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Natural Law and Human Right— The Casus of Contraception (Comments from the Level of Law)

Abstract: The author of the study deliberates whether the right to contraception can be described as a human right. He makes his speculations on the basis of a broader context of reflections concerning the relationship of human rights with the natural law, to which the former ones refer. The point of reference is recognizing the right as a good which co-creates a man. Contraception is not such a good since it is not an ontological value, that is, the one which does not entail anti-values.

Keywords: natural law, human rights, *Humanae Vitae*, UNFPA by choice, not by chance, right to contraception

Can the right to contraception be described as a human right? By asking this question, at the very beginning I wish to emphasize that the idea and reality of a human right will be more important in the response than specific content included in this phrase.

This year, fifty years have passed since the encyclical *Humanae Vitae* of John VI was issued. Throughout this time, there have been many polemical voices referring to the statements included in the encyclical, as well as to those expressed by its critics. However, they did not considerably affect the understanding and acceptance by the faithful of the ecclesial teaching about contraception. Worshippers are not very concerned with the teaching included in it. The fact that discussion on the encyclical faded at the end of the past century does not mean that it appeals to the Catholics and that they accept it. It was rather caused by

the fact that the papal teaching did not become widely respected. The common practice, also among worshippers, and the public message against the teaching of the Church inevitably resulted in limiting the theoretical considerations and contributed to suppression.¹

However, the theme resurfaces again. An example of this state of affairs was the lecture delivered at the Pontifical Gregorian University (October 14, 2017) by a member of the Pontifical Academy for Life, a priest Maurizio Chiodi, and his critique presented by an Austrian philosopher Josef Seifert. According to Chiodi, in the situation when the natural methods of birth control cannot be applied, on grounds of responsible behavior one can use the methods of artificial contraception. Even in such a situation it is not in conflict with recognizing a child as a gift. He concludes by claiming that moral norms cannot be reduced to rational objectivity. They should be treated as inherent to human life understood as a story of salvation.² Seifert defends the existing teaching by referring to the theory of “internally evil” acts, which remain as such regardless of intention and circumstances.³ How this debate develops will presumably depend on Pope Francis, who established a commission in order to reinterpret *Humanae Vitae*. It is not clear, though, what this reinterpretation is supposed to relate to.

The second fact affecting interest in the issue of contraception which influences human consciousness is the statement included in the annual report of the United Nations Population Fund (UNFPA) of 2012⁴ that planning a family is a human right. One of the elements of this human right is universal access to information about the possibilities of using contraception. Contraception has been classified as one of the human rights.

Writing about the rejection of contraception, Paul VI refers to the natural law. The document of the United Nations acknowledges contraception as a human right. It is worth considering both argumentations and asking about the relationship between the natural law and human rights, taking into account the case of contraception. If we assume that the natural law provides rational foundations for human rights,⁵ then the question arises whether the same foundation

¹ Barbara Chyrowicz, “Twarda mowa papieża,” *W Drodze*, vol. 7 (2018): 29–30.

² Maurizio Chiodi, “Re-reading *Humanae Vitae* (1968) in Light of *Amoris Laetitia* (2016),” https://www.lifesitenews.com/news/new-academy-for-life-member-uses-amoris-to-say-so-me-circumstances-require-c?utm_source=deon&utm_medium=link_artykul, accessed October 31, 2018.

³ Josef Seifert, “Comentarios del Profesor Seifert a la «Relectura de *Humanae Vitae*» del P. Chiodi,” <http://www.infocatolica.com/?t=opinion&cod=31365>, accessed October 31, 2018.

⁴ United Nations Population Fund (UNFPA), *State of World Population By choice, not by chance* (09.14.2012), https://www.unfpa.org/sites/default/files/pub-pdf/EN_SWOP2012_Report.pdf, accessed October 31, 2018.

⁵ Juan Miguel Palacios, “Problem metafizycznego uzasadnienia praw człowieka,” *Ethos*, vol. 12 (1999): 123.

can lead to contradictory conclusions about the admissibility of contraception or its lack in married life.

I do not enter the polemics with one theory or another, but I try to draw conclusions from the presented solutions.

Genetic Connections between Human Rights and the Natural Law

Before the drafted list of human rights was presented to the General Assembly of the United Nations in 1948, an analysis of theoretical problems connected with the declaration based on responses to a questionnaire sent to thinkers from countries belonging to UNESCO had been carried out. What is surprising is the fact of universal agreement with regard to the content of the declaration of people representing different cultures, philosophies, ideologies or legal traditions (Benedetto Croce, Mahatma Gandhi, Aldous Huxley, Harold Laski, Salvador de Madariaga, Teilhard de Chardin, Jacques Maritain). Their agreement regarding the presented catalogue was an expression of the belief of ideological neutrality of law and was based on the declaration's silence concerning the reasons justifying legal significance of the included normative statements. Also, the lack of the question about the acceptance on the part of people expressing their view influenced their approval. A widespread demand for the declaration of these rights put aside the issue of the potential negation of the reasons justifying them.⁶

In the perspective of the content development of human rights and often heated discussion regarding their formulation, the issue of reasons supporting them becomes a requirement facilitating a broad consensus. These reasons might have different sources and result from different and contextual needs. However, I would distinguish here theoretical rights, existing in the idea of the human rights itself and practical reasons for their formulation. The human rights are a result of the necessity provoked by human solidarity. The idea of human rights refers much more to human solidarity than to the category of nature. The unity of the human race based on the categories of solidarity is nonetheless secondary to the primary uniqueness of individuals. Does not this solidarity have a deeper foundation, though? And if it is so, is it unambiguous? Does humanity (termed as human rights) become tangible in individual persons or is it a result of collectivisation and solidarity? These are the questions which triggered discussion

⁶ Palacios, "Problem metafizycznego uzasadnienia praw człowieka," 120.

on the reasons justifying the existence of human rights, and above all their introduction or declaration and respecting them.

Today, human rights are universally present in the awareness of the Euro-Atlantic community, which created them. They are widely discussed and promoted. The global consciousness remains silent about the natural law. It remains the domain of doctrine, philosophical or legal explorations. Setting aside the multiplicity of solutions concerning the definition of sources and content of the latter one, this situation was caused by the change triggered by the idea of human rights. Without underestimating of the value of human rights, there can be no denying that they are both a certain ideological, and also legal, construct (related to specific declarations), contrary to the natural law, the reality of which was interpreted or created on the model of a human. The idea of the natural law as a logical existence appeared together with a man and the question about his relations with the nature of the world, about the principles in accordance with which one should make decisions, whereas the human rights have a retrospective character. They show some kind of regression, searching for inspiration for something they regard as universal in human activity. Beginning with an idea one refers to the past to justify them. In search of an explanation for their universality, invariability or common binding power, one indicates their connection with the law of nature. "The concept of human rights developed in a close relationship with the theory of the law of nature."⁷ A dividing line between them was constituted in legal dimension by positivism, which contradicted the natural law and gave rise to the idea of human rights. Justification for human rights sought by their advocates in laws of nature seems highly questionable as it refers to theories from which they receive greatest criticism.

Issued on August 26, 1789, the Declaration of the Rights of Man and of the Citizen clearly refers to the laws of nature, which existed and functioned before the emergence of a state organization. Rights such as freedom, ownership, safety, the right to resistance were natural and inalienable. They were supposed to have special state protection. Citizen rights were also of natural character (equality in law, freedom of conscience). Their source is the natural fact of social life.⁸ All the natural (inborn) rights resulting from the law of nature are linked to individuals and describe their subject status. In other words, a human was endowed with certain competences (rights) called fundamental rights, which condition natural justice independent of the decisions of positive law.⁹ Their inalienable character induces an obligation of appropriate conduct of the

⁷ Maria Szyszkowska, *Europejska filozofia prawa* (Warszawa: C.H. Beck, 1995), 115.

⁸ Krystyna Rogaczewska, "Prawa człowieka i obywatela do Wielkiej Rewolucji Francuskiej," in *Historia i filozofia praw człowieka*, ed. Agnieszka Florczak and Bartosz Bolechow (Toruń: Wydawnictwo Adam Marszałek, 2006), 32.

⁹ Paweł Łyżwa, "Obywatel w teoriach prawa natury," in *Historia i filozofia praw człowieka*, ed. Agnieszka Florczak and Bartosz Bolechow (Toruń: Wydawnictwo Adam Marszałek, 2006), 36.

state authority towards an individual, fundamental rights (= values), which the state finds in a person. However, contemporary involvement in human rights concerns not their ontological justification, but rather their protection and promotion. And it is a political issue rather than a philosophical or legal one.

Despite close contact with theories of the laws of nature, the modern theory of human rights is not close to them. It is much closer to legal positivism than to the natural law. They try to preserve their inherent idea of law far from voluntary concepts (they point to these in theories of natural law as the reason for its disapproval), but they are influenced by other modern ideas. The human rights, despite noble ideas, are embedded in the service of everyday life and the demands of modern life. A difficult and ambiguous term *nature* and its normative element caused that it was replaced with the term *dignity*, which seems to be closer, more clearly definable, thus indicating the independence of human rights from any state authority.

Humanae Vitae—The Sources of Prohibition of Contraception

The issue of regulating conception constitutes a focal point of the papal encyclical. Pope Paul VI defines in it what spouses are morally obliged to and how they should act. He justifies this duty indicating the source of obligation, on which Catholic principles of birth regulation are based. The definition of the source allows to differentiate an encouragement to specific behavior from the relevant obligation. The pope writes that in passing on life “they are bound to ensure that what they do, corresponds to the will of God the Creator. The very nature of marriage and its use makes His will clear, while the constant teaching of the Church spells it out.”¹⁰ For Paul VI the source of obligation is the natural law “illuminated and enriched by divine Revelation,”¹¹ which is accessible to every human reason, even if it is deprived of the light of the Gospel. The pope emphasizes that “people of our era are especially prepared to understand how much this teaching remains in agreement with the human reason.”¹² He realizes that the concept of the natural law is a controversial one also from political and theological point of view, especially because of the ambiguous character of the term *natural law*.

¹⁰ Paulus VI, “*Humanae Vitae*,” *Acta Apostolicae Sedis*, vol. 60 (1968): n. 10.

¹¹ *Humanae Vitae*, 4.

¹² *Humanae Vitae*, 12.

Referring to the natural law as a source of ecclesial teaching about contraception was subject to criticism. It was pointed out that the interpretation of the natural law the pope relies on is inappropriate since a thesis about inadmissibility of artificial contraception cannot be derived from it, and “prolonged periods of sexual abstinence of the spouses can put to the test their marital love.”¹³ Anselm Hertz OP, expressed his opinion that the pope’s interpretation of the natural law was wrong. He writes: “As a matter of fact, limiting the concept of nature and the natural law to physiological and biological laws and important metaphysical elements related to them, means referring to Aristotle’s and Stoic depiction of the natural law.”¹⁴ Bernard Häring claims that “the encyclical in its concept of the law of nature remains completely in agreement with *Castii Con-nubii*. Biological regularity plays an absolute role of an absolute norm for the whole person so that the welfare of the human being and family is subordinate to God’s will read from biological knowledge.”¹⁵

It does not seem likely that pointing out to the natural law Paul VI referred to any of its doctrinal concepts. His interpretation does not concern the philosophical dimension but theological one, since it is in accordance with theological cognition and spreading the mission entrusted to the Church by Christ. The pope does not want to reduce the teaching of the Church about the natural law to philosophical speculations which do not have ultimate explanation. He remains on the theological plane. Thus, he becomes independent of any doctrine of the law of nature. He refers to the right of Church to interpret the natural law, because Christ entrusted the Church with the mandate of preaching the whole moral law: evangelical as well as and natural, which “declares the will of God, and its faithful observance is necessary for men’s eternal salvation,”¹⁶ since the natural and evangelical orders are in compliance with the supernatural one. His teaching about the natural law corresponds with the entirety of the Magisterium. The Apostles and their followers are therefore “authentic guardians and interpreters of the whole moral law, not only, that is, of the law of the Gospel but also of the natural law.”¹⁷

The Magisterium of the Church preaches about the natural law as an element of the moral law, that is, an objective moral order inherent in human nature. It is an order independent of state authority, permanent, unchanged, relevant to all

¹³ Chyrowicz, “Twarda mowa papieża,” 27–28.

¹⁴ Paweł VI, “Encyklika *Humanae Vitae* oraz komentarz teologów moralistów środowiska krakowskiego pod kierunkiem Karola kardynała Wojtyły” (przedruk z *Notificationes e curia Metropolitana Cracoviensi*, nr 1–4 A.D. 1969): 35–36. http://kodr.pl/wp-content/uploads/2017/03/humanae_vitae.pdf, accessed October 31, 2018.

¹⁵ Paweł VI, “Encyklika *Humanae Vitae* oraz komentarz teologów moralistów środowiska krakowskiego pod kierunkiem Karola kardynała Wojtyły,” 36.

¹⁶ *Humanae Vitae*, 4.

¹⁷ *Ibid.*

people. Paul VI in the encyclical especially emphasizes the objectiveness of the moral order, that is, the moral order independent of any influence or theory. It is a moral order given to man by the Creator. The idea of objectivity of the natural law is an unchanged and permanent reference of the Magisterium of the Church. That is why the role of the Church is that of a guardian and interpreter of this law. “Since the Church did not make either of these laws, she cannot be their arbiter—only their guardian and interpreter. It could never be right for her to declare lawful what is in fact unlawful, since that, by its very nature, is always opposed to the true good of man.”¹⁸

In such a view of the natural law, the concept of nature is expressed in the historical and redeeming aspect as well as in integral and personal aspect of material and spiritual unity.

The Right of Man to Contraception: Sources

The papal preaching was not received with general acceptance. One can even go further. The attitude of the Church promoting the ban on contraception was criticized by the advocates of recognizing contraception as a permitted means of birth control or a human right. They rely on specific argumentation indicating lack of logic in the approach of the Church. They believe that the objection of the Church to abortion in practice should result in using instruments which would restrict its execution. As an effective instrument they consider free access to contraceptives. Therefore, it seems logical that religious groups should support methods and options which are alternative to sexual restraint and contribute to limiting abortion. At the same time, it is emphasized that the Church does not take into consideration the fact that most unwanted pregnancies happen among unmarried women and that in the twenty-first century extramarital sexual relations are a common fact.¹⁹ Sexuality and sexual acts are a fundamental part of human existence. Depriving people of the possibility to use contraception will not change this fact. Providing a certain level of safety, easy access to contraception makes it possible to plan future family life.²⁰

For the first time the United Nations Population Fund officially announced in 2012 that access to contraception is a human right. In the preface to the report

¹⁸ *Humanae Vitae*, 18.

¹⁹ Lilly O’Donnel, “UN Declares Birth Control a Human Right, and America Falls Short,” accessed November 2, 2018, <https://mic.com/articles/19272/un-declares-birth-control-a-human-right-and-america-falls-short#.01lc8Qkbn>.

²⁰ Chris Tognotti, “How to Argue Birth Control Is a Human Right,” accessed November 2, 2018, <https://www.bustle.com/p/how-to-argue-birth-control-is-a-human-right-2803746>.

“By Choice, but Not by Chance” dr Babatunde Osotimehin, the United Nations Under-Secretary-General and Executive Director of UNFPA, says that family planning is a human right. Therefore, it has to be applicable to everybody who wants it.²¹ Reading these words may arouse surprise. Do not human rights apply to everyone, whether they want it or not? Can human will, individual and expressed as the authority, decide about what is independent of it? The statement is at odds with the idea of human rights. So, is this a human right? This issue is expanded in the next sentence. Osotimehin states that this law has not been extended to everyone, especially in the poorest countries.²² It is the state that is responsible for it, since it refuses to recognize contraception as a human right. According to the proponents of this law, the Church is also to blame, as her influence on the state blocks women’s possible access to contraception.²³ Then, it is not about the will to accept the law, but about the possibility to exercise the law and what is its content. Such explanation is in compliance with the structural concept of law, which is also connected with duty. According to the document, this responsibility rests on state authority. It means that people who have the aforementioned right can demand that state authorities fulfill it. The fulfillment of the law itself is connected, however, with the actual possibility of returning the thing belonging to others. So can this duty remain just an empty promise?²⁴

Man’s right to family planning means that every individual makes a personal, independent decision about their future family. This plan is realized by deciding about the time and number of offspring. Therefore, family planning is dependent on planning the number of offspring. The family defines and expresses itself through progeny. Thus, can free access to contraception among people who are not planning a family be still recognized as a human right when it is defined through the prism of family? The right to contraception as a human right is only relevant in relation to family.

The right to contraception is an element of reproductive rights resulting from the right to family planning. Justifying this right, the authors of the report put it in a broader context of other human rights, from which they derive it. It includes both freedoms and rights which stem from civil, political, economic, social, and cultural laws. The right to decide about the time and number of offspring

²¹ “Family planning is a *human right*. It must therefore be available to all who want it.”

²² “But clearly this right has not yet been extended to all, especially in the poorest countries.”

²³ L. O’Donnell gives the Philippines as an example, but he does not indicate the actual ways in which the Church influences the state in this country.

²⁴ According to UNFPA, 22 million women in the world do not have an opportunity to use contraception. Providing it must absorb 4.1 billion dollars. The necessary funding could come from 5.7-billion-dollar-savings on the healthcare service for mother and child. Thus, contraception could contribute to significant savings.

is an integral part of the structure of reproductive rights and that is why it is directly connected with other fundamental human rights, such as the right to live, to freedom and safety, to health (sexual and reproductive), to marry and to be equal in marriage, to privacy, equality and not to be discriminated against (especially women), freedom from coercion and violence, freedom from torture and inhuman treatment, the right to education (including sexual education), to participation in public affairs, to search and obtain information and the freedom of expression and to make use of the achievements of science.²⁵

The right to family planning described as a freedom and a right is expressed in three elements: (1) the possibility to use all kinds of goods and help that enable its fulfilment; (2) access to objective, scientific information and sexual education free from prejudice and discrimination; (3) the possibility to make conscious choices for the benefit of freedom from coercion, violence and discrimination.²⁶ The right to contraception is in compliance with the first dimension of the right to family planning as it concerns the possibility of using the means, thanks to which one can decide about the time and number of conceived offspring.²⁷

Several Comments

The comparison of two such different documents with various conclusions enables formulating a few comments.

Both *Humanae Vitae* and the report “By Choice, Not by Chance” draw attention to family planning and development. Paul VI, however, speaks about responsible parenthood with regard to marriage. The report refers to any family in the human perspective and any man facing a decision about conceiving offspring.

Both documents use similar expressions: responsible parenthood and family planning, in which the attention is focused on the issue of parenthood. Their sources and attitudes are different, though. In *Humanae Vitae* it is the natural law. The report of the United Nations Population Fund refers to human rights.

The same concerns the implementation goals of these laws. In case of family planning the following arguments are put forward: reduction of poverty, health care, promotion of sex equality, helping children to get an education, the opportunity to get a job. These are significant issues with which Church identifies and promotes. The aim of responsible parenthood is to take into account the

²⁵ UNFPA, *By choice, not by chance*, 3.

²⁶ *Ibid.* 8.

²⁷ *Ibid.* 9.

physical, economic, psychological, and social conditions which enable people to accept more children or avoid giving birth to them. At the foundation of such attitude lies the fact that responsible parenthood belongs to an objective moral order and accepting one's duties in relation to God, oneself, family, society "while keeping the appropriate order of things and hierarchy of values."²⁸ That is why parents cannot freely define the methods of moral conduct and are obliged to "adjust their behaviour to the plan of God the Creator."²⁹

1. In the report the aim of family planning and all the circumstances connected with it constitute the foundation of creating laws. Despite referring to other human rights, in which the right to family planning was included and expressed, it does not seem to be a fundamental law. It is their consequence. The right to family planning, as it was defined, appears to be a product of culture and a man immersed in it. Culture does not create the categories of right and wrong, which remain the personal domain of a human being. The appropriate field of operation for culture are the categories of what is normal and what is not. The awareness of responsibility belongs to the structure of practical reason. Is the culture itself enough? As Hegel once said: "There seemed to impend such a peculiar spectacle that we would see a cultural nation without metaphysics like a richly decorated temple without the Blessed Sacrament."³⁰
2. The right to family planning is not based on highlighting personal goods but on goals, which can be reached thanks to not so much the right but to the guarantees offered by it and the requirement of responsibility. However, why is the state liable to the freedom of choice which a man is due?
3. Can contraception be a right? In the perspective presented by the report "By Choice, Not by Chance" contraception was shown as a means of achieving the desired and worthy goal. One cannot forget, however, that the behaviors connected with fully benefiting from it are the products of modern culture which is in compliance with the categories of a defined correctness.
4. Searching the sources of law is not only about discovering its purposeful reason but a causative one as well as a reason not contradicting specific legal solutions. I do not find such a reason in the right to contraception.

²⁸ *Humanae Vitae*, n. 10.

²⁹ *Ibid.*

³⁰ Georg Wilhelm Friedrich Hegel, *Nauka logiki*, trans. Adam Landman (Warszawa: PWN, 1967), vol. I, 4.

The Right to Contraception: Conclusions

If we assume that the natural law lies at the foundation of human rights understood as a right independent of human decision-making, then is the right to contraception as a human right a natural law? If it belongs to the category of human rights, it should be a *common* law (the same for every person regardless of their values and opinions, including religious ones); *inherent* (independent of the state's will and applicable laws, whose aim is to create a system of protecting them); *inalienable* (one cannot waive it or be deprived of it); *inviolable* (they cannot be revoked and arbitrarily regulated by the state); *natural* (possessed because of personal dignity and not because of any assignment or decision); *indivisible* (all of them constitute an integral and indivisible whole); *fundamental* (they are the basis for taking advantage of any other right).³¹

The discussion concerning the possibility of using contraception as an element of a wider in scope right to family planning from two so different points of reference seems inconclusive and thus futile. However, it is worth looking at its subject regardless of the description of the sources of specific solutions, of problems connected with defining the nature and of problems resulting from the justification of morally responsible conduct, or of the aforementioned ideological assumptions indicating the Church as a reason for restricting the possibility of taking advantage of the right to contraception. It is a reawakening of the idea of ideological neutrality of law, which united efforts in favour of defining the human rights.

Another perspective of the mutual encounter of such different rights is their definition through common features. The concept of the human rights (not in specific solutions) includes reference to the law of nature. Their attributes are natural character, inherence, inalienability, which result from human dignity. These are the properties which also define the natural law.³² The first and significant normative acts containing human rights in the first words refer to nature expressing its unity with the declared rights. Today's abandonment of the argumentation referring to this relationship is caused by the unwillingness to understand the natural law as a moral category, which fully embraces human activity restricting the moral freedom of choice because of its relationship with

³¹ Amnesty International, *Co to są prawa człowieka?*, <https://amnesty.org.pl/co-robimy/prawa-czlowieka/>, accessed November 3, 2018.

³² "That all men are by nature equally free and independent, and have certain inherent rights" (art. 1). "The Virginia Declaration of Rights" (1776), <https://www.archives.gov/founding-docs/virginia-declaration-of-rights>, accessed November 2, 2018; "...recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family" (Preamble). "Universal Declaration of Human Rights" (1948), <http://www.un.org/en/universal-declaration-human-rights/>, accessed November 2, 2018.

nature.³³ Forsaking the argumentation referring to the relationship of human rights with the natural law also stems from separating law from morality as two completely distinct normative systems.

This particular connection is emphasized in the teaching of the Church who recognizes in it the possibility of an intercultural and interreligious dialogue capable of fostering universal peace and of avoiding the “clash of civilizations” since “in this way, the natural law meets the demand of reasonable justification of the human rights.”³⁴ The connection between the possibilities of cognitive recognition and the requirements of nature results in the statement that “some sexual practices are directly opposed to the reproductive finalities inscribed in the sexual body of man. By this very fact, they also contradict the interpersonal values that a responsible and fully human sexual life must promote.”³⁵

Reasoning on the level of morality does not lead to satisfactory solutions or mutual conviction. In the teaching of the Church, there is no right to contraception classified as a human right. Closer to the appropriate definition whether the right to contraception exists is the one which at the starting point will concern the definition of law, whose attribute is the natural character. Since what is sought is the law which is a quality of the human nature (nature of man), and not a moral ability to perform activities whose consequences are protected by the state. The rights which have their source in the human nature coexist with it, are something real, tangible (life, health). They are always someone’s rights, whereas the human rights in their idea and historical development are the rights of a (historical) man to perform actions (rights to something), which he recognizes in his way of being a human. The existence of rights as goods of a man means that he implements them in his way of existence. As goods which are one’s own and individual competences connected with the human nature and which all the people are eligible for, these goods can be treated as human rights.

The right to contraception is not connected with having contraception as a good. Contraception is not a good which co-creates a man. It is not a value in ontological sense, that is, the one which does not entail an anti-value. Conversely, counter-values, as it occurs in the case of the evaluation of contraception, are characteristic of qualitative values. Contraception is not something that cannot be gained or lost. It is not dependent on human existence.³⁶ It is a tool

³³ Francesco Compagnoni, *I diritti dell’uomo. Genesi, storia e impegno cristiano* (Milano: San Paolo 1995), 209.

³⁴ International Theological Commission, *In Search of a Universal Ethic: A New Look at the Natural Law*, n. 35, accessed November 2, 2018, http://www.vatican.va/roman_curia/congregations/cfaith/cti_documents/rc_con_cfaith_doc_20090520_legge-naturale_en.html#3.4._Ways_towards_a_reconciliation.

³⁵ International Theological Commission, *In Search of a Universal Ethic: A New Look at the Natural Law*, n. 80.

³⁶ Palacios, “Problem metafizycznego uzasadnienia praw człowieka,” 131.

which allows a man to reach goals which are his own, whose fulfilment or absence causes the activities to expire and so does the necessity to use the tools to satisfy them. The report of 2012 concerns the right to contraception examined in the context of family planning. Out of this context contraception loses its reference to law. Can human rights in their natural reference be dependent on their contextual understanding?

Contraception is a sensitive issue and it divides the sides taking part in the dispute, as some regard it a law while others claim they are against the law. However, to call the right to contraception a human right would have to be put to the test of the natural goods (things) creating what the law refers to. It should be a human right (an actual good of someone) not only by its name. But this is the issue concerning the idea of human rights—how much law there actually is in the concept of human rights.

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Tomasz Gałkowski

Loi naturelle et loi de l'homme Un cas de contraception (commentaire légal)

Résumé

L'auteur de l'étude se demande si le droit à la contraception peut être défini comme un droit de l'homme. Ses réflexions tournent dans un contexte plus large concernant la relation entre les droits de l'homme et le droit naturel, duquel relèvent les premiers. Considérer le droit comme un bien co-créé par l'homme est notre point de repère. La contraception n'est pas un bien, car elle n'est pas une valeur au sens d'une valeur ontologique, c'est-à-dire qui n'implique pas d'anti-valeurs.

Mots-clés: loi naturelle, droits de l'homme, *Humanae Vitae*, UNFPA By Choice, not by Chance, droit à la contraception

Tomasz Gałkowski

Legge naturale e legge dell'uomo Un caso di contraccezione (commento legale)

Sommario

L'autore del presente studio si chiede se il diritto alla contraccezione possa essere definito come un diritto dell'uomo. Le sue riflessioni fanno riferimento al più ampio contesto dei rapporti tra i diritti dell'uomo e il diritto naturale, a cui quelli primi si rifanno. Il punto di riferimento è il riconoscimento del diritto come un bene alla creazione del quale l'uomo partecipa. Intesa in questi termini, la contraccezione non è un bene perché non è un valore nel senso di valore ontologico, e cioè che non comporta antivalori.

Parole chiave: diritto naturale, diritti umani, *Humanae Vitae*, UNFPA By Choice, non by Chance, diritto alla contraccezione