Abstract. Since the 1980s Catholic moralists have discussed whether the use of condoms to prevent the transmission of the virus that causes AIDS is morally permissible. In 2004 Rev. Martin Rhonheimer argued that the use of condoms by HIV-discordant married couples, although not prudent or advisable, was nevertheless not intrinsically wrong. Many other Catholic moralists strongly disagreed with him. This paper analyzes both sides of the argument and concludes that the practice is not morally permissible even for an infertile married couple because the use of a non-perforated condom, by preventing male ejaculation into the vagina, deprives the act of its essential ordination to procreation. National Catholic Bioethics Quarterly 15.1 (Spring 2015): 91–105.

Since the acquired immunodeficiency syndrome (AIDS) and its cause, the human immunodeficiency virus (HIV), were first identified in the 1980s, the medical profession has been involved in finding a cure for the disease and in identifying ways of reducing the transmission of the virus from person to person. One of the ways to transmit the virus is by heterosexual coitus, and so there is a real possibility that an HIV-infected man can infect his female partner and any resulting offspring with the virus.

Although condoms, even when used consistently and correctly, are not 100 percent effective in preventing transmission of the virus due to various factors such as occasional leakage or breakage, their use in sexual intercourse greatly reduces the probability of HIV transmission and is frequently recommended as a form of at least “safer” if not totally “safe” sex. A number of Catholic moralists supported the idea that distributing information about condoms and even recommending their use to persons who could not be persuaded to abstain from intercourse could be tolerated as a “lesser evil.”¹ This position, however, was clearly rejected by various Roman dicasteries, bishops’ conferences, individual bishops, and many ethicists,² and theologians who accept the authority of the ordinary magisterium do not support it today.

Over twenty-five years ago, however, Catholic theologians began asking another question, not about the advisability of promoting condom use as a public or private health policy, but about whether it would be morally permissible for a man to use a condom when having intercourse with his wife in order to prevent, as much as possible, the transmission of the virus when one of them is HIV-positive. The discussion became particularly heated following an article in The Tablet by Rev. Martin Rhonheimer in which he asserted that “a married man who is HIV-infected and uses the condom 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.”³ Rhonheimer’s assertion was followed by an intense debate in which at least ten Catholic moralists disagreed with his conclusion and the reasoning on which it was based.⁴

This paper will address the question: If a married couple is HIV-discordant, is it morally permissible for the husband to use a condom when engaging in sexual intercourse with his wife if his sole intention is to reduce the possibility of transmitting a potentially lethal virus? After a review of several leading theologians on the issue, I will conclude that it is not morally permissible because the wearing of a non-perforated (i.e., totally occlusive) condom while engaging in sexual intercourse deprives the act of its essential ordination to procreation.⁵ Sexual intercourse of this kind is a distortion of the marital act and to engage willfully in such action is immoral.

² See the extensive list of authorities and theologians, ibid., 332–335, nn. 6–7, 10–14.
⁵ Catholic moralists have long recognized the permissibility of a married man using a perforated condom with his wife in order to collect semen for analysis. A perforated condom, though, would have no prophylactic value.
Framing the Debate

Although theologians who have proposed the distribution of condoms as a public health measure defend it as the toleration of a “lesser evil,” the question of condom use by HIV-discordant married couples turns on whether it is necessarily an evil action at all. That is, if a couple were well aware of the potential risks of condom failure and had no intention to avoid pregnancy—particularly if they were beyond childbearing years—would it be morally wrong for them to use a condom in their sexual relations if the sole purpose was to foster that loving, intimate union that is an essential good of their married life?

How the question might be answered was addressed early on by William May. On the one hand, he stated that the use of condoms to prevent the transmission of AIDS need not be an intentionally contraceptive act, using the analogy of a couple who engage in intercourse when the wife is postmenopausal. Since the wife cannot conceive, they would obviously not be using the condom with contraceptive intent but solely for the purpose of preventing disease. May then says, “I believe that the same would be true of other married couples who might elect to use condoms in order to prevent transmitting AIDS. Their direct intent is to prevent the transmission of a disease; it is not to prevent conception. Consequently, their use of condoms for this purpose is not contraceptive and is not morally wrong for that reason.”

May then offered another reason why condom use in this case would still be wrong. He said that in choosing to use a condom, a married couple is not engaging in a true marital act but in a perversion of it. He cites with approval the reasoning of Rev. Joseph Farraher, SJ, that condomistic intercourse is wrong “because in such intercourse the male ‘seed’ is deposited into a *vas indebitum*.” He reformulated this idea, using the terminology of Pope St. John Paul II’s “theology of the body”:

They change the “language of their bodies.” In the marital act their bodies speak the language of mutual self-giving and receiving. Their bodily act speaks the language of love, of unreserved and unconditioned gift. Deliberate use of a condom stifles and mutilates this language. The bodily union becomes a caricature of the marital act, not an authentic instantiation of it. The act chosen is more similar to masturbation than it is to the marital act.

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May’s restatement of the issue seems to presuppose the idea that because the male seed, an essential element of the man’s self-expression, is not actually given to the woman but withheld in a condom, his bodily act is not truly one of unreserved, unconditional self-giving and so is a perversion of what an authentic marital act ought to be. The male seed is an essential part of the self-gift, and if it is received not by the woman’s body (the *vas debitum*) but by a latex sheath, there has been no true giving and receiving of the gift.

These two questions first addressed by May in 1988 as to (1) whether the use of a condom by a married couple in order to prevent the transmission of a lethal virus should be regarded as an *intentionally contraceptive* act, and (2) whether condomistic intercourse by a married couple should be considered a *perversion of the marital act* and so always wrong regardless of their intention, will frame the debate among Catholic moralists for the next twenty-five years. Although May’s argument based on the “language of their bodies” suggests that the act is non-unitive, the reason why it is non-unitive ultimately stems from that fact that an important element of the man’s self-gift (i.e., his procreative capacity) is being deliberately withheld.¹⁸

I know of no moralist who would maintain that an *infertile* HIV-discordant couple who use a condom to avoid transmission of the virus are engaging in an intentionally contraceptive act in the sense that their intention as moral agents [*finis operantis*] is to avoid pregnancy. However, Rhonheimer’s critics still reject his position on the grounds either that condomistic intercourse is contraceptive by its nature [*finis operis*] regardless of whether the agents have a “contraceptive intention,” or that condomistic intercourse is not a true conjugal act because it is not a procreative kind of act, even though in the case of infertile couples their action should not be described as “contraceptive.” Some authors who take the latter position will maintain that condomistic intercourse is also non-unitive, using arguments similar to May’s, but I consider the non-unitive effect of the act to be a function of its non-procreative nature. The debate has come to be framed in these terms because Rhonheimer has consistently held that in the absence of contraceptive intent on the agents’ part the act should not be considered contraceptive in the sense intended by Catholic doctrine, and so is not intrinsically evil for that reason, however imprudent the act may otherwise be.

I will first present the main lines of Rhonheimer’s argument, followed by summary accounts of the reasoning proposed by two of his principal opponents. I will conclude with a brief exposition of what I think is the answer consistent with Catholic doctrine.

**A Critical Analysis of Martin Rhonheimer’s Position**

Although Rhonheimer does not consider condom use even in the case of an HIV-discordant couple to be advisable, and he says that as a priest he would counsel the couple to live in complete abstinence, he nevertheless asserts that “if they sometimes have intercourse using a condom—especially if they are already of advanced age and/or infertile—I would not consider their way of acting as ‘intrinsically evil’

¹⁸ May develops this argument further in *Catholic Bioethics and the Gift of Human Life*, 3rd ed. (Huntington, IN: Our Sunday Visitor, 2013), 139–141.
in the way that contraception is. This is because these spouses do not oppose their hearts to the nature of sexuality as being essentially and by nature open to the transmission of life.”

In other words, Rhonheimer maintains that the Church’s teaching sees the immorality of contraception as consisting in the agent’s intention to engage in intercourse while at the same time acting to prevent conception from occurring. In fact, the intention to prevent conception is included in the definition of the sin of contraception given by Pope Paul VI in his encyclical letter *Humanae vitae*: “Similarly excluded is any action which either before, at the moment of, or after sexual intercourse, is specifically intended to prevent procreation [interdat, ut procreatio impediat]—whether as an end or as a means.”

In the case of using a condom to prevent transmission of the AIDS virus, Rhonheimer says that the agent’s intention can be merely to avoid infecting his spouse. If his sole intention is to prevent or greatly reduce the possibility of transmitting the virus, and he merely accepts the sterility of his act as a foreseen but undesired consequence, then the use of a condom could be permissible. This lack of contraceptive intent is all the more apparent in the case of an infertile couple whose sterility is not the result of an intentionally contraceptive act, for example, a woman who is post-menopausal or has had an oophorectomy for health reasons. In such cases there would be no question of an intention to prevent conception since conception is impossible.

Catholic moralists have maintained that the use of anovulant pills for therapeutic reasons can be morally justified by the principle of double effect, provided that there is no contraceptive intent and no other suitable therapy available. For this reason, Rhonheimer sees a certain analogy between this traditional teaching and his own assertion about the prophylactic use of condoms, but he denies that his position is a true application of the principle of double effect. The reason is that the first condition for using the principle of double effect is that the agent must already know the nature of what he is doing (the *object*) and whether that object is morally good or at least indifferent before he can evaluate the good and evil effects and how they are related. The morality of the *object* is precisely the point at issue, that is, whether it is morally good or at least indifferent to have intercourse with one’s wife while wearing a condom.

The central point of Rhonheimer’s position is that the *morality* of the object cannot be determined unless one knows the agent’s intention: “I assert that ‘using a condom’ as such is an act that cannot be specified morally without including a basic intentionality (which is different from the ‘ulterior intention’ with which one chooses and performs an action already morally specified).” At issue is “a proper description of the moral object and, thus, the identification of the moral species of the act of using a condom in this way, as well as the subsequent act of sexual intercourse.” Thus, if a man deliberately (i.e., with knowledge and free consent) has intercourse with his wife while wearing a condom, the act must be considered morally indifferent until

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11 Guevin and Rhonheimer, “On the Use of Condoms,” 42, original emphasis.
one knows the man’s intention or reason for acting. You cannot determine whether condomistic intercourse is good or evil until you know why it is being done:

Now, “having sexual intercourse by using a condom” is the description of an act in its natural species. ... Only when it is conceived as being related to an end can this act be understood as a human act and in its moral species. It is morally different to use a condom in order to “prevent conception” versus in order to “prevent infection”; I hold that the latter can be reasonably done without referring it to a contraceptive end, as in the case of a knowingly sterile couple in which one spouse is HIV-infected. As in the above analogy of taking anovulants for therapeutic reasons, the physical preventing of conception is not a moral problem as long as this is not precisely done with contraceptive intent, and as long as there is another good reason to have sexual intercourse.12

However, Rhonheimer seems to be conflating two intentions in the agent’s action. The latter is first choosing to have intercourse with a specific condition or modification, that is, wearing a condom. It is his proximate intention: to have intercourse with his wife provided that he ejaculates into a latex sheath instead of his wife’s vagina. His remote intention is to fulfill the unitive purpose of intercourse while avoiding the transmission of disease. The question is whether the man’s proximate intention can be morally specified in itself, that is, prior to a consideration of his motive, or whether the morality of the proximate action can be determined solely or at least principally by the morality of the remote intention. However, maintaining the distinction of the three fontes of morality requires that the act of intentionally engaging in condomistic intercourse can be morally evaluated apart from the motive or reason why one is performing that act.

Rhonheimer admits, at least theoretically, that there must be some relationship between the nature of what the agent is doing and his intention, and he rejects “the idea that one can do anything with any intention, or that simply by forming a determinate intention in each case we do what we intend. We cannot continually and arbitrarily re-describe our actions because intentions, at least in many cases, also depend on objectively given conditions.” Thus, certain kinds of non-generative sexual acts must be rejected because of an objectively given condition: “It seems to me obvious that solitary sex or acts of sodomy—anal and oral sex—are ‘unnatural’ and even plainly ‘against nature’: their behavioral structure is as such not of a generative kind.”13

Nevertheless, he maintains that ejaculating into a latex sheath is a generative kind of act: “Here the act as such is of a generative kind, but it is modified by human intervention. It is only this modification which renders the act non-generative.”14 The difference for Rhonheimer seems to be that in the case of condomistic vaginal intercourse, the male organ is at least located where it should be for a generative kind of act; thus it has the “behavioral structure” that is lacking in anal sex. In other words, provided that his penis is located in his wife’s vaginal tract, a man who ejaculates into a latex sheath is engaging in a generative kind of act even though he has modified his action.

12 Ibid., 42–43.
13 Ibid., 44.
14 Ibid.
in its performance by intentionally eliminating one of the elements essential to a generative kind of act, that is, the deposit of semen in the vaginal tract. However, the same man who intentionally modifies his act by ejaculating into his wife’s mouth instead of her vagina is not engaging in a generative kind of act. Thus, according to Rhonheimer, the human modification of the sex act involved in fellatio alters the action in a morally relevant way, whereas the moral relevance of modifying the sex act by ejaculating into a latex sheath can only be determined by the agent’s intention. “To know what kind of human—that is, intentional—act is being performed, one must know the purpose for which this modification that physically impedes insemination has been brought about.”¹⁵ In this case, it is the intention that defines the moral nature of the act.

Despite fierce criticism, Rhonheimer has vigorously defended the idea that the husband’s intentional non-deposit of semen in his wife’s vagina would be contraceptive in the moral sense only if he intends to avoid conception: “I contend that impeding insemination actually is contraception, but only provided that it is done for the sake of impeding the natural purpose of insemination, which is to conceive new human life.”¹⁶ This persistent conviction colors his reading of St. Thomas Aquinas, Pope Pius XI, and the natural-law reasoning of the Church’s jurisprudential tradition.

With regard to Aquinas, Rhonheimer acknowledges that the Angelic Doctor regarded as sinful every emission of semen done deliberately (ex proposito) in such a way that generation cannot follow.¹⁷ However, he interprets Aquinas as saying not that every deliberate action which renders intercourse unsuited for procreation is sinful; rather, what is sinful is “to do something with the intention of making the act unsuited, that is, to choose and not only physically cause the unsuitability for procreation.”¹⁸ The emission of semen intentionally done in such a way that generation cannot follow is sinful only if it is done for an evil reason.

Rhonheimer reads Pius XI in a similar way. The Pope’s statement in Casti connubii—that “any use whatsoever of matrimony exercised in such a way that the act is deliberately frustrated in its natural power to generate life is an offense against the law of God and of nature, and those who indulge in such are branded with the guilt of a grave sin”¹⁹—is interpreted by Rhonheimer as meaning that only those actions frustrating the marriage act which are done with the intention of preventing conception are sinful. In fact, he goes on to say that if we accept his interpretation, we can read the Pope’s statement to mean that “any use whatsoever of matrimony exercised in such a way that during the matrimonial act the emission of semen into the woman’s vagina is deliberately impeded for the reason of frustrating its natural power

¹⁵ Ibid.
¹⁷ Thomas Aquinas, Summa contra gentiles, 3.122, 5.
¹⁸ Rhonheimer, “The Contraceptive Choice,” 284, original emphasis.
¹⁹ Pius XI, Casti connubii (December 31, 1930), n. 56.
to generate life is an offense against the law of God and of nature.” Rhonheimer has had to modify the Pope’s statement to make it say what he wants. Any morality ex obiecto has disappeared from Rhonheimer’s paraphrase and from his analysis.

As for the Church’s centuries-old jurisprudence that the consummation of marriage requires true marital intercourse, and that according to the natural moral law true marital intercourse requires on the man’s part erection, penetration, and ejaculation into the woman’s vagina, Rhonheimer says,

“It seems to me intuitively repulsive to make the consummation of a marriage dependent on factual insemination into the woman’s vagina, and to consequently consider a marriage not consummated only because intercourse was performed exclusively while using a condom, while intercourse performed using hormonal contraceptives would be considered consummation—with all the known implications for its absolute indissolubility. I think in both cases the marriage is fully consummated.”

“Intuitively repulsive” or not, the moral and canonical tradition of the Church has elaborated a set of criteria for determining the act which both parties must be capable of performing in order to contract marriage validly (capacitas coeundi) and which they must in fact do in order to consummate the marriage they have contracted. The capacity to inseminate is one of the requirements on the male’s part for entering into marriage, and a completed act of insemination is one of the requirements for marital consummation. The reason is that insemination is considered an essential element of the marital act; no insemination, no true conjugal act. When Rhonheimer asks “which aspects of nature and bodily behavior are morally relevant and to what extent they are morally relevant,” he says that to answer the question we need “an ethical argumentation based on reason.” The reason is this: there is no true conjugal intercourse without insemination, and deliberately attempting a sexual act that is not true conjugal intercourse is immoral. The conclusion depends on a consideration of the moral nature of the act itself.

Is Condomistic Intercourse a True Marital Act?

As I mentioned before, many authors have criticized Rhonheimer’s position that it is not intrinsically evil for a HIV-discordant married couple to use a condom in having intercourse provided they have no intention of preventing conception. I will now briefly consider two authors who have cogently argued against Rhonheimer’s opinion: Luke Gormally and Janet Smith. Space does not allow us to consider other authors or every detail of each argument.

While Gormally and Rhonheimer are in agreement that “for an act of sexual intercourse to be marital, it should be a generative or procreative type of act, an

20 Rhonheimer, “The Contraceptive Choice,” 286, original emphasis.
21 Ibid., 289, emphasis added.
22 Ibid., 281.
act which of its kind is apt for generation.” Gormally also asserts that the “most fundamental disagreement between Rhonheimer and me is about what is necessary for an act to be of the generative kind.”

He then points out that there are two ways of performing a sexual act that make it per se inapt for generation: “One is by deliberately choosing a behavioral pattern in sexual activity which is per se inapt for generation (as people do, for example, in sodomy). The other is by deliberately producing physical circumstances which render inapt for generation a behavioral pattern which otherwise would be per se apt for generation (as happens when women take oral contraceptives to render infertile an act which otherwise might have been fertile).”

Rhonheimer maintains that the use of a condom is merely a “physical circumstance” that is not adopted in order to avoid contraception. Gormally agrees that contraceptive intent can be lacking, but nevertheless the act is still wrong because its behavioral pattern is non-generative. The reason, he says, is that “an essential element of the behavioral pattern required for intercourse to be of the generative kind is ejaculation by the man into the woman’s reproductive tract.” The effect of denying this “is radically to disconnect the notion of the procreative meaning of sexual intercourse from any reasonable criterion of what is to count as generative behavior.”

He states—and this is crucial—that when a man chooses to wear a condom, “the immediate (or proximate) object of his choice is that of ensuring ejaculation into the condom rather than into his wife’s vagina.” I believe Gormally is making a critical distinction between the object and the intention. What the agent is deliberately doing can and should be morally evaluated in itself and not solely in terms of his motive for doing it. The reason why he chooses this kind of sex act may be to prevent the transmission of HIV, but that reason should be considered the further intention with which he chooses to wear the condom, not the moral object of his act.

After arguing why true marital intercourse must be a generative kind of act (an assertion that is not contested by any of the authors in question), Gormally then states, on the basis of Genesis 2:24 and Matthew 19:3-6, that it is in “acting together in a way that is apt for reproduction that a man and a woman form a quasi-organic unity—they become in a sense ‘one body.’” He then specifies an essential requirement of becoming “one body”: “At the level of common-sense experience (of a kind

24 Gormally, “Marriage and the Prophylactic Use of Condoms,” 735, original emphasis.
25 Ibid., 736, original emphasis.
26 Ibid., 736–737, original emphasis. In response to Gormally, Rhonheimer states the man’s proximate object is not to ejaculate into a condom but to engage in marital intercourse. Wearing a condom is merely “a condition for carrying out the initial choice of having sexual intercourse with one’s spouse” (“The Contraceptive Choice,” 278–279, n. 14). However, the question remains as to whether the presence of this “condition” substantially alters the nature of the act in a morally decisive way.
27 Gormally, “Marriage and the Prophylactic Use of Condoms,” 736, original emphasis.
28 They all hold that there is an “inseparable connection, established by God, which man on his own initiative may not break, between the unitive significance and the procreative significance which are both inherent to the marriage act” (Paul VI, Humanae vitae, n. 12).
that is transculturally accessible), it is evident that what is required in the way of chosen behavior for a conjoining of reproductive powers must involve the husband’s ejaculating semen into his wife’s vagina.” In other words, “it is phenomenologically evident that, to be per se apt for generation, the behavior in question must involve the husband’s ejaculation of semen into his wife’s reproductive tract.”

Gormally sees corroboration of his “common sense” and “phenomenologically evident” position in the doctrine and juridical praxis of the Holy See. In dealing with practical cases of impotence and marital consummation, the dicasteries of the Roman Curia developed criteria for determining the necessary and sufficient conditions for a true act of marital intercourse. In other words, the question turns on what kind of act must have occurred for a marriage to be considered consummated, and what kind of act must a man and woman be capable of performing to contract marriage validly. Here it is important to remember that the act that “consummates” a marriage is not some special subclass of conjugal acts, but is the conjugal act itself in its essential and necessary features at the level of human performance. After considering the Church’s practice, Gormally concludes:

Marriage belongs to the order of creation, and what is required for the consummation of marriage should therefore be in principle universally graspable. What is universally graspable are the elements of the performance—what I earlier called the “behavioral pattern”—which embodies marital intercourse. Those elements for the man are erection, penetration, and ejaculation within the vagina. The most important of these is the ejaculation of semen: inability to deposit semen in the vagina amounts to an inability to perform the kind of act which is per se apt for generation. A sexual performance in which a wife has not received within her reproductive tract her husband’s semen is at a phenomenological level clearly not an act “ordered to procreation.”

This lack of aptitude is not an incidental feature of the act or a “physical circumstance” that makes the act sterile, but is rather “an essential feature of the chosen character of the performance.” Thus, condomistic intercourse is “a type of act which in the very character of the performance plainly detaches sex from its ordering to the good of children.” Moreover, this essential feature is in principle “universally graspable” and not “intuitively repulsive.”

Gormally concludes that condomistic intercourse also violates the unitive meaning of marriage and its sacramental nature. Matrimony sacramentally shares in the unity of Christ and his Church, which was created by his self-giving love and the Church’s receptivity of that love. Now, “the action which both signifies and realizes this unity is marital intercourse. But in order for it to do so, there clearly must be both a giving by the husband of his substance to his wife and a receiving of it by the wife.” However, “in condomistic intercourse there is neither the giving nor the receiving which are

29 Gormally, “Marriage and the Prophylactic Use of Condoms,” 740–741, original emphasis.
30 Ibid., 744, original emphasis.
31 Ibid., 745, original emphasis.
essential features of the symbolism.” Since a couple may very well intend to give themselves to each other in some sense, I think Gormally’s opinion must be rephrased to mean that in withholding his generative ability (of which his semen is a necessary element), the man is failing to give an essential part of himself and therefore cannot be symbolizing Christ’s self-sacrificing and life-giving love.

Janet Smith, on the other hand, begins by stating that condomistic intercourse—or “condomized” intercourse, to use her preferred term—is inherently immoral for all married couples because it violates the unitive meaning of the marriage act, and that the use of a condom by fertile couples gives a contraceptive meaning to their intercourse regardless of their intention. She says, “I will attempt to establish both (1) that condomized spousal sexual intercourse is intrinsically immoral because it violates the unitive meaning of the sexual act and (2) that condom use by fertile heterosexuals always retains a contraceptive meaning, even when done to reduce the risk of transmitting disease.”

In arguing the first point, Smith states the unitive meaning of intercourse involves more than just the mutual sharing of pleasure, but entails a distinctive kind of bonding: “It accomplishes three different kinds of bonding: that of the physical act of two bodies becoming one, that of a feeling of psychological closeness, and the spiritual or marital (and fully human) bonding of reaffirming a lifetime commitment.” When a man and a woman have made a lifelong commitment to each other, their sexual intercourse expresses their union in a uniquely distinctive way.

Essential to that distinctiveness is the procreative dimension of their conjugal relations, the act by which they become “one flesh,” for “the sexual act expresses a lifetime commitment precisely and most fittingly because by its nature it is ordained to the creation of new human life, a life with an immortal soul that incarnates the love of the spouses.” In support of her statement, Smith cites John Paul II’s exhortation Familiaris consortio: “Thus the couple, while giving themselves to one another, give not just themselves but also the reality of children, who are a living reflection of their love, a permanent sign of conjugal unity and a living and inseparable synthesis of their being a father and a mother.” From this Smith draws the conclusion that the “unitive meaning is achieved when spouses engage in acts expressive of complete self-giving wherein true physical union takes place, that is, when something that has procreative meaning takes place.”

A crucial question, however, concerns the essential requirements for a conjugal act to have procreative meaning. Since the Church has always recognized that infertile married couples may licitly engage in sexual intercourse, the actual conception of a

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32 Ibid., 748–749.
33 Smith, “Morality of Condom Use,” 30, original emphasis.
34 Ibid., 32.
35 Ibid., 35. Once again, the full unitive meaning of the act depends on it also being a procreative kind of act.
37 Smith, “Morality of Condom Use,” 37, emphasis added.
child would not be a requirement for this procreative meaning. Even in the case of a fertile couple, most of their sexual acts do not produce offspring. The issue, then, is about the minimal requirements for conjugal intercourse to be a procreative kind of act. Smith finds the answer to this question in the Church’s teaching that the kind of sexual act that consummates marriage is one in which “the spouses have performed between themselves in a human fashion a conjugal act which is suitable in itself for the procreation of offspring [per se aptum ad prolis generationem], to which marriage is ordered by its nature and by which the spouses become one flesh.”

What is required for an act to be per se ordered to procreation? The traditional answer has been that on the man’s part there must be penile erection, penetration of the wife’s vagina, and the depositing of his semen there. However, this answer is not based on any prescriptions of positive human law, but on careful philosophical consideration of what is minimally required at the level of human performance (i.e., what is subject to human will and control) for an act to be true human intercourse. Smith finds the explanation in the “theology of the body”:

For a husband to ejaculate within the vagina is for him to give of himself to the female. The semen is the vehicle for the sperm and the vagina is the receptacle of the semen. When semen has been deposited and the female has received the semen, they have become “one flesh” in a physical and factual way; moreover, the act that they have performed is an act that is ordained to the creation of “one flesh,” a new human being. When the semen has been deposited in the vagina, a sexual act apt for the generation of offspring has taken place.

However, the fact that the Church allows a postmenopausal woman or a vasectomized man to marry shows that it is not the actual procreative power of the partners that matters, but that they are capable of performing what is essential to the marital act:

Even semen devoid of sperm serves to consummate a marriage, and that with a woman who may be without key reproductive organs—she needs a vagina, but not ovaries or a uterus. The acts of the infertile are still per se apt for procreation though they are not in fact, or in se, procreative; that is, they are of a kind that is apt for procreation but they are an imperfect or defective instance of that kind. … Acts that preserve the ordination to procreation even if that ordination cannot be actualized essentially bear and express that procreative meaning.

In other words, the parties must do all they can at the level of human performance to make it a procreative kind of act, even if they know that some essential element, through no fault of their own, is missing.

However, if an action can retain its per se aptitude for generation even though it will always be infertile, then it is conceivable that an act that cannot result in conception can still be rendered non-procreative by the way in which it is done. By rendering the act at the level of human performance inapt for generation, the use of

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40 Ibid., 41.
a condom makes the intercourse a non-procreative kind of act even if the couple are already infertile and have no contraceptive intent:

If their acts can have that telos [ordination to procreation] in a per se way and can express the meaning of sexual intercourse, it would seem that it is possible for them to do things that would violate that telos or meaning. If they fail to do or to give to each other what is minimally necessary for an act of sexual intercourse to be per se apt for procreation, they would be falsifying the meaning of the act. Condom use prevents them from doing or giving what is necessary for an act to be per se procreative of its kind. ... Their acts become more like the acts of homosexuals, acts in which there is no procreative meaning being expressed. 41

This is the case regardless of whether the couple “intends” to contracept. To put the matter in more classical terms: “The finis operis/actus is a telos/end, ordination, meaning, or character of an act that is inherent in an act and so intrinsic to it or ‘embedded’ in it that one cannot choose that action without also choosing that end along with any other further ends the agent might have. A whole moral act ... includes both a finis operantis and the finis operis.” 42

This distinction between the role of the finis operis and the finis operantis in morally evaluating an actus humanus is traditional and, in my opinion, correct. Once again we are faced with the fundamental difference between how the moral object has been conceived by the Catholic moral tradition and its reformulation by Rhonheimer. The object must be morally evaluated according to its meaning and purpose apart from the reason or motive the agent has in performing that act. The very meaning of objective morality, as it has always been understood in the Catholic tradition, depends on this distinction. 43 Furthermore, Smith is correct in saying that in deliberately choosing a certain kind of moral object, one is choosing what it actually is in its entire meaning. Consequently, “a condom used by fertile heterosexuals has its own inherent ordination or telos, the intentionality of preventing the deposit of semen and the prospect of a sperm fertilizing an egg. Thus, whether the spouses use a condom to prevent pregnancy or the transmission of the HIV they cannot fail to intend the intrinsic telos of the condom in an act of heterosexual sexual intercourse.” 44


42 Smith, “Morality of Condom Use,” 55.

43 Smith rightly points out that “here, as elsewhere in his writings, [Rhonheimer] folds the intention, or the end of an action, into the object of the action” (ibid., 56). With regard to this general tendency among a number of contemporary moralists, Kevin Kieser’s observation is apropos: “While almost no Catholic theologian would like to say that his system does away with objective morality, it sometimes becomes difficult to see how any claims to the contrary are not anything more than mere assertions. ... At a certain point, it becomes clear that those moral systems that give primacy to intention in the specification of moral acts retain objective morality only in name,” “The Moral Act in St. Thomas: A Fresh Look,” The Thomist 74.2 (April 2010): 281–282.

44 Smith, “Morality of Condom Use,” 57.
A Teaching of Natural Law

As I stated earlier, the man who chooses to wear a condom while having intercourse with his wife is making two choices. He is first choosing to have intercourse while wearing a condom; his proximate intention is to have intercourse with his wife provided that he ejaculates into a latex sheath instead of his wife’s vagina. His second or remote intention is to fulfill the unitive purpose of intercourse while avoiding the transmission of disease. Each of those choices pertains to his actus humanus and is subject to moral evaluation. The evaluation of the proximate act must be distinct from the moral evaluation of the ulterior intention if we are to maintain any sense of objective morality, for if the morality of the action itself is determined by the moral nature of the motive, then we are merely saying that the end justifies the means. As much as Rhonheimer has distanced himself from proportionalism, on this particular issue I cannot see that he is saying anything other than that condomistic intercourse is at most an ontic evil (if even that), and that the morality of engaging in that act can be determined only on the basis of the agent’s intention.

Gormally is correct when he says that “transculturally accessible” common sense shows that there must be ejaculation into the woman’s vaginal tract for a true act of sexual intercourse to occur. That is the case because, as Smith points out, human intercourse has its own intrinsic ordination or telos, and when a couple uses a condom, they are acting in such a way as to violate that ordination. They are not engaging in a two-in-one-flesh act. The intrinsic evil of intentionally ejaculating into a latex sheath instead of the vagina can be described as “contraceptive,” “disordered,” “anti-procreative,” or “anti-unitive,” and there are good reasons for each of those terms. What is common to them all is the idea that intercourse of that sort is contrary to the law of nature.

While William Newton is correct in saying that the canonical tradition which has developed this reasoning “is not an infallible declaration,” he is less correct in asserting that the “theological foundation for this tradition is unclear and so it can appear arbitrary.” The natural-law reasoning underlying the Church’s jurisprudential tradition has been quite clear and is hardly arbitrary. Although for a period of time in the twentieth century there was a discrepancy between the praxis of the Holy Office and that of the Roman Rota regarding the necessary content of what is seminated, there was never any doubt that semination in the vagina was required for a true marital act. The 1977 decree of the Congregation for the Doctrine of the Faith resolving that discrepancy presupposes that something must be ejaculated into the vagina for true intercourse. That decree was issued by the doctrinal congregation, and I believe that Rev. Urbano Navarrete, SJ, Rev. Kevin Flannery, SJ, and Rev. Marcelino Zalba, SJ, are correct in stating that it is a declaration of natural law.

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The idea that a man must ejaculate into a woman’s vagina in order to complete a true and proper act of intercourse is not “counterintuitive” or “intuitively repulsive,” but is rather based on a consideration of what is essential for a man and woman to become two-in-one-flesh in an act that is procreative in kind insofar as it is subject to human performance. That the *communis aestimatio hominum* perceives that only an act of this kind can be a human act of intercourse is perhaps best illustrated by an anecdote related by William May:

When I wrote my essay in 1988 I consulted several theologians loyal to the magisterium. Some priest-theologians, because of misplaced “compassion,” I believe, thought that such use of condoms would be acceptable. I think Rhonheimer belongs here. However, every married Catholic theologian loyal to the magisterium whom I have consulted unanimously and immediately judged such behavior unworthy of marriage, and their spouses were in perfect agreement. Husbands and wives have a right to the *conjugal act*; they do not have a right to condomistic sex.48

“Their spouses were in perfect agreement.” Even the non-theologian can see—because it is “universally graspable”—that condomistic intercourse, even when done for a morally good end, is an essential distortion of the marital act and should never be done.

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48 May, “Using Condoms to Prevent HIV,” 668, original emphasis.