that generally accepts the gift of children—if the whole of the marriage is fertile, individual instances of sex can be contracepted.

Pope St. Paul VI saw that the reason argument applies to many things on the plane of nature, but that reason cannot govern the marital act by internally frustrating God's role in it, only by regulating man's use of it within naturally established patterns of fertility. The Pope saw what other denominations missed: the marital act is uniquely exalted among earthly things, by its participation in sacramental co-creation with God, which is *above* reason's grasp (§17). In this response, as already noted above, the Pope did not appeal to physicalism, but to the teaching on marriage.

The Pope also rejected the totality argument, replying that every marital act must retain its exalted nature, with both its unitive and procreative aspects. To withhold fertility in any marital act is to withhold part of a purportedly complete self-gift, which he describes as being "intrinsically wrong" or intrinsically contradictory about contraception in marriage, as already noted above in response to a mischaracterization of *HV* §14. Thus, the Pope rejected the reason and totality arguments as insufficient to justify contraception in marriage, by grounding his rebuttals in the nature of marriage.

Catholics reading *HV* today should be grateful to Pope St. Paul VI for responding to the hardest, most persuasive case of contraception. Rejecting the reason and totality arguments imagined in faithful matrimony required insight and subtlety. In contrast, rejecting arguments for contraception in adultery or childfree cohabitation is trivial, requiring only a basic understanding of sin, sex, and marriage.[15] If the Catholic Church did not permit contraception at its most rational and well-intentioned, she is unlikely to permit it when at its most selfish and convenient. Perhaps as a result, no one has ever approached the Holy See with arguments in favor of extramarital contraception, because all such arguments seem to be weaker than the arguments for contraception in marriage.

This essay takes up that seemingly ridiculous task: we must test whether the reason argument, the totality argument, or other arguments is valid for extramarital contraception, in an attitude of fidelity and submission to the tradition of the Catholic Church. Luckily, this essay is not the first foray into this topic.

---

[15] See Prov 28:13 and *Catechism of the Catholic Church* §2378, on children as the "supreme gift of marriage."

The Debate

Some Catholic moral theologians believe that *HV*'s proscription of contraceptives can be generalized to extramarital sex, and that all contraception is intrinsically evil.[16] Others hint that *HV* may not apply to all extramarital sex.[17]

A helpful spotlight on the debate is the issue of emergency contraception (EC), on which there is broad agreement on liceity, but disagreement as to the *reason* for liceity. In EC, a clinician provides a drug or device to prevent pregnancy after sex. Secular professional guidelines on EC describe its use for up to five days after any act of sex (consensual or nonconsensual). Depending on the timing of sex and EC during the female cycle of fertility, EC might work by preventing ovulation, or by ending the life of an embryo.[18] The United States Conference of Catholic Bishops permits EC in directive 36 of its 2009 *Ethical and Religious Directives* (*ERD*) only for victims of sexual assault, and only when a clinician can be morally certain that the drug or device will prevent fertilization, and not act after fertilization on an innocent embryo. Thus, the USCCB *does* permit EC in some cases, to prevent the taxing and traumatic experience which is pregnancy after sexual assault.

Writers who hold that contraception is intrinsically evil agree with the bishops by explaining that EC is not actually an act of contraception, but one of self-defense.[19] Those who hold that contraception is not intrinsically evil argue that EC *is* contraception because it is a drug or device that is used explicitly to prevent fertilization (unlike use of these same contraceptives to treat a medical problem). However, despite its nature as contraception, these

---

16 For a small sample, see Christopher Tollefsen, "Contraceptives for Victims of Sexual Assault and for the Mentally Disabled: A Reply to Stephen Napier," *Linacre Quarterly* 77, no. 3 (2010): 308–22, and Janet Smith, *Humanae Vitae, a Generation Later* (Washington, DC: Catholic University of America Press, 1991).

17 For another small sample, see Steven Napier, "Contraception for the Mentally Disabled: A Contraceptive Act?," *Linacre Quarterly* 77, no. 3 (2010): 280–307, and Tad Pacholczyk, "Catholics and Acceptable Uses of Contraceptives," *Making Sense of Bioethics*, March 30, 2016.

18 Kathleen M. Raviele, "Levonorgestrel in Cases of Sexual assault: How Does It Work?," *Linacre Quarterly* 81, no. 2 (2014):117–29.

19 Catholic Medical Association, "Statement on Emergency Contraception," September14,2015,cathmed.org/wp-content/uploads/2015/09/Statement-on-Emergency-Contraception-in-Cases-of-Rape.pdf.

The present essay will continue to call this emergency *contraception* (EC) because of this essay's definition of contraception (a use of these drugs or devices with an aim to prevent conception), which matches the medical term for this act; see American College of Obstetricians and Gynecologists "Practice Bulletin No. 152: Emergency Contraception," *Obstetrics and Gynecology* 126, no. 3 (2015): e1–e11.

writers uphold that EC is allowed because of the difference between sexual assault and the marital act described in *HV.*

One of the best articulations of this argument is by Steven Napier, writing about contraception in the intellectually disabled. Napier bridges the gap between writers who hold that all contraception is evil and those who do not: Napier himself holds that contraception is intrinsically evil, but offers a helpful insight on how sexual assault differs from the marital act. Napier's insight is that contraception after sexual assault is "not [intended] to separate the unitive and procreative meaning of [a] conjugal act."[20] Indeed, Napier goes on to explain, sexual assault does not *have* a unitive aspect because of the lack of consent which is part of the definition of sexual assault. Sexual assault is not a mutual loving self-gift, but a grave and violent sin by the perpetrator and a traumatic attack on the victim. Put another way, sexual assault represents a falling away from sex in marriage. In sex in marriage, spouses make an exclusive, total self-gift that unites all their faculties, including their fertility and their wills. Contraception is evil in this setting in part because it interrupts this self-gift. In contrast, sexual assault contains no mutual self-gift and certainly no unity of wills. In fact, the lack of this unity seems to be the key loss in the "falling away" of sexual assault from the ideal of the marital act. There is superficial physical resemblance of unity, but there is already such a deprivation "of [sex's] meaning and purpose" (*HV* §16) and deviation from "the consent of the spouses" that establishes "the conjugal community"[21] that contraception does not appear to interrupt sexual assault in the way it interrupts a marital act. If there is no unity between the sexual partners, there is no unitive aspect to destroy by withholding fertility, and *HV*'s main argument against contraception does not apply. If Napier's line of reasoning is correct, contraception in sexual assault is not wrong for the same reasons contraception is wrong in marriage. However, this does not automatically make contraception in sexual assault licit. Positive arguments must be made. What positive argument already exist for EC?

The literature largely makes a positive argument that EC is licit by describing EC as self-defense against the completion of an act by an aggressor. Just as she can physically resist with her fists, the victim of sexual assault can pharmacologically resist with pre-fertilization mechanisms of contraception. Most Catholic physicians are content with this, but perceptive readers will notice that EC is only analogically "self-defense," in that the woman protects

---

20 Napier, "Contraception for the Mentally Disabled," 295.

21 *Catechism of the Catholic Church* [*CCC*] §2201.

her gametes from being accessed by her aggressor's gametes.[22] However, the way she achieves this is more truly called an act of *contraception* than an act of self-defense: she is using a drug that lowers her fertility in order to avoid fertilization. Thus, a perceptive reader will realize that we must contend with the underlying "reason argument" again, this time without the doctrine of Christian marriage.

EC involves a victim and her physician using their reason to curtail the victim's fertility after an assault. In marriage, the use of reason was an unacceptable affront to something above us; unlike the exalted marital act, sexual assault is *beneath* us. Thus, without any formal defense of the use of reason to regulate a natural process after sexual assault, the ordinary magisterium has accepted the use of reason to regulate fertility with contraception when sex lacks key aspects of the marital act: consent and a unitive aspect (*HV* §12). In EC, a real act of contraception is licit, given the intention to protect the victim and a method that does not harm any embryos. Thus, EC demonstrates that the ordinary magisterium and many Catholic writers already believe we *can* use our reason to employ contraception to regulate the natural process of sex and fertilization in a narrow setting.

Given this, perhaps there is a broader role for the reason argument in other settings of extramarital contraception, or a role for other tools like double-effect reasoning. But even if this is so, why should we attempt to investigate extramarital contraception? Isn't EC enough, and couldn't more investigation cause scandal?

Why Should We Determine the Liceity of Extramarital Contraception?

Idle inquiries about hot-button topics help no one. But the discussion of EC as self-defense highlights one reason for a discussion of extramarital contraception: the USCCB recognizes that victims of assault *should* be permitted to repel the act of their aggressor (*ERD* §36). Before moral theologians and bioethicists addressed this question, Catholic hospitals unnecessarily withheld this option from women.[23] We can now recognize this as unfortunate: because ethicists waited, women were unable to resist their aggressors in this way. Are there other categories of victims who could be helped by a more general rule on extramarital contraception? Possibly.

Another reason to ask this question is to *avoid* scandal. Whenever a

---

[22] Some are tempted to say it is self-defense against pregnancy. But "self-defense" implies an aggressor, and she is not defending herself from his offspring, since any fetus that arises is a new innocent bystander, not her aggressor.

[23] L. Bucar and D. Nolan, "Emergency contraception and Catholic hospitals," *Conscience* 20, no. 1 (1999): 20–22.

pontiff discusses a gradualist approach to contraception or a truth about contraception, there is confusion among the faithful and the world.[24] This confusion probably comes from the general impression that contraception is intrinsically evil because it is artificial or unnatural, a physicalist simplification of *HV*. Making exceptions to a supposedly intrinsically evil act generates the scandalous impression that Catholic teaching is positive law—a modifiable, barely coherent list of rules. A comprehensive approach to extramarital contraception could prevent some confusion, like completing the Nicene Creed prevented confusion about the person of Christ and the Church. Certainly, concupiscence and poor catechesis will always feed scandal, but these failings do not remove the utility of a complete body of teaching on contraception.

There is another reason to seek a systematic answer to extramarital contraception, but it is a subtle one. The Church has long explained that God's plan for the begetting of children is within marriage between a man and a woman.[25] While the Church has never precisely said the corollary, it follows that raising children outside of marriage falls away from the fullness of God's plan; it is less good. People born and raised outside of marriage are more likely to suffer consequences from this less-good setting.[26] While it always possible to adopt these children into marriages, this comes with its own adverse consequences.[27] The only way to completely avoid this less-good situation for children is to prevent extramarital pregnancy. Clearly, the best way of preventing extramarital pregnancy is holiness of life among all the faithful. However, in a fallen world when vulnerable unmarried persons can become pregnant against their will, it is worthwhile asking whether some

---

24 See Martin Pendergast, "The Pope's Shift on Condoms Is No Surprise," *The Guardian*, November 23, 2010, and David Willey, "Is Pope Francis' Contraception Hint Just a Puff of Smoke?" *BBC News*, February 21, 2016.

25 See *CCC* §1646, *Gaudium et Spes* (1965), §50, and Ann Schneible, "Pope Francis: Children Have a Right to a Mother and Father," *Catholic News Agency*, November 17, 2014.

26 See Sara McLanahan and Gary D. Sandefur, *Growing up with a Single Parent: What Hurts, What Helps* (Cambridge, MA: Harvard University Press, 1994); Jane Waldfogel, Terry-Ann Craigie, and Jeanne Brooks-Gunn "Fragile Families and Child Wellbeing," *The Future of children* 20, no. 2 (2010): 87–112; Robert Rector, "Marriage: America's Greatest Weapon against Child Poverty," *The Heritage Foundation*, September 16, 2010.

27 Sharon K. Roszia, Allison Davis Maxon, and Deborah N. Silverstein, *Seven Core Issues in Adoption and Permanency: A Comprehensive Guide to Promoting Understanding and Healing in Adoption, Foster Care, Kinship Families and Third Party Reproduction* (Philadelphia: Jessica Kingsley, 2019).

extramarital pregnancies can be licitly prevented by preventing extramarital fertilization.

Of course, this line of reasoning is too feeble to support all-out endorsement of contraception to prevent all extramarital fertilization and birth. This line of reasoning must also be carefully handled pastorally, as it affects the faithful who have been born outside of marriage.[28] Also clearly, this line of reasoning does not endorse abortion for extramarital pregnancy—once an embryo is conceived, Catholic teaching is extremely clear on the sacredness of his or her life. After fertilization, the only licit options to address the imperfect environment for this child are reparative (not preventative), such as marriage, good parenting, and community support.

In summary, the discussion of the potential future child that may be conceived after extramarital sex is subtle and not the strongest reason to proceed with the present inquiry, but stems from Church teaching and relates to real-world consequences for children. For this reason, it deserves mention, but it will not form the basis of any further arguments. Given all of the above reasons to pursue a systematic approach to extramarital contraception, let us consider a framework for analyzing this broad topic.

The Liceity of Extramarital Contraception

Establishing Three Categories of Extramarital Sex

There is a long and complex spectrum of sex and sexual acts that fall away from marital chastity, and this spectrum can seem intimidating and impossible to analyze. To more clearly discuss extramarital contraception, we can use consent to create a non-exhaustive list of three categories:

1. Sex in which both parties have capacity to consent, and both consent to sex.

2. Sex in which both parties have capacity to consent, but one withholds consent and this person is overpowered.

---

[28] Preventing fertilization is not ontologically or pastorally equivalent to abortion. Ontologically, each being adds to the good; however, preventing extramarital fertilization is akin to preventing a falling away from the good, not deleting goods. Pastoral concerns about preventing extramarital fertilization often surround persons conceived this way who feel "illicit." But God certainly wills that these people exist and he willed their birth. However, the fullness of his will would have had their life come about a different way, so that those people never had to question that they are loved.

3. Sex in which one party has no capacity to consent, and this person is overpowered.

These categories do not define whether the overpowered party is male or female, but this essay is self-limited to female victims. Because these categories are structured using this essay's will-centered definition of "consent," these categories do not consider whether a victim of assault has a response to sexual advances other than one seated in the will. It also does not include either party's maturity, prudence, or cultural background, which are circumstances relevant to culpability but do not determine the *object* of an act in classical Catholic ethics.

Category 1 includes all consensual sex, even if consent is partial or not accompanied by strong desire. Examples of category-1 acts are the sex in cohabitation, consensual adultery and fornication, consensual hookups, and voluntary sex work. Category 2 includes all forms of sexual assault regardless of the partners' relationship, except abuse in category 3. Category 3 includes sexual assault of those unable to consent such as some minors (especially those below the age of reason), intellectually disabled adults, psychotic patients, or dementia patients.

Category 1: Consensual Extramarital Sex

There is a long history of proscription of contraception associated with voluntary sins such as fornication, adultery, and prostitution, which arguably apply to cohabitation, voluntary sex work, and relationship arrangements such as polyamory. Church fathers and doctors condemned sterilization and contraception centuries before *HV*.[29] The ancient world was aware of the difference between abortion and contraception, as Soranus of Ephesus explained in his second-century *Gynaecology* that "a contraceptive [ἀτόκιον] differs from an abortive [φθόριον], for the first does not let fertilization take place, while the latter destroys what has been conceived."[30] It is occasionally difficult to determine whether ancient writers accepted this distinction. Catholic writers in the first centuries had a predilection to speak of contraception, sterilization, extramarital sex, and homicide all in one breath.

---

[29] See, for example, Clement of Alexandria, *Paedagogus* 2; Hippolytus, *Refutatio omnium haeresium* 9.12; Canon 1 of the Council of Nicaea; St. Augustine, *De bono coniugali* 11–12 and *De nuptiis et concupiscientia* 1.15.17; St. John Chrysostom, Homily 28 on Matthew, no. 5; St. Jerome, *Adversus Jovinianum* 1.19 and Letter 22, no. 1; St. Ambrose, *Hexameron* 5.18; Origen of Alexandria, *Contra Celsum* 5.

[30] Keith Hopkins, *Sociological Studies in Roman history*, ed. C. Kelly (Cambridge: Cambridge University Press, 2019).

However, some at least list contraception, abortion, and sterilization as different acts, although writers disagreed as to whether these acts were different or identical in gravity.[31] It can be gathered from ancient writings that contraception *adds* evil to the evil of consensual extramarital sex, in two ways. First, contraception in consensual extramarital sex dodges the natural consequences of an evil act; second, it moves one more step *away* from God's plan for sex, which bestows children as a supreme gift.

Thus, whenever two agents are capable of consent and choose extramarital sex, contraception takes them further from God's plan for human sexuality. This conclusion cannot be overstated and must be expounded upon to have a truthful view of the Catholic Church's teaching on contraception. A university student in a hookup culture may lack prudence when she consents, but if she consents, contraception *adds* to the evil of extramarital sex. It does not help her or her partner. The Church's purview encompasses more than the practical convenience of avoiding an undesired pregnancy; its focus is on the effect that contracepted fornication has upon her soul's ability to pursue God's will, her ultimate happiness.

As another example, a couple may live together envisioning a future marriage, but presently *choose* to engage in extramarital sex. Since both are capable of consent and marriage, contraception *adds* to the evil of their fornication, it does not lessen it and it is not good for them. Put another way, avoiding the exclusive and permanent commitment to a sexual partner is one evil, and avoiding the procreative consequences of sex is another.

The Catholic Church has already been very clear on contraception in this type of extramarital sex. It cannot be entertained, as it is in no way compatible with Catholic teaching about the will of God, human perfection, and sexual mores. In fact, it may be argued that the more a sexual act resembles marriage, the greater is the evil of contraception. Specifically, the closer a sexual relationship is to an exclusive, permanent, selfless self-gift, the greater the rupture that contraception presents. Couples who are cohabiting for the long term and even having children are meaning to make an exclusive self-gift with their sexual intimacy and mode of life, so contraception is a grave subtraction and a lie. In contrast, a one-night-stand makes no pretense of an exclusive self-gift, so the addition of contraception into the already bankrupt use of sex is still evil, but less of a dramatic reversal.

---

[31] See St. Hubert's *Penitentiary* (850) for the former and John IV of Constantinople's *Libellus poenitentialis* for the latter (*PG*, 88:1904).

Category 2: Nonconsensual Extramarital Sex When Consent Is Possible

In sex between two parties with capacity to consent, but in the absence of one party's consent, one agent violently suppresses the freedom of another and frustrates their desire. This discussion must be divided into two parts: contraception administered after sex (post-exposure), and contraception administered before sex (pre-exposure).

As described above, a consensus of moral theologians agree that post-exposure contraception (EC) is licit, as long as it is truly contraception, meaning it works before fertilization and no innocent embryos are harmed. This wraps up the discussion of post-exposure contraception in nonconsensual extramarital sex: it is licit, with a few details to prevent loss of greater goods.

What about pre-exposure contraception in nonconsensual extramarital sex? Catholic ethicists have not often discussed pre-exposure contraception for sexual assault victims, probably for multiple reasons. Certainly one reason is that the issue of whether contraception is intrinsically evil is still unresolved. In addition, sexual assault is an unplanned event and thus pre-exposure interventions would be difficult to time. Further, abortion after sexual assault is vehemently opposed by the Church and the optics of considering pregnancy prevention in sexual assault might be confusing. Finally, there are other ways of preventing pregnancy from sexual assault (e.g., prudence and physical resistance) that are less tricky to support. However, none of these reasons rebut the central idea in EC literature: contraception in sexual assault is like pharmacological resistance, and victims *should* be able to resist their aggressors.

Famously but perhaps apocryphally, it was argued that women could take pre-exposure contraceptives if they were at serious risk of sexual assault because of their mission territory.[32] Most writers brush this example off as fictional or quickly transition to discussing EC, but the topic is worthy of investigation. Let us imagine two women on mission in an area where sexual assault is used as a weapon in guerilla war. One woman happens to

---

[32] Edward Bayer, *Sexual Assault within Marriage: A Moral Analysis Delayed* (Eugene OR: Wipf & Stock, 1985), 82–83. Bayer has argued that wives facing marital sexual assault could use preventative contraceptives, especially if a grave reason is present that prompts avoidance of pregnancy but the husband is unwilling to prevent danger to his wife by abstaining from sex. This is a difficult topic and beyond the scope of this essay, as this piece is focused on extramarital contraception. However, the author suggests that avoiding the occasion of sexual assault by living separately is a preferable solution to contraception, since (1) extricating oneself from risk of assault is prudent if assault can be foreseen and (2) contraception may have post-fertilization effects, which will be discussed below.

be taking a combined oral contraceptive for a medical indication. Despite every prudential action including prudent physical resistance, both women are sexually assaulted around cycle day fourteen. Both go to the nearby Catholic hospital for evaluation after the assault. Both women should be able to defend themselves against their aggressor's sperm reaching an egg. The woman taking an oral contraceptive is anovulatory according to lab testing by the hospital—her contraceptive pill is suppressing monthly egg release and has enabled her to defend herself against the completion of her aggressor's assault. Unfortunately, as is often the case in mid-cycle assaults, her companion who is not on a pre-exposure contraceptive is ovulating. The Catholic hospital cannot in good conscience offer her EC, out of concern for harming an embryo. Although the *ERD* say this woman "should be able to defend herself," she is powerless to do so.

This illustration demonstrates what Catholic hospitals and physicians often encounter: if a woman needs EC because she is near ovulation, she usually cannot get it. If she does not need it, she paradoxically can get it. EC in a Catholic, embryo-conscious protocol is actually *least* available to women who most need it: women are cyclically fertile, and at the fertile time they are *least* able to withhold their fertility from rapists if only post-exposure EC is offered. But if the bishops write that women should be able to pharmacologically defend themselves from their aggressor, why does current practice only acknowledge this ability after assault, and fail women most when they are fertile?

The answer is simple and is related to circumstances that gave rise to the EC decision: the ethics of the *ERD* are reactive, formulated by looking at secular medical practice and deciding how to modify it to breathe in the truth of the faith. The bishops looked at the unbridled provision of EC by secular hospitals, and applied doctrines from the beginning of life to write directive 36 permitting EC. Pre-exposure contraception in sexual assault was never specifically examined. Let us examine it now.

Importantly, this discussion does not apply to women who can control their surroundings, such as enfranchised women on university campuses who can avoid occasions of sexual assault, or avoid use of substances that dull judgment. The Catholic Church lays a heavy charge on each soul to form their conscience according to the moral law, grow in prudence, and remain in control of their will so as to act virtuously. The pre-exposure contraception being discussed in this section applies to unacceptably high risk of assault and disenfranchisement, such as the captivity and repeated sexual assault that ostensibly happened to religious sisters in the Congo in the 1960s.[33]

---

[33] Bayer, *Sexual Assault.*

Here, Napier's insight about the unitive aspect of the marital act shines forth again. Marriage is made by consent,[34] meaning that sexual assault is missing one of the most fundamental characteristics of marriage. This deprives sexual assault of a unitive aspect, even if there is physiological unity between the victim and the attacker. Given that there is no unitive aspect, extramarital contraception in assault cannot be not wrong because it destroys such an aspect. Moreover, there is no procreative requirement of a victim after this act of violence, as EC already demonstrates. As EC shows, a victim can use her reason to regulate her fertility because sexual assault is not above reason, as is the marital act. Thus, extramarital contraception in assault cannot be wrong because it disrupts an untouchable unitive or procreative aspect, absent here. In short, extramarital contraception in assault is not wrong for the same reasons that contraception in marriage is wrong. In fact, the foregoing discussion suggests that, when other options cannot extricate a woman from the high risk of completely nonconsensual sex, it might be licit to accept pre-exposure contraception.[35] But as above, we need positive arguments for liceity, not just suggestions that it is not illicit.

Can a woman suppress her fertility, which is a great good, for the sake of avoiding pregnancy after sexual assault? Temporary loss of this good must be proportionate to the danger of attack. The Catholic Church has a long, consistent teaching on proportion when a morally neutral act has two effects—one evil, one good. In the setting of pre-exposure extramarital contraception, an unmarried woman is suppressing fertility (an evil effect), which she believes is not to be used until marriage anyway, for the sake of avoiding fertilization after sexual assault (a good effect). If a woman faces near-certain sexual assault despite her best attempts at avoiding it, the chances of fertilization from one assault are between 5 percent and 30 percent.[36] If circumstances mean this threatens her health due to a pre-existing condition, or if this directly translates into a 5–30 percent chance of conceiving a child bereft of his right to be raised within marriage, there may be proportional benefit to the temporary suppression of a power not being used.

In addition, there is a risk that EC will have post-fertilization effects even if intentionally used only for pre-fertilization mechanisms.[37] Using

---

34 *CIC*, can. 1057, §1.

35 As with EC, such pre-exposure contraception is clearly an act of *contraception*, not simply an act of self-defense.

36 Bernardo Colombo and Guido Masarotto, "Daily Fecundability: First Results from New Data Base," *Demographic Research* 3 (2000), article 5, demographic-research.org/volumes/vol3/5/3-5.pdf.

37 Rebecca Peck, Walter Rella, Julio Tudela, Justo Aznar, and Bruno Mozzanega, "Does

pre-exposure contraception increases the likelihood of anovulation, lowering the likelihood of fertilization after assault, and lowering the odds of post-fertilization effects, although this may not be true of all methods.[38] Potentially decreasing the risk of post-fertilization effects to innocent embryos, which is rare but never acceptable, is also arguably proportional to the temporary suppression of fertility in an unmarried woman.

Are there undue costs to this temporary suppression? Long-term studies of hormonal contraceptives, the most common types employed worldwide, suggest that some women have menstrual irregularities during the initial months after stopping the contraceptive. Injectable Depo-Provera is associated with a reversible loss in bone density, meaning that any decrease in bone density is recouped after cessation of Depo-Provera.[39] Women who take combined oral contraceptive pills are at lower risk of ovarian and endometrial cancer compared to never-users, but higher risk of cervical and breast cancers.[40] Although these risks are real, the absolute effect sizes are small. Overall, the temporary loss of fertility due to preventative contraception may be proportionate to a very real risk of sexual assault.

Another important factor to discuss is whether the pre-exposure nature of this contraception is problematic; the short answer is, no. The fact that these women *anticipate* their sexual assault and take contraception ahead of time (unlike the sexual assault victim who takes EC afterwards), does not alter the liceity of their act of contraception. Two examples of anticipation not affecting the object of an act are self-defense and previable delivery. Defense of life and property can include precautionary measures, since self-defense means "an action taken to prevent *or reduce* harm to oneself."[41] As another example within reproductive bioethics, the timing of an anticipated danger

---

Levonorgestrel Emergency Contraceptive Have a Post-Fertilization Effect? A Review of Its Mechanism of Action," *Linacre Quarterly* 83, no. 1 (2016): 35–51.

38 Ian Milsom and Tjeerd Korver, "Ovulation Incidence with Oral Contraceptives: A Literature Review," *Journal of Family Planning and Reproductive Health Care* 34, no. 4 (2008): 237–46.

39 Tina Raine-Bennett, Malini Chandra, Mary Anne Armstrong, Stacey Alexeeff, and Joan Lo, "Depot Medroxyprogesterone Acetate, Oral Contraceptive, Intrauterine Device Use, and Fracture Risk," *Obstetrics & Gynecology* 134, no. 3 (2019): 581–89.

40 Ronald Burkman, James J. Schlesselman, and Miriam Zieman, "Safety Concerns and Health Benefits Associated with Oral Contraception," *American Journal of Obstetrics and Gynecology* 190, no. 4 (2004):S5–22.

41 Christian Coons and Michael Weber, *The Ethics of Self-Defense* (Oxford: Oxford University Press, 2016), 3.

does not affect the use of morally acceptable means to mitigate that danger by performing a previable delivery.[42]

In summary, while no person can completely control whether a child is conceived from an individual act of assault, a woman may prevent this as much as she is able, whether it is because she anticipates an unavoidable assault, or because one has already occurred.

Category 3: Nonconsensual Extramarital Sex When Consent Is Impossible

Finally, the last category of extramarital sexual encounters represents sexual assault of those without the capacity to consent. Most literature on this category focuses on intellectually disabled women, but this category would also include those with severe mental illness, those with dementia, and some minors (especially those below the age of reason). Two important voices in this discussion are Napier and Christopher Tollefsen.

Napier and Tollefsen discuss this issue in contrasting 2010 articles in the *Linacre Quarterly*.[43] Both look for a way to defend the intellectually disabled, and their main difference is the way they do so: Napier redefines contraception in the intellectually disabled as *not* contraception, and Tollefsen uses the principle of double effect to justify contraception. Both authors sympathize with the family and the woman in a difficult place, both intuit that this is a different matter from contraception in category 1, and both seek to know how God's mercy can be applied to this situation. Each ultimately fails to show the liceity of contraception in category 3 because both hold on some level that contraception is intrinsically evil. This leads to a relabeling fiasco of what is and what is not contraception, with both magnifying the importance of intention, a perilous thing to do.[44] Ultimately, Napier descends into consequentialism and Tollefsen into physicalism, but both conclude that intellectually disabled women *can* use pre-exposure contraception.

This essay will attempt to avoid physicalism, misuse of double-effect reasoning, consequentialism, and the pitfalls of overemphasizing intention.

---

42 National Catholic Bioethics Center, "Medical Intervention in Cases of Maternal–Fetal Vital Conflicts, a Statement of Consensus," *National Catholic Bioethics Quarterly* 14, no. 3 (2014): 477–89.

43 Napier, "Contraception for the Mentally Disabled"; Tollefsen, "Contraceptives for Victims of Sexual Assault and for the Mentally Disabled."

44 This territory has been previously covered with work on craniotomy: a craniotomy cannot be justified as a changing-of-shape for the sake of saving life. The object of craniotomy is a lethal act upon the fetus, and no amount of recharacterizing will change the fact that it is unacceptable to perform this act, regardless of the aims. See Gerard Magill, "Threat of Imminent Death in Pregnancy: A Role for Double-Effect Reasoning," *Theological Studies* 72, no. 4 (2011): 848–78.

As has been already mentioned, Napier's key insight is that when there is no unitive aspect to divide from the procreative, the evil of contraception represented in *HV* is no longer present. In category 3 more than ever, union is impossible, as sacramental marriage is (by the definition of "intellectually disabled" in this essay) impossible.

Thus, even if pre-exposure contraception *is really contraception*, and the person acting on the disabled woman's behalf truly intends to *prevent fertilization* before an assault occurs, this essay argues that pre-exposure contraception is licit in category 3, just as in category 2. Just like post-exposure and pre-exposure contraception when consent is not given, post-exposure and pre-exposure contraception can be used when consent is impossible.

Responses to Objections

Humanae Vitae *Contains Language about the Whole of Nature and Biology, So At Least Some Aspect of It Applies to All Sex and All Contraception*

Despite all of the above analysis, especially of the words "intrinsically wrong" modifying sex (not contraception) during the Pope's response to the argument of totality, it might still be objected that *HV* contains frequent language of nature and natural law. Most uses of the word "nature" are in comments about the nature of marriage or the nature of the marital act, but some relate to human nature or what could be called biology, such as §12: "The reason is that the fundamental nature of the marriage act . . . renders them capable of generating new life—and this as a result of laws written into the actual nature of man and of woman." This comment explains that fertility emerges from the nature of men and women as complementary for human reproduction, not about built-in inviolability of everyone's reproductive systems. But more troublesome is a quote in the next section:

> Hence to use this divine gift while depriving it, even if only partially, of its meaning and purpose, is equally repugnant to the nature of man and of woman, and is consequently in opposition to the plan of God and His holy will. . . . Just as man does not have unlimited dominion over his body in general, so also, and with more particular reason, he has no such dominion over his specifically sexual faculties, for these are concerned by their very nature with the generation of life, of which God is the source. (*HV* §13)

This section is meant to illustrate how contraception breaks the divine design for the conjugal act, and it begins about marital sexual assault—"a

conjugal act imposed on one's partner without regard to his or her condition or personal and reasonable wishes in the matter." It then establishes an analogy between marital sexual assault and contracepted sex, describing sexual assault as a violence upon the will of one spouse that frustrates their desire, and contraception as a violence upon the will of God, which "frustrates His design which constitutes the norm of marriage, and contradicts the will of the Author of life." The next pronouncement, "he has no . . . dominion over his specifically sexual faculties," is because these are concerned with something beyond him. This section and this objection must be taken very seriously. While the language introducing this analogy is marital, it seems to imply that any frustration of procreation is evil because it excludes God from sex, and we must never exclude God from anything.

HV responds to the objection for us with its clear-cut response to the reason argument. In his response to this argument, Pope St. Paul VI makes room for ways to regulate fertility that do not exclude God (§16), and only rejects the use of reason to break a promise, that is, to withhold fertility in what is meant to be a complete self-gift. If there are *other* licit ways to use reason to govern fertility, this sentence does not condemn them. All extramarital sex already frustrates God's design and contradicts his will; it remains for reason, following faith, to detect what licit methods there may be for regulating fertility. This essay proposes that reason, guided by faith, *does* find licit applications for contraception outside of marriage, but that reason can never find a licit application for contraception within marriage, because of the exalted nature of the marital act and the importance of preserving the couple's capacity for co-creation. Instead, reason identifies other licit methods of regulating fertility in marriage, such as abstinence on fertile days, which preserve as much capacity for life that each instance of sex possesses.

"Physicalism" Is a Straw Man of a Proof That Contraception Is a Natural and Moral Evil

What I have referred to as "physicalism," also occasionally termed a "naturalistic fallacy," is an overly simplified version of the perverted-faculty argument, best summarized by Edward Feser.[45] The full-bodied version of this argument comes from the long-standing voice of old natural law and an Aristotelian-Thomistic understanding of the nature of man as rational animal. Feser's account of reality is true, the perverted-faculty argument is valid, and personalist and new natural law arguments generally mirror

---

[45] Edward Feser, "In Defense of the Perverted Faculty Argument," in *Neo-Scholastic Essays* (South Bend, IN: St. Augustine's Press, 2015), 378–415.

perverted-faculty arguments.[46] To summarize a summary, Feser syllogizes that what is good for any being is to pursue its ends, and sex has unitive and procreative ends, so acting at variance with these ends is by definition evil for a thing. This argument is watertight and demonstrates why contraception is evil for category 1 sex. But Feser, like Pope St. Paul VI, has blinders on: just as the Pope does not consider the liceity of contraception when sex is illicit, so Feser does not consider the status of contraception when sex is not chosen.

Feser shows the limitations of his analysis when he describes sex as "individual deliberate act[s]" that involve "use of the sexual organs."[47] This is a great description of consensual sexual acts and consensual sex (category 1), but is not a good description of category 2 or 3, when a female victim does not make a deliberate choice to use her sexual organs. In sexual assault as perhaps in no other type of abuse, the aggressor uses a faculty which he cannot wield alone. He arrogates both complementary "halves" of the reproductive system and initiates a "use" of the victim's sexual faculty without her choice. As in other misuses of this faculty, the rapist

> turn[s] sexual pleasure away from its natural end of leading a person intensely to delight in and thereby to bond emotionally with another individual human being and reduces it to a kind of recreational virtual reality.[48]

This text from Feser's argument supports Napier's realization that sexual assault has no unitive aspect, since a rapist is using his victim's body as an instrument for his own satisfaction. A rapist *uses* his sexual faculties, a victim's faculties *are used.* Since *choice* is required to sin, a victim of sexual assault is not guilty of anything connected to using her sexual capacities; if it were up to her, they would not be used.

But surely, although the victim does not sin *during* sexual assault, she and her physician (category 2), or a surrogate decision-maker and a physician (category 3), certainly attempt to "frustrate the procreative end of sex altogether" at another time, which is opposed to a natural end.[49] In answer, two

---

46 Indeed, Feser points out ("In Defense," 409) that personalists who do not employ the perverted-faculty argument often must fall back on divine revelation, which this essay argues that Pope St. Paul VI does (by falling back on the divine nature of marriage when he prohibits contraception).

47 Feser, "In Defense," 407.

48 Feser, "In Defense," 409 (speaking of masturbation and pornography, applied here to rapists).

49 Feser, "In Defense," 396.

points from Feser himself are useful, on the complexity of human acts and on the spectrum from natural to moral evils. Feser admits that natural ends cannot solely determine how humans act toward sex and at times fertility is sacrificed for a greater good, as physicians do when they modify or halt fertility altogether for true treatment of disease.[50] Feser discusses corollaries and apparent exceptions to the perverted-faculty argument which neatly align with Catholic teaching (celibacy, sex for infertile and postmenopausal couples, etc.). EC, although promulgated by the USCCB by 2015, is not among his list of consistent teachings even though it represents a suppression of one good for the sake of a greater good.

Perhaps this is because contraception in sexual assault is so unusual. Unlike in elective contraception, the victim had no opportunity to avoid pregnancy by avoiding sex. Unlike in abortion, the victim has no obligation to carry any embryo, since no embryo yet exists. Unlike consensual sex, the victim does not use her sexual faculties in sexual assault or when accepting EC—she uses her reason as argued above, which as in other situations modifies fertility to achieve a greater good. "The reason argument," wrongly used by so many that Feser rebuts, is finally useful to show that reason *can be* and *is* used to pursue a greater good than the completion of an evil sexual assault. Contraception in categories 2 and 3 is not always a "failure to live well,"[51] but may when used prudentially and in deference to embryonic life achieve a greater good than the natural end of a sexual assault.

The Doctors of the Church Disagree with This Essay's Main Premise

St. Thomas Aquinas and St. Augustine, two of the highest non-scriptural authorities in Catholic theology, suggest that contraception is a vice against nature. (This is similar to Feser's objection, but with greater authority.) St. Augustine writes that "intercourse even with one's legitimate wife is unlawful and wicked where the conception of the offspring is prevented."[52] Contraception within marriage is unlawful and wicked (this essay agrees), and St. Augustine's "even with" (*etiam*) implies that extramarital contraception is even *more* unlawful and wicked. This author certainly agrees that consensual sex using contraception to prevent natural consequences adds sin to sin. But what about nonconsensual sex? St. Augustine is not clear on the matter, since he speaks of a man *choosing* sex, both in his text and the example he cites (Onan with Tamar in Gen 38:9–10).

---

50 Feser, "In Defense," 397–98.

51 Feser, "In Defense," 408.

52 St. Augustine *De adulterinis coniugiis* 2.12.

St. Thomas writes from a nature-based perspective and, unusually for him, from a consequentialist perspective:

> Now just as the preservation of the bodily nature of one individual is a true good, so, too, is the preservation of the nature of the human species a very great good. And just as the use of food is directed to the preservation of life in the individual, so is the use of venereal acts directed to the preservation of the whole human race.[53]

St. Thomas does not ignore that the marital act is good for individual couples,[54] but he emphasizes that married couples also serve the human race. This is an important part of his argument against contraception.

> The more necessary a thing is the more it behooves one to observe the order of reason in its regard; wherefore the more sinful it becomes if the order of reason be forsaken. Now the use of venereal acts, as stated in the foregoing Article, is most necessary for the common good, namely the preservation of the human race. Wherefore there is the greatest necessity for observing the order of reason in this matter: so that if anything be done in this connection against the dictate of reason's ordering, it will be a sin.[55]

The common good is here defined as the propagation of the human race, but a higher common good might be proposed, which is the fullness of God's will. Without violating this higher common good, this essay proposes a few licit uses of extramarital contraception that do not jeopardize St. Thomas's slightly lower common good. After all, this essay will leave married people to prevent human extinction exactly as St. Thomas desires, and only allows contraception in persons who have neither the right nor the duty to continue the human race with their aggressors. Marital sexual assault presents a slightly more complex case, which is beyond the scope of this work.

But this consequentialist argument is not the only argument St. Thomas employs. He has been quoted as finding contracepted sex to be intrinsically problematic regardless of consequences or marital status. Many have quoted the below passage on "the unnatural vice" as describing contraception along with bestiality and homosexual acts:

---

53 St. Thomas Aquinas, *Summa Theologiae* [*ST*] II-II, q. 153, a. 2, resp.

54 *ST* suppl., q. 49, a. 2, resp.; a. 3, resp.

55 *ST* II-II, q. 153, a. 3, resp.

> Wherever there occurs a special kind of deformity whereby the venereal act is rendered unbecoming, there is a determinate species of lust. This may occur in two ways: First through being contrary to right reason, and this is common to all lustful vices; secondly, because in addition, it is contrary to the natural order of the venereal act as becoming to the human race: and this is called the unnatural vice. This may happen in several ways [among which is] by not observing the natural manner of copulation, either as to undue means, or as to other monstrous and bestial manners of copulation. . . . The lustful man intends not human generation but venereal pleasures. It is possible to have this without those acts from which human generation follows; and it is that which is sought in the unnatural vice.[56]

These arguments are not consequentialist—they do not look for what happens after the act, but what the act is like in itself. Several responses may be made, depending on what St. Thomas intended from his rather opaque wording. If he is making a physicalist argument about foiling the ultimate end of human copulation, which can be construed from wording like "undue means" and "becoming to the human race," similar rebuttals as applied above also apply to St. Thomas.

However, if he is rejecting the use of contraception to avoid consequences of sex and obtain unbridled pleasure, this essay wholly agrees with him. The present piece does not defend the intentional use of contraception to only obtain sexual pleasure. While St. Thomas writes to condemn the rapist, this essay writes to defend victims' attempts to curtail the availability of their bodies to their perpetrators.

Finally, if St. Thomas argues from grounds of justice (i.e., that it is unjust to bend sex away from procreation for some non-physicalism reason), I reply that a physician who provides EC or other contraception to an assault victim *restores* as much separation between victim and perpetrator as is possible, and this is just. The victim and perpetrator, who are not married to each other, ought to have a complete separation between their sexual faculties, but this was overridden to a great degree by the perpetrator. The victim and her provider can help the victim re-establish whatever degree of separation is possible, even if only at a cellular level. In this author's mind, it is less self-defense and more a restoration of a just state of affairs that characterizes this type of contraception. This weak argument proposes that contraception in the face of near-certain or certain assault offers a type of restorative justice

---

[56] *ST* II-II, q. 154, a. 11, resp.

to the victim, which is possibly why the USCCB says a woman "should" be able to obtain EC if it does not offend greater goods. However, this is not to say that contraception in the setting of assault is required, or restorative of a kind of health.

Contraception for the Intellectually Disabled Will Increase Vulnerability to Abuse

Some object that any long-acting or regularly used contraception in vulnerable populations would encourage abusers, since abuse could go undetected due to pregnancy prevention. This is a critical prudential and pastoral concern, and it should affect decisions about particular cases, but does not change the arguments laid out above.

To assess whether the danger of increased abuse outweighs the benefit of avoiding pregnancy in a particular case requires an examination of particular circumstances. Double-effect reasoning can be employed here, since this situation might fulfill all four of its criteria:

1. The act itself is morally neutral or good: if the foregoing arguments be accepted, administering a drug or device to prevent fertilization from nonconsensual sex is neutral.

2. The good effect (protecting the victim from pregnancy and preventing extramarital *fertilization*) can be the only effect intended.

3. The good effect (protecting the victim from taxing and traumatic pregnancy) is not obtained by means of the evil effect (increased vulnerability to abuse); rather, the effects emerge from the act itself enumerated in (1), namely, *contraception.*

4. There is a proportion between the evil effect and the good effect.

This last criterion is the one that requires significant prudence. Heavily anonymized cases from the author's experience illustrate two potential outcomes from the consideration of this question.

In the first case, consider a young woman with paranoid schizophrenia. Her disease is severe and persistent. She interacts with audiovisual hallucinations for most of the day, despite her doctors' best efforts. She lives in a mental hospital that allows consistent observation for her safety. Most of the facility is under surveillance. The young woman experiences menses and

smears her blood on the walls and eats it. Annual gynecological exams are a challenge. Although a special clinic exists for patients like her, she does not understand pelvic exams and resists to the point of endangering herself and others. Her family believes that nine months of prenatal care, fetal assessment for the wellbeing of the baby, delivery, and postpartum recovery would be a nightmare for this young woman. Given the relative security against abuse provided by mechanisms like surveillance, and the significant benefits of avoiding pregnancy, the family decides that there is a proportion between the vulnerability to abuse and the protection from pregnancy. Menstrual suppression and contraception are provided.

In another case, a middle-aged woman with multiple sclerosis cannot care for herself. She has a supportive husband, but he must work long hours and he cannot care for her throughout the day. Their cheapest option is admission to a skilled nursing facility. She shares her room at the end of the hall with a bedridden woman with debilitating dementia. The room has a door that latches shut and there is no indoor security footage apart from a camera on the front and rear doors of the facility. There are male and female staff for lifting and caring for male and female patients, but staff rotate routinely between patients. This woman is unable to lift more than her head and forearms off the bed. Multiple sclerosis does pose risks in pregnancy, but these are relatively minor and she would be able to cooperate with prenatal care and delivery. The woman and her husband jointly decide that the risk of making her more vulnerable to abuse far outweighs the benefit of protecting her from pregnancy after sexual assault. Instead of contraception, her husband visits twice daily and carries on loving conversations with his wife as a clear signal to staff of her mental acuity and the consequences of any abuse.

These two scenarios of women who are vulnerable to sexual assault are very different. The objection that contraception may make victims more vulnerable to abuse is a good one, and will be valid in many cases. However, this does make the act of extramarital contraception *in itself* illicit—it only means that in some circumstances, it is not prudent.

What about Non-Disabled Minors without Mental Illness?

The entire foregoing discussion was based around agreement to participate in sex, and about pregnancy prevention. Children below the age of reason are completely unable to agree to this act, but are also unable to become pregnant (with very few exceptions). Any children below the age of reason who are unable to become pregnant are completely beyond the scope of this essay and no argument herein is meant to apply to them.

Children below the age of reason who are capable of conceiving a

pregnancy, such as children with untreated precocious puberty who become fertile before the age of seven, *do* fall under the discussion of this essay. In the author's estimation of clinical variables and double-effect reasoning, these girls would rarely or never meet the fourth criterion of the principle of double effect for anticipatory contraception to be prudent. This is not the least because contraceptive devices or drugs in these children are higher in risk, unwieldy, and uncomfortable. The insertion of a barrier contraceptive in a child may *itself* be abusive. Thus, for children below the age of reason, this essay does not defend the routine use of contraception to prevent pregnancy. Cases where this would be the best, most ordinary, and most prudent solution to reducing the risk of abuse and pregnancy would be vanishingly rare or nonexistent.

Adolescents represent a slightly more complex case. By and large, adolescents are fertile, and they are able to agree to participation in sex (as recognized by secular culture, which permits them emancipation in matters of reproductive health). This essay hinges on agreement to participate—not on biology, not on foresight, not on compete maturity—and thus many or most sexually active, unmarried adolescents are participating in category 1 sex, where contraception *adds* to the evil of fornication. It would be a tragic misinterpretation of this essay to begin widely endorsing contraception to unmarried adolescents—far better are strategies that reduce premarital sex and the physical, spiritual, and psychological consequences of this sin.

Contraception in the Intellectually Disabled Constitutes Eugenics

Various forms of reducing fertility have been used for eugenic motivations since biblical times (Pharaoh's direction to kill male newborns in Exod 1:15–16). More recently, eugenics flowered in Germany and the United States.[57] It is laudable to avoid this attitude in treatment of vulnerable persons, whom the Church teaches are especially deserving of care and attention in accord with the principle of solidarity.[58]

If Catholics choose contraception in the settings described in this essay, it is the author's hope that they do so in accord with *all* of Catholic teaching, not just mere liceity as determined by one essay. If a woman or her surrogate choose to use extramarital contraception as a licit option, it should be in accord with teachings on the will of God in chastity, prudence, solidarity, and the spiritual work of mercy to catechize.

---

57 Stefan Kuhl, *The Nazi Connection: Eugenics, American Racism, and German National Socialism* (Oxford: Oxford University Press, 2002).

58 Pontifical Council for Justice and Peace, *Compendium of the Social Doctrine of the Church* (2004), §§182–84.

Catholics Advocating for Contraception Will Cause Scandal

Scandal must be guarded against. If Catholics advocate for contraception in the intellectually disabled or a similarly justifiable population, it would require discretion and careful communication to those close to the decision. Avoiding widespread misunderstanding of these nuances, and avoiding provision of contraception to category 1 situations would be paramount.

However, as mentioned above, a consistent and complete teaching on contraception might prevent the later "discovery" of "exceptions" and the scandal that inevitably follows in media and in souls.

This Is All Irrelevant, because Most Contraceptives Are "Abortifacient"

Unfortunately, most hormonal contraceptives have a post-fertilization mechanism of action listed in their package inserts, and peer-reviewed medical literature suggests that oral contraceptive pills and other short-acting contraceptives may predispose to luteal-phase deficiency, and thus possibly iatrogenic early pregnancy loss, in up to one-third of cycles.[59] A similar paper by the same investigators found that in just under 5 percent of cycles in women using intrauterine devices, an embryo was detected with a pregnancy test, but then lost before clinical or sonographic evidence of pregnancy was appreciated.[60] This evidence is preliminary and not definitive, but it creates serious concern for pro-life physicians, Catholic or not.[61]

Lamentably, the most effective and practical contraceptives for the intellectually disabled population are hormonal in nature. Barrier contraceptives such as diaphragms or female condoms can cause discharge and discomfort, symptoms that are difficult for nonverbal patients to communicate. Design of a non-embryotoxic hormonal contraceptive would entail significant device design or pharmaceutical engineering, which is unlikely to arise in the present market.

---

59 Donna Harrison, Cara Buskmiller, Monique Chireau, Lester A. Ruppersberger, and Patrick P. Yeung, "Systematic Review of Ovarian Activity and Potential for Embryo Formation and Loss during the Use of Hormonal Contraception," *Linacre Quarterly* 85, no. 4 (2018): 453–69.

60 Cara Buskmiller, Donna Harrison, Lester A. Ruppersberger, and Patrick P. Yeung, "Systematic Review of Postfertilization Effects and Potential for Embryo Formation and Loss during the Use of Intrauterine Devices," *Linacre Quarterly* 86, no. 1 (2019): 60–77.

61 American Association of Pro-Life Obstetricians and Gynecologists, *Committee Opinion: Embryocidal Potential of Modern Contraceptives* (Eau Claire, MI: AAPLOG, 2020).

Conclusion

Extramarital contraception has been incompletely addressed by the Catholic Church. This may be because of fear of scandal or scarcity of real workable options. Aside from practical concerns, there is an argument in favor of using contraceptives to prevent pregnancy in nonconsensual extramarital sex, which has no unitive aspect. When contraception does not divide anything resembling marital love, the main criticism in *Humanae Vitae* does not apply, leaving room for reason to investigate whether contraception can ever be licit. The most notable of the arguments in favor of contraception in the 1960s was our ability to use reason. In extramarital sex without consent, we can use reason to prevent bodily suffering to victims of sexual assault.