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Chapter

Evolution of Catholic Marriage Morality in the Twentieth Century from a Baby-Making Contract to a Love-Making Covenant - Part II: Code of Canon Law to Vatican II

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Abstract

Sexual ethics in the West has been evolving, in practice and in theory, over the last century. The official Catholic Church teaching was challenged by many Christian churches and by the changing culture of the West. The Vatican insisted that no change could be made in its timeless truths. Nevertheless, each challenge required ever more sophisticated and convoluted arguments. The impetus for change came through the Western shift from seeing sexual activity as a procreative act toward viewing it as a way for husbands and wives (and gradually also any consenting adult) to express and deepen love. The Second Vatican Council accepted this new view, but subsequently the official teaching became more strict, insisting that both procreation and marital love-making must be present. The teaching of Pope Paul VI prohibiting contraception was the proverbial straw that broke the camel's back for many Catholics. They abandoned the official teaching, recognizing that it was the new personalist view itself that complicated the meaning of marriage. Subsequently, the Canon Law tried reestablish the validity of loveless sex in marriage—the dominant view through the centuries. That move was rejected.

Keywords: sexual ethics, marriage, birth control, covenant, Canon law, Pius XI, Pius XII, Paul VI, Vatican II

1. Background introduction

The official teaching of the Catholic Church on sexuality evolved significantly during the twentieth century. The Church encountered rapidly changing understandings of sexuality among both secular and religious groups. Church teachings, Charles Taylor observes, had been “connected with the denigration of sexuality, horror at the Dionysian, fixed gender roles” and involved an “unfortunate fusion of Christian sexual ethics with certain models of the ‘natural.’”¹ From 1917 to 2000, the Church monumentally changed the foundations of its sexual and marital ethic.

¹ Charles Taylor, “Sex and Christianity: How has the Moral Landscape Changed?” *Commonweal* 134, no. 16 [September 18, 2007], 16. *Notes for Church documents at end.*

But it tried not to revise the specific norms based on those foundations. Painting with broad strokes, we can say that the “people of God” welcomed the change of foundations but did not accept many norms commonly taught as absolutes by the “Church.” The result is the current disjunction between what the “Church” teaches and what the “pilgrim people of God” think and practice.²

There is a long, rather discontinuous pattern of changes in the sexual ethics of the Judaeo-Christian tradition. The Hebrew Bible (Old Testament) had an enormous amount of variations, many of which Christians no longer accept. The New Testament changed the ideal, mainly because Jesus was most likely celibate. Augustine, after a long sexually active history, again shifted to a more conservative restriction by legitimating procreative sex to be mainly a remedy for sin and a measure that would hasten the end of the world. Thomas Aquinas again took a less censorious approach, while Martin Luther revised significantly the meaning of matrimonial ethics. As the twentieth century approached, a shifting understanding of marriage led to the major changes the Catholic Church resisted and approved in its sexual ethic.

Jonathan Haidt’s *The Righteous Mind* provides a hermeneutical key for understanding the changes in sexual ethics during the last century. First he offers (in an overstated way) psychological evidence that human beings typically start with their convictions and tend to find reasons to justify those convictions only when they encounter or anticipate challenge. The Church in the twentieth century began with many conclusions, for example, that women cannot be ordained. When challenged by culture and by scholars who showed that its older arguments against women’s ordination were either weak or unjust, the Church did not change its normative position, but sought for new foundational justifications. Haidt demonstrates that this procedure is not unusual among human beings.³ Indeed, the habit for this kind of thinking is deeply ingrained in theological method. Church teaching often claims that it begins with the givens of Scripture and tradition and then theology explains and defends what those sources teach. *Fides quaerens intellectum*. In fact, theology often changes in response to new insights, as the Church’s teachings on slavery or women indicate. The current question was whether new intuitions and changing arguments should change the Church’s sexual norms.

Second, Haidt tested six loosely-drawn moral concerns that illuminate similarities and differences between so-called conservatives and liberals. Both tend to share a strong concern for compassion, a concern for fairness, and a concern for liberty. But conservatives tend also to be much more concerned about authority, loyalty, and sanctity.⁴

Debates over the Church’s sexual teaching have greatly foundered due to these latter three concerns. Moral theologian, Richard McCormick, S.J., said that it seldom took more than five minutes after he gave public lectures on sexual matters before the topic turned to authority and loyalty to the Church. Criticism of Church teaching has often been felt as a rejection of God’s authority. Loyalty and authority are important since their psychosocial functions is to bring people into cooperation, to highlight the binding quality of morality, and to provide group identity. Hence

² In this essay, I use the term “Church” in its conventional (and not theological) sense simply as shorthand for the official teaching by the Vatican. I do not intend to imply a division between the hierarchy and “people of God.” Like the term “the faithful,” such a division unfortunately suggests that members of the hierarchy are not part of the people of God or are not faithful. Furthermore, there is hardly complete agreement on sexual matters by the individuals and groups who are part of the “people of God.”

³ Jonathan Haidt, *The Righteous Mind: Why Good People are Divided by Politics and Religion* [New York: Pantheon, 2012], 74.

⁴ Haidt, *Righteous Mind*, op. cit., 182–83.

moral disagreement is not only about a concern for truth, but also a concern for the identity and unity of the Body of Christ. For the first half of the twentieth century, the Church's marital ethic functioned analogously to its prohibition of meat on Friday in that it provided a distinctly Catholic identity. Still, as the comparison suggests, the basis for moral requirements proper to sexual activity must be different from merely being matters of authority or communal loyalty.

Haidt's last concern, sanctity, is more directly relevant to Judaeo-Christian sexual morality. He describes sanctity as a need to be purified from stain and pollution. The Old Testament expresses great concern about sexual pollution. Sanctity refers to areas of life that are thought to be beyond touch or change. Through history, under the influence of the rubric of sanctity, descriptions of sexual activity commonly teeter between, on the one side, shame and dirt, and, on the other side, reverence and sacredness.⁵ In this vein, Church teaching often suggests that those who fail to follow the Church's sexual norms engage in mere selfish pleasure-seeking or base animal activity while those who follow the Church's sexual norms express a supreme love.⁶ Put another way, sexual norms are absolute in the sense that they are beyond free human alteration. Any activity that does not conform to these absolutes involves pollution and stain.

In what follows, this essay will trace the development of official Catholic teaching throughout the twentieth century. It begins with the Code of Canon Law. The Code is an important marker against which the progress of the Church's subsequent teaching can be readily seen. Well into the second half of the twentieth century, moral theology textbooks used its ideas as the basis for their treatment of the sixth commandment. As will be seen, even after the Church changed its basic understanding of marriage, it returned to the ideas of this early Code in order to prohibit practices that now seemed plausible in the new understanding.

2. Code of Canon Law

The 1917 Code of Canon Law lays down the lineaments of the Church's traditional understanding of marriage. The Code makes several terse assertions about the abstract nature of marriage, almost all of which were challenged as the twentieth century zigzagged down the decades. The Code begins with the assertion that marriage is 1] a contract, 2] which Christ made a sacrament. The Code lists 3] one primary, but twofold end of marriage, namely, 3a] the procreation and 3b] the education of children. After that it lists 4] one secondary end, which

⁵ Haidt, *Righteous Mind*, 146–47; Max Scheler, “Über Scham und Schamgefühl,” *Schriften aus dem Nachlass*, vol. 1, 2nd ed. [Bern: Franke Verlag, 1957], 65–152; L. William Countryman, *Dirt, Greed, and Sex: Sexual Ethics in the New Testament and their Implications for Today* [Philadelphia: Fortress Press, 1988]; Paul Ricoeur, “Wonder, Eroticism, and Enigma,” *Sexuality and the Sacred*, ed. James Nelson & Sandra Longfellow [Louisville, KY: Westminster/John Knox, 1993], 80–84; also José Noriega, “Eros and Agape in Conjugal Life: The Mystery of Conjugal Charity,” *Josephinum Journal of Theology*, 18 no. 2 [Summer/Fall 2011]: 357; Levio Melina, “The Body and its Vocation to Love in the Catechesis of John Paul II,” *Josephinum Journal of Theology*, 18 no. 2 [Summer/Fall 2011]: 342.

⁶ For example, recently Livio Melina writes: “contraception introduces into the bodily act of the reciprocal gift between a man and a woman the poison of a lie, which intimately falsifies the act, making it a self-gift that does not give completely, a receiving that does not really accept. It can truly be said that the contraceptive act is no longer a conjugal act: its objective intentional structure is no different from forms of sexual activity aimed only at hedonistic individual satisfaction, incapable of building true personal communion.” See, “From *Humanae Vitae* to *Deus Caritas Est*: Developments in the Theological Thought on Human Love,” *Josephinum Journal of Theology*, 18 no. 2 [Summer/Fall 2011]: 369.

likewise is twofold, namely, 4a] “mutual help” and 4b] “allaying of concupiscence.” Lastly, marriage has two “essential properties,” which are 5] “unity” and 6] “indissolubility.”

In general, a contract is an agreement of wills between two or more parties. The nature of this consent is laid out by the Code in exact form: “Matrimonial consent is an act of the will by which each party gives and accepts a perpetual and exclusive right over the body, for acts which are themselves suitable for the generation of children” [1917: 1081.2].⁷ The Code presupposes that the marriage contract is not subject to negotiation. People are free to enter or not into marriage, but they are not free to alter the rights and obligations of this institution. This contract is not structured primarily for the individual needs of the spouses but for producing children for the species.

According to the Code, spouses consent to give and accept a right to use the other’s body for purposes of sexual activity. In this, it follows St. Paul: “the wife does not have authority over her own body, but the husband does; likewise the husband does not have authority over his own body, but the wife does” [1 Cor. 7:4]. Once married, spouses must, if asked, pay the marital “debt” of sexual intercourse. Spouses do not have the authority to say, “No.” In this sense, marital rape is not possible.

Contracts typically focus chiefly on behaviors and not on the interior attitudes that became so important in personalist philosophies later in the century. In the Code it is not necessary, for validity of the contract, that the spouses have any affection for one another. Indeed, spouses can get married even though they live in different countries and have not previously met.⁸ This is not to say that the Church encouraged loveless marriage. For example, Pope Leo XIII earlier wrote that spouses “are bound, namely, to have such feelings for one another as to cherish always very great mutual love” [1880: 11; L:6] [1]. But such love is not necessary for the validity of the contract.

One major reason why mutual love is not necessary for marriage is due to the influence of the Pauline writings. While there is a precedent for a connection between marriage and love in Ephesians [5: 25–32], the love urged there is not mutual.⁹ More importantly, few if any biblical texts have shaped Christian sexual ethics as much as 1 Corinthians 6–7. This text tends to make sex and love incompatible bedfellows. Paul said that a husband should relate to his wife as if he had no wife [1 Cor. 7: 29]. Augustine reinforced this attitude: “Thus it is characteristic of a good Christian to love in one woman the creature of God whom he desires to be transformed and renewed, but to hate corruptible and mortal intimacy and

⁷ Throughout this essay, references to Church documents will be made in the text itself. The online sites where these documents can be found are listed in the bibliography. Usually, in references to Church documents, I will add an “L.” The “L” in the citation refers to translations made by Odile M. Liebard, *Love and Sexuality: Official Catholic Teachings* [Wilmington, NC: McGrath Publishing, 1978]. Liebard’s numbering often makes it easier to locate exact citations, since Liebard numbers each paragraph. Unfortunately, he does so consecutively in a way that makes later documents begin their numbering with the next number after the last number in the previous document.

⁸ This is still true; see the current *Code of Canon Law*, [1983: 1104.1]; Ladislav Örsi, S.J., *Marriage in Canon Law: Texts and Comments, Reflections and Questions* [Wilmington, DL: Michael Glazier, 1986], 52–53.

⁹ Ephesians’ recommendation [5:21–33] of mutuality, when spelled out, holds only that husbands should love their wives, in imitation of Christ’s love for the Church and, curiously, as a form of loving their own bodies, but that wives should obey and respect their husbands.

copulation—that is, to love the human being in her creaturehood but to hate that which makes her a wife.”¹⁰

The Code makes a specifically theological claim that “Christ our Lord elevated the very contract of marriage between baptized persons to the dignity of a sacrament” [1917: 1012.1]. It is now widely recognized that this is not a historically true statement.¹¹ Still, after Trent, this claim is asserted to be theologically true, with the hazard that theological truth and historical truth follow separate paths. A further divergence appears in that the biblical Jesus and St. Paul recommend celibacy in sacramental terms, but the Church has chosen not to make vowed celibacy a sacrament.¹²

The Code draws a not-obvious conclusion from Christ’s elevation of marriage: “Therefore it is impossible for a valid contract of marriage between baptized persons to exist without being by that fact a sacrament” [1917: 1012.2].¹³ This contention leads to some severe problems, which make church law foreign to the intuitions of most people. First, although most Protestant Churches deny that marriage is a sacrament, the Catholic Church teaches that Protestants who marry in fact receive the sacrament in spite of their sincere intention or adamant determination not to receive a sacrament. Second, the Church teaches that Catholics who are baptized but no longer believe are simply unable to get married, even though everyone has a right to get married. On the one hand, they will not and should not ask the Church to marry them, since they no longer believe. On the other hand, their attempt to marry civilly outside of the Church is invalid. Such people, as well as all those around them, likely think they are married, but the Church says they are in fact fornicating. Well-known canonist Ladislaus Orsy, S.J., describes these results as “absurd.”¹⁴

Central to the Code is its natural law view of marriage’s purposes. Activities are distinguished by the ends or goals they pursue. “The primary end of marriage is the procreation and education of children; its secondary end is mutual help and the allaying of concupiscence” [1917: 1013.1]. It should be noted that neither the flourishing of the individual spouses nor their personal communion are ends of marriage. Behind the Code’s teaching on the primacy of procreation are the theologies of Augustine and Aquinas. For them, sexual activity was directed to the continuance of the species, not to the good of the spouses. In fact, Augustine thought that sexual activity was usually immoral, though excused by the good of procreation. Thomas developed a rather complete theology of marriage out of the nature of sperm. For him, unlike other bodily fluids, sperm is not directed to the man’s good.

¹⁰ Augustine, *The Lord’s Sermon on the Mount* in *Ancient Christian Writers* [Westminster, MD: Newman, 1948], bk. 1, ch. 15, #41.

¹¹ Orsi, *Marriage in Canon Law*, 53.

¹² St Paul [1 Cor. 7] recommended celibacy instead of marriage. When Paul comments that a wife will be anxious to please her husband, he does not see this desire to please as an expression of love. Rather, he interprets it as an occasion for her to turn away from the Lord. The unmarried are described as holy in both body and spirit, while the married are those concerned about the things of the world. In other words, Paul’s advice in First Corinthians does not present marriage as a central relationship where love of God and marital love of neighbor unite.

¹³ The “therefore” seems to be a reverse reading of history. For much of history prior to Trent, Christians got married without thinking of marriage as one of Christ’s sacraments. When then the Church decided that marriage was a sacrament, it became necessary to say that all those previous marriages had been sacraments even if people were not aware of receiving a sacrament. See Joseph Martos, “Marriage: A Historical Survey,” *Perspectives on Marriage: A Reader*, Kieran Scott & Michael Warren, eds., 3rd ed. [New York: Oxford, 2007], 60.

¹⁴ Orsi, *Marriage in Canon Law*, 56.

Rather, sperm is designed by God to continue the species. Thomas then justifies the long-term bond of marriage because the education of children takes many years and women are not naturally capable of doing that task alone.¹⁵

Marriage, according to the Code, has a two-part secondary end. This end is to remedy the spouses' insufficiencies and evil tendencies. The first part is "mutual help," which refers to tasks that need to be done in the ordinary course of living, e.g., laundry. The focus is on deeds, not on sharing personal life with the spouse. The second part says that people get married in order to remedy concupiscence. For St. Paul [1 Cor 7:2, 5, 8, 36], marriage is a solution to the problem of lust. Similarly, Aquinas held that marriage is a sacrament because it is a remedy against sin.¹⁶ Luther memorably opined, "The temptation of the flesh has become so strong and consuming that marriage may be likened to a hospital for incurables which prevents inmates from falling into graver sins."¹⁷

While the primary and secondary ends of marriage focused respectively on the child and on the limitations and problems of spouses, the essential properties of marriage, which are "unity" and "indissolubility," name characteristics of marriage as an institution [1917: 1013.2]. "Unity," in the mind of the Code, like *fides* in Augustine,¹⁸ is not the same as love. Rather, it is a negative term, meaning exclusivity. It forbids sexual activity with anyone other than one's lawful spouse. "Indissolubility" likewise is negative: it forbids divorce. It is said to acquire "a peculiar firmness in Christian marriage by reason of its sacramental character." The Code had to add a qualification like "peculiar firmness" because from its very beginning the Church has dissolved indissoluble marriages. The Church—due to the pressure of real life difficulties, the Pauline privilege, the Matthean exception for *porneia*, the distinction between *ratum* and *consummatum*, and the Petrine privilege—altered any absoluteness deriving from Jesus's prohibition of divorce. Because of these exceptions, the vast majority of all indissoluble marriages in the world are, in principle, dissolvable. Throughout much of the twentieth century, pressure within the Church for further exceptions increased, often masquerading under the rubric of annulments.

It can be noted in passing, though the point is significant, that procreation is given as the purpose of marriage, not the purpose of sexual intercourse. Subsequently, there arose a focus on the specific nature of sexual act and of how it itself might be violated. Thus birth control even outside marriage eventually became an intrinsically evil act. Subsequently, this allowed the Church to teach that while, for good reasons, it was no violation of marriage to be infertile, it was a violation of sex to prevent it from being fertile. Similarly, there is no assertion of any inseparability between procreation and love since love was not necessary for the validity of a marriage.

Christians should not live by legal codes alone, and so it was important for theologians and the papacy to develop theologies of marriage during the rest of the twentieth century. More sensitive to communal reception and pastoral practice, such theologies progressively modified official Church teaching.

¹⁵ Thomas Aquinas, *Summa Contra Gentiles*, trans. Vernon J. Bourke [Notre Dame: University of Notre Dame: 1975], bk. 3. ch. 122. Nevertheless it should be noted that Aquinas also describes a sweet friendship that grows between the spouses.

¹⁶ For Aquinas, friendship and mutual help that are part of marriage belong not to its pre-lapsarian essence nor to its sacramental quality, but to its institution in civil law. ST 3:42.1–2.

¹⁷ Martin Luther, *Luther's Works*, vol. 44 [Philadelphia: Fortress, 1966], 9.

¹⁸ Augustine: *Against Julian* in *Fathers of the Church* [New York: Fathers of the Church, 1957], bk. 3, ch. 16, # 30.

3. Pius XI

The winds of the twentieth century were pushing against the wall of tradition. In response, Pius XI devoted an important encyclical, *Casti connubii*, to the topic of marriage. He resists some changes but welcomes others. Along with his predecessor Leo XIII, he still holds that, in things like marriage and sex, it is “more useful and salutary” that they “remain in their natural state, unimpaired and unchanged.” God knows best, and only the wickedness of men would try to change this natural order [1930: 95; 1880: 25] [2]. Crucially, the pope holds that this order “is entirely independent of the free will of man” [1930: 6]. In this view, marriage is not an institution that humans through “trial and error” devised to meet certain needs and that might change when those needs change. The underlying image of marriage is that of entering an institution that has established rules and purposes. One cannot change these rules and purposes. And, once inside the institution, one cannot choose to leave.

Pius XI upholds the absolute sexual prohibitions that have been the hard core of Church teachings in the area of sexuality: “Since, therefore, the conjugal act is destined primarily by nature for the begetting of children, those who in exercising it deliberately frustrate its natural power and purpose sin against nature and commit a deed which is shameful and intrinsically vicious” [1930: 54]. The probable background for these claims is, on the one hand, “sanctity” concerns surrounding sexuality and, on the other, the historical connection often made between contraception and murder, since both are understood to be against “life.” The Church does not explain why sexual aberrances are “intrinsically vicious” or “intrinsically evil.” In Church teaching few acts other than genital acts are placed in this category. For example, in spite of Genesis 3:16, there has been no prohibition of anesthesia during childbirth, Caesarian sections, or subsequent wet-nursing. To say that some acts are intrinsically evil is to say there are no exceptions. It renders needless any consideration of the particulars of real situations. That is, some acts are wrong, no matter how much good they might bring about or how much evil, for example, the death of a wife, they might prevent [1930: 61].

Nevertheless, contrary to this absolutism, the pope makes two strange concessions. Pastorally, he proposes that when one spouse is practicing contraception, the other spouse is guiltless as long as that spouse does not formally consent to the sin [1930: 59].¹⁹ For moral theologians, this should be an astounding claim. In no other area of life is such immediate and indispensable cooperating in serious sin allowed. In allowing this exception, which goes back to Augustine,²⁰ the rights and duties of marriage override the strictness of moral theory.

Pius XI makes a second adaptation that had implications that occupied theologians through much of the rest of the twentieth century. Augustine held that sexual intercourse when procreation could not happen was sinful.²¹ Instead, Pius XI wrote that, although the “conjugal act is destined primarily by nature” for begetting children, it is not against this nature to engage in sexual intercourse when, due to “natural reasons either of time or certain defects,” no children can be begotten [1930: 59]. Around the time of this encyclical, the menstrual cycle of women was being better understood. That new understanding laid the biological basis for the rhythm method and later for natural family planning. Pius proposed that, even

¹⁹ The concession is repeated in the Pastoral Council for Families document, “Vademecum for Confessors,” [1997: III.13].

²⁰ Augustine, *Letters*, vol. 5 [New York: Fathers of the Church, 1956], #262.

²¹ Augustine, *Catholic and Manichaeon Ways of Life* [Washington: Catholic University of America, 1966], 2.18.65.

though sexual activity cannot achieve its reason for existing, it is permissible. Thus, an opening was made that there is no necessary moral connection between marriage, sex, and procreation. As a result of this concession, countless trees have been felled for books and articles debating the issues that opened up. More importantly, countless lives have been thrown into religious and moral turmoil.

Pius XI points to the secondary ends of sexual intercourse as justification for engaging in sex when it cannot achieve its primary end. When he does so, however, he adds a new secondary end: the “cultivating of mutual love,” which, he says, goes beyond “mutual help.” He then draws a revolutionary implication: the “mutual inward molding of husband and wife. . . can in a very real sense. . . be said to be the chief reason and purpose of marriage” [1930: 23–24]. He says that the traditional view that marriage is primarily for procreation is itself only a restricted sense of marriage. In its fuller sense, marriage is for “mutual interchange and sharing” [1930: 24]. Then, perhaps for the first time in official Catholic teaching, he describes sexual intercourse as “the cultivating of mutual love” [1930: 59].

When describing this love, however, Pius XI reverts back to that strand of the tradition that insists that such love includes no seeking of one’s own advantage but only the good of the other, much as Christ loves the Church [1930: 23]. Throughout much of the century, Church descriptions of love tend to use terms such as self-sacrifice or self-gift. That people get married and engage in sexual activity also as a form of self-love or to receive love has only gradually been admitted. Fulfilling a basic human drive has usually been described negatively as concupiscence and lust. Church teaching during the early part of the century offered little affirmation that seeking pleasure can be healthy and normal. More importantly, there was little awareness that sexual intercourse is a “pleasure-bond” that contributes greatly to holding loving marriages together.²² Western culture has come to affirm openly that marriage is a central locus of *eros* and *philia* or mutual love.²³ Gradually, without denying the place of self-sacrifice and the importance of *agape*, the Church has accepted this view of marriage.

4. Pius XII

The enormous cultural changes of the twentieth century in the Western world made more urgent the question why people should simply follow nature. Developments in biology and medicine changed the so-called natural order and enhanced human life. The control made possible by science abetted the Enlightenment’s emphasis on human freedom. A growing sense of personal dignity made it unseemly to describe marriage as an agreement to use another’s body as a means to make babies and to temper lust. Similarly, it seemed dualistic to speak of “using” one’s own body. Reacting against these and other challenges, Pius XII reasserted a natural law foundation for marriage and devised new characteristics to proscribe recent medical possibilities. According to the pope,

“In forming man, God regulated each of his functions, assigning them to the various organs. . . God fixed, prescribed, and limited the use of each organ. He cannot allow man now to arrange his life and the functions of his organs according to his own taste, in a manner contrary to the intrinsic and immanent function assigned them. Man, in truth, is not the owner of his body nor its absolute lord,

²² William H. Masters and Virginia E. Johnson, *The Pleasure Bond* [New York: Bantam, 1974].

²³ For the development of these three distinct types of love, see Edward C. Vacek, S.J., *Love, Human and Divine: The Heart of Christian Ethics* [Washington, DC: Georgetown University, 1994].

but only its user. A whole series of principles and norms derives from this fact” [1944; L: 204] [3].

This text again sets down biological nature as the basis for the Church’s teaching in sexual morality. By identifying the work of God and the work of nature, the Pope implied that any direct interference with or alteration of our bodily nature is in fact a direct rejection of God’s work. But, since the Church allowed such interference in all of the rest of creation, even though God is also the “owner” of such creatures, it became clear that the only area off-limits to human intervention was human nature. Again, since the Church came to allow considerable interference in all the organs of the human body, except the sexual organs, it became clear that the ban on changing nature was restricted solely to human sexual organs. For example, while artificial insemination is permissible in other animals, for human beings “In the case of artificial insemination one should not only keep a very cautious reserve,” but also one “must exclude it altogether.” This is so, even though it would enable the couple to achieve the primary end of their sexual organs and of marriage [1949; L: 256; 1951: 318] [4, 5].

Pius XII uses the same biologicistic argument against contraception. He repeats his predecessor’s claim that, no matter how grave the consequences, it is wrong to “deprive this [marital] act of its inherent force or to impede the procreation of new life” [1951; L: 288, 291]. Thus, direct sterilization, even when the removal of a woman’s ovaries might protect her from a life-killing pregnancy, was completely forbidden. Her sexual organs do not exist for her good but “for the conservation of the human race” [1951; L: 300]. She is not allowed to change the function of her organs “in a manner contrary to the intrinsic and immanent function assigned them.” Still, indirect sterilization, such as in the removal of cancerous ovaries, was permitted to save her life [1951: 45]. Here compassion wins out.

Like his predecessor, Pius XII held that it is permissible for spouses to restrict sexual activity to infertile periods. Remarkably, he added that for good reasons, such as eugenics or health, spouses may choose to avoid procreation for the entire duration of their marriage, even though, again, this practice seems to undermine the primary purpose of marriage. He holds that persons can make the decision not to procreate even in advance of getting married [1951; L: 296, 298]. One could surmise that it was becoming clearer that marriage was a great good, quite apart from procreation. Catholic authors explain this seeming exception by insisting on an “in-principle” view of marriage and sexual activity.²⁴ Both are essentially procreative, even when they actually cannot or morally ought not be procreative.

Other authors, embracing personalist philosophy, pressed the Church to include a greater emphasis on the person in its sexual teaching. They argued that sexual intimacy, “the expression and actuation of the personal and affection union,” is equal to procreation or independent of it [1951; L: 310–314].²⁵ Against that view, Pius XII insists that marriage “is not ordered by the will of the Creator towards the personal perfection of the husband and wife as its primary end, but to the procreation and education of a new life.. . This principle holds good for all marriages, even if they are unfruitful” [1951; L: 312]. He holds that all that is profound in married love should be at the service of the children, such that complete self-sacrifice of their own needs is demanded of the spouses [1951; L: 314, 316]. The Pope cryptically

²⁴ Dennis Hollinger, “Good Sex: Its Meaning and Morals,” in *Moral Issues and Christian Responses*, 8th edition, ed. Patricia Beattie Jung and L. Shannon Jung [Minneapolis: Fortress Press, 2013], 122–26.

²⁵ In 1944, the Roman Rota had taken up a new theological challenge from personalism, namely, that “the evolution and perfection” of the husband and wife is not secondary but a primary end of matrimony.” In response, it said: “These newcomers to matrimonial matters stray from true and certain doctrine” *Acta Apostolicae Sedis* 36 [1944], 103.

added that if God had wanted sex to be primarily about mutual love, God would not have designed the sexual act the way God created it [1951; L: 328].

Nevertheless, Pius XII introduced somewhat of a personalist argument in response to those who were arguing that artificial insemination would in fact enable some spouses to fulfill the procreative purpose of marriage. Pius argued that if all God desired was the “union of two life-germs,” God would not have devised nature so that procreation requires the “personal cooperation” of the husband and wife [1951; L: 318]. Indeed, Pius’s theology gradually shifted to allow personalist concerns to play a greater role in the Church’s theology of marriage. For example, he describes a child as “the true and complete expression of [spouses’] reciprocal love” [1956; L: 500]. Then, making a novel addition to the tradition, he set out the precursor to what became for Paul VI the inseparability principle: “Never is it permitted to separate these various aspects to the positive exclusion either of the procreative intention or of the conjugal relationship” [1956; L: 503] [6]. It is this “never” that increasingly split the official Church teaching from the intuitions and practice of so many of the people of God.

5. Vatican II

The Second Vatican Council is justly famous for its shift in style. It made no normative changes to official teaching on particular sexual practices. Rather it offered a strongly positive affirmation of both marriage and sexuality. Whereas, in the popular Catholic mind, the Church taught that sexuality was the locus of sin, now it became a locus of grace. The Council demonstrated this change of attitude when it wrote that sexual actions within marriage are “noble and worthy ones... . These actions signify and promote that mutual self-giving by which spouses enrich each other.” Shifting the emphasis from procreation, *Gaudium et spes* describes marriage as “the primary form of interpersonal communion,” a “community of love,” a “conjugal covenant,” and an “intimate partnership of married life and love” [1965: 12, 47, 48, 49] [7]. This married sexual love is affirmed as eminently human, involves the good of the whole person, and, most remarkably, merges the human with the divine. In this context, children are described as the “ultimate crown” of this married love and the “supreme gift of marriage” [1965: 48–50].

For most of its history, the Church did not understand sexual activity in terms of love. Now, without giving any explanation for the change, the Church insisted that sexual activity both expresses and perfects love [1965: 49]. To use colloquial language, spouses “make love.” Even more, this love is now described as a “total love” [1965: 49]. One might best appreciate the exuberance of these descriptions by contrasting them with that of Augustine, who encouraged spouses to give up sexual activity as soon as they were able, because sexual activity usually involves sin.²⁶ That advice makes little sense if sexual intercourse is “love-making.” In contrast, the Council said that sexual activity signifies and promotes mutual self-giving [1965: 49].

It is well known that Vatican Council II did not reaffirm the past teaching of primary and secondary ends. The Council fathers assert that the “other purposes of matrimony” should not be made “of less account.” Like previous popes, the Council insisted that both marriage and marital love are ordained toward children. It now elevates this role by proclaiming that through procreation parents participate in

²⁶ Augustine, *The Good of Marriage*, in *Fathers of the Church* [New York: Fathers of the Church, 1955], 3.3.

God's own creative work; they cooperate with God's own love in enlarging God's family [1965: 50].

The Council fathers then took up the contentious question of "harmonizing conjugal love with the responsible transmission of life." The underlying challenge was that of birth control. The phrase "transmission of life," referring to the life of the species, reflects a biological perspective. The challenge was that many people had the experience that methods of birth control seemed to help spouses grow in conjugal love. As is well known, Paul VI decided that all the Council fathers, meeting in solemn assembly, along with their expert theologians, were not qualified to make a decision on this topic. So constrained, the Council members simply recognized that there are difficulties in the present era that make this harmony difficult. In an irenic, if naïve, fashion, they asserted that there cannot be any contradiction between these two natural inclinations, since God created both [1965: 51]. Breaking with a past attitude that encouraged large families, they recognized that there may be strong reasons to limit family size. They encouraged prospective parents to take into account a host of personal, social and historical factors in deciding the number of children [1965: 50]. The Council importantly affirms that it is the right of the parents to make this decision. However, these "responsible parenthood" decisions must include more than good intentions and should refer objectively to the "nature of the human person and his acts," in the context of love [1965: 50]. Then, in a restrictive clause, it tells "sons of the Church"--thus not making a natural law claim--to avoid what the teaching authority might eventually determine to be blameworthy [1965:51].

6. Paul VI

The encyclical *Humanae vitae* by Paul VI summarized, solidified, and somewhat extended points that had been made earlier in more informal "addresses" by Pius XII and by Vatican II. In that sense, the teaching was not particularly new. Paul VI tried to preserve the same norms, while also honoring the more positive theology of Vatican II. Thus, he affirms, "husband and wife tend toward the mutual communion of their beings in view of personal perfection, to collaborate with God in the generation and education of new lives" [1968a: 8] [8]. Paul VI points out that, even if not fertile, sexual acts always remain "ordained to expressing and consolidating their union" [1968a: 11].

The pope then addressed the central question of the encyclical: whether there is a moral difference between natural family planning methods and other methods such as the "pill." *Humanae vitae* masterfully acknowledges almost all the arguments made in favor of these other methods of birth control and against the old restrictions. Then he rejects these arguments on two grounds: the intrinsic evil criteria and the inseparability principle. The first subtly appeals to a sacrosanct character of sex, whose violation Aquinas thought was worse than sacrilege.²⁷ The second appeals to the laudable goal of a fully integrated life. Both grounds deserve consideration.

First, it bears repeating that an intrinsically evil act is said to be wrong, no matter how much evil would be avoided or how much good would be achieved [1968a: 14]. Thus, on the one hand, any positive reason for using contraception is immediately cast into the framework of doing evil (sin) to bring about good. On the other hand, any suggestion that using contraception might avoid evil is shunted off and directed to spirituality considerations: it is better to suffer evil or death (with

²⁷ *The Summa Theologica of Saint Thomas Aquinas* [Westminster, MD: Christian Classics, 1948], I-II.154.12.

Christ) than to do something wrong. In short, although Paul VI blesses human intelligence, which makes humans similar to God, he holds that this intelligence cannot be used to intervene to alter the biological sexual order established by God [1968a: 16]. Thus, even though “God has wisely disposed natural laws. . . which, of themselves, cause a separation” between sexual activity and procreation, that is, during most of the menstrual cycle, humans may not use their intelligence to do the same. Rather, “each and every marriage act must remain open to the transmission of life” [1968a: 11]. As is well known, such a claim was not widely persuasive. Taking a pill did not seem intrinsically evil to most people. In fact, it seemed prudent and loving. They agreed with Vatican II that sexual activity is holy in the sense that it cooperates with God, but they did not agree that it is sacred in the sense that it is off limits to human intervention.

Second, Paul VI reasserted the inseparability principle [1968a: 12]. Shifting from the teleological language of “purposes” or “ends,” he uses the word “meanings” (or “significations”), which point to an essential “nature.” The point is that sexual activity, abstractly, is the “kind” of activity that has a procreative “meaning.” This reference to kind of activity allows the procreative “meaning” to be honored even when no procreation is possible, that is, when the body itself is not “open to the transmission of life.” Contrary to at least one strand in John Paul II’s theology of the body, Paul VI does not demand that spouses be psychologically open to children. For Paul VI, there is no sin when spouses agree “in the positive will of avoiding children for plausible reasons, seeking the certainty that offspring will not arrive” [1968a: 16]. Rather “inseparability” forbids only actively doing something to cause infertility. Again, what God does (namely, separate fertility and union), humans may take advantage of; but humans may not actively do what God does [1968a: 11].

Paul VI nicely finessed the traditional teaching that husbands and wives have the right to use the body of their partners. He says that having rights over the body of another for sexual acts does not mean that one can impose a conjugal act on one’s partner. The Pope does not argue that marital rape would be a violation of rights (marriage remained a contract that gives to another rights over one’s own body); rather it is a violation of love, which is the new personalist criterion shaping the Church’s sexual and marital ethics [1968a: 13].

The Pontiff extended the Council’s teaching on love by describing it as a “special form of personal friendship, in which husband and wife generously share everything without undue reservation” [1968a: 8]. This is an important addition, since previous teaching tended to treat love in a generic way, sometimes describing it simply as “spiritual and disinterested.” Because marriage is a special form of friendship which is both bodily and interested, spousal love can allow or expect certain expressions of this love that are not permissible in other forms of friendship. Thus, the Church now offered a personalist argument for sexual exclusivity.

A week after *Humanae vitae*, Paul VI further embraced the “personalist conception” of married love [1968b; L: 1238]. Such love is “preeminent” in the subjective dimensions of marriage [1968b; L: 1238]. Paul describes it somewhat more carefully than his predecessors. It is “not a total fusion. Each personality remains distinct” [1970; L: 1235] [9]. This point balances out the frequent Church assertion, citing Genesis, that the two become one flesh. The latter assertion had been used as a basis for denying the independence of women within marriage. More expansively, Paul VI writes, “There is no married love that is not, in its exultation, an impulse toward the infinite, and that does not wish to be, in the impulse, total, faithful, exclusive and fecund” [1970; L: 1345; 1968a: 9]. As will be seen below, John Paul II will drop the qualifiers of “in its exultation,” “wish to be,” and “in the impulse.” For him, married love must be total, or else it is wrong. For Paul VI, conjugal chastity is a step by step process. He rebuffs the commonplace assumption that, after the marriage

ceremony, any sexual desire or practice is chaste. Rather, marital chastity is a life-long process of integrating “manifold tendencies” [1970; L: 1362]. John Paul II will insist, with the idea of total love, that love must always be complete.

Not surprisingly, the new theology of marriage as a personal covenant created problems with the contract notion enshrined in the 1917 Code. Paul VI himself underscored the disjunction: “conjugal love” plays a “lofty and necessary role in marriage,” but it plays no role in the canonical law about marriage [1976; L: 1609] [10]. He spoke against those newcomers who make the “validity” of marriage dependent on the presence of love [1976; L: 1603]. Any lack of love among married persons affects not in the least the traditional teaching of the absolute impossibility of divorce. Hence, Paul VI insists, all that is needed for a valid marriage is the “indivisible moment” of consent [1976; L: 1606]. After saying “I do,” no other decision of the will or any absence of love can make the slightest difference in the validity of marriage [1976; L: 1606]. This legal logic hardly matched the messiness and the narrative character of married life. The cognitive dissonance between official Church teaching and people’s experience of loveless marriages as well as life-giving second marriages led many people to abandon the Church.

The ecclesial consequences of *Humanae vitae* were enormous. They spring from two of the concerns that Haidt argues, as we saw, distinguish political and religious conservatives, namely, authority and loyalty. Coming at the time of an array of cultural world revolutions, *Humanae vitae* fractured the back of Church authority and divided Catholics. While Paul VI reaffirmed the tradition in order not to undermine Church authority, the result was the opposite. Many of the liberated Catholics insisted that they had to “follow their own conscience,” a teaching that had received some support in Vatican II but that also fed upon an expanding individualism. Mostly in vain, the defenders of Paul’s document pointed out that Vatican II’s affirmation of conscience was accompanied by restrictions such as the demand to be “submissive to Church’s teaching office,” the assertion of “objective standards,” the rejection of relying on sincere intentions, and the proscription of any “methods of regulating procreation which are found blameworthy by the teaching authority of the Church” [1965: 51]. Disagreement was often characterized as “dissent,” a term that unfortunately recast any debate from being a disagreement over truth to being disobedience to authority and a lack of loyalty to the Church. For many, the disjunction was cataclysmic.

7. Congregation for the doctrine of the faith

During Paul VI’s tenure, the Congregation for the Doctrine of the Faith (CDF), in its succinct “Declaration on Sexual Ethics,” charted new territory in understanding the fundamental topic of sexuality itself, even as it resisted any changes in the norms for specific sexual behaviors that might flow from that understanding. Following developments in psychology, the Vatican asserts that sexuality “so profoundly” affects the human person that it is one of “the principal traits that distinguish” an individual’s life [1975: 1] [11]. Where the tradition had primarily focused sexuality on prolonging the human race, here sexuality is considered to be central to a person’s identity.

This acknowledgment brought new challenges because many people were engaging in expressing their sexual identity in ways that the Church disapproved. Hence, the CDF decried “erroneous opinions” and a “growing permissiveness” that contradicted the traditional norms. In spite of evidence of widespread uncertainty and disagreement throughout much of the West, the Church declared that it “knows with certainty” that its own norms “are in complete harmony with the

Divine order of creation and with the spirit of Christ, and therefore also with human dignity” [1975: 13].

The CDF was quite explicit: its goal is “to repeat the Church’s doctrine” [1975: 6]. To understand the CDF’s response, it is helpful to recall what Haidt says about the human tendencies of both sides of an issue. “In moral matters, we. . . deploy our reasoning skills to support our team, and to demonstrate commitment to our team.” Haidt adds: “Conscious reasoning functions like a press secretary who automatically justifies any position taken by the president.” Haidt notes that all humans practice “confirmation bias,” which is “the tendency to seek out and interpret new evidence in ways that confirm what you already think.” At the same time, reason works hard to dismiss contrary evidence. In short, Haidt observes, “Moral matrices bind people together and blind them to the coherence, or even existence, of other matrices.”²⁸

Thus, on the topic of masturbation, the CDF dismissively writes that “facts do not constitute a criterion for judging the moral value of human acts” [1975: 9]. It adds, “Whatever the force of certain arguments of a biological and philosophical nature,. . . both the Magisterium. . . and the moral sense of the faithful have declared without hesitation” that it is “an intrinsically and seriously disordered act” [1975: 9]. In other words, contrary evidence does not affect the Church’s position. Taking loyalty for granted, the CDF presumes that the faithful’s attitude is in agreement, so no further evidence of that support is needed. Put another way, if any of the faithful were to hesitate or disagree, then they are not among the “faithful.” Finally, the CDF, after admitting that no text of scripture condemns masturbation, asserts that “the tradition of the Church has rightly understood it to be condemned in the New Testament.” Even if it is not there, it is there.

The CDF acknowledged that many psychologists were arguing that masturbation “is a normal phenomenon of sexual development, especially among the young” [1975: 9]. This appeal to development presented a new kind of challenge, namely, an activity might be appropriate at an early stage of life, even if it is not appropriate for adults. For example, some taught that it was a matter of indifference that young children fondle their own genitals. But in Church teaching this would objectively be one of the worst sexual sins possible (although subjectively innocent). That is, these act would be objectively evil since in children there is neither any possibility of procreation nor any sense of unity with another person. The response of the CDF was not to undertake the task of inserting a developmental understanding of sexuality. Rather, the CDF shifted the argument. It notes that many people who masturbate do not have the freedom to be fully responsible for sexually sinning [1975: 9–10]. This approach preserves the norm that the child’s act is objectively a grave matter, but it offers the relief that in children there is no personal guilt.

Not surprisingly, the CDF also rejected premarital sex. It upholds the traditional standard, saying, “every genital act must be within the framework of marriage” [1975: 7]. It explains that nonmarried persons “cannot ensure, in sincerity and fidelity, the interpersonal relationship between a man and a woman” [1975: 7]. It is noteworthy that the Congregation appeals to personalist values. Unfortunately, this approach overlooks that marriage itself cannot guarantee interpersonal stability, as divorce statistics indicate. Only a contract theory, claimed to be from God and both unalterable and unbreakable, keeps marriage technically stable even when in all other ways the interpersonal relationship has died.

The CDF next took up the topic of homosexuality, which had scarcely been present in earlier twentieth century Church teaching but was now being positively assessed in the psychological sciences. Social acceptance of homosexuality was gradually increasing since sexuality was now considered part of one’s very identity.

²⁸ Haidt, *The Righteous Mind*, 79–80, 91, 110.

The CDF, at this point in history, generally understood homosexuality as a pathology due to some incurable instinct or condition. It insists that “homosexual acts are intrinsically disordered and can in no case be approved” [1975: 8]. Even if homosexuals are incurable, they ought not act with their limitations.

Finally, the CDF had to deal with a new challenge raised by theologians who said that many people who engage in prohibited sexual actions may be acting wrongly, but they may not be drastically separated from God. It seemed highly implausible to these critics that, say, an adolescent boy who on one occasion freely enjoyed sexual fantasies was fit for damnation. To this, the CDF repeated the seventeenth century declaration that all sexual sins, no matter how slight they may seem, are objectively serious sins [1975: 10]. The plausibility of Church teaching grew thinner.


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