

## Notes and Comments

### Conjugal Love, Condoms, and HIV/AIDS

Father Martin Rhonheimer is the most important moral theologian to come out in favor of condoms used to prevent the spread of HIV/AIDS. In *The Tablet*, he stated the following:

a married man who is HIV infected and uses condoms to protect his wife from infection is not acting to render procreation impossible, but to prevent infection. If conception is prevented, this will be an—unintentional—side effect and will not therefore shape the moral meaning of the act as a contraceptive act.<sup>1</sup>

The foregoing statement begins by framing the issue of condoms and HIV/AIDS in relation to the question of what constitutes a contraceptive act. Thus, the implication is that if the use of a condom is not contraceptive, then it is also not morally wrong. An analogous situation, according to this view, is that in which a woman takes the anovulant pill, not for contraception, but for therapeutic purposes.<sup>2</sup>

Most moral theologians would grant that the use of condoms to pre-

vent the passing of HIV/AIDS to a spouse does not constitute an act of contraception, because it lacks the relevant intentionality. As a number of prominent moral theologians have argued, however, framing the question as though it were about contraception does not yet really come to grips with the underlying moral issue.<sup>3</sup> Rather, the question needs to be addressed in relation to the nature of the conjugal act and chastity.

Sexual acts are of course morally good only when they constitute conjugal acts, but not all sexual acts spouses may perform are *ipso facto* conjugal ones. The discussion of whether the contraceptive effect of the use of condoms to prevent the passing of HIV/AIDS to a spouse is *praeter intentionem* (outside of intention) is therefore a distraction from the underlying moral issue. If the use of a condom prevents the sexual act from being truly conjugal, then the very choice to use a condom is in itself morally evil (i.e., the evil is not simply a side effect).

Rhonheimer argues in response that the use of a condom for this purpose is only a “modification” of a normal sexual act and that this modification therefore does not invalidate the act as properly conjugal. The Church’s teaching that “each and every” sexual act between spouses must be “open” to procreation should therefore be understood to mean “intentional” openness, rather than

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<sup>1</sup>Martin Rhonheimer, “The Truth About Condoms,” *The Tablet* (10 July 2004), 11.

<sup>2</sup>Benedict Guevin and Martin Rhonheimer, “On the Use of Condoms to Prevent Acquired Immune Deficiency Syndrome,” *National Catholic Bioethics Quarterly* (Spring, 2005): 38, 42.

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<sup>3</sup>E.g., Luke Gormally, “Marriage and the Prophylactic Use of Condoms,” *The National Catholic Bioethics Quarterly* (Winter, 2005); William E. May, “Using Condoms to Prevent HIV,” *The National Catholic Bioethics Quarterly* (Winter, 2004).

“physical openness.”<sup>4</sup> Otherwise, he continues, natural infertility, the use of NFP, and therapeutic uses of the pill would also invalidate the sexual intimacies of spouses as conjugal acts, since they too would lack “physical openness.”<sup>5</sup> The attempt to argue that the use of a condom obstructs the integrity of the conjugal act, then, is to resort to a discredited moral theology of natural teleologies that violates the division between fact and value, between is and ought.<sup>6</sup>

This debate raises the issue of the role of intention and nature in determining when a sexual act is a “conjugal” one. While a full discussion of these matters would require a much fuller treatment than is possible in a short note, the following will nevertheless briefly offer the outlines of a response.

*Veritatis splendor* tells us that the primary determinant of the “moral species” of an act is the “object” of the exercise of one’s freedom (78). In other words, it is what one has committed oneself to in freedom as good and what thus shapes our moral identity as virtuous or vicious. For the object to be worthy of human freedom, therefore, it must be ordered to or capable of ordination to man’s final end, God (79).

A number of moral theologians,

including Fr. Rhonheimer, have rightly highlighted a crucial passage from *Veritatis splendor*, indicating the nature of the moral object: “In order to grasp the object of an act which specifies that act morally, it is therefore necessary to place oneself *in the perspective of the acting person*. The object of the act of willing is in fact a freely chosen kind of behavior” (78, italics original). The passage clearly points to the fact that the object is not only an event that can be observed from the outside, but is also—from the specifically moral point of view—an exercise of human freedom. In acting, human freedom adopts an object as its proximate end. In doing so, freedom (and all that it contains and implies—reason, desire, and so forth)—is committed in such a way that the moral actor is given his moral character.

The passage also emphasizes, however, that the exercise of freedom entails the commitment of one’s person to a “kind of behavior,” which must be ordainable to God. Indeed, the section of the encyclical dealing specifically with the human act (71–83) uses variations of this phrase seven times. Clearly, to speak of kinds of behavior means that moral action cannot be defined simply in terms of intention. It means that actions can be described objectively—without violating the perspective of the acting person—according to their intelligible structure and meaning in relation to the vocation of human nature. Indeed, it would seem to be the burden of *Veritatis splendor’s* discussion of

<sup>4</sup>Guevin and Rhonheimer, “On the Use of Condoms,” 44, 46.

<sup>5</sup>Ibid.

<sup>6</sup>Ibid., 44.

human acts to emphasize this objectivity.

It is on this last point that Rhonheimer falters in his discussion of condoms and HIV/AIDS. His valuable contribution to ethics rightly emphasizes the crucial importance of intention in defining the meaning of a moral act. However, his discussion of condoms exhibits a tendency to reduce the moral act to pure intentionality and to reduce whatever cannot be understood in terms of intentionality to a merely material or pre-moral realm, a realm of “physicality.”<sup>7</sup> He argues that the use of a condom as such is a pre-moral or merely “natural” description of an event, and not yet the description of a moral act. It is analogous therefore to the statement “a man was killed.”<sup>8</sup> The conclusion then is inevitable: it is not until the intention (e.g., use of a condom to prevent conception, or use of a condom to prevent transmission of HIV/AIDS) is known that *any* moral evaluation *at all* can be made.

But is this true? Or does the choice to use a condom—for whatever reason—constitute a moral ob-

ject? Can it be analyzed and understood from the particular moral perspective, that is to say, from “the perspective of the acting person,” as an intelligible “kind of behavior” that either is or is not in accord with the demands of conjugal chastity?

In order to understand the meaning of “kind of behavior” for *Veritatis splendor*, we need to put the phrase in the context of the whole encyclical. In particular, we need to see it in the context of moral action’s compatibility or non-compatibility with man’s ordination to and imaging of God, which in turn must be seen in view of the encyclical’s Christocentrism.<sup>9</sup>

This Christocentrism (with its implications for the role and meaning of the body) is the immediate background for the encyclical’s discussion of “physicalism” and “naturalism” (46–50). As John Paul II notes, moralists at times forget the created character of nature (46) and that the whole nature of man, as *corpore et anima unus* (48), is created in the image of God (45). After rejecting this tendency—as well as its consequences: treating the “human body” as a “raw datum” or “pre-moral” matter and pitting nature and freedom against each other

<sup>7</sup>Cf. *ibid.*; Martin Rhonheimer, “Intrinsically Evil Acts and the Moral Viewpoint: Clarifying a Central Teaching of *Veritatis Splendor*” and “Intentional Actions and the Meaning of Object: A Reply to Richard McCormick,” both in *The Splendor of Truth: Veritatis Splendor and the Renewal of Moral Theology*, ed. J. A. DiNoia and Romanus Cessario (Princeton, N.J.: Scepter Publishers, 1999), 159–193, 241–268.

<sup>8</sup>Guevin and Rhonheimer, “On the Use of Condoms,” 43.

<sup>9</sup>It is important to note that *Veritatis splendor*’s teaching on the moral act as ordained to God in chapter two is preceded by the criticism of moral theories that tend to introduce Christian elements as merely external “exhortation” or “generic paranesis” (37) in that same chapter, as well as by the discussion of “Christian ethics,” the meaning of the Good, and so forth in the first chapter.

(48)—the encyclical goes on to teach that

*it is in the unity of body and soul that the person is the subject of his own moral acts.* The person, by the light of reason and the support of virtue, discovers in the body the anticipatory signs, the expression and promise of the gift of self, in conformity with the wise plan of the Creator. (48, emphasis original)

Thus, “*A doctrine which dissociates the moral act from the bodily dimensions of its exercise is contrary to the teachings of Scripture and Tradition*” (49, emphasis original). The encyclical concludes on this basis that “certain specific kinds of behavior” must be rejected (*ibid.*).

From these passages, it is clear that, for the encyclical, “intention” does not exhaust the content of moral action or the nature of the moral object. Rather, human freedom (which, because it is grounded in rational appetite, includes intention) is enabled and shaped by human nature as a whole, including the body. Indeed, because the human person is *corpore et anima unus*, his or her love is necessarily expressed and brought to its fullness in and through the body. We can say then that behavioral patterns—“kinds of behavior”—possess a rational structure and content given the meaning of the body and human nature as a whole. “Kinds of behavior” are therefore ordered or disordered, in conformity or not in conformity with the “anticipatory signs” of the “gift of self” and the

“wise plan of the Creator.”<sup>10</sup> Thus, the intelligibility of an action is in part determined by its relation to the body’s personal meaning and dignity and its signification of the vocation of human nature.

As has already been noted, numerous Church documents have emphasized that “each and every” conjugal act must be open to new life.<sup>11</sup> Each must be the kind of act that can con-

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<sup>10</sup>Does *Veritatis splendor*, then, run afoul of the stricture against confusing is and ought? Does its teaching rest on a primitive fallacy? It is, as *Veritatis splendor* emphasizes, necessary to understand moral action within the perspective of the moral actor. It must therefore be granted that morality cannot simply be deduced from nature. In view of the encyclical’s teaching, nevertheless, it is useful to remind ourselves that the strict division between fact and value, is and ought, arose in the wake of empiricist and positivist reductions of nature to purely material sub-personal reality (e.g., David Hume, *A Treatise on Human Nature* [1739–1740]). Some discernment is therefore in order concerning the absolute validity of this division. If nature is created *ex nihilo*, as Christians believe, then: (1) it has “value” inscribed in it from its beginning in the form of a vocation that constitutes and radically structures it, (2) it represents and manifests God’s freedom, in which human freedom is given its possibility and form, (3) it possesses a radically sacramental structure or symbolic ontology, indicating its saturation with meaning that cannot be separated from or merely related extrinsically to human action, etc. The strict division between is and ought presupposes a reduction of nature to dead matter, of reason to rationalism, of freedom to freedom of indifference, of causality to merely efficient causality, of order to mechanism, etc.

<sup>11</sup>E.g., Paul VI, *Humanae vitae*, 11 (1968); John Paul II, *Familiaris consortio*, 32 (1981); *Catechism of the Catholic Church*, 2366.

summate a marriage, making the husband and wife “one flesh.” The *Code of Canon Law* (canon 1061) tells us that for consummation to occur, a conjugal act must be “per se apt for the generation of children” (“per se aptum ad proles generationem”).<sup>12</sup> The Code goes on to say that this per se aptness for generation makes the spouses “one flesh” (“quo conjuges fiunt una caro”). *In other words, even though the question of condoms and HIV/AIDS does not turn on whether the act is an act of contraception (i.e., whether it possesses the intentionality of preventing conception), whether or not the sexual act is a “kind of behavior” that is “apt for generation” is nevertheless crucial in determining whether it is a conjugal act.* Certain acts having nothing to do with contraception, such as sodomy or mutual masturbation, are also immoral (unchaste) on the basis of a similar inaptness.

The question, then, necessarily *must* take into account natural finalities in their relation to the structure or *ratio* of married love. Notice also therefore that the unitive and procreative “meanings” (*Humanae vitae*, 12) necessary in order to have a conjugal act are not parallel or external to each other. Rather, the Code’s use of the ablative (“*quo . . . fiunt*”) indicates that it is the aptness for generation that renders the act unitive. Moreover, and by implication, the unitive meaning carries within itself the openness to

and the basic form of fruitfulness.

Now, as we have seen, Rhonheimer puts the question of “aptness” in terms of intentional openness, set in contrast to merely “*physical* openness.”<sup>13</sup> But as *Veritatis splendor* makes clear, to pay attention to the structure (*ratio, telos*) of the body is not physicalism, because the body and its structures are saturated with intelligible meaning. The body cannot be thought of as “merely physical,” since its physicality is fully human. Indeed, as *Veritatis splendor* points out, treating the body as simply pre-moral is in fact a type of physicalism, because it reduces an essential aspect of the human person to sub-personal matter (48–49). As John Paul put it, the body manifests the ordination of the human person to love; it possesses a “nuptial meaning.” The body itself, therefore, represents an invitation to communion, that is to say, to a fundamental human good.

The one-fleshness of husband and wife (which “fulfills” or “perfects”<sup>14</sup> sacramental marriage’s indissolubility) is an expression of love in the body. It implies a communication of the very substance of the man (his “flesh,” his unique personal identity, which is in

<sup>13</sup>Guevin and Rhonheimer, “On the Use of Condoms,” 46.

<sup>14</sup>*Catechism of the Catholic Church*, 1627 (citing Gn 2:24, Mk 10:8, and Eph 5:31); *Gaudium et spes*, 49 (“Haec dilectio proprio matrimonii opere singulariter exprimitur et perficitur”); *Casti connubii*, AA 22 (1930), 552 (spousal self-giving is “fully perfected” [plene perficitur] in marital consummation).

<sup>12</sup>See also, *Catechism of the Catholic Church*, 2366.

fact inscribed genetically in his semen) to the woman, whose body (out of all of the possible bodies in the cosmos) is uniquely made to receive this communication. Precisely in receiving this communication, the woman offers her own flesh (her own unique personal identity inscribed in her body) back to the man. Because this mutual communication is supposed to be an expression and realization of love, it also possesses its distinctive fruitfulness, which is part of and cannot be separated from its very *ratio*.

It is not actual conception of a child, however, that renders the spouses “one flesh.” While conception is the normal fruit of their bodily communication, it is not that communication *per se*. This is because *de facto* operation must not be confused with nature. Thus, pregnancy as such, or even the complete *de facto* functioning of the generative organs necessary for conception to occur, is not necessary for the union to be “apt” and therefore to constitute a “conjugal act.” What is necessary is that the sexual act be the kind of behavior in which the communication of the husband, and all that it implies about love, be “received” by the wife in her proper self-communication back to the husband.<sup>15</sup>

Along with being, as Rhonheimer puts it, “intentionally open,” there are therefore other requirements for the

full “aptness” of the sexual intimacy of husband and wife. In particular, its integral aptness requires that the act must be the kind of act whose structure is such as to permit the sort of mutual communication in which the husband communicates his “flesh” and the woman receives it, regardless of whether or not other factors such as age or sterility prevent this communication from being fruitful in particular cases. Again, this latter requirement is not merely “physical,” as opposed to rational/intentional, because the body is not merely physical, but is always-already saturated with human-personal value and meaning.

Could a sodomitical act, if performed by spouses, be considered a conjugal act? Sodomy fails to communicate love because it fails to take into account the *ratio* of the human body: as the scholastics suggest, it deposits the male seed in a place (albeit inside of the woman’s body) that is inapt because it is incapable of truly receiving it (in terms of the very *ratio* of sexual difference and the body). It violates the structure of conjugal love because it violates the structure of the conjugal act, or as we have seen, the “anticipatory signs . . . of the gift of self, in conformity with the wise plan of the Creator,” written in the body. The wife cannot “receive” the husband’s substance in a sodomitical act, because only the wife’s sexual organs are *capable* of receiving his substance in the way relevant to the meaning of sexual union. The pertinent sense of “to receive,” here, means more than simply a mechanical reception: it

<sup>15</sup>Cf. Gornally, “Marriage and the Prophylactic Use of Condoms,” for a brief discussion of the canonical requirements for entrance into valid marriage.

means that only the woman's sexual/procreative organs are *ordered* to the reception of her husband's substance.<sup>16</sup> This ordination is written

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<sup>16</sup>At this point, an objection is often raised in the form of the following rhetorical questions: "Is it immoral to chew sugarless gum?" "Is it immoral to cut one's hair?" These questions suggest that such benign activities are analogous to disordered sexual acts insofar as (or so the argument presupposes) each seems to run contrary to the *telos* of a bodily organ. Thus, if a negative moral judgment of certain sexual behaviors can be determined on the basis of the *telos* of the sexual organs, consistency would demand a similar negative judgment regarding gum-chewing or hair-cutting. But are these analogies compelling? It seems to me that there are at least two closely related reasons why they are not.

*First*, they misrepresent the pertinent meaning of ends by assuming that the *tele* of teeth and of hair *are* in fact frustrated by chewing sugarless gum and by cutting. Thus, the argument assumes that teeth and hair are finalized only in the mastication of food and in growing longer, respectively. But an adequate description of the ends of teeth and hair, chewing and grooming, is more complicated than that. Bodily organs such as hair or teeth do have immanent *tele*, and these *tele* are specifically human, and, in this sense, bear some anticipatory signs of self-gift. Nevertheless, these immanent *tele* are only partial realizations of the overall *telos* of the human being. The use of them as such is not yet specifically moral, even though it is not pre-moral in the sense of being neutral or indifferent to the moral—once again, teeth and hair contain some anticipatory signs of self-gift. By contrast, sexual activity, which has to do with personal self-gift, brings the overall *telos* of the human being immediately into play in the very use of the sexual organs. *My argument here, then, is that the end of the sexual organs, considered as a crucial part of the meaning of the substantial human being (cf. John Paul II's nuptial anthropology), is the conjugal act, which however is of its very nature generative-*

*into their very structure; it constitutes their nuptial significance. Sodomy is therefore inapt because it possesses nothing of the unitive/generative ratio of sexual love. As such, it cannot objectively express conjugal love. It is on this basis a violation of chastity. And therefore it is a "kind of behavior" that must never be chosen.*

The non-contraceptive use of condoms is similarly a failure with respect to aptness for generation. It likewise constitutes a pattern of be-

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*fruitful and therefore must be apt for generation (or open to conception) if it is to be a conjugal act (i.e., if it is to be unitive-procreative, according to the teaching of Humanae vitae, 12).*

*Second*, by failing to take into account the relevant differences between sexual acts and other bodily actions, these analogies also fail adequately to take into account the significance of much of the Tradition, including John Paul II's teaching concerning the nuptial meaning of the body. We might recall that the Church is sometimes accused of being obsessed with sexual issues. Far from indicating some sort of unwholesome obsession, however, the Church's careful protection of sexuality from innumerable possibilities for degradation indicates her awareness of the basic difference between sexuality and other activities. Sexuality is both more fragile in the face of man's fallen nature and is also more central to man's human identity as a being called to love (which is, *of its nature*, fruitful). Thus, the wrongfulness of disordered sexual acts is not simply a result of their constituting a use of bodily organs in a way that does not correspond with natural "ends." Rather, it resides in the implications for human love in their use in opposition to those ends. Hence, we can see the logic of the traditional teaching that sexual sins, unlike many other types of sins, have no parvity of matter (cf. St. Thomas Aquinas, *Summa theologiae* II-II, q. 154, a. 4; *De Malo*, q. 15, a. 2).

havior that cannot communicate the husband's substance to the wife in the way that is pertinent to a conjugal act and therefore to the *ratio* of sexuality—even when a contraceptive *intention* is absent. Such a use of the condom is like mutual masturbation or *coitus interruptus* (setting aside the latter's contraceptive use) insofar as each fails (and in principle must fail) to communicate the husband's substance and identity—his “flesh”—to that of the wife. Thus, freely adopting (and therefore intending) such acts as the object of choice implies the pursuit of sexual pleasure without the communication objectively necessary (according to the *ratio* of human bodily life and all of its implications) for conjugal love.<sup>17</sup> Implicit in the choice to use a condom, and its articulation as an intelligible “kind of behavior,” is (whether those who make the choice fully realize this or not) the objective

meaning, “we want and are determined to prevent the communication of our bodies (and therefore the essential meaning of such communication) that our sexual relations would otherwise enact.”

Such acts are therefore distinct from the sexual union of infertile spouses, whether that infertility results from natural causes (such as menopause), hormone therapy, hysterectomy, low sperm count, or the wife's natural cycles. Infertile spouses can become *una caro* in their sexual relations because the communication of bodies *does* occur in their sexual intimacy, although the normal fruit of this communication is not possible. Conjugal relations under these circumstances are not “inapt” for generation; they are simply ineffective. Again, what is decisive is that they are a particular instance of a kind of behavior, even if the particular instance is *de facto* attended by impediments and defects that do not change the basic nature of that behavior. □

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<sup>17</sup>Other moral theologians have expressed the wrongfulness of the use of condoms to prevent the passage of HIV/AIDS to a spouse in terms that also—it seems to me—ultimately imply an introduction of natural ordination into the determination of the moral object. Benedict Guevin speaks of “objective intentions” and of the choice “to alter the finality of the sexual act” (“On the Use of Condoms,” 39). Luke Gormally tells us: “at the level of common-sense experience . . . , [it] is evident that what is required in the way of chosen behavior for the conjoining of reproductive powers must involve the husband's ejaculating semen into his wife's vagina” (“Marriage and the Prophylactic Use of Condoms”). And of course, Rhonheimer has been quick to point out this implied dependency by way of criticism (“On the Use of Condoms,” 44).

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