

The Use of Contraceptives Under Threat of Rape: An Exception?

Martin Rhonheimer

***Abstract:** This essay offers a moral analysis of using contraceptives (i.e., anovulants pills) under the threat of rape. It does so by first considering the earlier analyses offered during the pre conciliar era by three trusted moralists, all of whom concluded that such action was permissible. Their arguments are carefully examined. The essay then assesses some subsequent work that drew upon these earlier essays, but which also touched off a debate that indicated the need for a more satisfactory treatment of the question. It then addresses the question in light of the teachings of *Humanae vitae* against contraceptive acts, and of *Veritatis splendor* regarding both moral action and intrinsically evil acts. In so doing, the essay reinforces the basic conclusion of the pre conciliar moralists, but through a more adequate moral theory that supports the basic direction encouraged by the encyclicals, including the latter's rejection of proportionalist moral theory.*

I. A Test-case for the Argumentative Structure of *Veritatis Splendor*

In light of the tragic circumstances of the war in Bosnia-Herzegovina, the question was again raised whether, in the face of a direct threat of rape, a woman could legitimately make use of contraceptive measures in a preventative way so as to avoid a possible pregnancy. There seems to be uncertainty and confusion regarding the application of Catholic doctrine on contraception in this specific case. For many, an affirmative answer to this question does not seem reconcilable with the Church's teaching that contraception is an intrinsically evil act, and therefore can never be justified.¹ Further, there is the fear that such a "justification" could open the door to any number of "exceptions," whose morality would be left to the judgment of the agent.

1. Cf. *The Catechism of the Catholic Church*, 2370; *Veritatis splendor*, 80.

In fact, a precise explication of the contraceptive choice that the Church rejects as immoral is required to explain the moral legitimacy of the case in question, and at the same time to affirm the intrinsically disordered—and therefore evil—character of contraception. It is worth recalling that in 1961 this problem was submitted to the authoritative judgment of three prestigious moralists, who unanimously considered the use of contraceptive measures to be legitimate in this case. According to these authors, such a use of contraceptives pertains to a legitimate act of self-defense.² This position has been confirmed later in an article by Giacomo Perico, written in response to the events in Bosnia-Herzegovina;³ indeed, it can be said that this position is commonly accepted by moralists. The problem today, however, is on a different level.

Presuming that—according to the Church’s Magisterium—the norm which prohibits contraception is among those negative norms which are valid without exception (*semper et pro semper*), *the reasons adopted* for sustaining the licitness of the use of contraceptive measures in the case of a foreseeable threat of rape are obviously of highest importance. Indeed it would seem that the reasons justifying the use of contraception in this case would amount to the admission of an “exception” that negates the absolute illicitness of contraception. They could even be seen as a justification of the proportionalistic method rejected by the encyclical *Veritatis splendor*. From the point of view of fundamental moral theology, therefore, the question bears great importance.

Defending the positive judgment on the licitness of the behavior in question, I want to first show the extent to which the reasons offered by the mentioned authors are not completely acceptable. I will then present an argument which seems to me to preserve both the intrinsically evil character of contraception, and the morally licit use of contraceptive measures in the case of the threat of rape. The question will be primarily one of how to correctly determine the *object* of the act which, under the name “contraception,” is called intrinsically (i.e. *per se*) evil, independently of any *ulterior* circumstances or intentions.⁴

II. Some Responses Given in the Past

A close reading of the writings of the three moralists (Palazzini, Hürth, and Lambruschini) consulted on this question in 1961 shows that they tended to consider

2. Una donna domanda: come negarsi alla violenza? Morale esemplificata. Un dibattito, *Studi Cattolici* V/27 (1961), 62-72; with interventions by S. E. Monsignor Pietro Palazzini, then Secretary of the Sacred Congregation of the Council (pp. 62-64); Fr. Francesco Hürth SJ, professor at the Pontifical Gregorian University (pp. 64-67); and Monsignor Ferdinando Lambruschini, professor of Moral Theology at the Pontifical Lateran University (pp. 68-72).

3. G. Perico SJ, *Stupro, aborto e anticoncezionali*, in *La Civiltà Cattolica* III (1993) 37-46. Fr. Perico’s article has stimulated extensive discussion; cf. G. Valente, *La pillola e la legittima difesa*, in *30 Giorni* 7/8 (July-August 1993), 12-17.

4. Cf. *Veritatis splendor*, 80.

contraception above all as a type of (temporary) sterilization, and therefore as an infringement on the natural order—an order according to which the act of sexual copulation possesses a procreative quality which would be eliminated by the contraceptive act. In such a view, focused on contraception as an artificial interference with the natural processes and ends of the sexual act, it was not easy to exempt from this judgment the case under consideration, given that it also treats of the artificial suspension of a natural function.

Nevertheless, already in 1961 one of the three authors consulted, Fr. Hürth, rightly affirmed that a norm such as the one prohibiting an act of sterilization could only refer to an act of sexual copulation *freely consented to* by the woman.⁵ Thus, the case in question treats of what he calls a “sterilization in an *absolute* sense” (given that physically, sterilization is brought about, in this case an anovulatory effect), but not a sterilization in a “*relative* sense,” i.e. of an act which induces, as a cause, sterility in a subject who *freely and deliberately* wants or permits sexual intercourse, and who *simultaneously*, with a deliberate will, deprives her sexual act of its reproductive capacity.⁶

According to his analysis, “objectively,” the preventative use of a contraceptive in the case of the threat of rape would not be comparable to that sterilizing (or contraceptive) act which is morally unacceptable; objectively, in fact, we are dealing with a legitimate act of self-defense. The distinction adopted by Fr. Hürth effectively corresponds to the classical distinction according to which an act may be considered either at the “physical” level (i.e., Thomas’s *genus naturae*, corresponding to Hürth’s “in an absolute sense”) or at the “moral” level (i.e., Thomas’s *genus moris*, corresponding to Hürth’s “in a relative sense”). We will speak more on this later.

Frs. Palazzini and Lambruschini, on the other hand, attempted to resolve the problem on the basis of the “principle of double effect” and the “principle of totality.” As such, the principle of the psychological health of the woman and her legitimate self-defense would be simply the “proportionate reason” or “excusing cause,” which would change the sterilizing act into an “indirect sterilization,” or a “justified” sterilization.⁷ This argument, however, which is essentially different than that of Fr. Hürth, would seem to be problematic. This is for precisely the reason that, in the case at hand, one chooses, *as a means*, the use of a contraceptive measure with the end of preventing a possible conception. It would seem, therefore, that one does exactly what the Church condemns as an intrinsically evil act. In this matter, as with others like it, the use of the principle of double effect tends to create not-insignificant

5. P.F. Hürth, *Il premunirsi rientra nel diritto all legittima difesa*, in *Studi Cattolici*, cit., 65.

6. Hürth, *ibid.*; also cf. F. Lambruschini, *È legittimo evitare le conseguenze dell'aggressione*, *ibid.* 69 (with less explicit argumentation, but analogous on this point).

7. As Fr. Palazzini affirmed in his contribution *Si può e si deve proteggere l'equilibrio della persona*, in *Studi Cattolici*, cit., 63-64.

ambiguities,⁸ and in recent years has even contributed to the justification of the so-called “proportionalist” theory in some circles of Catholic moral theology.⁹

III. A Recent Use of These Earlier Responses

A position later set forth, in the above-mentioned article by Giacomo Perico, is essentially based on the argumentation put forth by Palazzini, although integrating the more personalistic vision of the Second Vatican Council. The author begins by clearly laying out the problem, indicating that “it is above all necessary to clearly identify the real and primary reason for which the moral law prohibits recourse to contraceptives in the conjugal act.”¹⁰ He then states that, the marital act being by nature an “act of love,” and an “act open to procreation,” freely chosen, contraception interferes with this reciprocal gift of love and in the mechanism of reproduction activated by it, as an impediment to the fusion of the germinal cells, resulting in non-conception. It is precisely in this voluntary exclusion of conception, to which the act of love between the spouses could lead by its nature, that the moral disorder of contraception consists.¹¹

This approach, however, leads to the problem of being unable to identify an argument whereby the author could show that contraception is illicit also in cases where the spouses—for legitimate reasons of paternal and maternal procreative responsibility—know themselves to be *obligated* to avoid a new conception. Indeed, this is the case that must be primarily considered, not that in which the spouses’ intention is to arbitrarily exclude procreation from their marriage. How could one explain, then, in a case of authentic procreative responsibility, the moral difference between contraception and periodic continence? The author does so simply by referring to the natural-physiological structure of the act.¹² As such, he began his discourse, as we have seen, by saying that the conjugal act is *by its nature* an “act of love”; he now adds that the conjugal act *by its structure and nature* is an “act open to procreation,” where the “nature” of the act refers to physiological fertility or infertility. At this point there seems to reappear, as a *Deus ex machina*, precisely that “naturalistic” (or “biologistic”) argumentation which the author had initially sought to overcome through personalistic language. In any case, his reasoning cannot be considered conclusive.

8. Subsequently, Cardinal Pietro Palazzini further specified his argument, along the lines of Fr. Hürth’s, adding moreover that the norm taught by *Humanae vitae* refers only to sexual intercourse freely chosen within marriage, and not to persons forced against their will (we will speak of this below, in §5). See the above-cited interview in *30 Giorni* by Valente, “La pillola,” 17.

9. For example: P. Knauer, “La détermination du bien et du mal moral par le principe du double effet,” in *Nouvelle revue théologique* 87 (1965), 356-376; or ID., “The Hermeneutic Function of the Principle of Double Effect,” in C.E. Curran, R.A. McCormick (ed.), *Readings in Moral Theology* No. 1, (New York, 1979), 1-39.

10. G. Perico, *Stupro, aborto e anticoncezionali*, cit., 41.

11. *Ibid.*

12. *Ibid.*, 41 (fourth paragraph).

For Fr. Perico, then, it is easy to resolve the case of a foreseeable rape on the basis of the principles he has set forth, but he pays a very high price in doing so. Obviously, a sexual act perpetrated by a rapist is not an act of love, but merely an assault. The author rightly affirms, “the profound difference between the two behaviors, at the moral level, is clear”;¹³ he recognizes the fact that we are dealing with two different behaviors, in which there is a difference from the point of view of the object of the act.

Later, however, he uses a formulation which recalls the “vocabulary of proportionalism,” as well as that of situational ethics. He claims:

In this concrete situation, it becomes morally licit that the [the woman], so as to avoid a possible pregnancy, make use of the only means available, i.e., of contraception. As such, that act of intercourse, extorted by violence, is rendered sterile, only because she intends to safeguard values which are of maximum importance for her future from a psychological-affective point of view.¹⁴

This formulation contains, in my judgment, the serious defect of not recognizing the difference between:

- (1) “Contraception” as a “human act” that can be qualified morally; and
- (2) the act, “to take a contraceptive measure,” considered as a “physical act,” as a technical, anovulatory procedure rendering conception impossible, i.e., an act described at the physiological level.

According to whether one uses the word “contraception” in the first or the second sense, the term “means” also acquires a significantly different meaning. In the second case, “means” signifies only the technical, physiological, “pharmaceutical” dimension of an act (in the same sense that, e.g., aspirin is a “means” used against a headache).¹⁵ In the first case, however, “means” would be an act freely chosen for a purpose, i.e., a *praxis* by which one intends to arrive at an ulterior end. For example, “taking an aspirin” could be a practice or act of “getting rid of a headache,” with the ulterior end, perhaps, of being able to sleep. The question then is: presupposing that contraception is intrinsically evil, why is it licit “in this concrete situation” to choose it as a *means* for a good end? What is the meaning of “contraception” in the case we are considering? Is it a *praxis*, as in the first sense, or a simple “means,” as in the second sense?

13. *Ibid.*, 42.

14. *Ibid.* Fr. Perico relies in this context also on the authority of Fr. Ivan Fucek, interviewed by L. Brunelli, *La pillola congolese*, in *Il Sabato*, March 13, 1993, 32 ff.

15. Where we use the term “means” in its moral, practical sense, Thomas uses the Aristotelian phrase “*ea quae sunt ad finem*” which signifies freely translated “what is done for the sake of an end.” These means, thus, are properly *actions*, done for the sake of attaining a goal.

Fr. Perico arrives, necessarily, at the affirmation that “contraception” is a physical procedure—a means in the second sense—which in this case would be proportioned to “safeguarding a value of highest importance.” As such, we would be dealing with an act of self-defense. With this argumentation, however, contraception would *always* be considered licit in cases where one “intends to safeguard values of highest importance.” This is certainly not the result for which the author was aiming. I think that he rather wanted to show why contraception, in the case in question, is an act which is different from the point of view of its *moral object*. I do not think he wanted to show, however, that it is, in itself, only a choice at the “physical” (pre-moral) level, to then be justified according to the values at stake according to the intention of the agent.

Fr. Perico’s article, therefore, does not make clear whether the act of taking a contraceptive in the case of the threat of rape would be

(a) A contraceptive act, chosen with the end of legitimate self-defense, although in a specific situation that renders the choice “proportionate,” making it licit as an exception (the object of the act would be contraception, and the ulterior end, self-defense), or

(b) Objectively an act of self-defense, and *not* the choice of a contraceptive act (the object of the act would be to “protect oneself from the undesirable consequences of another’s assault on one’s body,” which is objectively a different kind of act than “contraception”).

Obviously, only solution (b) is compatible with the teaching that contraception is an intrinsically evil act (supposing that one wishes to maintain the licitness of taking contraceptive measures in the case of the threat of rape). Fr. Perico’s article, though certainly well-intended and which at times can even give the impression that it favors option (b), seems to me to be in fact oriented towards option (a); this also seems confirmed by the way in which it refers to the opinion of the three moralists consulted in 1961.

IV. A Note on the Proportionalist Solution

The resolution of this question cannot, therefore, consist in asking the question whether the behavior in question, judged *in principle* to be objectively dishonest, could nevertheless be later “justified” in a specific case. It would rather be necessary to examine whether that which the Church condemns as “contraception,” on the one hand, and the preventative use of contraceptive means in the case of the threat of rape, on the other, are not in reality two *objectively* different types of human acts, which are therefore subject to different moral norms. Responding to this question, one would also clarify what is meant by “the object of a human act,” in the way that this term seems to be used by the Church’s Magisterium.

Before proceeding, however, I want to insert a brief comment. For adherents of the proportionalist or consequentialist theories (it is not necessary to distinguish between these here), the case would be resolved, more or less, in the following

manner. Having as a point of departure the type of argument just presented (in Fr. Perico's article), they would say that the solution given is neither coherent nor sincere. The proportionalist, in fact, would say that it makes no sense to speak of an act which is evil based on its object, and then, by means of rather complicated reasoning, attempting to justify an exception. The proportionalist would simply begin with the idea that the contraceptive act "as such"—that is, in the second sense of a procedure considered at the technical-physiological level—can not yet be qualified morally. It would be necessary, he would claim, to *also* take into consideration the circumstances and the intentions of the agent, referring to the realization of other goods or to the prevention of other evils. Only with reference to *all* of these elements could one arrive, in each specific case, at the object of the act.¹⁶ This methodology, it seems, is in essence similar to the one just presented, with one significant difference: it universalizes the method, and in this sense it is more coherent.¹⁷

On the basis of this methodology, however, it would no longer be possible to formulate a universal norm prohibiting the choice of a concrete behavior, given that—according to the requirements of the methodology—all of the possible circumstances could not be taken into consideration at the moment of the formulation of the norm. The norm could only contain a more-or-less formal prohibition: "Never have recourse to contraception without a proportional reason." Such a norm obviously does not conform to the Church's teaching.

To clarify our problem it will therefore be indispensable at first to show, in detail, precisely that in which consists the "contraceptive choice" rejected by the Church, and why such a choice and the associated behavior are to be considered morally disordered. To this end, the encyclical *Humanae vitae* provides a formulation of the norm prohibiting contraception, a formulation which will allow us to respond to this question in a clear and technically unambiguous way.

V. The Contraceptive Choice According to the Encyclical *Humanae Vitae*

On the one hand, sterilization is presented in the encyclical *Humanae vitae* only as a particular case of a more generic choice; that is, the contraceptive choice. Compared to earlier accounts, it is no longer presented in the opposite

16. Cf. e.g.: J. Fuchs, SJ, *Der Absolutheitscharakter sittlicher Handlungsnormen*, in H. Wolter, (ed.), *Testimonium Veritatis Frankfurter Theologische Studien*, Band 7, (Josef Knecht, Frankfurt/M. 1971), 211-240; esp. 231 ff. The author recently confirmed this position in a commentary on the encyclical *Veritatis splendor*: J. Fuchs, *Das Problem Todsünde*, in *Stimmen der Zeit* 119 (1994) 75-86; esp. 83. q.v. also my extensive criticism, "Intentional Actions and the Meaning of Object," in *The Thomist* 59 no. 2 (1995) 279-311 (as a response to R. A. McCormick, "Some early reactions to 'Veritatis splendor,'" in *Theological Studies* 55 [1994] 481-506). Reprinted in: J. A. di Noia and Romanus Cessario (ed.), *Veritatis splendor and the Renewal of Moral Theology*, (Princeton-Huntington-Chicago 1999), 241-268.

17. In this sense one understands how the proportionalists continue to affirm that they, in essence, merely make use of a traditional method, applying it however in a universal, and thus coherent, way.

manner, as if contraception (hormonal or mechanical procedures) were a particular case of sterilization and therefore of mutilation. On the other hand, the teaching on contraception is situated, in a clearer and more explicit way, within the context of conjugal love, which, according to the teaching of Vatican II, is considered the intimate union and mutual self-giving of two persons.¹⁸ The council presents conjugal love as that of free subjects who are responsible for the transmission of human life and who, in their bodily and spiritual union, cooperate by means of their love with the love of the Creator. As such, the discussion is no longer centered on a simple respect for natural processes and ends, but rather on the conjugal union—the loving union of two persons—as the responsible subject of the transmission of life.

Paul VI, faithful to the teaching of his predecessors, meant to defend this conjugal love when he affirmed that every matrimonial act, in order to remain an expression of that loving mutual donation of the spouses, “must remain open to the transmission of life.”¹⁹ Later on, Paul VI’s encyclical *rejects* as a means of responsible parenthood

every action which, either in anticipation of the conjugal act, or in its accomplishment, or in the development of its natural consequences, proposes (*intendat*), whether as an end or as a means, to render procreation impossible.²⁰

The norm, as it is set out in *Humanae vitae* (and in essence as it had already been presented in the encyclical *Casti connubii* of Pius XI), explicitly refers to conjugal acts; these latter obviously imply a fundamental mutual right to sexual relations with the other spouse and a respective consent of both. From this, it can easily be deduced that the applicability of the norm presupposes—in the agent to whom it refers and consequently in his actions—a *twofold* purpose or free choice: (a) that of having sexual intercourse with another person; and (b) the purpose or intention—both at the level of means and of ends—to prevent that such freely chosen sexual intercourse would have procreative consequences.

We would, in fact, call “contraception” a type of human action animated by this twofold intentionality. It is not, therefore, only and simply an act which prevents the causing of the conception of a new life; it is *rather an action which prevents that one’s freely consented to sexual acts would become the cause of a conception*. The human act “contraception,” therefore, is an act which is part of one’s own sexual behavior, and indeed is a constitutive element of sexual behavior. It is an act which, presupposing the necessity and/or the will to avoid causing a

18. Cf. Vatican Council II, *Pastoral Constitution Gaudium et spes*, 48-49.

19. *Humanae vitae*, 11.

20. *Humanae vitae*, 14. Notice that the Latin text of the encyclical uses the verb *intendere*: “... id tamquam finem obtinendum aut viam adhibendam intendat, ut procreatio impediatur.”

new conception, essentially and objectively—and despite wanting to avoid causing a new conception—pursues the end of carrying out sexual relations which otherwise could be fertile.²¹

It seems that it is precisely here that we find the nucleus of the moral disorder present in contraceptive choice. Whether it be carried out by “artificial” means or without them, for example, by means of *coitus interruptus* (*Humanae vitae*, in fact, does not specifically condemn *artificial* contraception, but “every action which... intends...,” etc.), the moral problem inherent in contraception certainly does not consist in its “artificial” character. Rather, this disorder or moral evil is based in the twofold intention of having sexual relations with another person and of simultaneously depriving those relations of their possible procreative consequences, which in this case are obviously undesired.

Even when the reasons for which it is considered desirable to avoid a pregnancy are just and legitimate, contraception is not a behavior which respects the fundamental truth of man and woman as bodily-spiritual beings, and the truth of the mutual self-gift of the spouses. On the other hand, recourse to periodic continence would involve an essentially different type of behavior on the part of the spouses, assuming that the reason for avoiding a pregnancy is justified.²²

It is not that continence *in itself* is by necessity morally good, meritorious, or better than sexual intercourse. Continence is morally called for, and therefore good, when it is necessary—among other things—to preserve in the spouses, through their self-dominion, the unity and mutual integration of spirit and body: in our case, the unity and mutual integration of responsibility and sexuality.

“Contraception,” therefore, considered as an act proceeding from a free choice, and as such also morally qualifiable, is a way of acting which always refers to acts of sexual intercourse which are freely chosen, or at least consented to, by the agent. “Contraception” is objectively and essentially an integral part of one’s own sexual behavior and of the free choices which pertain to it.

VI. Distinguishing the Physical Level from the Moral Level

For such reasons, not every procedure, though “physically” inhibiting a possible conception, can be considered of the same moral species or kind as that

21. I try, following Thomas’ methodology, to explain moral disorders by their opposition to a determinate virtue, here chastity, which also defines an “ethical context.” Thus, in contrast to those who root the evil of contraception in its being intentionally directed against the coming-to-be of a new human life and thus as intentionally analogous to homicide (as Grisez and his collaborators), I see the disorder in the very sexual and bodily behavior and thus as opposed to the requirements of the virtue of chastity.

22. Cf. *Humanae vitae*, 16; John Paul II, *Familiaris consortio*, 32; *Discourse of August 22, 1984 (General Audience)*; *Discourse of January 10, 1992 (to the participants in a course of formation organized by the “Center for Studies and Research on the natural regulation of fertility” of the Catholic University of the Sacred Heart)*, in *L’Osservatore Romano*, January 11, 1992, 5.

disordered human act called “contraception” to which the moral norm of *Humanae vitae* refers. Catholic moral theology has always distinguished between the “physical object” of an act and its “moral object,” i.e., the *genus naturae* from the *genus moris*.²³ Morally, an anovulatory procedure that is physically contraceptive is the evil of “contraception” only if the agent proposes (i.e., intends) with that procedure to avoid the necessity of abstaining from sexual intercourse which he or she fears could cause an unwanted pregnancy. In other words, the morally contraceptive act is an *alternative* to an act of continence. Such a reference to one’s own freely consented sexual behavior enters therefore into the definition of the *object* of the act “contraception,” considered as a moral act. With this, an *intentional* element enters into the definition of the object, referring to the fact that the act has been rationally *chosen* as a good to pursue, in a definite context and therefore as an object of practical reason.²⁴

The specifically *moral* problem consists therefore in the intention to live—perhaps for reasons that in themselves are just and responsible—one’s sexuality and the bodily dimension of conjugal love in such a way that one’s own body and that of the spouse are treated, in their aspect of being the cause of human life, as a mere “instrument” or “object” of procreative responsibility; this is done rather than rendering their bodies, through acts of responsible continence, the *subject* of that loving responsibility. Such behavior is contrary to the requirement of the integration of one’s sexual inclinations into the full personal truth of conjugal love.²⁵

For this reason, an act that, considered *physically*, is anovulatory and physiologically contraceptive, does not fall necessarily under the moral norm prohibiting contraception. An example would be to use anovulatory means to regulate a woman’s rhythm or to suppress an athlete’s menstruation on the day of an important race.

23. Cf. St. Thomas Aquinas, *Summa Theologiae* III, q.1. a.3 ad 3; *ibid.*, q.18, a.5, ad 3; M. Rhonheimer, *Natural Law and Practical Reason: A Thomist View of Moral Autonomy* (New York: Fordham University Press, 2000), 475 ff.; and *Die Perspektive der Moral. Philosophische Grundlagen der Tugendethik* (Berlin: Akademie Verlag, 2001), 138 ff.; W.E. May, *Moral Absolutes*, (Milwaukee: Marquette University Press, 1989), 58 ff.

24. Along these lines one can consider for example the definition of the object of the act “masturbation” in the *Catechism of the Catholic Church*, 2352: “By masturbation is to be understood the deliberate stimulation of the genital organs in order to derive sexual pleasure.” The object therefore includes an intentional element, which indicates the “form” of the “*materia circa quam*”; so, the whole act is, in the light of reason, a practical good. The object is not only the material; at this level it could not be rationally chosen.

25. Cf. John Paul II, *Discourse of January 10, 1992*, cit.; *ID.*, *Familiaris consortio*, 32. Cf. more thoroughly M. Rhonheimer, *Contraception, Sexual Behavior, and Natural Law. Philosophical Foundation of the Norm of “Humanae vitae,”* in various authors, “*Humanae vitae*: 20 anni dopo. Atti del II Congresso Internazionale di Teologia Morale.” (Rome, November 9-12, 1988, Milan 1989), 73-113; published also in *The Linacre Quarterly* 56 no. 2 (1989), 20-57, and in a enlarged version as *Sexualität und Verantwortung. Empfängnisverbütunga als ethisches Problem* (Vienna: IMABE 1995).

Furthermore, and in reference to the case under consideration, not even the use of a contraceptive with the primary and direct purpose of preventing a conception could be, as such, considered a contraceptive choice, when such use is not part of a choice to carry out that sexual act from which a conception could be a possible and foreseeable consequence. To avoid or to prevent that the conception of a new life occurs is not, as such and per se, a moral disorder. Indeed, in some cases it may even be morally required.

The moral disorder resides, rather, in depriving one's freely chosen sexual acts of their quality of being a possible cause of procreation—and this precisely as an alternative to the act of abstaining from these potentially fertile sexual acts. In such a moral context, the matrimonial act could no longer be called an act “open to the transmission of life.”²⁶ If, on the other hand, periodic continence is practiced for reasons of parental responsibility, in that case *both* acts of abstention and acts of intercourse during infertile periods bear a significance with respect to paternal and maternal responsibility; they retain their sense of being acts oriented to the transmission of life, a task in which the spouses cooperate responsibly precisely in the dimension of their sexual behavior—i.e., in the bodily expression of their love.²⁷ In fact, even in acts of responsible continence the two inseparable meanings of conjugal love and human sexuality are realized and expressed, *both at the spiritual and at the bodily level*: the loving union of the spouses and their responsibility for the transmission of life.

When one speaks of “contraception,” therefore, it is necessary to differentiate a merely technical use of the word “contraception”—as yet unqualified morally—from the moral use of the term, by which is specified a freely chosen type of human behavior. What at times causes confusion is the medical-technical use of the term contraception (at the level which considers only the physical object of the act) in contexts where rather a judgment on the licitness of a specific human behavior as an object of a free choice is required—and vice versa.

For this reason, the encyclical *Veritatis splendor* emphasizes that, “in order to be able to grasp the object of an act which specifies that act morally, it is therefore necessary to place oneself in the perspective of the acting person,” given that “the object of the act of willing is in fact a freely chosen kind of behavior”; every object is “the proximate end of a deliberate decision which determines the act of willing on the part of the acting person.”²⁸ The teaching of *Veritatis splendor* on intrinsically evil acts (no. 79) also operates on this level, as does the doctrine of the *Catechism of the Catholic Church*, cited in no. 78 of the encyclical, which

26. *Humanae vitae*, 11.

27. Cf. also G. E. M. Anscombe, *Contraception and Chastity*, (London, 1977), 22-23.

28. *Veritatis splendor*, 78. Cf. M. Rhonheimer, “‘Intrinsically Evil Acts’ and the Moral Viewpoint: Clarifying a Central Teaching of ‘Veritatis splendor,’” in *The Thomist*, 58 no. 1 (1994) 1-39. Reprinted in: J. A. DiNoia and Romanus Cessario (ed.), *Veritatis splendor and the Renewal of Moral Theology*, (Princeton-Huntington-Chicago, 1999), 161-193.

states: “There are concrete acts that it is always wrong to choose, because their choice entails a disorder of the will, i.e., a moral evil.”²⁹ This affirmation refers not only to “behaviors,” or to the behavioral “form” or structure of certain acts, but to the *choice* of such acts. As the object of a *choice*, an “act” or a “behavior” is always more than a merely “physical” act or “occurrence.” It is precisely a practical good, an object of reason, a “*bonum apprehensum et ordinatum per rationem*.”³⁰ And it is therefore at that level that moral norms are formulated.

The reason for the prohibition of contraception could not, therefore—nor in fact does it—consist in a violation of a natural, physiological order. At this level, a moral judgment on the use of a contraceptive means would not even be possible. The moral disorder of contraception, as with any moral disorder, does not consist in what occurs at the physiological or biological level, but in that which takes place at the level of the intentional and free behavior of the person: in this case, in the failure to fulfill the demands of the virtue of chastity.³¹

VII. Preventative Contraception Under Threat of Rape: A Choice of Self-defense

Consequently, the use of contraceptive measures, such as an anovulatory pill or a device which impedes the penetration of sperm into the vagina, is not *per se* to be considered as a human act which falls under the moral norm prohibiting contraception. In fact, in the case of a preventative use in the face of the threat of rape, we are dealing with the use of a contraceptive measure (that is, one which prevents conception, in the physical sense) in an entirely different ethical context: not with the purpose of rendering infertile a freely desired and consented to sexual act, thus eliminating the need for continence (given that pregnancy is undesired), but to defend oneself from the possible undesired and undesirable effects of an act imposed on oneself against one’s will.

In such a situation, a woman is not only without any obligation to accept the possible procreative effect of such a forced copulation (we are obviously not speaking of abortion here). Instead, she has the right—and at times perhaps even a reasonable duty—to avoid a conception: out of respect for herself and her freedom to decide regarding her own life; out of respect and responsibility toward the new life, which has the right to proceed from an act of love; or in respect and fidelity toward her vocation, for example in the case of women religious.

It is clear that in this case we are not dealing with a *contraceptive choice or will*. Regarding the moral object, we are dealing with a legitimate *choice to*

29. *Catechism of the Catholic Church*, no. 1761 (this is the “in brief” text. In no. 1755 (the principle text), which is identical, fornication is given as an example.)

30. St. Thomas Aquinas, *ST* II-II, q.20 a.1 ad 1.

31. Cf. Vatican Council II, *Pastoral Constitution Gaudium et spes*, 51; *Humanae vitae*, 17 and 21; John Paul II, *Discourses of August 29 and September 5, 1984 (General Audiences)*.

defend oneself from the undesirable and disadvantageous consequences of an assault on one's own body, a choice which is at the same time a choice to defend, to the extent possible, one's freedom in the face of a foreseen situation in which that freedom may be, in part, taken away by a violent aggressor. The fact that, in the case of rape, sexual intercourse is neither consented to nor freely carried out confers a completely different objective moral character on the act of preventing such an assault from resulting in the conception of a new life: precisely the character of an act of self-defense.

VIII. The Choice of Contraception Remains Intrinsically Evil

It cannot be said, therefore, that in this way an "exception" is established to the norm prohibiting contraception. At the same time, on this basis certain unfortunate and confusing statements given in the past can be avoided, such as "the prohibition of sterilization is not an absolute principle," or "direct sterilization is not necessarily an intrinsically perverse act," whenever a reason justifying it existed.³² Such statements, in fact, find their explanation in the context of a legalistic, and therefore casuistic, logic, in which is also situated the proportionalist methodology; adherents of this methodology often make use of such statements.

If the Church's Magisterium teaches that contraception (as well as sterilization) is an "intrinsically perverse" or "evil" action, it does not make this judgment in reference to the act considered at the level of its physical object (the physical act preventing conception), but at the level of its moral object. The statement, therefore, that "it is not clear that the use of the pharmaceuticals that we are discussing [i.e. contraceptive measures] is intrinsically evil,"³³ also seems irrelevant. Only an act considered as the object of the will of an agent who rationally chooses such a behavior can be intrinsically perverse. Such an act cannot be, however, *simply and exclusively* the physical procedure or "the use of a pharmaceutical that prevents conception." What is needed, rather, is that configuration of the act which, before practical reason, confers on the act its primary objective identity as a specific type of human act and of *bonum faciendum*. Therefore, the two cases we are considering are two objectively different human acts, which obviously do not fall under the same moral norm. "To impede, as an alternative to an act of continence, the procreative consequences of one's freely chosen sexual acts" is the act of "contraception." "To prevent the possible procreative consequences of an assault on one's body and thus of an abuse of it" is an act of "self-defense."

To repeat, the argumentation advanced here is essentially different from a proportionalist or consequentialist argument. It is true that these methods also aim to do nothing other than determine the *objective* significance of the act—proportionalism is in fact a method for determining the object of an act. It deals,

32. Cf. the argumentation of F. Lambruschini, in *Studi Cattolici*, *cit.*, 69-70.

33. F. Hürth, *op. cit.*, 67.

however, with what it calls an “expanded object,”³⁴ that is an “object” in which all the circumstances and morally relevant intentions are included, and this as a result of a prior weighing of (“pre-moral”) goods and evils. Because this “expanded object” of proportionalism cannot be distinguished from the *ulterior* intentions, it is *indeed not an object*. In contrast, an understanding of “object” consistent with St. Thomas and *Veritatis splendor* no. 78ff does include a proximate or basic intention,³⁵ but this is clearly distinguished from those *ulterior* intentions *for which* such an object (a concrete human action) is chosen. According to the proportionalist methodology, every action could be re-described or redefined, according to the circumstances and intentions regarding the foreseen consequences of the act. It would be impossible, then, to formulate a prohibitive norm that could not become impertinent in a specific case.

As we have noted above, the proportionalist methodology derives from the casuistic tradition, and therefore from an ethics centered on norms, which treated the natural law as though it were a positive code. The methodology presented here, on the other hand, pertains to an ethic of virtue. Such an ethics analyzes human action and its objective meaning in specific ethical contexts, so as also to be able to distinguish the object of an act from *ulterior* intentions for which an act is chosen.³⁶ To arrive at a determination of the objective value of the action examined here, we have not had recourse to a weighing of goods or of “proportionate reasons.” Our evaluation, rather, addressed the primary and fundamental content of the contraceptive choice as distinguished from the choice of an act of self-defense. Not all norms, therefore, as the proportionalists claim, are to be considered as the result of a prior weighing of various goods, a result that is always provisional. Some norms referring to concrete behaviors, precisely those that are prohibitive, express the “intrinsically”—per se—disordered character of such behaviors.³⁷ The methodology used here allows the formulation of negative norms regarding the choice of concrete behaviors *whose descriptions are unalterable*, norms which are valid *semper et pro semper*, provided that the description truly be that of a human act, that is a description that includes those fundamental *intentional* elements which confer on the act its primary and fundamental moral identity, and with this its “objective” meaning. ■

34. Cf. the above-cited article by R. A. McCormick, “Some early reactions to ‘Veritatis splendor,’” 501, and my response, published shortly thereafter.

35. For the notion of “basic intention” and “basic intentional action” see M. Rhonheimer, *La prospettiva della morale*, cit., 39; 85 ff.; 239 ff.

36. For a more detailed treatment, cf. M. Rhonheimer, “‘Ethics of Norms’ and the Lost Virtues. Searching the roots of the crisis of ethical reasoning,” in *Anthropotes* 9 no. 2 (1993) 231-243; and ID., “‘Intrinsically Evil Acts’ and the Moral Viewpoint: Clarifying a Central Teaching of ‘Veritatis splendor,’” *cit.*; and the response to the critique of R. A. McCormick, in *The Thomist* 59 no. 2 (1995), 279-311.

37. For this reason, the encyclical *Veritatis splendor*, 77 states: “The weighing of the goods and evils foreseeable as the consequence of an action is not an adequate method for determining whether the choice of that concrete kind of behavior is ‘according to its species,’ or ‘in itself,’ morally good or bad, licit or illicit.”