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John T. Noonan Jr.

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TOKOS AND ATOKION: AN EXAMINATION OF NATURAL LAW REASONING AGAINST USURY AND AGAINST CONTRACEPTION

"Natural law" being a composite abstraction capable of a variety of uses, the concept takes meaning only as it is put to work in specific contexts. I propose to examine how natural law has been appealed to by Catholic theologians in their arguments against usury and contraception. It seems to me that such examination may be more instructive as to what "natural law" meant to the theologians than an inspection of their formal definitions of natural law. The comparative aspect of this investigation may serve to bring out more sharply certain characteristics of the arguments. Usury was *tokos* to the Greeks, while what caused contraception was for them *atokion*.¹ Beyond this verbal link, usury and contraception share the bond of having been both condemned as contrary to the natural law of generation. There are resemblances in the reasoning directed to showing them evil. The relevance of such an examination to jurisprudence is at one remove; but reasoning as to the morality of human conduct is not dissimilar from reason as to the legality of human conduct, and legal parallels to the reasoning examined here may suggest themselves to the reader.

An act of lending is naturally sterile. An act of intercourse is naturally fertile. These two propositions appeared to be, respectively, the chief rational supports of the absolute prohibition by Catholic theologians of any increase or profit on a loan and the absolute prohibition by Catholic theologians of any act preventing intercourse from being fertile. By what reasoning were these propositions reached? What objections did they evoke? How did they relate to their respective prohibitions? Did they merely restate the rules, or did they have an independent function? Let us consider first the proposition on sterility.

I. THE NATURAL LAW CASE AGAINST USURY

An early scholastic analysis of usury rested on the legal definition in Roman law of a loan, *mutuum*. In a loan, it was argued, mine (*meum*) becomes yours (*tuum*). This etymology reflected the legal classification. As defined by Roman law a *mutuum* was the transfer of ownership.² If what was mine was now yours, it would be a contradiction in terms to charge for its use. Return of the good was, of course, stipulated for by the contract, but there was an inherent contradiction in temporarily transferring ownership and also requiring payment for the use of the good during the time it was loaned. The legal classification of the loan was itself violated by making the gratuitous act productive of gain.³

¹ *Atokos* is sometimes used in a financial sense meaning not paying interest. PLATO, *THE LAWS* 921c.

² *INSTITUTIONES* 3.14, in *CORPUS JURIS CIVILIS* (ed. by T. H. Mommsen, W. Kroll, P. Krueger, and R. Schoell, Berlin, 1928-1928).

³ HUGUCCIO, *SUMMA* 14.3 ante c. 1 (MS Munich, Staatsbibliothek, Cod. lat. 10247). The argument is still in use fifty years later when Thomas Aquinas adopts it in his youthful commentary on the Sentences (*In IV libros sententiarum Petri Lombardi*, 3.37.1.6, in *7 OPERA OMNIA*, Parma, 1852-1873).

In this argument, "nature" seemed to be nothing other than the order established by law. It was not made clear why another contract to pay usury could not be added to the gratuitous loan contract, especially as the Roman law itself recognized this possibility.⁴ It was not apparent why, for a man entering into the loan relationship, the legal description of the loan contract was decisive. The argument based on the nature of the *mutuum* gradually became obsolete.

A more substantial argument was based on the nature of money. Its classic formulation was by Aristotle. Money, he said, was invented to facilitate exchange, as the exchange of real goods was too awkward for civic life. To use money in a loan to gain more money was to misuse money, "for money was intended to be used in exchange, not to increase at usury."⁵ The argument here was still legal, but in its focus on the purpose of money it looked beyond the law to the human purpose in inventing money. It did not indicate, however, how this human purpose was frustrated if money were used both in commerce and in interest-bearing loans. It seemed to assume that, once the purpose of money was fixed by man, it was immoral to find some other purpose.

Associated with this analysis of the purpose of money was a contrast between money and naturally fruitful goods. The Greek word itself for usury, *tokos*, meant "offspring." Usury, Aristotle said, was offspring "against nature," and the nature Aristotle appealed to was the nature (*physis*) of the universe. He compared this offspring of sterile coin with the fruit of plants and the offspring of animals: these were "in accordance with nature." All mercantile trade was "against nature." But usury was most against nature, for here sterile coin itself bore fruit.⁶

This Aristotelian analysis was a favorite of Christian theologians. In the patristic period it was given prominence by St. Gregory of Nyssa. Usury, Gregory said, was the result of "a wicked union, which nature does not know." God the creator had given fertility only to sexually differentiated animals.⁷ Among the medieval theologians the sterility of money was a commonplace, and the conclusion was regularly drawn that from a naturally sterile good no increase should be taken.

The didactic and rhetorical values of the argument that money was sterile were evident. There were two difficulties with it. It did not cover the case of a loan of grain, where the Bible suggested that usury might be committed.⁸ It did not clearly distinguish between a loan of money where canon law forbade the lender a profit and the rent of a sterile house where canon law permitted the lessor a profit.⁹ St. Thomas Aquinas attempted a subtle reformation. Some goods, he pointed out, are naturally consumed in using them. Wine and seed are instances of this kind. For these goods the value of their use and the value of their substance are identical. Other goods, such as a house or a horse, are

⁴ DIGESTA 50.16.121, in CORPUS JURIS CIVILIS.

⁵ ARISTOTLE, POLITICS 1256-1258^b, tr. B. Jowett, in 10 WORKS.

⁶ *Id.* at 1257^b.

⁷ St. Gregory of Nyssa, *Homily* in PATROLOGIA GRAECA (ed. J. P. Migne, Paris, 1857-66) [hereafter PG] 54:671.

⁸ Deuteronomy 23:19.

⁹ *Decretum Gratiani* 88:11, in CORPUS JURIS CANONICI (ed. E. Friedberg, Leipzig, 1879-1881).

not essentially consumed in their use. They may deteriorate over a period, but to use them is not necessarily to consume them. That such goods will be consumed in use is characterized as *per accidens*: "it is not from the nature of inhabitation that a house is destroyed." To charge a rent for the use of such a good whose substance is distinguishable from its use is just. In contrast, it is essential to the nature of drinking wine that the wine be consumed. For goods consumed in their use it is wrong to charge for the use, for the use is identical with the substance. To sell wine, and then to sell its use, is to sell the same thing twice. Similarly, to lend money and get it back with a payment for its use is to be given back more than you have given.¹⁰

This argument, like Aristotle's, depends on assigning to goods a purpose which, it is then assumed, cannot be altered. Money, Aquinas argues, has the Aristotelian purpose of being consumed in exchange, or at least this is its "proper and principal use." Accordingly, like wine, the value of its substance and use are identical. The analysis here focuses on what would be described in Aristotelian categories as the essential form. Money is viewed as a consumptible because its substance has to be changed to use it. When money is spent, it no longer retains the same essential form even if the spender has a good of equal worth. In the same way fuel is essentially changed in being burnt, although burning it transforms it into energy. Looked at in this way, the use of money and its substance are the same value. When a borrower returns the money he received, he returns the whole value he had received. To charge for the use of the money, as well as to get it back, is to sell the same thing twice.

The Thomistic form of the argument seems more satisfactory than the Aristotelian in the two respects in which the latter is conspicuously deficient. It applies to loans of some goods other than money. It does not rest on a fanciful distinction between money, which does not breed, and animals, which do — a distinction made pointless once it is admitted that houses may lawfully be rented. The distinction between goods consumed at once and goods consumed over a period is a legal distinction, taken from the Roman law.¹¹ But it seems to rest on something in nature. There is a difference in the rate of destruction or deterioration of goods put to different uses. If one wants to cast this difference in terms of "essential" and "accidental" change and base moral distinctions on the difference, is this not an appeal to nature? Yet, despite these improvements, the Thomistic argument rests on the same unexamined premise as the Aristotelian: the purpose of money is exchange; to consider another purpose in lending is perverse. The argument that it is "against nature" to take usury is here not the legal argument that it is "against the nature of the loan contract"; it is the equally legal argument that usury is "against the nature of money."

With the main rational case against usury resting on the nature of money, two questions might have seemed appropriate: How do you know that the purpose of money is exchange? Why can't you change its purpose? The first was scarcely considered. The reason alleged by Aristotle for the invention of money

¹⁰ THOMAS AQUINAS, *SUMMA THEOLOGIAE* 2-2.78.1 (Leonine edition, Rome, 1899).

¹¹ *INSTITUTIONES* 2.4.2; *DIGESTA* 7.5.2, 5, 6, 7, and 10.

was too plausible. Everyday experience confirmed his explanation of the origin: money was indeed used to facilitate exchange. The twelfth and thirteenth century theologians were pioneers in the rational consideration of economic phenomena; they knew nothing of the sophisticated tools for economic analysis which were to be developed in the nineteenth and twentieth centuries. They believed that their commonsense appreciation of the evident facts was sufficient for moral evaluation. It was apparent that use in exchange was a purpose of money. Was it the relevant purpose to be kept in mind in the act of lending? This question merged with the question: Can you change the purpose of money?

The answer to this second question was that the purpose of money was established by law. Money was set by law as a measure of other values. Because it was the measure, its own value had to be taken as fixed. To say that money itself had a variable value was like saying that the measure for lengths or the scales for weights could be variable. To fulfill the function assigned to it by law, money had to be invariable in value. When money was transferred in a loan it seemed to be still being used as a measure of value. To assert that it was being used in some other way was to assert that its value was variable. But the law made no provision for treatment of money as a commodity, subject to price fluctuations like other commodities. The law seemed to assume that in a loan the measuring function of money must be regarded as its purpose.¹²

If one starts from the usual scholastic definitions of natural law, one would not suspect the degree to which a natural law argument could rest on human law. Yet it is apparent that usury was against natural law only in the sense of being irrational given the existence of a certain society and the truth of certain assumptions. Assuming that a stable measure of value was necessary for the operation of society and assuming that the measuring function of this standard of value was alone relevant in lending, then the formal Thomistic case against usury held. "Against nature" meant "against legal purpose." Instead of being contrasted with conventional legal rules, the natural law here depended on them.

Despite this dependence on the artificial, the contingent, and the human, there was a strong tendency to believe that usury was in some fundamental way a contravention of an order established by God. This belief was reflected in the claim that money unnaturally bred money. It was reflected in the showing that it was self-contradictory, self-stultifying, perverse to make a gratuitous contract and demand usury or sell the same good twice. The conviction of the theologians that some universal order was violated by the act was faithfully caught by Dante, who put the usurers with the sodomites in the circle of hell destined for those who "sinned against nature."¹³

The conviction that more must be at stake than a legal order also led to the framing of the argument in terms of the sale of time. At its most banal level the contention that the usurer "sells time" was simply a restatement of the proposition, based on the legal nature of money, that the usurer sells the same

¹² THOMAS AQUINAS, IN IV LIBROS SENTENTiarUM 3.37.1.6. For further discussion of this key point in the scholastics' analysis, see my *THE SCHOLASTIC ANALYSIS OF USURY* 93-94 (Cambridge, 1957).

¹³ DANTE, *LA DIVINA COMMEDIA* (Florence, 1928), *Inferno* Canto 11.49.

thing twice.¹⁴ But the argument was given in forms which had metaphysical or theological implications. The usurer, William of Auxerre said, "acts against the universal natural law, because he sells time which is common to all creatures." Every being, he continued, gives of itself. "Nothing, however, so naturally gives itself as time." The usurer, then, in selling what "belongs to all creatures, generally injures all creatures, even the stones; wherefore, if men were silent against the usurers, the stones would cry out, if they could."¹⁵ The notion of sacrilegious interference with the order of creation was pushed to the point where the usurer was said to be selling what was God's. Repeating William of Auxerre on the wickedness of selling what belongs to all creatures, St. Bernadine of Siena added that Jesus Christ had declared that "He alone knows the time and the hour. If therefore it is not ours to know the time, much less is it ours to sell it."¹⁶ The tendency, then, was to go from argument founded on purely legal and conventional grounds to argument appealing to the sacral constitution of the universe. The unnaturalness of usury was seen, at this extreme, as a violation of an order consecrated by God.

At the legal, conventional level at which the Aristotelian or Thomistic forms of the argument appealed to nature there were three main problems: recognized exceptions to the fixed purpose of money; shifts in analytical perspective; and circumstances extrinsic to the loan affecting the value of money. The first recognized exception was the rent of money *ad pompam*, for display. In this contract known to the Roman law, a person rented money not to spend it but to exhibit it as an indication of his wealth.¹⁷ In this case the use was found distinguishable from the substance, and the conclusion was drawn that rent might lawfully be charged.¹⁸ The difficulty this conclusion caused was twofold. Like the rent of a house, the rent *ad pompam* showed that the Aristotelian argument appealing to natural sterility was hollow. Nothing was more sterile than money on display, yet a profit from it was lawful. More importantly, this use showed that money might be considered a commodity. When money was rented for display, it was to be used as money, that is, as a sign and measure of wealth; it simply was not to be spent as money. But no one said that the rent *ad pompam* was unnatural. It was not objected that the sole function of money was to measure value while being spent. Another function for money was being recognized. Why did this function not subvert the foundations of the usury rule? Presumably because the case of the rent *ad pompam* was so rare that it was easy to believe that this purpose of money need not regularly be considered. This use of money could be considered not to be its "principal use." The distinction was not based on statistics, though doubtless statistics would have shown the rent *ad pompam* to be unusual. Rather "the principal use" designated that use in terms of which the other use acquired meaning and utility. Thus the special case could not shake the conviction

¹⁴ E.g., St. Bonaventure, *De decem praeceptis collatio* 6.19, in 5 *OPERA OMNIA* (Quarachi, 1888-1902).

¹⁵ WILLIAM OF AUXERRE, *SUMMA AUREA* 3.21.1 (f. 225 v.) (Paris, 1500).

¹⁶ Bernadine of Siena, *De contractibus* 43.2.3, in *DE EVANGELICO AETERNO*, 2 *OPERA OMNIA* (ed. J. de la Haye, Venice, 1745).

¹⁷ *DIGESTA* 13.6.5.6; 13.6.4.

¹⁸ THOMAS AQUINAS, *DE MALO* 13.4 ad 15 (ed. P. Bazzi and P. M. Pession, Turin, 1949).

that the obvious purpose of money was to be a measure and that this purpose must be observed in the act of lending.

The second exception to the standard view of money occurred in the sale of money when it was foreign exchange. In this case the money being purchased was not legal tender. It was a commodity, not a measure.¹⁹ Accordingly, there seemed to be no theoretical objection to variation in its value while its purpose as a measure was disregarded. There also seemed to be no threat to the usury rule when legal tender was exchanged on the spot for foreign currency. Even when a bank sold foreign currency to be delivered, say, three months later in the foreign country, there was no danger of the bank profiting by an extension of credit; the customer being charged was here extending credit. But when a bank bought foreign currency to be delivered three months later in the foreign country, there took place both the purchase of money as a commodity and a three-month extension of credit at a profit by the bank. The main argument against usury failed to cover the case. For a long time, from 1200 to 1600, the theologians argued over whether the usury rule — no profit on a loan — applied, or whether the case escaped the usury rule because money as a measure was not being purchased. In the long run the latter view prevailed.²⁰ In prevailing it substantially nullified the usury rule for international banking. It prevailed because, once it was apparent in transactions of comparative frequency that money had other purposes than that of a measure, the main argument against usury fell, at least as to these transactions. It was still true that the reason why the sale of foreign exchange took place was that ultimately the money sold was used as a measure. The "principal use" of money still gave utility and significance to the use of money as a commodity on the exchanges. But on the exchanges where money was viewed as a commodity there was no longer the Aristotelian or Thomistic objection to usury; money was here no longer confined to a single nature and function.

The nature of money also appeared in a different way when the perspective or focus of analysis shifted. This difference seems attributable not to recognition of another function of money, but to recognition of another way of looking at problems involving money. Money was treated as fruitful when it was a question of requiring full restitution of profits from money unjustly obtained, including money obtained by usury: the usurer making restitution was himself obliged to pay usury.²¹ Money was treated as fruitful when it was a question of investment in a *societas*, a partnership in which the investor risked his capital and was entitled to a return not measured purely by the risk.²² Money was treated as fruitful in the *census*, an annuity based on a revenue-producing base.²³

¹⁹ ALEXANDER LOMBARD, *TRACTATUS DE USURIS* c.9 (ed. A. M. Hamelin, Louvain, 1962).

²⁰ See *THE SCHOLASTIC ANALYSIS OF USURY* 182-190; 311-335.

²¹ There was a split of authority on this point. Compare WILLIAM OF AUXERRE, *SUMMA* 3.21 (f. 226r) saying that the money taken unjustly by the usurer was "the root" of the profits he made by investing it, with Thomas Aquinas denying this assertion (*Quodlibetales*, 3.19 in 15 *OPERA OMNIA* [Vives ed., Paris, 1871-1880]).

²² THOMAS AQUINAS, *SUMMA THEOLOGIAE* 2-2.78.2 ad 5. See *THE SCHOLASTIC ANALYSIS OF USURY* 133-153.

²³ Giles of Lessines, *De usuris* 9, in THOMAS AQUINAS, 17 *OPERA OMNIA* (Parma, 1864). The *census* was formally distinguished from a loan as being the purchase of a right to money.

By a shift in analytic perspective, money was identified in each case with real capital. Nothing in the Aristotelian-Thomistic view of the nature of money could account for the different treatment. The real reasons were pragmatic and various. Usury might not be discouraged if a usurer could take usury and make restitution without interest. The *societas* was an important form of commercial endeavor where the sharing of a business risk put the investor in a very different situation from the lender to a consumer. The *census* was a major form of agricultural credit and the most important form of municipal finance; it was highly unusual in the Middle Ages as a form of personal credit. Practical differences existed between *societas* and *census*, on the one hand, and *mutuum*, on the other; but theory based on the nature of money was helpless to account for the differences.

Circumstances affecting the value of money also subverted the Thomistic appeal to its nature. That the value of the use and the value of the substance of money are the same is formally correct, abstraction made from all the circumstances of the loan. If, however, even the circumstances of the lender alone are considered, there is a range of possible cases. If the lender is a man hoarding cash "in a chest," as some scholastics explicitly conceived him to be, he is at least arguably no worse off if he lets another person use his money and then gets it back without interest.²⁴ If, however, the lender has to take his money out of a going business to lend, he suffers a loss distinct from the value of the money loaned. If the lender is in an economy where there are opportunities for him to invest, he suffers the loss of the potential profit from an investment. Aquinas, and the majority of medieval theologians before 1450, refused to let the lender take into account these probable and potential losses by charging the borrower for them.²⁵ In this way, by arbitrary rule, the main argument was untouched. After 1450, the theologians admitted that interest might be charged as compensation in the circumstances where loss for the lender was probable, and by 1600 it was admitted that there were money markets in which a lender always suffered loss in lending rather than investing elsewhere.²⁶ At this point there was always a value attached to "the lack of the use of money," and the main Thomistic argument no longer held. The case it posited of the lender without a use for his money could no longer be regarded as the norm.

The process by which the Thomistic argument was undermined reflected both a shift in economic environment and a shift in analysis. The rise of specific money markets and, more broadly, the replacement of a purely agrarian society

The right might be for a fixed period or in perpetuity. It might be redeemable by refund of the purchase price, or not redeemable. It might have a fixed rate of return or one varying with the revenue actually produced by its base. It might be based on revenue from land, or from personal labor, from taxes. A variable, perpetual nonredeemable *census* based on farmland was close to being a partnership in the farm. A fixed *census* for a period of years based on personal labor was scarcely distinguishable from a loan. In the Middle Ages many theologians treated as evasions of the usury rule the forms of the *census* which were closest to a loan. When the usury rule was revised in the sixteenth century, one method of revision was to accept as lawful means of profit all forms of the *census*. See THE SCHOLASTIC ANALYSIS OF USURY 154-164; 231-241.

²⁴ See St. Bernadine, *De contractibus* 42.2.2.

²⁵ THOMAS AQUINAS, DE MALO 13.4 ad 14; SUMMA THEOLOGIAE 2-2.78.2 ad 1.

²⁶ On the change, see THE SCHOLASTIC ANALYSIS OF USURY 249-268.

by a commercial capitalism changed the likelihood of the hoarder of cash being the normal lender. At the same time, the new analysis recognized that the circumstances of the lender had to be taken into account in determining what the value of his money was to him. From looking at the abstract purpose of money and deducing its value therefrom, the postmedieval theologians turned to considering, in addition to the nature of money, the individual circumstances of the lender. This new focus on the person of the lender and his situation, replacing the focus on the act of lending by itself, led to the major theoretical breakthrough producing the modern distinction between usury and interest. Changes in the economic environment had stimulated the rethinking which led to the recognition of circumstances beyond the act of lending and the primary purpose of money. The new view, by contrast, revealed how purely the old argument had focused on the isolated act of lending and the presumed purpose of money to reach its conclusion.

In retrospect, it is difficult to see how such an abstract argument as the Aristotelian-Thomistic one carried such weight. The argument, it might be suspected, was only rationalization for a prohibition decreed by authority. After all, the Old Testament, the New Testament, three ecumenical councils, half a dozen popes, and numerous local synods had condemned usury absolutely. The theologians' unfortunate task, it might be guessed, was to provide an explanation for the condemnation.

Such a view would be unduly mechanical. The biblical texts attacking usury were found relevant because usury struck perceptive men in the medieval economy as a serious problem. The councils, popes, and synods called attention to the biblical texts and added penalties of their own for the same reason. The texts would have remained inoperative, the ecclesiastical authorities silent, if conditions had not evoked the ancient precepts and demonstrated afresh their relevance. To be sure, the biblical texts and formulas of the Church influenced the way the economic and social phenomena attendant on lending were seen; but the phenomena, it may be hypothesized, were such as to make the old texts and new sanctions seem appropriate.

The vitality and the relevance of the rule are not to be identified with the supporting rationale of the nature of money. The rule protected certain values. It was these values — not the rule itself and not the argument based on nature — which were to prove to be permanent parts of the Christian tradition. These values were not the same as the "nature" appealed to when the nature of money was focused upon. What these values were may, perhaps, be discovered by a consideration of the other arguments supporting the rule. These other arguments were three: Usury is uncharitable. Usury is an occasion for the sin of avarice. Usury has undesirable social consequences.

Usury was sometimes viewed as a particular sin against charity, especially as a failure to help one's neighbor in distress. This failure was measured against an ideal Christian community in which wealthy Christians put their resources at the disposal of needy Christians. The special unity of Christians was thus urged by St. Bernadine: "As we are all one body in Christ Jesus, a Christian having money useless to himself is necessarily bound to communicate it to his

neighbor who can make it useful for himself."²⁷ This explanation went beyond the demands of nature to the demands of the mystical body of Christ. But viewing the community as a purely natural arrangement, it was argued that usury was prohibited by "natural instinct" because it was always against the charity by which we are bound to help our neighbors.²⁸ In this perspective, loans to the needy poor had a particular malice, and usury was always a failure to love one's neighbor as oneself.

That usury led to avarice rested, in part, on an Aristotelian observation. There is no natural limit, Aristotle maintained, to the desire for money. A man trading for the purpose not of satisfying natural need but of accumulating wealth seeks wealth without limit. The trader thus knows no measure, and of all traders the worst is the usurer.²⁹ This argument carried too far for the medieval theologians, who, unlike Aristotle, did not condemn all commercial enterprise. But they often attributed to usurers a sinful passion for wealth, and here the theologians drew on observation of their own society. The usurer acted not from necessity but from cupidity. The usurer appeared to have a hardheartedness and a taste for making money without risk or labor. "Where your treasure is, there will be your heart also." The usurer had placed his treasure in his loans, and his interest in them seemed likely to displace any interest in heaven.³⁰

The argument from consequences was urged most strongly by Pope Innocent IV, a native of the great commercial port of Genoa. If usury were permitted, he said, the rich would rather lend usuriously than invest in agriculture. Only the poor would be left to do the farming, and they would not possess the animals and tools with which to farm. Famine would result.³¹ In this view, the usury rule ensured a channelling of economic resources into socially necessary uses. This was an opinion not without foundations in a Europe largely dependent on agriculture and not without confirmation in the harsh experiences with village usurers in ancient Greece or in pre-Communist China.³² It was a rationale accepted by some of the most acute medieval commentators—Cardinal Hostiensis; Chancellor John Gerson; the most learned of canonists, Joannes Andreas.³³ None of these authorities relied solely on this reasoning. Yet Pope Innocent had discovered a purpose for the usury rule which made the rule flexible, open to change as the environment changed. His reasoning offered the best insight into the contingency of the rule.

The value protected by the usury rule might, then, be said to be love of one's neighbor. This value was made specific in the rule's requirement of mercy to the poor and unselfishness in lending. The rule was animated, received vitality,

²⁷ St. Bernadine, *De contractibus* 38.1.10.

²⁸ Innocent IV, *Apparatus super libros decretalium* (Strassburg, 1478), 5, *De usura*, ante c. 1.

²⁹ ARISTOTLE, *POLITICS* 1256^b.

³⁰ Innocent IV, *Apparatus super libros decretalium* 5, *De usura*, ante c. 1; St. Antoninus, *Summa sacrae theologiae* (Venice, 1581-1582), 2.1.6.

³¹ Innocent IV, *Apparatus super libros decretalium* 5, *De usura*, ante c.1.

³² See HENRI PIRENNE, *MEDIEVAL CITIES* 126 (tr. by F. D. Halsey, Princeton, 1925); LIEN-SHENG YANG, *MONEY AND CREDIT IN CHINA* 93-98 (Cambridge, 1952).

³³ See *THE SCHOLASTIC ANALYSIS OF USURY* 50, 65, 70.

from the Christian commitment to love of other persons. Only this Christian value of love gave life to the rule; only this value survived in the rule's ultimate revision. In the context of an agricultural economy, the usury rule functioned to prevent exploitation of the poor by village loan sharks. The exceptions to the rule permitted investment in commercial partnerships, municipal finance, some forms of agricultural credit, and, eventually, international commercial banking. The exceptions revealed the true function of the rule, the true value protected. But this view of the rule and its animating value leaves unexplained the adoption and role of the argument based on the nature of money. Why was this argument used at all?

The argument may be seen, from a hostile perspective, as functioning to make absolute a rule which could have been selective. Instead of being directed at the primary evils, the rule, because of the argument, blindly inhibited good and evil loans alike. The absolute rule, however, seems to have had priority, in time and in authority, over the argument. The rule existed. Why was this argument chosen to support it?

Providing the framework for the choice, there was the well-known preference of medieval philosophers of arguing from essences. This general characteristic of intellectual style was reinforced by considerations particularly influential when speaking of sin. If an act is condemned as intrinsically evil, it seems easier to defeat the exceptions which always threaten to subvert a moral rule. "It's against nature": this appears to be a swift and secure answer to any claim that an unusual situation justifies modification of a rule. The appeal of security and simplicity which this kind of response offers may be supposed to have motivated the wide acceptance of the argument here. The satisfactions thereby obtained must be considered to have been rhetorical and psychological rather than intellectual. Anyone who studied the rule knew of the exceptions which made simplicity and certainty illusory. But both in justifying the rule to oneself and in presenting it to others there seems to have been a psychological satisfaction in having a moral position which rested on the internal self-contradiction of the act it condemned; and this subjective satisfaction was strengthened by the rhetorical satisfaction of denouncing usury as wicked because unnatural. The cries, "Money is sterile" and "The usurer sells time," persisted long after it was clear that the same observations could be made about money in the *census*, *societas*, rent *ad pompam*, or foreign exchange. The argument based on nature seemed to be the surest way of establishing the evil of usury even if the nature appealed to was a nature determined by law and ignored in some analogous transactions.

These psychological and rhetorical reasons may account for the adoption of the argument. They do not point to its most significant function. Because the whole discussion had been set in terms of nature, rational investigation was initiated; a process was begun in which rationality could play. The natural argument and its variants may be viewed as an attempt to express, in language persuasive in the twelfth and thirteenth centuries, the sense of the theologians that there was an evil in usury which man could grasp. The usury prohibition was not simply a law of the Jews, to be dropped eventually like the taboo on intercourse

in menstruation. It was not an inexplicable command of God, to be accepted like the command to Abraham to kill Isaac. It was not a simple decision of ecclesiastical polity, from whose hold the pope could dispense.³⁴ It was not a rule intended only for Christians by reason of some peculiarity of Christian theology.³⁵ It was a moral rule binding all men in the society because usury was a real evil in the society. The reality of that evil was expressed in an argument which now seems clumsy, too far-reaching in some aspects, too short in others. Its actual function was not to convince, but to symbolize. It stood for the proposition, Usury is a moral evil in this society, and there are reasons showing this evil. It announced the rational character of the rule on lending. It proclaimed that there was a measure in economic relations. It said that the rule was not to be modified by arbitrary ecclesiastical enactment; that the rule was not to be taken as a divine mystery, a Jewish superstition, or an esoteric Christian truth. But putting the case against usury on a rational level it invited all the subsequent changes.

II. THE NATURAL LAW CASE AGAINST CONTRACEPTION

Like the case against usury, the case against contraception rested primarily on certain positive assumptions about the institutional arrangements which the condemned behavior would distort and about the purpose of the act and objects which the condemned behavior would frustrate. The starting point was reflection on the meaning of marriage as an institution. For the Jews marriage had been a way of perpetuating the race which awaited the Messiah and a way of overcoming death by living in one's descendants. For the redeemed Christian neither of these purposes made sense. The Messiah had come; the Resurrection had assured each Christian of eternal life. What was the purpose of an institution such as marriage? It was attacked on one side by Christian Gnostics who urged that virginity was the only proper state for the Christian in these "the last days"; it was attacked on the other side by Christian Gnostics who argued that the liberty conferred by Christ on every Christian was liberty from all restraints on sexual behavior.³⁶ Faced with these objections from the Right and the Left of the second century, the orthodox theologians resorted to a "natural law" answer already given by the Stoics: the purpose of marriage was procreation.

The Stoic teaching on marriage was set in a doctrinal context containing elements hostile to the Gospel. The Stoics prized the freedom of a man from dependence on all external forces including other human beings, and they advocated a rigid suppression of emotions.³⁷ These views should have logically led to an aversion to marriage. But the Stoics also respected man's nature as

³⁴ In the decretal *Super eo*, Alexander III taught that the pope could not dispense from the usury rule even for the worthy purpose of raising money to ransom captives of the Saracens. DECRETALES 5.19.4, in CORPUS JURIS CANONICI.

³⁵ The rule applied in theory to the Jews (see RAYMOND OF PENNAFORTE, *SUMMA CASUUM CONSCIENITAE* 2.7.9 [Verona, 1744]), although the Jews themselves did not feel bound by the prescriptions of the canon law.

³⁶ See my *CONTRACEPTION: A HISTORY OF ITS TREATMENT BY THE CATHOLIC THEOLOGICALS AND CANONISTS* 58-72 (Cambridge, 1965). [Hereafter cited as *CONTRACEPTION*.]

³⁷ EPICETUS, *ENCHIRIDION* 41 (ed. Heinrich Schenckl, tr. W. A. Oldfather, Cambridge, 1928).

they found it to be. The generative organs existed; they must, therefore, be part of the universal order and have a purpose. That purpose appeared to be generation. It was to act in accordance with nature to use the generative organs for generation.³⁸ Marriage appeared as the institution in which this generative usage was sanctioned by law and custom. The Stoics accepted marriage for generation as an institution which, channelling a natural power, did not destroy the ideal of rational self-sufficiency.

The Christian theologians were faced with a problem somewhat like the Stoics. What account should be taken of sexual tendencies in a system where the dominant ideals seemed to exclude any value for sexuality. The theologians found the Stoic solution satisfactory. Although procreation no longer had the purposes the Jews had assigned it, man's nature must be respected. Although Christ had freed Christians from the law, the Christian was not freed from the demands of his nature. It was to act according to nature to use the generative organs for generation within the institution established by law. To the theological objections from the Right and the Left, man's nature was an answer.

One persistent strain of Christian thought, then, linked the procreative purpose of intercourse to the institution of marriage. "We Christians marry only to bear children," declared St. Justin in his celebrated second century defense of Christianity;³⁹ that marriage was for procreation was repeated by second century writers like Athenagoras, Clement of Alexandria, and Minucius Felix.⁴⁰ Two centuries later a classic statement of the connection between procreation and marriage was made by St. Augustine: the formula used in the marriage ceremony, he said, "announces that the marriage is contracted to procreate children." When spouses avoid children, "husbands are shameful lovers, wives are harlots." To marry, planning not to have children, is not to marry at all.⁴¹ With particular clarity in Augustine's analysis, contraception appeared as a violation of the institution of marriage. This institution was, first of all, a legal institution. Augustine invoked the language of the Roman wedding contract. Yet this legal institution was also viewed as divinely sanctioned. God, man's creator, willed man's perpetuation in marriage.⁴² In this way, to violate the purpose of the institution was to act against nature in acting against an institution designed by the author of nature. Just as usury was found to violate the nature of lending as designed by law, so Catholic theologians taught repeatedly that contraception violated the nature of marriage as designed by the law and by God.

The argument based on the institution failed to show that each act of contraception was evil; at least it left open the question whether the contraceptive act was wrong in a marriage where a number of offspring had been procreated so that the institutional purpose had been accomplished. A second strain of Christian thought taken from the Stoics focused on the nature of the genital mechanism. The generative organs were to generate with. At the lowest level,

³⁸ MUSONIUS RUFUS, *RELIQUIAE* sec. 63 (ed. O. Hense, Leipzig, 1905).

³⁹ ST. JUSTIN, *DUAE APOLOGIAE*, 1.29 (ed. Gerard Rauschen, Berlin, 1911).

⁴⁰ See CONTRACEPTION 76-77.

⁴¹ Augustine, *Contra Faustum* 15.7, *CORPUS SCRIPTORUM ECCLESIASTICORUM LATINORUM* (hereafter: *CSEL*) 25:430.

⁴² Augustine, *De bono coniugii* 1, *CSEL* 41:187.

as with the *mutuum*, the proof was verbal, from the name. At a somewhat more sophisticated level, the appeal was to what was self-evident, just as in usury the appeal had been to the self-evident use of money. It was obvious that generation was consequent on the exercise of the generative organs. It was assumed that this was their proper and natural purpose. To use them for some other purpose was to violate their nature and thereby nature in general. "To have coitus other than to procreate children is to do injury to nature," taught Clement of Alexandria.⁴³

This argument focused on the nature of the genital organs, or on the nature of the male seed, or on the nature of the act of coitus. The focus varied with author and epoch. The differences are not, I think, material. The organs or the seed are said to have a given nature because of their use in the act. It is the process and its components which are treated as naturally generative. As with the assertion made about the purpose of money, this view of the purpose of the generative apparatus was reached without any statistical examination of the number of times coitus was generative. It was similarly also reached without the benefit of exact technical knowledge. The reproductive mechanism was largely *terra incognita* when this reasoning was fashioned. The female ovum had not been discovered. There were positively erroneous notions about the role of the male sperm. Neither statistically nor scientifically founded, the statement as to nature expressed a judgment as to what the norm of sexual conduct should be.

The related questions may now be considered: How did the Christian theologians know that generation was the sole purpose of coitus? Why could the purpose not be changed? Evidently, generation was a purpose of coitus: some coital acts resulted in conception. Evidently, the purpose was an important one: it assured the survival of the race. But why was it the sole natural purpose? Why could it not be altered?

The analogous questions on the nature of money had been answered by an invocation of the law. The law had also fixed the purpose of marriage, and it could be urged with Augustine that the only coital acts licensed by marriage were those which fulfilled the purpose the law had set. The chief reliance, however, was not on what the law had determined, but on what God had determined. The generative purpose, it was said, was unalterable because it had been fixed by God. To perform the generative act while frustrating the generative purpose would be to offend God. In some way beyond the sense in which any sin might be said to offend God, it was argued that violation of the natural purpose here was an affront to Him.⁴⁴

There are two ways of understanding this answer. One is to see it as question-begging. How did one know that God would be offended if the generative purpose was changed? The theologians held no general principle that God was offended by every human alteration of bodily processes. The answer presumed that God would be offended because nature here was in some special way fixed. But whether or not nature was fixed was the question which led to the invocation of

⁴³ Clement, *Paedagogus* 2.10.95.3, DIE GRIECHISCHEN CHRISTLICHEN SCHRIFTSTELLER DER ERSTEN DREI JAHRHUNDERT (hereafter GCS) 12:214.

⁴⁴ THOMAS AQUINAS, *SUMMA THEOLOGIAE* 2-2. 153.3 ad 2.

God. "Fixed by God" may be seen as an emphatic way of saying "fixed by nature" without providing any increase in knowledge.

The other way of understanding the invocation of God is to enlarge the implications of the answer along the following lines: Because coitus is the means by which God brings human life into the world, it is a unique kind of collaboration with God.⁴⁵ It is unlike other bodily processes in this sacredness. Other processes can be interfered with, channeled, interrupted. The act by which human life may originate must be kept immune from all human meddling.⁴⁶ The act is *sui generis* in its potential power; it must be treated as *sui generis* in its freedom from human control. Developed in these terms, the claim that God has fixed the purpose has a content.

There were, however, two main sets of difficulties with this developed answer. As with the teaching on the nature of money, one set grew out of recognized exceptions to the fixed nature; the other grew out of circumstances of the person performing the act which affected the quality of the act. Of the exceptions, the oldest one was that summed up under the rubric of "the marital debt." St. Paul had taught that there was a duty incumbent on each spouse "to render the debt" to the other.⁴⁷ Christian theologians treated this injunction as establishing an obligation for one spouse to have intercourse if the other spouse sought it.⁴⁸ It was apparent from experience that the spouse seeking intercourse might not always do so for a generative purpose. Yet, it was unanimously taught, the other spouse was not thereby freed from the duty of rendering the debt. Coitus was necessarily, then, assigned a purpose other than generation, the purpose of satisfying the marital obligation. It was not explained how the act, here satisfying this purpose determined by the marriage contract, was related to the generative function. It was simply accepted that satisfaction of the debt was a natural purpose as well as generation.

This ancient exception was not as subversive of the general rule on coital purpose as exceptions recognizing that coitus might also be initiated for nongenerative purposes. The first of these exceptions was an extension of another teaching of St. Paul. If, as he taught, marriage was a remedy for incontinence,⁴⁹ then a spouse tempted to commit some sexual sin of incontinence might lawfully seek marital intercourse. This opinion, an occasional one among the Fathers and a minority one among medieval theologians, was ultimately accepted by the majority of theologians in the seventeenth century and has since then been common teaching.⁵⁰

The Pauline exceptions had easier acceptance than those where no biblical authority stimulated reflection. In the fifteenth century, however, Le Maistre taught that marital intercourse might be sought for reasons of psychological health; his view was eventually accepted. He also taught that marital intercourse

⁴⁵ John Chrysostom, *On Those Words of the Apostle, "On Account of Fornication,"* PG 51:213.

⁴⁶ St. Ambrose, *Expositio evangelii secundum Lucam* 1.43-45, CSEL 32 (4): 38-39.

⁴⁷ 1 Corinthians 7:3-6.

⁴⁸ THOMAS AQUINAS, IN IV LIBROS SENTENTiarUM 4.32.4.

⁴⁹ 1 Corinthians 7:9.

⁵⁰ See CONTRACEPTION 77-79, 248-249, 312-321.

might be sought for pleasure, for pleasure too had a rational function in human life.⁵¹ After four centuries of bitter dispute, this view, or a qualified version of it, became accepted by a majority of twentieth century theologians.⁵² Finally, the idea was advanced that coitus might be sought in order to express marital love. This nineteenth century innovation was widely adopted by twentieth century theologians.⁵³

If it were lawful, and therefore not unnatural, to have intercourse to pay the debt, to avoid incontinence, to gain health, to have pleasure, or to express love, it was apparent that generation was not the sole natural purpose. It became usual among modern theologians to speak of generation as "the primary purpose." But this labeling did not solve the problem. How did they know which purpose was primary, which secondary? If a variety of purposes existed, why could not one purpose be pursued at certain times, and another purpose at other times? Like the recognition of a variety of purposes for money, the recognition of a variety of purposes for intercourse did not overturn the formal argument. It could still be insisted that the act producing human life was so sacred that it could never be altered. Yet the persuasiveness of this contention was inevitably weakened when it was admitted that there were a number of less important functions which coitus might naturally fulfill. It was not self-evident why, in the fulfillment of one of these "secondary functions," measures might not be employed to prevent the "primary function" from being exercised. The most severe advocates of the position that the generative function was fixed had permitted this measure of human control: spouses were free to decide to have intercourse or not. The necessary initial step had thus always been recognized as a domain of human choice. If, in addition, it was recognized that coitus had several functions to fulfill, the question pressed: Why was it an offense to God to let human choice determine which function was to be performed?⁵⁴

The circumstances in which coitus was performed were also seen to affect the purpose of the act. Originally analysis focused on the genital act or mechanism alone without reference to other considerations, just as the analysis of usury had focused on the nature of lending and the nature of money. It was recognized by some late sixteenth century theologians, however, that generation could occur to the detriment of the education of existing children or to the disadvantage of the family. These circumstances were first perceived as reasons for qualifying the right to the marital debt.⁵⁵ Only in the twentieth century was it urged by some theologians that the same considerations affected the quality of the generative act itself. If, in given circumstances, generation injured the educational opportunities of existing offspring, if it injured seriously a spouse's health, if it harmed conjugal unity, could it be said to be natural? Their conclusion was that, in

⁵¹ MARTIN LE MAISTRE, *QUAESTIONES MORALES* (Paris, 1490), vol. II, "De temperantia," f. 49v.

⁵² See CONTRACEPTION 492-494.

⁵³ See *id.* at 500-502.

⁵⁴ Louis Janssens, *Morale conjugale et progestogènes*, 39 *EPHMERIDES THEOLOGICAE LOVANIENSES* 817-821 (1963).

⁵⁵ Peter de Ledesma, *Tractatus de magno matrimonii sacramento super doctrinam angelici in aliquibus quaestionibus additionum ad tertiam partem* 64.1 (Venice, 1595).

such circumstances, it was better to prevent generation than to generate; the natural act was now the nongenerative act.⁵⁶

The parallel here with the development of the recognition of interest should not be pressed too hard, but one line of comparison is relevant. The right to interest became commonly admitted only when the economic environment had changed sufficiently so that, ordinarily, the circumstances of the lender were such that to lend resulted in loss. The interest-free act could then no longer be accepted as a norm. Similarly, here, circumstances of the spouse which may affect the generative norm have received theological recognition only with two major changes in the environment: the development of a social structure in which personal choice plays a major role in marrying, so that personal love between the spouses becomes an expectable and important value; and the development of universal and prolonged education, so that the education of children may be seriously affected by an increase in the number in a family.

A second comparison is also worth consideration: Recognition of interest occurred when the focus of analytic concern shifted from the act and the means used in the act to the circumstances of the lender. The lender was then viewed, not precisely as a person, but at least concretely in a particular economic situation. The analogous tendency in the theology of marriage since 1935 has been not to focus on act and means, but on the spouses in their concrete situation. This new approach has often been expressed in terms of personalist philosophy as an approach taking into account the whole person instead of the biological act.⁵⁷ The personalist focus may be distinguished from a mere consideration of circumstances. Yet, in fact, a consideration of all the circumstances affecting the act leads to a result very similar to that suggested by the personalists. Only abstraction of the coital act from all circumstances had once made it possible to contend that it was naturally generative.

A shift in analytic perspective and interest also affected the natural law argument. The full Augustinian assertion on the purposes of marriage was that it was for "the generation of offspring to be educated religiously."⁵⁸ In medieval theologians like Aquinas the statement became "the purpose of intercourse is the generation and education of offspring." It is not entirely clear in Aquinas whether the educational purpose necessarily transcends nature and requires Christian revelation.⁵⁹ In the Thomistic argument against fornication, only natural education appears to be assumed by the argument that fornication is evil because an act is posited, which is naturally directed to the generation and education of offspring, but which here fails in its provision for education.⁶⁰ If the coital act, then, is taken as normally generative and educative, it is apparent that a large number of discrete human acts are embraced by the apparently unitary term "purpose." The fundamental difficulty caused

⁵⁶ Josef Maria Reuss, *Don mutuel des époux*, LA VIE SPIRITUELLE, Supplement (1964), p. 122.

⁵⁷ The fundamental exposition of this approach is HERBERT DOMS, *VOM SINN UND ZWECK DER EHE* (Breslau, 1935); French trans. by Paul and Marie Thisse, *Du sens et de fin du mariage*, revised and augmented by the author (Paris, 1937).

⁵⁸ Augustine, *In Genesim secundum litteram*, 9.7, CSEL 28¹:276.

⁵⁹ Consider THOMAS AQUINAS, IN IV LIBROS SENTENTIARUM 4.31.2.2 ad 2.

⁶⁰ THOMAS AQUINAS, DE MALO 15.2 ad 4.

by saying that the purpose of coitus is "generation and education of offspring" is to recognize two purposes which may not be both realizable. If the act is natural only if both purposes are accomplishable it would seem as unnatural to generate in marriage, if education could not be carried out, as it would be unnatural to generate outside of marriage. It could also be argued that, if a coital act had generated offspring A, who was to be educated, it would be an unnatural act to generate offspring B if his generation would substantially impair A's education. In both the Augustinian statement on the purpose of marriage and the Thomistic statement on the purpose of intercourse, there is a potential conflict between the value attached to generation and the value attached to education. Nothing in the appeal of the statements to nature resolves the potential conflict. Whether generation or education were favored would seem to depend on the circumstances of a particular environment.

The recognition of other uses for coitus, the perception that in a number of cases generation would be harmful to natural goods, the inability of the appeal to nature to decide between generation and education — all of these indications would suggest that, in asserting that contraception was contrary to nature, the theologians did not base themselves on some discovered order in the universe, but asserted values they thought important. This conclusion may be confirmed in two ways: by looking at the selective use of examples of what constituted natural behavior, and by observing the inconsistent views of the theologians on the marriage and marital behavior of the sterile.

A favorite example of Stoic and patristic writers on sexuality was taken from agriculture: a sower did not throw seed on barren soil, or on soil already planted, nor did he throw seed wastefully.⁶¹ The behavior of the sower was taken as natural. The behavior of a farmer building a dam, thereby channelling and frustrating natural forces, was never invoked as relevant. Yet both the sowing of seed and the building of dams are instances of purposeful human interference with physical forces. One was dramatically useful in the assertion of the procreative purpose, the other was not.

Similarly, the animals were usually cited as examples of natural sexual behavior. Sometimes it was alleged generally that all animals refrained from intercourse in pregnancy; sometimes special animals like the elephant were cited for this kind of restraint. Such behavior was urged on man as natural.⁶² On the other hand, some animals were spoken of as unnatural. The hare, to whom was attributed two sets of sexual organs, only one of which functioned reproductively, was instanced as an animal not to imitate.⁶³ The weasel, said to copulate by the mouth, was not an example for man to follow.⁶⁴ The dorsal position for a man in intercourse was stigmatized as "doglike" and condemned.⁶⁵ In short, the animals were used only as vivid illustration of values already arrived

⁶¹ Clement, *Paedagogus* 2.10.91.2, *GCS* 12:212.

⁶² JEROME, *CONTRA JOVINIANUM* 1.49; WILLIAM PERALDUS, *SUMMA DE VIRTUTIBUS ET VITIIS* (Venice, 1497) 16, "Temperance," 18.

⁶³ Clement, *Paedagogus* 10.85, *GCS* 12:209.

⁶⁴ BARNABAE *EPISTOLA* 10.8 (ed. Theodore Klauser, Bonn, 1940).

⁶⁵ Burchard of Worms, *Decretum* 19.49, in *BUSSORDNUNGEN DER ABENDLANDISCHEN KIRCHE* (ed. F. W. H. Wasserschleben, Halle, 1851).

at. "Nature" was not derived from a study of actual behavior of animals. Lore about the animals was used selectively to teach what the proper values were. The tendency to invoke the animals for purposes of comparison was as pronounced as the tendency to contrast natural animal fertility with the sterility of money. In each case the comparisons were rhetorical and didactic and not the basis for the moral judgments already reached. Animal nature was a teaching device, not a preexisting and determinative standard of conduct for men.

The projection of values which appeared so clearly in the choice of animal examples was also made evident in the treatment of nature where the married sterile were concerned. Here Christian practice and theology led to a view of "nature" distinct from the view asserted in the proposition defending procreation. A literal application of the teaching on the purpose of marriage would have barred marriage to the sterile. Sterility would have been an objection to contracting a marriage and a ground for annulment if a marriage had been attempted. Like impotence, sterility would have been an impediment to marriage. A literal application of the teaching on the nature of the generative organs would have also barred intercourse to the married once one spouse was incapable of generating. Intercourse at a time when sterility was certain would have been termed unnatural. Intercourse in pregnancy would have been held to be as unnatural as anal intercourse was held to be. In fact, however, the Church put no barrier to the marriage of aged women who could no longer conceive. The Church would not dissolve sterile marriages. Sterility did not become an impediment.⁶⁶ The intercourse of the sterile was not labeled as unnatural.⁶⁷

Not only was the marriage of those known to be sterile always accepted; not only was their right to intercourse eventually established. It was conceded in the nineteenth century and emphasized in the twentieth century that, in given circumstances, all spouses had the right to seek intercourse at times ascertained to be sterile.⁶⁸ Although a few surviving Augustinians protested that rhythm was unnatural, most modern theologians made no attempt to object to it as against nature.⁶⁹ A method calculated to sterilize the "naturally generative" coital act was accepted without serious controversy.

The attitude toward rhythm, like the older attitude toward the marriage of the sterile, must be a source of surprise and discomfort for anyone who takes literally the statements, Coitus is naturally generative, Contraception is against nature. The same surprise and discomfort would have been experienced by anyone who had taken literally the statements, Money is naturally sterile, Usury is against nature, and had then considered the attitude of the Church on the *societas*, the *census*, the sale of foreign exchange, and the rent *ad pompam*.

⁶⁶ Augustine, *De bono coniugii* 7, CSEL 41: 196-197.

⁶⁷ While many theologians objected to sterile marital intercourse, while many objected to intercourse in pregnancy, such intercourse was regularly called "sinful," but not "unnatural." The horror of acts labeled unnatural, such as anal or oral intercourse, was never manifested toward these other uses of the generative organs where generation was impossible. "Unnatural" was, in fact, reserved to characterize genital acts where insemination, not generation, could not occur.

⁶⁸ The climactic papal recognition was made by Pius XII in 1951, in his Address to the Italian Catholic Society of Midwives, ACTA APOSTOLICAE SEDIS 43:845-846.

⁶⁹ See CONTRACEPTION 439-443.

In both cases, the statements projected values; confusion resulted only from mistaking the function the statements performed.

Like the statements on money, the statements on the generative act and organ functioned in relation to a rule, an absolute prohibition of the Church. Like the statements on money, the first function of these statements on nature was to place the prohibition within the realm of the rational. If the rule was founded on nature, neither biblical texts nor ecclesiastical pronouncements would, in the long run, be as influential as the judgment of reasoning human beings. The appeal to nature was, in effect, an invitation to exercise reason.

The absolute rule of the Church here, like the absolute rule on usury, protected certain values. Can one identify the "nature" asserted with the values protected? An answer to this question depends on an inspection of the values. I would suggest that the values protected by the rule were four: procreation, life, dignity, and love. In the first place, the prohibition of contraception asserted that procreation was good. For thirteen hundred years there were major movements within the Church, or in competition with it, which taught that procreation was evil: Gnosticism, Manicheism, Priscillianism, Bogomilism, Catharism. Against these movements, the assertion that contraception was against nature was, in large part, an affirmation that procreation was a good act of cooperation with a good God.

Secondly, prohibition of contraception embodied an assertion of the sanctity of life. In the Greco-Roman society in which Christians first condemned contraception there was widespread insensitivity to infant and embryonic life. Infanticide, abandonment of babies, and abortion were practiced without legal restraint and with little moral criticism.⁷⁰ The Christians appeared as defenders of the rights of the infant and the embryo. Destruction of any human life, they maintained, was murder. The defense of the sacredness of existing life extended to a defense of the sacredness of the process by which life was engendered. There were two main reasons for this extension of concern. No clear line existed between seed and embryo; if, with Tertullian, one said, "He kills a man who kills a man to be,"⁷¹ the statement seemed to apply equally to both. In practice, it was difficult to distinguish between the abortifacient and contraceptive effects of the potions which were the most popular contraceptives.⁷² The protection of existing life seemed to require the proscription of means affecting conception. The valuation given life thus played a part in the judgment formed on contraception.

Thirdly, some sexual acts in marriage appeared to be destructive of the personal dignity of a spouse. These acts expressed or fostered the belief that a spouse, usually the wife, was a thing given the other to be enjoyed and exploited. The treatment of oral intercourse and anal intercourse as unnatural may be read as assertions, in the language of an age unacquainted with personalist philosophy, that the spouses, united in marriage, must relate to each other as persons.

Finally, the sanctity attached to coitus was an implicit assertion of the value of sexual love. Not promiscuously outside of marriage, not even without reverence

⁷⁰ See *id.* at 85-86.

⁷¹ Tertullian, *Apologia*, p. 8, CSEL 64: 23-27.

⁷² See CONTRACEPTION 14.

within marriage, could love be expressed in sexual acts. In the treatment of coitus as a sacral union, the mystery and the importance of sexual love were obscurely acknowledged.

That protection of procreation and of life were in the minds of those framing the absolute rule seems to me to be established by evidence. That protection of personal dignity and of love was also in their minds rests on evidence also; but here we attribute to earlier theologians concepts which they did not use explicitly; we reinterpret and explicate. We are using our concepts to describe the way the rule functioned; we are hypothesizing that these values gave vitality to the rule.

The argument that contraception was against nature supported the absolute rule just as the argument that usury was against nature supported the usury prohibition. Again, it is possible to see the argument as making absolute a rule which could have been expressed in more discriminating and flexible terms. Again, the question arises why the argument based on nature seemed so superior; and again, psychological and rhetorical satisfactions would seem to account for the choice. The sacral character of coitus to which the argument based on nature finally appeals seems to be no stronger than the usury argument's appeal to the sacred character of time. This characterization asserts the reality of the rule, the seriousness of the violation, but adds no new evidence or insight. The claim that coitus was naturally fertile continued long after acceptance of the marriage of the sterile, intercourse in pregnancy, intercourse to express love, and the use of rhythm. Although coitus might often be lawfully sterile, theologians still asserted that to make it sterile was self-stultifying. To demonstrate the rule on contraception by claiming that a contraceptive act was self-contradictory apparently yielded psychological and rhetorical gratifications.

To look only at the negative aspects of the argument based on nature would be to overlook its most important function. Like its counterpart on usury, it asserted that there was an evil in contraception which man could grasp. The prohibition of contraception was not simply a Jewish law, a Christian idiosyncrasy, a papal aberration, a divine whim. There were values which the practice of contraception endangered which should be dear to all men. Contraception was in a given society an evil. The argument based on nature stood for this proposition. It announced the rational character of the rule on coitus. It taught that there was a measure in marital acts which could be found by examination; it invited scrutiny which could lead to revision of the rule.

A comparison of arguments based on the nature of money with arguments based on the nature of sex may seem to bring together two hopelessly dissimilar subjects. "For love or money": the dichotomy seems eternal. Nature itself would seem to cry out against an attempt to extract from such diverse natures any common themes. The considerations appropriate to an ethics of moneylending, the specialized function of a few, would seem so remote from the considerations relevant to the sexual conduct of all married persons that only accident or force could bring them both together.

In the present paper I have tried to show that in fact both topics have been

approached in much the same way by Catholic theologians employing the concept of natural law. Conclusions similar to mine have been reached by a more abstract examination of natural law in general; but they lack concreteness and could be viewed as the results of a preference for "subjectivism." Here I have drawn conclusions from the way natural law concepts actually functioned in two specific moral problems. The conclusions suggested are true at least in these two cases.

"Nature" has a rhetorical function. The acts and purpose designated as natural occur in experience, but their controlling normative role is assigned them by an authoritatively proclaimed rule. It is evident to everyone today that the "sterile nature" of money was a concept employed for didactic and psychological reasons; it added no fresh evidence for the usury rule which invoked it. An analogous function is equally clear in the employment of the concept of the "fertile nature" of coitus. In each case the vitality of the moral rule itself depended not on the concept of nature employed but on the values protected. These values were not discoverable from an inspection of the nature of an act. They depended on human purposes, and so on human persons. The truly vital function of the argument based on nature, however, was to draw an issue into discussion by men. The argument based on natural law demanded the exercise of rationality; it rejected the view that behavior in a given area of life was purposeless, measureless, uncontrollable, or arbitrary. It assumed that there was an order for human purposes, and so a human nature whose mark was reason. It called for a process of rationality which began in argument and ended in reasoned decision.

JOHN T. NOONAN, JR.